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**DPA  
TERMS AND CONDITIONS**

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**DRAFT – Version 2**

**November 2022**

**Note: This document is intended to be read alongside: (i) the Dispatchable Power Agreement Business Model Summary (November 2022); and (ii) the Dispatchable Power Agreement Consultation Government Response (November 2022), and this document is subject to the “Disclaimer” within Dispatchable Power Agreement Business Model Summary (November 2022).**

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## **PRELIMINARY**

The Conditions as applicable to an Eligible Generator are to be read in conjunction with:

- (A) the offer to contract made to the Eligible Generator by the DPA Counterparty as the designated CfD Counterparty pursuant to section 10 of the EA 2013 and the acceptance of that offer by such Eligible Generator; and
- (B) the Agreement entered into between the DPA Counterparty and the Eligible Generator.

**Part 1  
Introduction**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 In these Conditions:

**"10-TD Gas Sample Period"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD Gas Trade Number Percentage"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD Gas Volume Percentage"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD UKA Sample Period"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"10-TD UKA Trade Number Percentage"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"10-TD UKA Volume Percentage"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Acceptable Collateral"** has the meaning given to such term in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of the Schedule (*Gain Share*);

**"Acceptable Credit Standing Test"** means that one or both of the following tests are met by the Investors:

- (A) there is at least one Material Investor with a long-term credit rating of not less than [BBB+ (from Standard & Poor's or Fitch)] or [Baa1 (from Moody's)]; or
- (B) the Investors when considered together have consolidated net assets as determined in accordance with IFRS of no less than the Minimum Net Assets Requirement;

**"Acceptable Grounds of Objection"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Achieved and Declared CO<sub>2</sub> Capture Rate Average"** means the monthly average of: (i) the Achieved CO<sub>2</sub> Capture Rate; and (ii) the Declared CO<sub>2</sub> Capture Rate, in each case during the relevant AP Billing Period and as calculated by the DPA Counterparty for each AP Billing Period in accordance with the following formula:

$$ADCR = \frac{(ACR_{ph} \times TotalSettlementUnits_{ACR_{ph}}) + \sum(DCR_i)}{TotalSettlementUnits}$$

where:

*ADCR* = Achieved and Declared CO<sub>2</sub> Capture Rate Average  
(expressed as a percentage (%))



$ACR_{ph}$	=	Achieved CO <sub>2</sub> Capture Rate in the relevant AP Billing Period ( <i>expressed as a percentage (%)</i> )
$TotalSettlementUnits_{ACR_{ph}}$	=	Total number of AP Settlement Units where the Achieved CO <sub>2</sub> Capture Rate is used as the Availability of Capture in the relevant AP Billing Period
$DCR_i$	=	Declared CO <sub>2</sub> Capture Rate for each AP Settlement Unit (i) in the relevant AP Billing Period where the Declared CO <sub>2</sub> Capture Rate is used as the Availability of Capture for that AP Settlement Unit ( <i>expressed as a percentage (%)</i> )
$TotalSettlementUnits$	=	Total number of AP Settlement Units in the relevant AP Billing Period

**"Achieved CO<sub>2</sub> Capture Rate" (ACR<sub>ph</sub>)** means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) for the Facility during each AP Settlement Unit, which shall be equal to the lower of:

- (A) one hundred percent (100%); and
- (B) the value calculated in accordance with the following formula:

$$ACR_{ph} = \frac{CO2_{exp} - CO2_{expCORE}}{CO2_{gen} - CO2_{genCORE}}$$

where:

$ACR_{ph}$	=	Achieved CO <sub>2</sub> Capture Rate ( <i>expressed as a percentage (%)</i> )
$CO2_{exp}$	=	AP Metered CO <sub>2</sub> Output (tCO <sub>2</sub> )
$CO2_{expCORE}$	=	AP Metered CO <sub>2</sub> Output with Capture Outage Relief Event (tCO <sub>2</sub> )
$CO2_{gen}$	=	AP Calculated CO <sub>2</sub> Generated (tCO <sub>2</sub> )
$CO2_{genCORE}$	=	AP Calculated CO <sub>2</sub> Generated with Capture Outage Relief Event (tCO <sub>2</sub> ),

**"Actual Load Factor"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Actual Net Efficiency"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Adjusted Revenues Period"** means a period during the Term in which one (1) or more of the following is reduced or increased as a direct result of a Qualifying Change in Law:

- (A) the Net Dependable Capacity;
- (B) the Availability of Generation;
- (C) the Availability of Capture; and/or

(D) the Metered Day Electricity Output;

**"Adjusted Revenues Sub-Period"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Affected Operational CP"** has the meaning given to that term in Condition 3.11 (*Operational Conditions Precedent: General Reporting Obligations*);

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

- (A) contractually obliged to exercise rights under the relevant Direct Agreement in accordance with the instructions of one (1) or more Lenders (or an agent or security trustee on its or their behalf); or
- (B) party to an agreement regarding the exercise of rights under such Direct Agreement with a person falling within paragraph (A) above;

**"Affiliate"** means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);

**"Agreement"** means the agreement entered into between the DPA Counterparty and the Eligible Generator pursuant to an offer made by the DPA Counterparty pursuant to section 10 of the EA 2013;

**"Agreement Date"** has the meaning given to that term in the Agreement;

**"Agreement Date Provisions"** means Part 1 (*Introduction*), Part 2 (*Term*), Part 3 (*Conditions Precedent and Milestone Requirement*), Condition 8 (*Definitions: Part 5*), Condition 9.13 (*APR Indexation Adjustment*), Condition 10.15 (*Other Extra Variable Costs Indexation*), Condition 10.19 (*Base Performance Assumptions Adjustments*), Condition 14 (*Default Interest*), Condition 15 (*Set-off*), Condition 16 (*Deductions and withholdings*), Condition 17 (*Payment accounts*), Condition 18 (*Generator representations and warranties*), Condition 19 (*DPA Counterparty representations and warranties*), Condition 20 (*Generator undertakings: General*), Condition 24 (*Generator undertakings: Information provision and no cumulation of Subsidy, state aid and/or union funding*), Condition 25 (*Generator undertaking: Supply Chain Reporting*), Part 9 (*Termination*), Part 10 (*Dispute Resolution*) to Part 13 (*Miscellaneous*) (inclusive), Annex 1 (*Conditions Precedent*), Annex 3 (*Calculation of Default Termination Payment*), Annex 4 (*Change Control Procedure*), Annex 5 (*Form of Direct Agreement*), Annex 10 (*Pro forma notices*), and the Schedule (*Gain Share*);

**"Alternative T&S Network Review Notice"** has the meaning given to that term in Condition 35.13(B) (*Termination for T&S Prolonged Unavailability Event*);

**"Alternative T&S Network Solution Plan"** means a plan developed by the Generator setting out the required milestones and actions in order to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and alternative T&S Network [or alternative permanent storage]<sup>1</sup> (either directly by pipeline, or indirectly by other means of transportation), in order to remedy a T&S Prolonged Unavailability Event;

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<sup>1</sup> Note to Reader: This Definition is subject to further review by BEIS.

**"Alternative T&S Network Solution Plan Deadline"** means the date which falls eighteen (18) Months after the date of a T&S Prolonged Unavailability Event Notice issued by the DPA Counterparty in accordance with Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"Amended DCR Notice"** has the meaning given to that term in Condition 23.1(D)(ii) (*Declaration Obligations*);

**"Amended DCR Settlement Unit"** has the meaning given to that term in Condition 23.1(D) (*Declaration Obligations*);

**"Amended Declared CO<sub>2</sub> Capture Rate"** has the meaning given to that term in Condition 23.1(D)(i) (*Declaration Obligations*);

**"Amendment Notification"** has the meaning given to that term in paragraph 2.1 (*Amendment Notifications*) of Annex 4 (*Change Control Procedure*);

**"Annual Adjusted NDC"** has the meaning given to that term in Condition 7.1(E)(i)(b) (*Undertaking: Annual NDC Test*);

**"Annual Adjusted NDC Implementation Date"** has the meaning given to that term in the Agreement;

**"Annual NDC Test"** means a test carried out by the Generator pursuant to Condition 7 (*Adjustments to the Net Dependable Capacity: Annual NDC Test*) and in accordance with Annex 2 (*Testing Requirements*);

**"Annual NDC Test Access Notice"** has the meaning given to that term in Condition 7.11 (*Annual NDC Test Access Right*);

**"Annual NDC Test Access Right"** has the meaning given to that term in Condition 7.10 (*Annual NDC Test Access Right*);

**"Annual NDC Test Date Adjustment Notice"** has the meaning given to that term in Condition 7.1(C) (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Notice"** has the meaning given to that term in Condition 7.1(E) (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Notice Deadline"** has the meaning given to that term in Condition 7.1(E) (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Obligation"** has the meaning given to that term in Condition 7.1 (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Report"** means a test report prepared by the Generator in respect of an Annual NDC Test which shall include the Test Report Minimum Technical Requirements;

**"Annual NDC Test Response Notice"** has the meaning given to that term in Condition 7.4 (*DPA Counterparty Response Notification*);

**"Annual NDC Test Supporting Information"** has the meaning given to that term in Condition 7.4(B) (*DPA Counterparty Response Notification*);

**"Annual NDC Test Window"** means the period between the date which falls four (4) Months before the Annual Adjusted NDC Implementation Date (or, if such date is not a Business Day, the first (1st) Business Day thereafter) and the date which falls one (1) Month before the Annual

Adjusted NDC Implementation Date (or, if such date is not a Business Day, the first (1st) Business Day thereafter), in the year of the relevant Annual NDC Test;

**"AP Billing Period"** means a Month, except that:

- (A) the first AP Billing Period shall commence on the Start Date and end on the last day of the Month in which the DPA Counterparty notifies the Generator pursuant to the OCP Response Notice or the Further OCP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*); and/or
- (B) Condition 3.50 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable) and the last AP Billing Period shall commence on the first day of the last Month of the Term and end on the last day of the Term;

**"AP Calculated CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) generated by the Facility during an AP Billing Period, based upon the AP Total Metered Fuel Consumption and AP Fuel Composition as applicable for each AP Settlement Unit during such period, converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EU ETS Phase 2" and with the calculation performed in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Calculated CO<sub>2</sub> Generated with Capture Outage Relief Event"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) generated by the Facility during periods of Capture Outage Relief Events in an AP Billing Period, based upon the AP Total Metered Fuel Consumption and AP Fuel Composition as applicable for each AP Settlement Unit during such period converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EU ETS Phase 2" and with the calculation performed in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Compensatory Interest"** means the interest that is due and payable at the AP Compensatory Interest Rate in accordance with Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Compensatory Interest Amount"** has the meaning given to that term in Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Compensatory Interest Rate"** has the meaning given to that term in Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Fuel Composition"** means the composition of fuel used by the Facility in each AP Settlement Unit during an AP Billing Period, as measured at the Gas Supply Point(s) during such period;

**"AP Fuel Composition Recalculation Amount"** has the meaning given to that term in Condition 9.20 (*Recalculations of Estimated AP Fuel Composition*);

**"AP Metered CO<sub>2</sub> Output"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) entering the T&S Network during an AP Billing Period, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s) during such period;

**"AP Metered CO<sub>2</sub> Output with Capture Outage Relief Event"** means the mass quantity of CO<sub>2</sub> (expressed in tCO<sub>2</sub>) entering the T&S Network during periods of Capture Outage Relief Events in an AP Billing Period, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s) during such period;

**"AP Other Metered Data"** means the AP Total Metered Fuel Consumption, and the AP Metered CO<sub>2</sub> Output (as applicable);

**"AP Other Metered Data Cut-Off Time"** has the meaning given to that term in Condition 8 (Definitions: Part 5) of Part 5 (Payment Calculations);

**"AP Other Metered Data Recalculation Amount"** has the meaning given to that term in Condition 9.18 (Recalculations of Other Metered Data);

**"AP Reconciliation Amounts"** has the meaning given to that term in Condition 12.5 (Calculation of AP Reconciliation Amounts);

**"AP Reconciliation Billing Period"** has the meaning given to that term in Condition 12.6 (Calculation of AP Compensatory Interest Amounts);

**"AP Settlement Unit"** means each half hour period in a day divided into half hour-long periods for each day after the Start Date that falls during the Term, and starting at 00:00 on each such day;

**"AP Settlement Unit Calculated CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (expressed in tCO<sub>2</sub>) generated by the Facility during an AP Settlement Unit, based upon the AP Total Metered Fuel Consumption and AP Fuel Composition for the relevant AP Settlement Unit, converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EU ETS Phase 2" and with the calculation performed in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Settlement Unit Baseline CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (expressed in tCO<sub>2</sub>) generated by the Facility during an AP Settlement Unit, based upon the AP Total Baseline Fuel Consumption and AP Fuel Composition for the relevant AP Settlement Unit, converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EU ETS Phase 2" and with the calculation performed in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Total Baseline Fuel Consumption"** means the baseline full load fuel consumption of the Facility in an AP Settlement Unit (i) calculated in accordance with the following formula:

$$BFC_i = \left( \frac{NDC_i}{PNE_i} \right) \times \left( \frac{GCV}{NCV} \right) \times \left( \frac{1800}{105.506} \right)$$

where:

$BFC_i$  = AP Total Baseline Fuel Consumption (*therms*) in AP Settlement Unit (i)

$NDC_i$  = Net Dependable Capacity (*MW*) in AP Settlement Unit (i)

$PNE_i$	=	Plant Net Efficiency (% NCV basis, expressed as a decimal) in AP Settlement (i)
$GCV$	=	Gross Calorific Value of Reference Fuel Composition (expressed in MJ/kg)
$NCV$	=	Net Calorific Value of Reference Fuel Composition (expressed in MJ/kg)

**"AP Total Metered Fuel Consumption"** means the metered fuel consumption of the Facility (expressed in therms) in each AP Settlement Unit during an AP Billing Period, as measured by the Gas Supply Metering Equipment at the Gas Supply Point(s) during such period;

**"Applicable Planning Consents"** has the meaning given to that term in the Contracts for Difference (Allocation) Regulations 2014 (as at the Agreement Date);<sup>2</sup>

**"Approved Alternative T&S Network Solution Plan"** has the meaning given to that term in Condition 35.13(B)(i) (*Termination for T&S Prolonged Unavailability Event*);

**"Approved Capture Rate Breach Rectification Plan"** has the meaning given to that term in Condition 22.5(B)(i) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Approved Scheme of Funding"** has the meaning given to that term in the Agreement;<sup>3</sup>

**"Approved Test Procedure"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"ARP Estimate"** means a good faith estimate in relation to an Adjusted Revenues Period, including a good faith estimate of: (i) the date on which such Adjusted Revenues Period will commence and end; (ii) the QCiL Adjusted Revenues Payment; and (iii) the impact of the Adjusted Revenues Period on one (1) or more of the following:

- (A) the Net Dependable Capacity;
- (B) the Availability of Generation;
- (C) the Availability of Capture; and/or
- (D) the Metered Day Electricity Output;

**"APR Indexation Adjustment"** has the meaning given to that term in Condition 9.13 (*APR Indexation Adjustment*);

**"APR Indexation Anniversary"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Arbitral Award"** has the meaning given to that term in Condition 42.2 (*Arbitration Procedure*);

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

<sup>2</sup> Note to Reader: This definition is subject to further review by BEIS.

<sup>3</sup> Note to Reader: This definition is expected to be relevant if any funding has been provided to the Generator and/or its Affiliates under the Industrial Strategy Challenge Fund and/or BEIS Energy Innovation Programme for development/pre-development expenditure incurred in respect of the Project prior to the Agreement Date. Such funding must be notified to, and verified by, BEIS on a project-by-project basis and set out in the Agreement. BEIS is considering whether to refer to any other scheme(s) of funding.

**"Arbitration Dispute"** means any Dispute other than an Expert Dispute;

**"Arbitration Procedure"** means the rules, obligations and procedures set out in Condition 42 (*Arbitration Procedure*);

**"Arbitrator"** means any person to whom a Dispute is referred in accordance with the Dispute Resolution Procedure;

**"Assumed CO<sub>2</sub> Capture Rate"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Load Factor"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Net Dependable Capacity"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Net Efficiency"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Audit Notice"** has the meaning given to that term in Condition 3.18 (*Reporting Obligations Audit Right*);

**"Audit Right"** has the meaning given to that term in Condition 3.17 (*Reporting Obligations Audit Right*);

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

**"Availability of Capture"** ( $AC_i$ ) means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) during each AP Settlement Unit, based on the Achieved CO<sub>2</sub> Capture Rate and the Declared CO<sub>2</sub> Capture Rate during such AP Settlement Unit, calculated in accordance with the following formula:

(A) where a Capture Outage Relief Event occurs during an AP Settlement Unit:

$$AC_i = DCR_i$$

where:

$$DCR_i = \text{Declared CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

(B) where: (i) no Capture Outage Relief Event occurs during an AP Settlement Unit; and (ii) Metered Electricity Output is equal to or less than zero (0):

$$AC_i = DCR_i$$

where:

$$DCR_i = \text{Declared CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

(C) where: (i) no Capture Outage Relief Event occurs during an AP Settlement Unit; and (ii) Metered Electricity Output is greater than zero (0):

$$AC_i = ACR_{ph}$$

where:

$$ACR_{ph} = \text{Achieved CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

**"Availability of Generation"** ( $AG_i$ ) means the net generating capacity of the Facility (expressed as a percentage (%)) during an AP Settlement Unit, calculated in accordance with the following formula for each such unit:

(A) where no Generation Outage Event occurs during an AP Settlement Unit:

$$AG_i = 1.00$$

(B) where a Generation Outage Relief Event occurs during an AP Settlement Unit:

$$AG_i = 1.00$$

(C) where a Generation Outage Event either starts, continues or ends during the relevant AP Settlement Unit:

$$AG_i = AG_{OE_n} = 1 - \frac{\sum ((NAC_{OE_n} - NAC_j) \times \Delta T_j)}{NAC_{OE_n} \times \Delta T_{Settlement Units}}$$

where:

$$AG_{OE_n} = \text{Availability of Generation during Generation Outage Event n (expressed as a percentage (\%))}$$

$$NAC_{OE_n} = \text{Net Available Capacity immediately preceding the Generation Outage Event (MW)}$$

$$NAC_j = \text{Net Available Capacity during time segment j (MW)}$$

$$\Delta T_j = \text{Duration of time segment j of the Generation Outage Event (hours)}$$

$$\Delta T_{Settlement Units} = \text{Generation Outage Event (AP Settlement Unit) Duration (hours)}$$

**"Availability Payment"** means the payment calculated in accordance with Condition 9.1 (*Availability Payment Calculation*);

**"Availability Payment Billing Statement"** has the meaning given to that term in Condition 12.1 (*Delivery of Availability Payment Billing Statement*);

**"Availability Payment QCiL Differential"** has the meaning given to that term in Condition 27.34 (*QCiL Operations Cessation Event Payment*);

**"Availability Payment Rate"** means the Initial Availability Payment Rate, as adjusted pursuant to Conditions 9.13 to 9.16 (*APR Indexation Adjustment*);

**"Base Performance Assumptions"** means:



(A) the Reference Plant CO<sub>2</sub> Emissions; and

(B) the Reference Plant Gas Consumption;

**"Base Performance Assumptions Adjustments"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

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

**"Base Year"** has the meaning given to that term in the Agreement;

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

**"Billing Period"** means the AP Billing Period and/or the VP Billing Period (as applicable);

**"Billing Statement Dispute Notice"** has the meaning given to that term in Condition 13.4 (*Billing Statement Disputes*);

**"Billing Statements"** means an Availability Payment Billing Statement and/or a Variable Payment Billing Statement (as applicable);

**"BSC"** means the Balancing and Settlement Code that is provided for in standard condition C3 (*Balancing and Settlement Code*) of the Electricity Transmission Licence;

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

**"Calculated CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) generated by the Facility during the relevant period, based upon the Total Metered Fuel Consumption and Fuel Composition as applicable for each such period, converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EU ETS Phase 2" and in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"Calculation CMRP Source"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Capture Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(E) (*Declaration Obligations*);

**"Calculation Gas Price Source"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Capture Assets"** has the meaning given to that term in the Agreement;

**"Capture Outage Event"** means an event where the Capture Assets are unavailable, curtailed or derated (which, for the avoidance of doubt, shall include a Full Capture Outage Event);

**"Capture Outage Relief Event"** means: an event where the Facility is unable to export captured CO<sub>2</sub> to the T&S Network, which occurs as a direct result of a T&S Outage Event excluding any T&S Outage Events that arise out of or in connection with any act, omission,

breach or default of the Generator or its Representatives (including any breach by the Generator or its Representatives of an Industry Document);<sup>4</sup>

**"Capture Rate Breach Deadline"** means the date which falls eighteen (18) Months after the date of a Capture Rate Breach Notice, as such date may be extended day for day for each day that the Generator is delayed in achieving a Capture Rate Breach Rectification by reason of:

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) a Capture Outage Relief Event which directly affects the ability of the Generator to achieve a Capture Rate Breach Rectification;

**"Capture Rate Breach Notice"** has the meaning given to that term in Condition 22.2 (*Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Rectification"** has the meaning given to that term in Condition 22.3(A) (*Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Rectification Plan"** means a plan developed by the Generator and submitted to the DPA Counterparty pursuant to Condition 22.5 (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*) setting out the Generator's proposed actions and milestones (and proposed deadlines for completing such actions and milestones) in order to rectify a breach of the Minimum CO<sub>2</sub> Capture Rate Obligation and achieve a Capture Rate Breach Rectification;

**"Capture Rate Breach Rectification Review Notice"** has the meaning given to that term in Condition 22.5(B) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Response Notice"** has the meaning given to that term in Condition 22.3 (*Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Termination Event"** means an event as set out in Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Carbon Market Reference Price"** has the meaning given to that term in Condition 10.9 (*Carbon Price calculation*);

**"Carbon Market Reference Price Review"** means a review of the effective carbon price in the UK carried out by the DPA Counterparty pursuant to Annex 7 (*Carbon Market Reference Price Review*);

**"Carbon Price"** means the carbon price (*expressed in £/tCO<sub>2</sub>*) calculated in accordance with Condition 10.8 (*Carbon Price calculation*);

**"Carbon Support Price"** means:

- (A) the carbon price support rate as published by HM Treasury (*expressed in £/kWh*) pursuant to the Finance Act 2000 Schedule 6 (*Climate Change Levy*), converted to an equivalent £/tCO<sub>2e</sub> figure, for the purposes of the DPA using the kg of CO<sub>2e</sub> per kWh (GCV) of Natural Gas conversion factor pursuant to the "UK Government GHG Conversion Factors for Company Reporting" as published from time to time by BEIS; or

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<sup>4</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops.

- (B) an alternative carbon support price determined by the DPA Counterparty pursuant to Annex 4 (*Change Control Procedure*);

**"CCP Affected Parties"** means, in respect of a General Amendment, the generators which are party to those CCUS Programme DPAs to which the General Amendment is proposed to be made;

**"CCS Network Code"** means the network code that the Generator is required to comply with in accordance with the [Code Agreement]<sup>5</sup>;

**"CCUS Programme"** means a programme, as such programme may be updated from time to time, to deploy a system comprising the following:

- (A) capturing CO<sub>2</sub> that has been produced by, or in connection with, processes including:
- (i) commercial electricity generation;
  - (ii) commercial industrial processes; or
  - (iii) commercial hydrogen production;
- (B) transporting such CO<sub>2</sub> that has been captured; and
- (C) disposing of such CO<sub>2</sub> that has been captured, by way of permanent storage;

**"CCUS Programme DPA"** means each DPA entered into between a DPA Counterparty and an Eligible Generator issued pursuant to an offer made by the DPA Counterparty pursuant to section 10 EA 2013;

**"Change Control Procedure"** means the rules, obligations and procedures set out in Annex 4 (*Change Control Procedure*);

**"Change in Applicable Law"** means:

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

**"Change in Law"** means:

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

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

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<sup>5</sup> Note to Reader: The Generator is expected to need to enter into the Code Agreement in order to make the CCS Network Code binding upon the Generator.

- (i) arises out of, or in connection with, a breach of or default under or with respect to, that Law, Directive, Industry Document or Required Authorisation by the Generator or any of its Representatives;
- (ii) arises out of, or in connection with, a failure by the Generator or any of its Representatives to act in accordance with the Reasonable and Prudent Standard; or
- (iii) represents no more than a continuous improvement or development of good practice which would be complied with in respect of a generating facility deploying CO<sub>2</sub> Capture Technology by a generator acting in accordance with the Reasonable and Prudent Standard;

**"Change of Ownership"** means:

- (A) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the shares in the Generator or Holdco (including the control over the exercise of voting rights conferred on those shares or the control over the right to appoint or remove directors or the rights to dividends); and/or
- (B) any other arrangements that have or may have or which result in the same effect as paragraph (A) above;

**"Change of Ownership Notice"** has the meaning given to that term in Condition 61.12 (*Change of Ownership*);

**"Change of Ownership Response Notice"** has the meaning given to that term in Condition 61.14 (*Change of Ownership*);

**"Change of Ownership Supporting Information"** has the meaning given to that term in Condition (*Change of Ownership*) 61.14(C);

**"CiAL Dispute"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Generator"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Notice"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Threshold Criterion"** has the meaning given to that term in Condition 33.9 (*CiAL Dispute Threshold Criterion*);

**"CiAL Dispute Validity Notice"** has the meaning given to that term in Condition 33.3 (*Validity of CiAL Dispute Notices*);

**"CiAL Request Criterion"** has the meaning given to that term in Condition 32.3 (*Requirement to undertake a CiAL Review*);

**"CiAL Request Notice"** has the meaning given to that term in Condition 32.2 (*Requirement to undertake a CiAL Review*);

**"CiAL Request Validity Notice"** has the meaning given to that term in Condition 32.5 (*Validity of CiAL Request Notices*);

**"CiAL Review"** means a review conducted by the DPA Counterparty pursuant to Condition 32.1 (*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 CiAL Amendment Objectives will cease to be met; and
- (B) as a consequence of one (1) or more of the Required CiAL Amendment Objectives ceasing to be met, Required CiAL Amendments are necessary;

**"CiAL Review Notice"** has the meaning given to that term in Condition 32.6 (*Notification of CiAL Review*);

**"CiAL Review Outcome Notice"** has the meaning given to that term in Condition 32.9 (*Notification of outcome of CiAL Review*);

**"CiAL Review Response Deadline"** has the meaning given to that term in Condition 32.6(B) (*Notification of CiAL Review*);

**"CiAL Review Response Notice"** has the meaning given to that term in Condition 32.7 (*Notification of CiAL Review*);

**"CiAL Review Trigger"** has the meaning given to that term in Condition 32.1 (*Requirement to undertake a CiAL Review*);

**"Civil Procedure Rules"** means the Civil Procedure Rules 1998;

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

**"Claimant"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Classification Objection"** has the meaning given to that term in paragraph 2.6(B)(ii)(a) (*Technical Amendments (bilateral Proposed Amendments): process*) of Annex 4 (*Change Control Procedure*);

**"CMRP Dispute"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Fallback Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"CMRP Inclusion Criteria"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Quality Criteria"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Review Calculation Period"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Source"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"CMRP Source Live Day"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Trading Day"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"CO<sub>2</sub>"** means carbon dioxide;

**"CO<sub>2</sub> Capture Rate Estimate"** has the meaning given to that term in the Agreement;

**"CO<sub>2</sub> Capture Rate Test"** means a test carried out by the Generator pursuant to Condition 23.13 in accordance with paragraph 6 (*CO<sub>2</sub> Capture Rate Test*) of Annex 2 (*Testing Requirements*);

**"CO<sub>2</sub> Capture Rate Test Notice"** has the meaning given to that term in Condition 23.13 (*Undertaking: Access to and test of Facility*);

**"CO<sub>2</sub> Capture Rate Test Report"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"CO<sub>2</sub> Capture Technology"** means technology which is installed or implemented pursuant to the CCUS Programme and which:<sup>6</sup>

- (A) captures some or all of the CO<sub>2</sub> or any substance consisting primarily of CO<sub>2</sub>; and
- (B) temporarily stores, processes and exports captured CO<sub>2</sub> (or any substance consisting primarily of CO<sub>2</sub>) for permanent storage and disposal and/or utilisation;<sup>7</sup> or
- (C) carries out any other process which is preparatory or ancillary to limbs (A) and (B) of this definition;

**"CO<sub>2</sub> Cost Differential"** (CC<sub>i</sub>) means the CO<sub>2</sub> cost differential in respect of the Facility (*expressed in £/MWh*) for a VP Settlement Unit (i), calculated in accordance with the following formula:

$$CC_i = CP_i \times (CO2E_{CCUS} - CO2E_{Ref})$$

where:

CC <sub>i</sub>	=	CO <sub>2</sub> Cost Differential in VP Settlement Unit (i) (£/MWh)
CP <sub>i</sub>	=	Carbon Price in VP Settlement Unit (i) (£/tCO <sub>2</sub> )
CO <sub>2</sub> E <sub>CCUS</sub>	=	Facility CO <sub>2</sub> Emissions in VP Settlement Unit (i) (tCO <sub>2</sub> /MWh)
CO <sub>2</sub> E <sub>Ref</sub>	=	Reference Plant CO <sub>2</sub> Emissions in VP Settlement Unit (i) (tCO <sub>2</sub> /MWh)

**"CO<sub>2</sub> Delivery Point(s)"** means the point(s) of connection of the Facility to the T&S Network pursuant to the T&S Connection Agreement [or where CO<sub>2</sub> is transported from the Facility to

<sup>6</sup> Note to Reader: This definition is subject to further review by BEIS.

<sup>7</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops and in relation to non-pipeline transportation (NPT) arrangements.

the T&S Network other than by pipeline, the point(s) of connection where such CO<sub>2</sub> first enters the T&S Network];<sup>8</sup>

**"CO<sub>2</sub> Metering Dispute"** has the meaning given to that term in Condition 13.9 (*CO<sub>2</sub> Metering Dispute*);

**"CO<sub>2</sub> Metering Equipment"** means the metering equipment which is required pursuant to the CO<sub>2</sub> Metering Specification to meter the Metered CO<sub>2</sub> Output and the Metered CO<sub>2</sub> Rich Stream Output which may include flow meters, composition analysers, associated communications equipment, and any other necessary ancillary equipment and infrastructure;

**"CO<sub>2</sub> Metering Obligation"** has the meaning given to that term in Condition 21.2 (*Undertakings: CO<sub>2</sub> Metering Obligation*);

**"CO<sub>2</sub> Metering Specification"** means [●];<sup>9</sup>

**"CO<sub>2</sub> Rich Stream"** means a stream consisting primarily of CO<sub>2</sub> which is produced by the Facility and delivered to the relevant T&S Network at the CO<sub>2</sub> Delivery Point(s);

**"Code Agreement"** means the agreement entered into by a Generator which makes the CCS Network Code binding on such Generator;]

**"Cold Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

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

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

- (A) relevant to generating and CO<sub>2</sub> capture facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology and/or the Facility Capture Technology);
- (B) required to be completed, followed or passed (as appropriate): (i) in order for a generating facility to generate and export electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation;
- (C) required to be completed, followed or passed (as appropriate): (i) in order for a capturing facility to capture and export CO<sub>2</sub>; or (ii) to demonstrate that a capturing facility is fit for commercial operation; and
- (D) required to be carried out in accordance with Annex 2 (*Testing Requirements*);

**"Compensatory Interest"** means any AP Compensatory Interest and/or VP Compensatory Interest (as applicable);

**"Compensatory Interest Amount"** means an AP Compensatory Interest Amount and/or a VP Compensatory Interest Amount (as applicable);

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<sup>8</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops and in relation to non-pipeline transportation (NPT) arrangements.

<sup>9</sup> Note to Reader: The specific CO<sub>2</sub> metering standards are to be determined



**"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 which has jurisdiction in respect of the Facility, the Project, the DPA and/or any other DPA Document,

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

**"Conditions"** means these terms and conditions;

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

**"Confidential Information"** means DPA Counterparty Confidential Information and Generator Confidential Information;

**"Connected Dispute"** has the meaning given to that term in Condition 43.1(A) (*Consolidation of Connected Disputes*);

**"Consolidation Request"** has the meaning given to that term in Condition 43.2 (*Consolidation of Connected Disputes*);

**"Contractor"** means any contractor, sub-contractor, consultant or adviser of or to the Generator but excludes any Electricity Transmission System Operator, Electricity Transmission Licensee, Electricity Licensed Distributor, Gas Licensed Shipper, Gas Licensed Transporter or the T&S, Operator;

**"Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"CPI"** means:

- (A) the all items index of consumer price inflation published each Month by the Office for National Statistics;
- (B) if that index is no longer being published, such index as the DPA 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 DPA Counterparty may from time to time reasonably determine to be appropriate in the circumstances;

**"Crown Body"** means any department, office or agency of the Crown;

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

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

**"Daily Discount Rate"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Declaration Obligations"** has the meaning given to that term in Condition 23.1(H) (*Declaration Obligations*);

**"Declaration Access Right"** has the meaning given to that term in Condition 23.9 (*Undertaking: Access to and test of Facility*);

**"Declaration Access Termination Event"** has the meaning given to that term in Condition 23.16 (*Failure to provide Declaration Access Right*);

**"Declaration Inspection Notice"** has the meaning given to that term in Condition 23.10 (*Undertaking: Access to and test of Facility*);

**"Declaration Capacity Data"** means the Generation Declaration Capacity Data, the Declared CO<sub>2</sub> Capture Rate and/or the Capture Declaration Capacity Data (as applicable);

**"Declared CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) that the Facility would have achieved when operating at full load at the time a Declared CO<sub>2</sub> Capture Rate was submitted by the Generator to the DPA Counterparty in accordance with Condition 23.1(C), corrected to Reference Site Conditions, and assuming that a T&S Network was available to enable the Facility to export all captured CO<sub>2</sub> to such T&S Network;

**"Default"** means: (i) a Termination Event; or (ii) an event or a circumstance which would (with the passage of time, the giving of notice, the making of any determination pursuant to the DPA or any combination of any of the foregoing) be a Termination Event;

**"Default Interest"** has the meaning given to that term in Condition 14.1 (*Calculation of Default Interest*);

**"Default Termination Date"** has the meaning given to that term in Condition 35.27(A) (*Default termination*);

**"Default Termination Notice"** has the meaning given to that term in Condition 35.27 (*Default termination*);

**"Default Termination Payment"** means the amount (*expressed in pounds (£)*) calculated in accordance with the formula set out in paragraph 1.1 of Annex 3 (*Calculation of Default Termination Payment*);

**"Default Termination Payment Notice"** has the meaning given to that term in Condition 36.9(B) (*Consequences of default termination*);

**"Delivery CO<sub>2</sub> Quality Standards"** means the compositional limits of the CO<sub>2</sub> Rich Stream (minimum percentage of CO<sub>2</sub> and maximum levels of a range of impurities) that are permissible for entry to a specific T&S Network, together with the maximum and minimum entry pressure and maximum and minimum entry temperature, as specified in the CCS Network Code;<sup>10</sup>

**"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;

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Note to Reader: This definition is subject to the development of the T&S business model.

**"Direct Agreement"** means an agreement in substantially the form set out in Annex 5 (*Form of Direct Agreement*), or in such other form as may be agreed by the DPA Counterparty (in its sole discretion);

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

- (A) which is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of the Generator) in accordance with the Reasonable and Prudent Standard; and
- (B) in circumstances in which the Generator is seeking to invoke the provisions of Part 8 (*Changes in Law*) with which the Generator does in fact comply;

**"Directors' Certificate"** means a certificate signed by two (2) directors of the Generator or one (1) director of the Generator in the presence of a witness who attests the signature, such directors or director (as applicable) having made, and confirmed in the certificate as having made, all due and careful enquiries in relation to the information set out in such certificate (or set out in the notice, or enclosures or appendices to the notice, which such certificate is accompanying) and certifying that such information is in all material respects true, complete, accurate and not misleading, in each case by reference to the facts and circumstances then existing, provided that where any such information is provided by a third party that is not a holding company or subsidiary of the Generator or a Representative of any such party or the Generator and is marked as such, the certification of the director or directors (as applicable) of that information shall only extend to the certification that that information is in all material respects true, complete, accurate and not misleading to the best of their knowledge and belief having made all due and careful enquiries;

**"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, completion, testing, commissioning, operation, maintenance and decommissioning of any other project;
- (B) the Facility and not to any other generating assets or capture assets; or
- (C) the Generator and not to any other person;

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

**"Dispute Information"** has the meaning given to that term in Condition 39.7 (*Outline of Dispute Resolution Procedure*);

**"Dispute Notice"** has the meaning given to that term in Condition 39.3 (*Outline of Dispute Resolution Procedure*);

**"Dispute Resolution Procedure"** means the rules, obligations and procedures set out in Part 10 (*Dispute Resolution*) including the Arbitration Procedure and the Expert Determination Procedure, but excluding the provisions of Condition 45.1 and 45.2 (*Metering Disputes*);

**"Distribution Connection and Use of System Agreement"** means the agreement that an Electricity Licensed Distributor is required to prepare or maintain in force in a form approved by the Authority under standard condition 22 (*Distribution Connection and Use of System Agreement*) of an Electricity Distribution Licence;

**"DPA"** means the Agreement which incorporates these Conditions;

**"DPA Counterparty"** has the meaning given to that term in the Agreement;

**"DPA Counterparty Confidential Information"** means:

(A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the DPA Counterparty or a Government Entity (including any such Information relating to the policy of His Majesty's Government of the United Kingdom with respect to matters pertinent to CCUS Programme DPAs or the DPA) which the Generator (or its Representatives) receives or has received from:

- (i) the DPA Counterparty (or its Representatives); or
- (ii) from any third party who receives or has received such Information from the DPA Counterparty (or its Representatives) in respect of the DPA,

in each case including any Information which the Generator prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable;

(B) without prejudice to the generality of paragraph (A) above, all Information relating to any QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment; and

(C) all Information which relates to or arises from negotiations, discussions and correspondence in connection with the DPA,

but excluding in each case all Excluded Information;

**"DPA Counterparty Declaration Breach Notice"** has the meaning given to that term in Condition 23.3 (*Notification by DPA Counterparty of Declaration Obligation breach*);

**"DPA Counterparty Permitted Purposes"** means:

(A) complying with the DPA Counterparty's responsibilities and obligations, and exercising the DPA Counterparty's rights, powers and discretions, under or in connection with the DPA, any other DPA Document or any other CCUS Programme DPA;

(B) complying with the DPA Counterparty's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;

(C) reporting on the establishment, administration, performance or operation of, or compliance or non-compliance with, the obligations and arrangements contemplated by, or provided for in, the DPA and/or CCUS Programme DPAs; and

(D) reporting to the Secretary of State on the performance, operation, and DPA Settlement Activities of the Project to enable or assist the Secretary of State to fulfil its functions in connection with the CCUS Programme DPA and/or CCUS Programme. The Secretary of State's functions include:

- (i) the development of the CCUS Programme DPA;
- (ii) the development of the CCUS Programme; and
- (iii) any examination of the performance, efficiency, and effectiveness of the Project;

**"DPA Counterparty QCiL Notice"** has the meaning given to that term in Condition 26.1 (*DPA Counterparty QCiL Notice*);

**"DPA Counterparty QCiL True-Up Notice"** has the meaning given to that term in Condition 29.1 (*DPA Counterparty QCiL True-Up Notice*);

**"DPA Counterparty Restricted Purposes"** means:

- (A) complying with the DPA Counterparty's responsibilities and obligations, and exercising the DPA Counterparty's rights, powers and discretions, under or in connection with the DPA, any other DPA Document or any other CCUS Programme DPA; and
- (B) complying with the DPA Counterparty's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;

**"DPA Documents"** means the DPA and each of the agreements entered into between the Parties pursuant to it and **"DPA Document"** shall be construed accordingly;

**"DPA Generators"** means, at the relevant time, all parties (other than the DPA Counterparty) to CCUS Programme DPAs, provided that, where there are two (2) or more parties to any CCUS Programme DPA other than the DPA Counterparty, only one (1) of them shall be counted for the purposes of this definition;

**"DPA Payment Information"** means the following information relating to the Payments:

- (A) the Initial Net Dependable Capacity Estimate;
- (B) the Net Dependable Capacity;
- (C) the CO<sub>2</sub> Capture Rate Estimate;
- (D) the Achieved and Declared CO<sub>2</sub> Capture Rate Average;
- (E) the Plant Net Efficiency Estimate;
- (F) the Start Up Times Estimates;
- (G) the Initial Availability Payment Rate;
- (H) the Availability Payment Rate;
- (I) the Initial Other Extra Variable Costs;
- (J) the Other Extra Variable Costs;
- (K) the Initial Reference Plant CO<sub>2</sub> Emissions;
- (L) the Reference Plant CO<sub>2</sub> Emissions;
- (M) the Initial Reference Plant Gas Consumption;
- (N) the Reference Plant Gas Consumption;

- (O) the Facility CO<sub>2</sub> Emissions;
- (P) the Facility Gas Consumption;
- (Q) the Gas Price Sources; and
- (R) the CMRP Sources;

**"DPA Register Information"** means the following information to be included and updated in the DPA Counterparty's register:

- (A) name of Facility;
- (B) unique identifier assigned to the Facility by the DPA Counterparty;
- (C) Start Date (including the Generator's expected Start Date);
- (D) Agreement Date;
- (E) the Facility's generation technology and capture technology types;
- (F) if applicable, whether the Facility is a Dual Scheme Facility;
- (G) the Target Commissioning Date;
- (H) the Target Commissioning Window start date;
- (I) the DPA Payment Information;
- (J) the Generator's name, company registered address and company registration number;
- (K) the unique geographical coordinates of the Facility;
- (L) DPA agreement type;
- (M) version name and number of the terms and conditions;
- (N) if applicable, the reference number and date of any modification agreement entered into between the Generator and the DPA Counterparty;
- (O) detail of the type of electricity connection (partial, direct or islanded);
- (P) detail of whether the Facility has a transmission or distribution electricity connection; and
- (Q) if applicable, the termination date of the DPA;

**"DPA Reserved T&S Capacity"** means the lower of: (i) the Generator's Registered T&S Capacity; and (ii) the Maximum T&S Capacity Cap;

**"DPA Reserved T&S Delivery Point Size"** means the lower of: (i) the Generator's T&S Delivery Point Size; and (ii) the Maximum T&S Delivery Point Size Cap;

**"DPA Settlement Activities"** means the calculation, invoicing, recalculation and settlement of payments to be made pursuant to the DPA;

**"DPA Settlement Required Information"** means all the Information required by the DPA Counterparty, or the DPA Settlement Services Provider on its behalf, relating to the DPA and required by it to carry out the DPA Settlement Activities;

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

**"Dual Scheme Facility"** means a Facility that forms part of a Generating Station which includes one (1) or more other Generating Units which are not part of the Facility;

**"EA 1989"** means the Electricity Act 1989;

**"EA 2013"** means the Energy Act 2013;

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

**"EIR"** means the Environmental Information Regulations 2004, together with (where the context requires) any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

**"Electricity Delivery Points"** means the point(s) of connection of the Facility to the Electricity Transmission System or the Electricity Distribution System, as applicable (being the Boundary Point);

**"Electricity Distribution Code"** means the distribution code that an Electricity Licensed Distributor is required to prepare or maintain in force in a form approved by the Authority under standard condition 21 (Distribution Code) of an Electricity Distribution Licence;

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

**"Electricity Distribution System"** has the meaning given to that term in section 4(4) of the EA 1989;

**"Electricity Licensed Distributor"** means a person who is authorised pursuant to an Electricity Distribution Licence to distribute electricity, acting in that capacity;

**"Electricity Metering Dispute"** has the meaning given to that term in Condition 13.6 (*Electricity Metering Dispute*);

**"Electricity Metering Equipment"** means: (i) the "Metering Equipment" as defined in, and registered pursuant to, the BSC to measure the flows at the Electricity Delivery Points of electricity with the Facility, its Metering System, and its associated BM Unit(s); and (ii) in the case of a Dual Scheme Facility, the "Metering Equipment" as defined in, and registered pursuant to, the BSC to measure the Imported Input Electricity of the Generating Station;

**"Electricity Metering Obligation"** has the meaning given to that term in Condition 21.1 (*Undertakings: Electricity Metering Obligation*);

**"Electricity Storage"**, in the electricity system, is the conversion of electrical energy into a form of energy which can be stored, the storing of that energy, and the subsequent reconversion of that energy back into electrical energy;

**"Electricity Storage Facility"** means a facility where Electricity Storage occurs or can occur and includes all assets performing or contributing to any such Electricity Storage;

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

**"Electricity Transmission Licence"** means an electricity transmission licence granted or treated as granted under section 6(1)(b) of the EA 1989 that authorises a person to participate in the transmission of electricity;

**"Electricity Transmission Licensee"** means any person who is authorised by an Electricity Transmission Licence to participate in the transmission of electricity;

**"Electricity Transmission System"** means those parts of the GB Transmission System that are owned or operated by an Electricity Transmission Licensee within the transmission area specified in its Electricity Transmission Licence;

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

**"Eligible Generator"** has the meaning given to that term in the Contracts for Difference (Definition of Eligible Generator) Regulations 2014 (as amended);

**"Energy Consultant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Appointment Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Information Request"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Minimum Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

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

**"Estimated Fuel Billing Period"** has the meaning given to that term in Condition 9.19 (*Estimates of AP Fuel Composition*);

**"Estimated Fuel Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Metered Electricity Output"** has the meaning given to that term in Condition 11.3 (*Estimates of Unadjusted Metered Electricity Output*);

**"Estimated Output Billing Period"** has the meaning given to that term in Condition 11.2 (*Estimates of Unadjusted Metered Electricity Output*);

**"Estimated Output Billing Statement"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);



**"Estimated Output Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"European Union"** or **"EU"** means the European Union, established by the Treaty of the European Union signed at Maastricht on 7 February 1992 (as amended, supplemented or replaced by any later Treaty);

**"EU(W)A 2018"** means the European Union (Withdrawal) Act 2018;

**"Ex-Ante"** means that the relevant QCiL Compensation will be calculated and paid in advance of the corresponding QCiL Costs, QCiL Savings and/or Adjusted Revenues Period arising;

**"Ex-Post"** means that the relevant QCiL Compensation will be calculated and paid in arrears of the corresponding QCiL Costs, QCiL Savings and/or Adjusted Revenues Period arising;

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

**"Excluded Information"** means Information:

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

**"Expected Facility Data"** means the Generator's estimate, for each year (from 1 April to 31 March inclusive) of the remainder of the Term, of:

- (A) the total electricity output of the Facility (*expressed in MWh*), which is as it will be measured by the Electricity Metering Equipment;
- (B) the expected CO<sub>2</sub> capture rate of the Facility (*expressed as a percentage (%)*) which is as it will be measured by the CO<sub>2</sub> Metering Equipment;
- (C) the net generating capacity of the Facility (*expressed in MW*);
- (D) the availability of the Facility to capture CO<sub>2</sub> (*expressed as a percentage (%)*);
- (E) [*any other information to be determined*];<sup>11</sup>
- (F) in relation to the estimates referred to at paragraphs (A) – [●], an explanation of the underlying assumptions and key uncertainties provided in a format to be determined by the DPA Counterparty (acting reasonably); and
- (G) where a submission of the estimates or data referred to in paragraphs (A) – [●] has been made by the Generator to the DPA Counterparty, and where such estimates or data has changed significantly since the last submission, the reasons for those changes;

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

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<sup>11</sup>

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

**"Expert"** means any person appointed to determine a Dispute in accordance with Condition 41 (*Expert Determination Procedure*);

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

**"Expert Appointment Threshold"** has the meaning given to that term in Condition 33.7 (*Expert Appointment Threshold*);

**"Expert Determination Notice"** has the meaning given to that term in Condition 41.1 (*Expert Determination Procedure*);

**"Expert Determination Procedure"** means the rules, obligations and procedures set out in Condition 41 (*Expert Determination Procedure*);

**"Expert Determination Response Notice"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Expert Dispute"** means a Dispute which, pursuant to the terms of the DPA, is to be referred for determination in accordance with the Expert Determination Procedure;

**"Expert Referral Date"** has the meaning given to that term in Condition 41.6(A) (*Expert Determination Procedure*);

**"Facility"** has the meaning given to that term in the Agreement;

**"Facility Capture Technology"** means, in respect of the Facility, the capture technology deployed by the Facility, as specified in the Agreement;

**"Facility CO<sub>2</sub> Emissions"** has the meaning given to that term in the Agreement;

**"Facility Connection Points"** means the CO<sub>2</sub> Delivery Points, the Gas Supply Points and/or the Electricity Delivery Points (as applicable);

**"Facility Fuel"** means the fuel used by the Facility, as specified in the Agreement;

**"Facility Gas Consumption"** has the meaning given to that term in the Agreement;

**"Facility Generation Technology"** means, in respect of the Facility, the generation technology deployed by the Facility, as specified in the Agreement;

**"Facility Heat and Material Balance Diagram"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Facility Metering Equipment"** means the Electricity Metering Equipment, the CO<sub>2</sub> Metering Equipment and/or the Gas Supply Metering Equipment (as applicable);

**"Facility Shutdown"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"First Submission"** has the meaning given to that term in Condition 41.6(B) (*Expert Determination Procedure*);

**"First Submission Deadline"** has the meaning given to that term in Condition 41.6(B) (*Expert Determination Procedure*);

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

**"FM Affected Party"** has the meaning given to that term in Condition 51.1 (*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/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

**"FoIA Information"** means any information of whatever nature, however conveyed, and in whatever form, including written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form);

**"Force Majeure"** means any event or circumstance including:

- (A) any Change in Law (which expression, for the purposes of this definition, shall not include any Foreseeable Change in Law, and, in the period to the Start Date, shall include any change after the Agreement Date in the policy or guidance of any Competent Authority); and
- (B) any event or circumstance resulting from any action or omission by or of any DPA Settlement Services Provider, any BSC Agent or a BSC Company,<sup>12</sup>

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 Generator 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);
- (iii) is not due to the FM Affected Party's fault or negligence (or that of its Representatives); and
- (iv) is not a T&S Outage Event, a T&S Commissioning Delay Event or a T&S Cessation Event,

provided always that:

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

**"Forecast Data"** has the meaning given to that term in Condition 24.2 (*Forecast Data*);

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<sup>12</sup> Note to Reader: This definition is subject to the further consideration by BEIS in terms of whether an equivalent CO<sub>2</sub> entity is referenced here.

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

- (A) was published on or after 01 January 2000 but before the Agreement Date:
- (i) in a draft Bill;
  - (ii) in a Bill;
  - (iii) in an Act of Parliament which had been enacted but which had not (in whole or in part) come into effect;
  - (iv) in Devolved Legislation which had not (as regards that Change in Law) come into effect;
  - (v) in draft subordinate legislation;
  - (vi) in draft Devolved Legislation;
  - (vii) in subordinate legislation which had not (as regards that Change in Law) come into effect;
  - (viii) in a draft Required Authorisation or Required Authorisation which had been made but which had not (as regards that Change in Law) come into effect;
  - (ix) in a draft Directive or in a Directive which had been made but which had not (as regards that Change in Law) come into effect;
  - (x) in a draft Treaty or other international agreement in relation to which His Majesty's Government of the United Kingdom had made a public statement (from which it had not prior to the Agreement Date publicly resiled) that it would be a signatory; or
  - (xi) in a Treaty or other international agreement to which the United Kingdom was a signatory but which had not (as regards that Change in Law) come into effect,

but only to the extent that the change has substantially the same effect as that which was contemplated in such publication and provided that the change shall not be deemed not to have substantially the same effect solely because it is enacted or brought into effect after the Agreement Date in a different form, or by a different person or Competent Authority, than when published before the Agreement Date;

- (B) is contemplated in a proposal or option(s) which was (or were) published on or after 01 January 2000 but before the Agreement Date:
- (i) in a consultation document of a Competent Authority and which is the stated preferred proposal (or, if only one (1) proposal was made, that proposal) of the Competent Authority (whether or not the Competent Authority is at the Agreement Date consulting (or has completed consulting) or considering (or has considered any) responses to the consultation), unless that proposal has been superseded by another stated preferred proposal or formally withdrawn, or the Competent Authority has formally indicated that it does not intend to proceed with it; or
  - (ii) in a final modification report in respect of a relevant Industry Document,

but only to the extent that the change has substantially the same effect as that which was contemplated in such publication and provided that the change shall not be deemed not to have substantially the same effect solely because it is enacted or brought into effect after the Agreement Date in a different form, or by a different person or Competent Authority, than when published before the Agreement Date;

- (C) results from the enactment and implementation of any part of chapters 2, 4 and 5 (including the associated schedules to any of those chapters) of part 2 of the EA 2013;
- (D) occurs as a result of the amendment, supplement, termination, repeal, replacement or withdrawal of all or part of any document which is referred to in any Law, Directive, Industry Document or Required Authorisation in existence at the Agreement Date, provided that:
  - (i) a document setting out the nature of such amendment, supplement, termination, repeal, replacement or withdrawal (whether or not in draft) had been published on or before the Agreement Date; and
  - (ii) such amendment, supplement, termination, repeal, replacement or withdrawal has substantially the same effect as that so published;
- (E) constitutes the re-enactment, re-making or similar of (in whole or in part) any Law, Directive, Industry Document or Required Authorisation, provided that the re-enacted, re-made or similar Law, Directive, Industry Document or Required Authorisation, as the case may be, has substantially the same effect as that of which it is a re-enactment, re-making or similar;
- (F) implements or gives effect to (the whole or part of) any Treaty which has been published on or after 01 January 2000 but before the Agreement Date (and notwithstanding that implementation proposals and/or related sanctions for any part of the United Kingdom have not been published or have not (in whole or in part) come into effect on the Agreement Date), provided that the implementation proposals and/or related sanctions which come into effect in the United Kingdom (or relevant part thereof) have substantially the same application as the provision in the Treaty which it implements;
- (G) results from any Required Authorisation or Directive obtained or made pursuant to or for the purposes of another Required Authorisation or Directive which has been made prior to or is in force on the Agreement Date (the "**First Required Authorisation or Directive**") unless the Generator is obliged to obtain such a Required Authorisation or Directive because of an unforeseeable amendment to the First Required Authorisation or Directive made after the Agreement Date;
- (H) results from any exercise of the Royal Prerogative where such exercise has the same, or substantially the same effect, as that which was proposed on or after 01 January 2000 but before the Agreement Date;
- (I) constitutes a change in the interpretation or application of a Law, Directive, Industry Document or Required Authorisation by any Competent Authority if such interpretation or application is in accordance with a proposal set out in a document (whether or not in draft) which was published on or after 01 January 2000 but before the Agreement Date and the change has substantially the same effect as that which was proposed in the document;
- (J) results from legal proceedings:
  - (i) commenced;

- (ii) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or
  - (iii) threatened (by issue of a formal written notice before action or similar),  
against the Generator on or prior to the Agreement Date; or
- (K) results from legal proceedings against the Facility (including legal proceedings against a Competent Authority in relation to a Required Authorisation) where, on or prior to the Agreement Date:
- (i) notice of such proceedings had been published by the court, arbitral, or other tribunal, administrative or regulatory body, or, as the case may be, expert, hearing the legal proceedings;
  - (ii) the Generator had been informed of such proceedings by any party to the legal proceedings, or by the court, arbitral or other tribunal, administrative or regulatory body, or, as the case may be, expert hearing the legal proceedings; or
  - (iii) such proceedings were (a) commenced, (b) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert, or (c) threatened (by issue of a formal written notice before action or similar); and, in each case, the Generator was aware, or could reasonably be expected to have become aware of such proceedings; or
- (L) results from an application for judicial review in respect of the grant of any of the Applicable Planning Consents, made:
- (i) within six (6) weeks of the grant of the relevant Applicable Planning Consent, in relation to an application to which paragraph 5 of Rule 54.5 of the Civil Procedure Rules applies; or
  - (ii) within three (3) Months of the grant of the relevant Applicable Planning Consent, in relation to all other applications,

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

**"FSMA"** means the Financial Services and Markets Act 2000;

**"Fuel Composition"** means the composition of fuel used by the Facility during the relevant period, as measured at the Gas Supply Point(s) during such period;

**"Full Capture Outage Event"** means an event where the Capture Assets are fully unavailable;

**"Full Load Operation"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full Load Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full Load Test Performance Outputs"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full T&S Outage Event"** means an event or circumstance affecting the relevant T&S Network which prevents the Facility from accessing and exporting any captured CO<sub>2</sub> Rich Stream to such T&S Network;

**"Further Annual NDC Test Response Notice"** has the meaning given to that term in Condition 7.5(C)(ii) (*DPA Counterparty Response Notification*);

**"Further Longstop Date Capacity Response Notice"** has the meaning given to that term in Condition 6.5(B)(ii) (*Longstop Date Capacity Notice*);

**"Further Milestone Assessment Response Notice"** has the meaning given to that term in Condition 4.4(C)(ii) (*Milestone Requirement Notice*);

**"Further OCP Response Notice"** has the meaning given to that term in Condition 3.10(C)(ii) (*Operational Conditions Precedent: General Reporting Obligations*);

**"Further Outage Relief Response Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Further T&S Network Availability Response Notice"** has the meaning given to that term in Condition 3.45(C)(ii) (*T&S Connection Confirmation Requirement*);

**"Further TCDE Response Notice"** has the meaning given to that term in Condition 3.33(C)(ii) (*T&S Connection Confirmation CP Relief*);

**"Gain Share Transaction Documents"** has the meaning given to that term in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of the Schedule (*Gain Share*);

**"Gas"** or **"Natural Gas"** shall have the same meaning as in the Uniform Network Code;

**"Gas Act"** means the Gas Act 1986 as such act is amended or replaced and any regulations made thereunder as amended or re-enacted from time to time;

**"Gas Cost Differential"** ( $GC_i$ ) means the gas cost differential in respect of the Facility (*expressed in £/MWh*) in VP Settlement Unit (i) calculated in accordance with the following formula:

$$GC_i = \frac{GP_i}{100} \times (GU_{CCUS} - GU_{Ref})$$

where:

$GC_i$  = Gas Cost Differential (*£/MWh*) in VP Settlement Unit (i)

$GP_i$  = Gas Price (*pence/therm*) in VP Settlement Unit (i)

$GU_{CCUS}$  = Facility Gas Consumption (*therms/MWh*)

$GU_{Ref}$  = Reference Plant Gas Consumption (*therms/MWh*)

**"Gas Distribution System"** means all or part of a distribution system in Great Britain operated by a Gas Licensed Transporter;

**"Gas GB Day Ahead Contract"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Index"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Price"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Volume"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Gas Licensed Shipper"** means a person who is authorised by a Gas Shipper Licence to ship Natural Gas;

**"Gas Licensed Transporter"** means a person who is authorised by a Gas Transporter Licence to distribute Natural Gas;

**"Gas Price"** means the Gas price (*expressed in pence/therm*) calculated in accordance with Condition 10.3 (*Gas Price calculation*) in VP Settlement Unit (*i*);

**"Gas Price Source"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas Reference Price"** has the meaning given to that term in Condition 10.4 (*Gas Price calculation*);

**"Gas Shipper Licence"** means a licence granted under Section 7A of the Gas Act;

**"Gas Supply Metering Dispute"** has the meaning given to that term in Condition 13.10 (*Gas Supply Metering Dispute*);

**"Gas Supply Metering Equipment"** means the metering equipment which is required pursuant to the Gas Supply Metering Obligation to meter the Gas supply to the Facility which shall include flow meters, a Gas composition chromatograph, associated communications equipment, and any other necessary ancillary equipment and infrastructure;

**"Gas Supply Metering Obligation"** has the meaning given to that term in Condition 21.3 (*Undertakings: Gas Supply Metering Obligation*);

**"Gas Supply Points"** means the point(s) of connection of the Facility to the Gas Distribution System to be identified on a plan which is annexed to the Agreement;

**"Gas Transporter Licence"** means a licence granted under Section 7 of the Gas Act;

**"GB System Operator"** means the operator of the GB Transmission System, acting in that capacity;

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

**"General Amendment"** means any Proposed Amendment which:

- (A) is a Technical Amendment; and
- (B) the DPA Counterparty proposes be effected in respect of either:
  - (i) all CCUS Programme DPAs to which the DPA Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given; or



- (ii) all CCUS Programme DPAs of a particular category to which the DPA Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given,

in each case, other than any CCUS Programme DPA to which Annex 4 (*Change Control Procedure*) is expressed not to apply;

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

**"Generating Unit"** means any Apparatus which produces electricity;

**"Generation Assets"** has the meaning given to that term in the Agreement;

**"Generation Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(A) (*Declaration Obligations*);

**"Generation Outage Event"** means an event where the Facility is unavailable, curtailed or derated such that the net generating capacity of the Facility at the Electricity Delivery Point(s), at Reference Site Conditions, is reduced by an amount greater than one per cent (1%) of the Net Dependable Capacity, regardless of whether or not the Generator is required to declare such event in accordance with the requirements of UK REMIT;

**"Generation Outage Event (AP Settlement Unit) Duration"** means the total duration of all AP Settlement Units impacted by a Generation Outage Event (*expressed in hours*);

**"Generation Outage Relief Event"** means a Generation Outage Event which occurs as a direct result of the Facility's connection to:

- (A) the Electricity Distribution System and/or Electricity Transmission System being de-energised, disconnected or disrupted; or
- (B) the Gas Distribution System being disconnected or disrupted,

except to the extent that:

- (i) such de-energisation, disconnection and/or disruption arises out of or in connection with any act, omission, breach or default of the Generator or its Representatives (including any breach by the Generator or its Representatives of an Industry Document, or where the Generator has or its Representatives have entered into an interruptible gas supply agreement); and/or
- (ii) prior to such event occurring, the Generator has declared to the DPA Counterparty that the Facility is unavailable due to a Generation Outage Event which is not related to the events set out in (A) or (B) above and such unavailability is continuing;

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

**"Generator"** has the meaning given to that term in the Agreement;

**"Generator Capture Rate Breach Remediation Notice"** has the meaning given to that term in Condition 22.7(B) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Generator Confidential Information"** means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Generator, the Facility or the Project which the DPA Counterparty (or its Representatives) receives or has received from:
- (i) the Generator (or its Representatives); or
  - (ii) any third party who receives or has received such Information from the Generator (or its Representatives) in connection with the DPA;

in each case including any Information which the DPA Counterparty prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable;

- (B) without prejudice to the generality of paragraph (A) above, all Information relating to:
- (i) any QCiL Compensation or QCiL True-Up Compensation; or
  - (ii) any T&S Termination Payment,
- including all Information relating to or arising from negotiations, discussions and correspondence in respect of any such QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment; and
- (C) any Information which relates to or arises from negotiations, discussions and correspondence in connection with the DPA,

but excluding in each case all Excluded Information;

**"Generator Declaration Breach Notice"** has the meaning given to that term in Condition 23.4 (*Notification by Generator of Declaration Obligation breach*);

**"Generator Metering Remediation Notice"** has the meaning given to that term in Condition 21.7(C) (*Resolution of Metering Obligation breach*);

**"Generator Metering Remediation Notice Information Request"** has the meaning given to that term in Condition 21.8 (*Resolution of Metering Obligation breach*);

**"Generator Net Payable Amount"** means, in respect of a Billing Period, any amount which is due and payable by the Generator to the DPA Counterparty;

**"Generator Objection Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Generator Permitted Purpose"** means:

- (A) complying with the Generator's responsibilities and obligations, and exercising the Generator's rights, powers and discretions, under or in connection with the DPA or any other DPA Document; and
- (B) complying with the Generator's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;

**"Generator QCiL Notice"** has the meaning given to that term in Condition 26.8 (*Generator QCiL Notice*);

**"Generator QCiL Notice Information Request"** has the meaning given to that term in Condition 26.11 (*Generator QCiL Notice*);

**"Generator QCiL Response Notice"** has the meaning given to that term in Condition 26.2 (*Generator QCiL Response Notice*);

**"Generator QCiL Response Notice Information Request"** has the meaning given to that term in Condition 26.6 (*Generator QCiL Response Notice*);

**"Generator QCiL True-Up Notice"** has the meaning given to that term in Condition 29.8 (*Generator QCiL True-Up Notice*);

**"Generator QCiL True-Up Notice Information Request"** has the meaning given to that term in Condition 29.11 (*Generator QCiL True-Up Notice*);

**"Generator QCiL True-Up Response Notice"** has the meaning given to that term in Condition 29.3 (*Generator QCiL True-Up Response Notice*);

**"Generator QCiL True-Up Response Notice Information Request"** has the meaning given to that term in Condition 29.6 (*Generator QCiL True-Up Response Notice*);

**"Generator Repeating Representations"** means each of the representations and warranties set out in Condition 18.1 (other than in Conditions 18.1(G) (*No litigation*) and 18.1(H) (*No requirement to deduct or withhold*));

**"Generator T&S Connection Works"** means the T&S Network connection works that the Generator is required or elects to carry out and complete pursuant to the T&S Construction Agreement;

**"Generator T&S Prolonged Unavailability Remediation Notice"** has the meaning given to that term in Condition 35.18(B) (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*);

**"Generator T&S Prolonged Unavailability Response Deadline"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"Generator's Registered T&S Capacity"** means the Generator's registered capacity under the [T&S Connection Agreement]<sup>13</sup> (expressed in [●]);

**"Generator's T&S Delivery Point Size"** means the size of the Generator's CO<sub>2</sub> Delivery Point(s) (defined as "Delivery Point Size" in the CCS Network Codes), which shall be determined in accordance with the [T&S Connection Agreement]<sup>14</sup> (expressed in [●]);

**"Government Entity"** means:

- (A) any department, non-departmental public body, authority or agency of His Majesty's Government of the United Kingdom or the Crown;
- (B) any of His 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;

<sup>13</sup> Note to Reader: Where the Generator's registered capacity will be specified is subject to further development of the CCS Network Code.

<sup>14</sup> Note to Reader: Where the size of the Generator's CO<sub>2</sub> Delivery Point(s) will be specified is subject to further development of the CCS Network Code.

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

**"Gross Calorific Value of Reference Fuel Composition"** is the value given in paragraph 1 of Part B (*Reference Site Conditions*) of Annex 2 (*Testing Requirements*);

**"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;

**"GRP Dispute"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Fallback Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"GRP Inclusion Criteria"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Quality Criteria"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Review Calculation Period"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Trading Day"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"GCV"** means gross calorific value;

**"Heat and Material Balance Diagram"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"HoldCo"** has the meaning given to that term in the Agreement;

**"Hot Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"ICE Futures Europe Index"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"IFRS"** has the meaning given to such term in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of the Schedule (*Gain Share*);

**"Imported Input Electricity"** means, in respect of a Generating Station, all electricity (*expressed in MWh*) imported from the Electricity Transmission System or from an Electricity Distribution System to that Generating Station, as measured at the Boundary Point;

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

**"Incomplete AP Billing Period"** has the meaning given to that term in Condition 9.17 (*AP Other Metered Data Fallback*);

**"Incomplete AP Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Independent Gas Transporter Network Codes"** means the network codes established and maintained by Gas Licensed Transporters in respect of the Gas Distribution System;<sup>15</sup>

**"Indexation Anniversary"** means an APR Indexation Anniversary and/or a OEVC Indexation Anniversary (as applicable);

**"Industry Documents"** means any and all agreements, codes and instruments regulating:

- (A) the generation, transmission, distribution, supply and trading of electricity in Great Britain, including the Grid Code, the SOTO Code, the BSC, the CUSC, the Master Registration Agreement, any Electricity Distribution Code, any Distribution Connection and Use of System Agreement and/or any other connection or use of system agreement with an Electricity Transmission Licensee or Electricity Licensed Distributor;
- (B) the distribution, supply and trading of Gas in Great Britain, including the Uniform Network Code, the Independent Gas Transporter Network Codes and/or any other connection or use of system agreement with a Gas Licensed Transporter or Gas Licensed Shipper; and
- (C) the capture, temporary storage, permanent storage, distribution, transportation, and trading of CO<sub>2</sub> in the United Kingdom, including any CCS Network Code,

and **"Industry Document"** shall be construed accordingly;

**"Inflation Factor"** means:

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

$$\Pi_i = \frac{CPI_i}{CPI_{base}}$$

where:

$\Pi_i$  = is the Inflation Factor;

$CPI_i$  = denotes the CPI for January of the relevant calendar year or, where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, the Reference CPI, which is applicable to the Settlement Unit (i);

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

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

$$\Pi_i = \frac{CPI_i^{new}}{CPI_{base}^{old}} \times \frac{CPI_b^{old}}{CPI_{base}^{new}}$$

where:

$\Pi_i$  = is the Inflation Factor;

<sup>15</sup>

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

$CPI_i^{new}$	=	is the CPI applicable to Settlement Unit (i), using the new (re-based) index;
$CPI_{base}^{old}$	=	is the Base Year CPI, using the original index
$CPI_b^{old}$	=	is the CPI in the Month in which the re-basing has occurred using the original index; and
$CPI_{base}^{new}$	=	is the CPI in the Month in which the re-basing has occurred, using the new (re-based) index;

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

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

**"Initial Availability Payment Rate"** has the meaning given to that term in the Agreement;

**"Initial Base Performance Assumptions"** means the Initial Reference Plant CO<sub>2</sub> Emissions and the Initial Reference Plant Gas Consumption;

**"Initial CMRP Index"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"Initial Conditions Precedent"** means the conditions precedent set out in Part A of Annex 1 (*Conditions Precedent*) and **"Initial Condition Precedent"** shall be construed accordingly;

**"Initial Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Initial CP Provisions"** means Part 4 (*Adjustments*), Part 8 (*Changes in Law*), Part A (*GRP Review Procedures*) of Annex 6 (*Gas Reference Price Review*), Part A (*CMRP Review Procedures*) of Annex 7 (*Carbon Market Reference Price Review*) and Part A (*Reference Plant Review Procedures*) of Annex 8 (*Reference Plant Review*);

**"Initial DCR Settlement Unit"** has the meaning given to that term in Condition 23.1(C) (*Declaration Obligations*);

**"Initial GRP Index"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Initial Heat and Material Balance Diagram"** has the meaning given to that term in the Agreement;

**"Initial Milestone Delivery Date"** has the meaning given to that term in the Agreement;

**"Initial Net Dependable Capacity Estimate"** has the meaning given to that term in the Agreement;

**"Initial Notified Annual NDC Test Date"** has the meaning given to that term in Condition 7.1(B) (*Undertaking: Annual NDC Test*);

**"Initial Other Extra Variable Costs"** has the meaning given to that term in the Agreement;

**"Initial Reference Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Initial Reference Plant CO<sub>2</sub> Emissions"** has the meaning given to that term in the Agreement;

**"Initial Reference Plant Gas Consumption"** has the meaning given to that term in the Agreement;

**"Initial Target Commissioning Window"** has the meaning given to that term in the Agreement;

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

**"Intellectual Property Rights"** means:

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

**"Interim Operational Notification"** has the meaning given to that term in the Grid Code;

**"Investor"** has the meaning given to such term in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of the Schedule (*Gain Share*);

**"Investor Requirements"** means that both the Acceptable Credit Standing Test and the Power CCUS Expertise Test are met by the Investors;

**"Law"** means:

- (A) any Act of Parliament, any 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 (A) to (D) (inclusive) 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;



"**LCIA**" means the London Court of International Arbitration;

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

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

"**Lender**" means any bank or financial institution (excluding any direct or indirect shareholder of the Generator) which provides debt financing or refinancing in relation to the Facility;

"**Lock-in Period**" means the period commencing on the Agreement Date and ending on the date that falls [twelve (12)] Months after the Start Date;

"**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 Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (C) the failure of the Gas Licensed Transporter to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Gas Licensed Transporter is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons set out in (B) and/or (C) above:

- (i) the Generator gives notice to the DPA 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 Generator 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 DPA and each other DPA Document in any way that is reasonably practicable; and

- (c) to resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable;

**"Longstop Date Performance Tests"** means the Commissioning Tests to be carried out and completed by the Generator (whether simultaneously with, or subsequent to, the OCP Performance Tests) in order to demonstrate whether the Generator has satisfied the Minimum Longstop Date Commissioning Requirements;

**"Longstop Date Capacity Notice"** has the meaning given to that term in Condition 6.1 (*Longstop Date Capacity Notice*);

**"Longstop Date Capacity Response Notice"** has the meaning given to that term in Condition 6.4 (*Longstop Date Capacity Notice*);

**"Longstop Date Capacity Supporting Information"** has the meaning given to that term in Condition 6.4(B) (*Longstop Date Capacity Notice*);

**"Longstop Period"** has the meaning given to that term in the Agreement;

**"Loss Adjusted Metered Electricity Output"** means the BM Unit Metered Volume for the Facility during a VP Settlement Unit as measured by the Electricity Metering Equipment during such period, adjusted for: (i) the transmission loss multiplier allocated in accordance with the BSC; or (ii) any new or substituted multiplier or factor which is in the nature of, or similar to, a transmission loss multiplier;

**"Master Registration Agreement"** means the agreement of that name that an Electricity Licensed Distributor is required to maintain in force in a form approved by the Authority under standard condition 23 (*Master Registration Agreement*) of an Electricity Distribution Licence;

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

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

**"Material Amendment Agreement"** has the meaning given to that term in paragraph 2.2(B) (*Material Amendments: process*) of Annex 4 (*Change Control Procedure*);

**"Material Amendment Response Notification"** has the meaning given to that term in paragraph 2.2(B) of Annex 4 (*Change Control Procedure*);

**"Material Change"** means:

- (A) in relation to the Electricity Metering Equipment a "Material Change" as defined in the BSC save that references to "Metering Equipment" within the definition of "Material Change" in the BSC shall be replaced by references to Electricity Metering Equipment;
- (B) in relation to the CO<sub>2</sub> 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 Generator's ability to meet its obligations under the DPA relating to the CO<sub>2</sub> Metering Equipment will be significantly affected; or

- (C) in relation to the Gas Supply 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 Generator's ability to meet its obligations under the DPA relating to the Gas Supply Metering Equipment will be affected;

**"Material Equipment"** has the meaning given to that term in the Agreement;

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

**"Material Investor"** means an Investor who holds any legal, beneficial or equitable interest in at least [twenty five percent (25%)] of the shares in the Generator or Holdco;

**"Maximum CO<sub>2</sub> Rich Stream Flow Rate Estimate"** has the meaning given to that term in the Agreement;

**"Maximum Metered Day Electricity Output"** means the product (*expressed in MWh*) of the Net Dependable Capacity (*expressed in MW*) and the total duration (*expressed in hours*) of all AP Settlement Units (excluding an AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending or continuing) in which the BM Unit Metered Volume for the Facility, as measured by the Electricity Metering Equipment, is greater than zero (0), during each VP Billing Period;

**"Maximum Metered Sub-Period Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Maximum T&S Capacity Cap"** has the meaning given to that term in the Agreement;

**"Maximum T&S Delivery Point Size Cap"** has the meaning given to that term in the Agreement;

**"Maximum VP Metered CO<sub>2</sub> Rich Stream Output"** means the product (*expressed in tCO<sub>2RS</sub>*) of the Maximum CO<sub>2</sub> Rich Stream Flow Rate Estimate (*expressed in t/h*) and the total duration (*expressed in hours*) of all half hour-long periods in which the mass quantity of CO<sub>2</sub> Rich Stream entering the T&S Network from the Facility, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s), is greater than zero (0), during each VP Billing Period;

**"Metered CO<sub>2</sub> Output"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) entering the T&S Network during the relevant period, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s) during such period;<sup>16</sup>

**"Metered CO<sub>2</sub> Rich Stream Output"** means the mass quantity of CO<sub>2</sub> Rich Stream (*expressed in tCO<sub>2RS</sub>*) entering the T&S Network during the relevant period, as measured at the CO<sub>2</sub> Delivery Point(s) during such period;<sup>17</sup>

**"Metered Day Electricity Output"** means, in a VP Billing Period, the Unadjusted Metered Electricity Output (*expressed in MWh*) as reported by a BSC Company or BSC Agent to the DPA Counterparty for such period, adjusted to disregard all Unadjusted Metered Electricity Output in any AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending or continuing. If the actual Metered Day Electricity Output is greater than an amount equal to the Maximum Metered Day Electricity Output, the

<sup>16</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops.

<sup>17</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops.

Metered Day Electricity Output for such VP Billing Period shall be deemed to be equal to the Maximum Metered Day Electricity Output;

**"Metered Electricity Output"** means the Unadjusted Metered Electricity Output for each Settlement Unit as reported by a BSC Company or a BSC Agent to the DPA Counterparty;

**"Metered Electricity Output Cut-Off Time"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered Electricity Output Recalculation Amount"** has the meaning given to that term in Condition 11.4(B)(ii) (*Recalculations of Estimated Metered Electricity Output*);

**"Metered Sub-Period Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metering Access Right"** has the meaning given to that term in Condition 21.15 (*Undertakings: Access to and testing of meters*);

**"Metering Access Termination Event"** means an event as set out in Condition 21.21 (*Failure to provide Metering Access Right*);

**"Metering Breach Notice"** has the meaning given to that term in Condition 21.4 (*Notification of Metering Obligation breach*);

**"Metering Breach Response Notice"** has the meaning given to that term in Condition 21.5 (*Response to notification of Metering Obligation breach*);

**"Metering Breach Response Notice Period"** has the meaning given to that term in Condition 21.5 (*Response to notification of Metering Obligation breach*);

**"Metering Dispute"** means an Electricity Metering Dispute, a Gas Supply Metering Dispute and/or a CO<sub>2</sub> Metering Dispute (as applicable);

**"Metering Dispute Deadline"** means the date which is twenty (20) Months after the Billing Period in which the disputed Settlement Unit occurred;

**"Metering Inspection Notice"** has the meaning given to that term in Condition 21.16 (*Undertakings: Access to and testing of meters*);

**"Metering Obligations"** means the Electricity Metering Obligations, the CO<sub>2</sub> Metering Obligations and/or the Gas Supply Metering Obligations (as applicable);

**"Metering Remediation Plan"** means a plan developed by the Generator setting out appropriate milestones and actions to be taken to remedy a breach of a Metering Obligation;

**"Metering Schematic Obligation"** has the meaning given to that term in Condition 21.11 (*Undertakings: Metering Schematics*);

**"Metering Schematic Obligation Notice"** has the meaning given to that term in Condition 21.11(A) (*Undertakings: Metering Schematics*);

**"Milestone Assessment Response Notice"** has the meaning given to that term in Condition 4.3 (*Milestone Requirement Notice*);

**"Milestone Delay Notice"** has the meaning given to that term in Condition 4.8 (*Difficulties in achieving the Milestone Requirement*);

**"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 Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (C) the failure of the Gas Licensed Transporter to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Gas Licensed Transporter is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons in (B) and/or (C), above:

- (i) the Generator gives notice as soon as reasonably practicable to the DPA Counterparty 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 Generator 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 DPA and each other DPA Document in any way that is reasonably practicable; and
  - (c) to resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable;

**"Milestone Requirement"** has the meaning given to that term in Condition 4.1 (*Milestone Requirement Notice*);

**"Milestone Requirement Notice"** has the meaning given to that term in Condition 4.1 (*Milestone Requirement Notice*);

**"Milestone Satisfaction Date"** means the date that the Generator has complied with and fulfilled a Milestone Requirement as specified in the Milestone Assessment Response Notice or the Further Milestone Assessment Response Notice (as applicable);

**"Minimum CO<sub>2</sub> Capture Rate"** means an Achieved and Declared CO<sub>2</sub> Capture Rate Average of seventy per cent. (70%);

**"Minimum CO<sub>2</sub> Capture Rate Breach"** has the meaning given to that term in Condition 22.2 (*Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Minimum CO<sub>2</sub> Capture Rate Obligation"** has the meaning given to that term in Condition 22.1 (*Undertaking: Minimum CO<sub>2</sub> Capture Rate*);

**"Minimum Longstop Date Commissioning Requirements"** means that:

- (A) the Net Dependable Capacity demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Net Dependable Capacity;
- (B) the Test Achieved CO<sub>2</sub> Capture Rate demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required CO<sub>2</sub> Capture Rate;
- (C) the Plant Net Efficiency demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Plant Net Efficiency; and
- (D) the Start Up Times demonstrated at the Longstop Date Performance Tests are equal to or lower than the Required Start Up Times;

**"Minimum Longstop Date Termination Notice"** has the meaning given to that term in Condition 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*);

**"Minimum Net Assets Requirement"** has the meaning given to that term in the Agreement;

**"Minimum OCP Commissioning Requirements"** means that:

- (A) a Net Dependable Capacity of not less than eighty five per cent. (85%) of the Net Dependable Capacity Estimate has been Commissioned;
- (B) the OCP Required CO<sub>2</sub> Capture Rate has been Commissioned;
- (C) a Plant Net Efficiency of not less than ninety per cent. (90%) of the Plant Net Efficiency Estimate has been Commissioned; and
- (D) the Start Up Times demonstrated at the OCP Performance Tests are equal to or lower than the Required Start Up Times;

**"Minimum Reporting Content Requirements"** means the minimum required content of the report to be provided by the Generator to the DPA Counterparty pursuant to Condition 3.14(A) (*Operational Conditions Precedent: Construction Reporting Requirements*) detailing the Generator's progress in relation to the Pre-Operation Activities which shall include, but shall not be limited to, the following:

- (A) an executive summary;
- (B) a summary of the Pre-Operation Activities carried out to date;
- (C) a schedule for the Project which: (i) compares the initial baseline schedule against actual progress achieved to date; and (ii) sets out forecast and actual key events including both critical and near critical path milestones, in each case in relation to the Pre-Operation Activities;
- (D) a baseline critical path together with any updated versions of the same;
- (E) an updated 'S' curve in relation to the Pre-Operation Activities;
- (F) a summary of the progress in obtaining finance for the Project (including equity, debt and other forms of finance) prior to the Milestone Delivery Date;

- (G) an earned value analysis figure showing progress against the earned value baseline, with commentary on any deviations from such baseline;
- (H) Project Cost Data; and
- (I) a summary of key risks relating to cost and schedule outturn for the Pre-Operation Activities, and the associated potential quantified impact of such risks;

**"Minimum Terms of Reference Requirements"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Misleading Declaration Termination Event"** has the meaning given to that term in Condition 23.8 (*Misleading Declaration Capacity Data*);

**"Month"** means a calendar month;

**"Moody's"** means Moody's Investors Service, Inc., a Delaware corporation, and any successor thereto;

**"Mutual Appointment Decision"** has the meaning given to that term in Condition 42.4 (*Arbitration Procedure*);

**"NBP UK Index"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"NDCE Adjusted Heat and Material Balance Diagram"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"NDCE Adjustment Deadline"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"NDCE Adjustment Notice"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"Net Available Capacity"** means, subject to Condition 9.6 (*Outage Relief Events*), the declared available net generating capacity (*expressed in MW*) of the Facility at the Electricity Delivery Point(s), at Reference Site Conditions, by the Generator in relation to any Generation Outage Event during an AP Billing Period;

**"Net Calorific Value of Reference Fuel Composition"** is the value given in paragraph 1 of Part B (*Reference Site Conditions*) of Annex 2 (*Testing Requirements*);

**"Net Dependable Capacity"** means the net generating capacity (*expressed in MW*) of the Facility on a continuous and reliable basis available at the Electricity Delivery Point(s), at Reference Site Conditions. For the purposes of the Availability Payment, the Net Dependable Capacity shall be equal to the lower of: (A) the net generating capacity demonstrated at the Test (excluding the CO<sub>2</sub> Capture Rate Test) that has most recently been carried out by the Generator in accordance with this DPA; and (B) the Net Dependable Capacity Estimate;

**"Net Dependable Capacity Estimate"** means the Generator's estimate of the Net Dependable Capacity from time to time, being the Initial Net Dependable Capacity Estimate as may be adjusted pursuant to Condition 5 (*Adjustment to Net Dependable Capacity Estimate*) and/or Condition 7 (*Adjustments to the Net Dependable Capacity: Annual NDC Test*);

**"No Alternative T&S Solution Reason"** has the meaning given to that term in Condition 35.9(A)(iv) (*Termination for T&S Prolonged Unavailability Event*);

**"Non-affected Party"** has the meaning given to that term in Condition 51.4(A) (*Conditions to Force Majeure relief*);

**"Notified Annual NDC Test Date"** means the relevant Initial Notified Annual NDC Test Date, or, if Condition 7.1(C) applies, the relevant Revised Notified Annual NDC Test Date;

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

**"NPA Payment Cure Period"** has the meaning given to that term in Condition 37.1(B) (*Termination Events*);

**"OCP Non-Compliance Notice"** has the meaning given to that term in Condition 3.11 (*Operational Conditions Precedent: General Reporting Obligations*);

**"OCP Notice"** has the meaning given to that term in Condition 3.7(B) (*Operational Conditions Precedent: General Reporting Obligations*);

**"OCP Performance Tests"** means the Commissioning Tests to be carried out and completed by the Generator pursuant to paragraphs 2(A), 3(B) and 4(C) of Part B of Annex 1 (*Conditions Precedent*) (whether simultaneously with, or prior to, the Longstop Date Performance Tests), in order to demonstrate whether the Generator has satisfied the Minimum OCP Commissioning Requirements;

**"OCP Required CO<sub>2</sub> Capture Rate"** means a Test Achieved CO<sub>2</sub> Capture Rate which is equal to or greater than the higher of: (i) ten (10) percentage points lower than the CO<sub>2</sub> Capture Rate Estimate; and (ii) eighty per cent. (80%);

**"OCP Response Notice"** has the meaning given to that term in Condition 3.9 (*Operational Conditions Precedent: General Reporting Requirements*);

**"OCP Supporting Information"** has the meaning given to that term in Condition 3.9(B) (*Operational Conditions Precedent: General Reporting Obligations*);

**"OEVCI Indexation Adjustment"** has the meaning given to that term in Condition 10.15 (*Other Extra Variable Costs indexation*);

**"OEVCI Indexation Anniversary"** has the meaning given to that term in Condition 10.16(A) (*Other Extra Variable Costs indexation*);

**"OFAC"** means the Office of Foreign Assets Control of the US Department of the Treasury;

**"Operational Conditions Precedent"** means the operational conditions precedent set out in Part B of Annex 1 (*Conditions Precedent*) and **"Operational Condition Precedent"** and **"OCP"** shall be construed accordingly;

**"Operational CP Provisions"** means all of the provisions of the DPA other than the Agreement Date Provisions and the Initial CP Provisions;

**"Other CCUS Programme Contract"** means a private law contract entered into with the DPA Counterparty or the Secretary of State in relation to the CCUS Programme (which is not a CCUS Programme DPA);<sup>18</sup>

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<sup>18</sup>

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



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

- (A) all other generators which operate generating facilities deploying CO<sub>2</sub> Capture Technology;
- (B) all generators which operate generating facilities deploying the same or similar generation technology (or combustion process) as the Facility but which do not deploy CO<sub>2</sub> Capture Technology;
- (C) all generators which operate generating facilities deploying one (1) or more Material Generation Technologies;
- (D) all other generators which operate generating facilities deploying CO<sub>2</sub> Capture Technology other than the Facility's CO<sub>2</sub> Capture Technology; or
- (E) all generators which operate generating facilities deploying CO<sub>2</sub> Capture Technology, the generation output of which is not subject to a CCUS Programme DPA,

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;

**"Other Extra Variable Costs"** means the Initial Other Extra Variable Costs attributable to the Facility (*expressed in £/MWh*), as adjusted pursuant to Conditions 10.15 to 10.18 (*Other Extra Variable Costs indexation*);

**"Other Subsidy"** has the meaning given to that term in Condition 24.13(A)(i) (*Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding*);

**"Outage Relief Event"** means a Generation Outage Relief Event or a Capture Outage Relief Event;

**"Outage Relief Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Outage Relief Response Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Outage Relief Supporting Information"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Party"** means a party to the DPA;

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

**"Payments"** means the Availability Payment and the Variable Payment;

**"PDE Affected Party"** has the meaning given to that term in Condition 50.1 (*Relief due to Payment Disruption Event*);

**"PDE Obligations"** has the meaning given to that term in Condition 50.1 (*Relief due to Payment Disruption Event*);

**"Performance Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Access Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Access Right"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Date Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Report"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Plant Net Efficiency"** means the net efficiency on a net calorific basis (*expressed as a percentage (%)*) of the Facility, equal to the PNE Metered Electricity Output divided by PNE Facility Heat Input, at Reference Site Conditions, as demonstrated by either the OCP Performance Test or the Longstop Date Performance Test (where relevant) in accordance with Annex 2 (*Testing Requirements*);

**"Plant Net Efficiency Estimate"** has the meaning given to that term in the Agreement;

**"PNE Facility Heat Input"** means the Total Metered Fuel Consumption of the Facility on a net calorific value heat basis (*expressed in MWh*) during each Test Run Period of a Test as measured by the Gas Supply Metering Equipment at the Gas Supply Point(s);

**"PNE Metered Electricity Output"** means the BM Unit Metered Volume for the Facility (*expressed in MWh*) as measured by the Electricity Metering Equipment during each Test Run Period of a Test;

**"Post-Tax Real Discount Rate"** has the meaning given to that term in the Agreement;

**"Power CCUS Expertise Test"** means that there is at least one (1) Material Investor which has at least three (3) years of ongoing and continuous experience operating at least one (1) generation facility deploying thermal generation technology with a net generating capacity equal to or greater than [one hundred (100)]MWe;

**"Pre-Operation Activities"** means the design, procurement, development, construction, completion, testing, and commissioning of the Facility, and grammatical variations thereof shall be construed accordingly;

**"Pre-Start Date Termination Date"** has the meaning given to that term in Condition 35.1(E)(i) (*Pre-Start Date termination*);

**"Pre-Start Date Termination Notice"** has the meaning given to that term in Condition 35.1 (*Pre-Start Date termination*);

**"Pre-Start Up (Shutdown) Test Conditions"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Previous Subsidy"** has the meaning given to that term in Condition 3.51(A)(i) (*Waiver of Subsidy Control Declaration Operational CP*);

**"Price Source Live Day"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Pro Forma"** has the meaning given to that term in Condition 62.2 (*Pro forma notices*);

**"Proceedings"** means any proceeding, suit or action relating to or arising out of a Dispute, the DPA or any other DPA Document but excluding any Electricity Metering Dispute;

**"Project"** means the design, development, construction, completion, testing, commissioning, operation, maintenance and decommissioning of the Facility pursuant to the DPA;<sup>19</sup>

**"Project Commitments"** has the meaning given to that term in the Agreement;

**"Project Cost Data"** means details of the following costs incurred by the Generator in respect of the Project:

- (A) pre-development costs;
- (B) regulatory and licensing costs;
- (C) engineering, procurement and construction costs, including:
  - (i) mechanical costs;
  - (ii) electrical costs;
  - (iii) control and instrument costs;
  - (iv) civil and architectural costs; and
- (D) infrastructure costs;

**"Project Delay Notice"** has the meaning given to that term in Condition 3.15 (*Operational Conditions Precedent: Construction Reporting Requirements*);

**"Project Gain Share Amount"** has the meaning given to such term in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of the Schedule (*Gain Share*);

**"Prolonged FM Event"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Event Notice"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Termination Date"** has the meaning given to that term in Condition 35.6 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Termination Notice"** has the meaning given to that term in Condition 35.6 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Trigger Date"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

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Note to Reader: This definition will be reviewed and may be amended for retrofit projects.

**"Proposed Amendment"** has the meaning given to that term in paragraph 2.1(A) of Annex 4 (*Change Control Procedure*);

**"Proposed Amendment Effective Date"** has the meaning given to that term in paragraph 2.1(B) of Annex 4 (*Change Control Procedure*);

**"Proposed CiAL Expert"** has the meaning given to that term in Condition 33.3(A) (*Validity of CiAL Dispute Notices*);

**"Proposed CMRP Expert"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Proposed Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Proposed Energy Consultant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Energy Consultant Deadline"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Energy Consultant Determination Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed GRP Expert"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Proposed Reference Plant Expert"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Terms of Reference"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"PTP Response Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"QCIL Adjusted Revenues Payment"** has the meaning given to that term in Condition 27.1(C) (*Categories of Qualifying Change in Law compensation*);

**"QCIL Adjusted Revenues Period Adjustment"** means any QCIL Compensation which has been, or will be, made by way of a QCIL Adjusted Revenues Payment;

**"QCIL Capex Payment"** has the meaning given to that term in Condition 27.1(B) (*Categories of Qualifying Change in Law compensation*);

**"QCIL Capex Payment Adjustment Date"** means the date on which eighty per cent. (80%) of the Term has expired;

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

**"QCIL Capital Savings"** means QCIL Savings that relate to the acquisition, disposal, modification or construction of any asset in respect of the Project (including costs of site preparation, initial delivery and handling costs, installation and assembly costs, costs incurred

in testing whether the asset is functioning properly and professional fees, in each case which are directly associated with the acquisition, modification or construction of the relevant asset);

**"QCiL Compensation"** means: (i) a QCiL Opex Payment; (ii) a QCiL Capex Payment; (iii) a QCiL Adjusted Revenues 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 Condition 27 (*Qualifying Change in Law: Compensation*);

**"QCiL Compensation Date"** has the meaning given to that term in Condition 28.1 (*Qualifying Change in Law: Effective date and payment*);

**"QCiL Compensation Termination Date"** has the meaning given to that term in Condition 35.33 (*QCiL Compensation termination*);

**"QCiL Compensation Termination Notice"** has the meaning given to that term in Condition 35.33 (*QCiL Compensation termination*);

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

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

- (A) development and pre-development costs in respect of the Facility (including (i) the cost of surveys and environmental impact assessments in respect of the Facility; (ii) costs incurred in satisfying the Secretary of State's assessment with respect to the allocation of the DPA; and (iii) costs incurred in obtaining a planning permission for the Facility);
- (B) decommissioning costs in respect of the Facility;
- (C) break costs associated with the Generator's contractual or financing arrangements in respect of the Project; or
- (D) costs which are wholly attributable to the construction, testing, completion or commissioning of the Facility,

but excluding:

- (E) all other compensation which has been, will be or is reasonably likely to be payable by the Generator in connection with such QCiL Construction Event; and
- (F) all costs associated with the Generator's financing arrangements in respect of the Project (including all interest incurred in respect of such financing arrangements) except where expressly specified in any of paragraphs (A) to (D) above; and

including a negative adjustment that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, reflects (i) the revenue that the Generator is expected to generate (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility is expected to generate

from the date on which the QCiL Construction Event occurs to the date on which the Term would have expired but for the occurrence of such QCiL Construction Event, with such revenue calculated:

- (G) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
- (H) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
- (I) based on forecast wholesale electricity market revenues for the day-ahead electricity market, determined in accordance with an operating regime that stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist,

minus (ii) the operating costs that the Generator is expected to incur to generate such electricity;

**"QCIL Construction Event Payment"** has the meaning given to that term in Condition 27.1(D) (*Categories of Qualifying Change in Law compensation*);

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

**"QCIL Costs"** means, in relation to a Qualifying Change in Law, all out-of-pocket costs (including QCiL Tax Liabilities) which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly as a result or in anticipation of such Qualifying Change in Law being implemented, occurring or becoming effective, but excluding: (i) any Default Termination Payment; (ii) all costs incurred in respect of the agreement or determination of the amount of the Default Termination Payment; and (iii) all costs associated with the Generator'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 Net Capital Costs"** means, if QCiL Capital Costs exceed QCiL Capital Savings in respect of a Qualifying Change in Law, the QCiL Capital Costs less the QCiL Capital Savings;

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

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

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

**"QCIL Operating Costs"** means all QCiL Costs other than QCiL Capital Costs;

**"QCiL Operating Savings"** means all QCiL Savings other than QCiL Capital Savings;

**"QCiL Operations Cessation Event"** means:

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

**"QCiL Operations Cessation Event Costs"** means, in relation to a QCiL Operations Cessation Event, all irrecoverable and unavoidable out-of-pocket costs (including QCiL Tax Liabilities and break costs associated with the Generator's contractual or financing arrangements in respect of the Project) which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring, but excluding:

- (A) all other compensation which has been, will be or which is reasonably likely to be payable by the Generator in connection with such QCiL Operations Cessation Event; and
- (B) all costs, other than break costs, associated with the Generator's financing arrangements in respect of the Project (including all interest accrued in respect of such financing arrangements);

**"QCiL Operations Cessation Event Payment"** has the meaning given to that term in Condition 27.1(E) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Operations Cessation Event Savings"** means, in relation to a QCiL Operations Cessation Event, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation and including the cost that the Generator would have incurred in generating the Generator's Revenue (Ex-Ante Basis)) which have been, will be or are reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring;

**"QCiL Opex Payment"** has the meaning given to that term in Condition 27.1(A) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Response Information"** has the meaning given to that term in Condition 26.2 (*Generator QCiL Response Notice*);

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

**"QCiL Supporting Information"** has the meaning given to that term in Condition 26.8 (*Generator QCiL Notice*);

**"QCiL Tax"** means any Tax other than any Tax on gross or net Income, Profits or Gains, save to the extent that the rate at which such Tax on gross or net Income, Profits or Gains is

chargeable has been introduced or amended by a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be;

**"QCIL Tax Liability"** means:

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

**"QCIL Termination Date"** has the meaning given to that term in Condition 35.31 (*Qualifying Change in Law termination*);

**"QCIL Termination Notice"** has the meaning given to that term in Condition 35.31 (*Qualifying Change in Law termination*);

**"QCIL True-Up Adjusted Revenues Period Adjustment"** means any QCIL True-Up Compensation that has been, or will be, made by way of an adjustment to the Net Dependable Capacity, Availability of Generation and/or Availability of Capture;

**"QCIL True-Up Compensation"** means the adjustment to the QCIL Compensation which is necessary to reflect the QCIL True-Up Information;

**"QCIL True-Up Information"** has the meaning given to that term in Condition 29.1 (*DPA Counterparty QCIL True-Up Notice*);

**"QCIL True-Up Response Information"** has the meaning given to that term in Condition 29.3 (*Generator QCIL True-Up Response Notice*);

**"QSE Notice"** has the meaning given to that term in Condition 30.1 (*Qualifying Shutdown Event: Procedure*);

**"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 and provided that no decision by any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules to the DPA or CCUS Programme DPAs (including the annulment, invalidation, suspension, revocation, modification or replacement of any prior decision pursuant to such rules) shall constitute a Qualifying Change in Law;

**"Qualifying Shutdown Event"** means:

- (A) His Majesty's Government of the United Kingdom or the Secretary of State or any other Minister of the Crown or any department of His Majesty's Government of the United Kingdom (each, a **"Government Authority"**): (i) applying, implementing or changing the Law which is in force from time to time; (ii) applying or exercising its powers under such Law; or (iii) applying, implementing and/or changing policy or guidance which has effect from time to time;



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

other than any application, implementation, change, exercise of powers or other action required by, or necessary for compliance with, international or EU law, policy or guidance (provided such international or EU law, policy or guidance was not promoted by such Government Authority and, in relation to any international or EU law, policy or guidance proposed after the Agreement Date, such Government Authority has used its reasonable endeavours to prevent the adoption of such international or EU law, policy or guidance (such reasonable endeavours not to include an obligation on any Government Authority to take legal proceedings to challenge such adoption)), and which the Generator is able to demonstrate to the satisfaction of an English court of competent jurisdiction: (i) imposes a requirement that permanently prevents the whole of the Facility from operating; or (ii) is the refusal or the failure to give approval, for a period in excess of twenty-four (24) Months, to a request for consent to any re-start of the whole of the Facility, (each, a **"Shutdown Event"**) unless, in any such case, the Shutdown Event was for reasons:

- (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 Facility or the generation of electricity or the capture of CO<sub>2</sub> therefrom; (2) the Generator; (3) the land on which the Facility is situated; (4) the management of any of (1) to (3); or (5) the generation of electricity using the same Generation Technology as the Facility or the capture of CO<sub>2</sub> using the same CO<sub>2</sub> Capture Technology as the Facility (whether in the UK or elsewhere), but in this case, provided the Relevant Matters also relate or apply to one (1) or more of (1) to (4), where at the time of the Shutdown Event it was justifiable in the circumstances as they related or applied to the relevant one(s) of (1) to (5) to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility;
- (ii) arising out of, in connection with, or resulting from the negligence, breach or fault of, or a failure to act in accordance with the Reasonable and Prudent Standard by, the Generator or any of its Representatives, where at the time of the Shutdown Event it was justifiable in the circumstances to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility; or
- (iii) relating to any decision by any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules in the DPA or CCUS Programme DPAs (including the annulment, invalidation, revocation, modification, suspension or replacement of any prior decision pursuant to such rules);

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

**"Reconciliation Amount(s)"** means an AP Reconciliation Amount(s) and/or a VP Reconciliation Amount(s) (as applicable);

**"Reference CPI"** means the most recently published CPI;

**"Reference Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant CO<sub>2</sub> Emissions"** means the Initial Reference Plant CO<sub>2</sub> Emissions (as such term is defined in the Agreement), as may be adjusted by the DPA Counterparty pursuant to Condition 10.19 (*Base Performance Assumptions Adjustments*);

**"Reference Plant Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Methodology"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Commencement Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Procedure"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Report"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Year"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Gas Consumption"** means the Initial Reference Plant Gas Consumption (as such term is defined in the Agreement), as may be adjusted by the DPA Counterparty pursuant to Condition 10.19 (*Base Performance Assumptions Adjustments*);

**"Reference Plant Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Site Conditions"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Rate Methodology"** means the applicable methodology for setting reference rates which applies to or in the United Kingdom from time to time;

**"Reference Site Conditions"** means the site conditions set out in paragraph 1 (*Reference Site Conditions*) of Part B (*Reference Site Conditions*);

**"Relief Event AP Billing Period"** has the meaning given to that term in Condition 9.6(A) (*Outage Relief Events*);

**"Relief Event Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Relief Event Recalculation Amount"** has the meaning given to that term in Condition 9.10(B)(ii) (*Outage Relief Events*);

**"Representatives"** means:

- (A) in respect of the DPA Counterparty:
  - (i) its directors, officials, officers, employees, agents, consultants and advisers; and
  - (ii) the DPA Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers;
- (B) in respect of the Generator:
  - (i) its directors, officers or employees;
  - (ii) any of its Contractors, agents, consultants and advisers which are engaged in connection with the Project, the DPA or any other DPA Document; and
  - (iii) the directors, officers, employees, agents, consultants and advisers of any of its Contractors which are engaged in connection with the Project, the DPA or any other DPA Document;
- (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);
- (B) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR; or
- (C) any apparent request for information under the FoIA or the EIR;

**"Requested Milestone Supporting Information"** has the meaning given to that term in Condition 4.3(B) (*Milestone Requirement Notice*);

**"Required AP Other Metered Data"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Required Authorisation"** means, in relation to each Party and at any time, each authorisation, licence, accreditation, 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 and comply with its obligations under the DPA and the other DPA Documents and, in the case of the Generator, for the Project;

**"Required CiAL Amendment"** means any such amendment or supplement to the DPA which is, as a direct result of a Change in Applicable Law being implemented, occurring or becoming effective, necessary to ensure that the Required CiAL Amendment Objectives are met (provided that any such amendment or supplement shall not affect either: (i) the commercial intent of the DPA; or (ii) the overall balance of risk, rights and obligations between the Parties, in each case as provided for in the DPA);

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

**"Required CO<sub>2</sub> Capture Rate"** means a Test Achieved CO<sub>2</sub> Capture Rate which is the higher of: (i) five (5) percentage points lower than the CO<sub>2</sub> Capture Rate Estimate; and (ii) eighty five per cent. (85%);

**"Required Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Required Net Dependable Capacity"** means ninety per cent. (90%) of the Net Dependable Capacity Estimate;

**"Required Plant Net Efficiency"** means ninety five per cent. (95%) of the Plant Net Efficiency Estimate;

**"Required Start Up Times"** means one hundred and twenty five per cent. (125%) of the Start Up Time Estimates;

**"Residual Value Adjustment"** means an adjustment that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure reflects:

- (A) the revenue that the Generator is expected to generate (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility is expected to generate from the date on which the DPA terminates as a result of a T&S Prolonged Unavailability Event until the date on which the Term would have expired but for the occurrence of such T&S Prolonged Unavailability Event, with such revenue calculated:
  - (i) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
  - (ii) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
  - (iii) based on forecast wholesale electricity market revenues for the day-ahead electricity market, determined in accordance with an operating regime that

stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist,

- (B) minus the operating costs that the Generator is expected to incur to generate such electricity;

**"Resolution Period"** has the meaning given to that term in Condition 40.1(A) (*Resolution by Senior Representatives*);

**"Respondent"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Response Submission"** has the meaning given to that term in Condition 41.6(C) (*Expert Determination Procedure*);

**"Restricted Share Transfer"** means any Change of Ownership to any person who:

- (A) is engaged with or has substantial interests in:
- (i) gambling or gaming;
  - (ii) the manufacture or sale of arms and weapons;
  - (iii) the production or sale of alcohol; and/or
  - (iv) the production or sale of tobacco;
- (B) has been convicted of a criminal offence relating to the conduct of its business or profession;
- (C) has committed an act of grave misconduct in the course of its business or profession;
- (D) has failed to comply with material obligations relating to the payment of Taxes or social security contributions;
- (E) is listed on the Sanctions List, or is owned or controlled, directly or indirectly, by a person listed on the Sanctions List;
- (F) is violating any Sanctions Laws applicable to it;
- (G) is located, organised or resident in a country which is the subject of Sanctions by any Sanctions Authority; or
- (H) is a governmental agency, authority or body or state-owned enterprise of any country which is the subject of Sanctions by any Sanctions Authority;

**"Revised Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(G) (*Declaration Obligations*);

**"Revised Generator QCiL Information"** has the meaning given to that term in Condition 26.10(B) (*Generator QCiL Notice*);

**"Revised Generator QCiL Response Information"** has the meaning given to that term in Condition 26.5(B) (*Generator QCiL Response Notice*);

**"Revised Generator QCiL True-Up Information"** has the meaning given to that term in Condition 29.10(B) (*Generator QCiL True-Up Notice*);

**"Revised Generator QCiL True-Up Response Information"** has the meaning given to that term in Condition 29.5(B) (*Generator QCiL True-Up Response Notice*);

**"Revised NDCE"** has the meaning given to that term in Condition 5.1(A)(ii) (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"Revised Notified Annual NDC Test Date"** has the meaning given to that term in Condition 7.1(C) (*Undertaking: Annual NDC Test*);

**"Sanctions"** means economic or financial sanctions or trade embargoes or similar measures enacted, imposed, administered or enforced from time to time by any Sanctions Authority;

**"Sanctions Authority"** means any of OFAC, the United Nations, the European Union, His Majesty's Government of the United Kingdom or any US federal government entity;

**"Sanctions List"** means the Specially Designated Nationals and Blocked Persons List maintained by OFAC, the List of Foreign Financial Institutions Subject to Part 561 maintained by OFAC, or any similar sanctions list of individuals or entities maintained by any Sanctions Authority;

**"SCADA System"** means a Supervisory Control and Data Acquisition system to monitor and control the operation of the Facility and to provide data as required to support the provision of information as required by the Generator and the DPA Counterparty;

**"SCADA Systems Obligation(s)"** has the meaning given to that term in Condition 21.23 (*Undertakings: SCADA Systems*);

**"Season"** means a period of six (6) consecutive Months commencing on either 01 April or 01 October;

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

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

**"Senior Representative"** means a senior employee or officer selected by a Party to represent it in relation to Condition 40 (*Resolution by Senior Representatives*);

**"Senior Representatives Settlement"** has the meaning given to that term in Condition 40.1(A) (*Resolution by Senior Representatives*);

**"Service Agent"** has the meaning given to that term in the Agreement (but only if Condition 69 (*Agent for service of process*) is expressed to apply to the DPA in the Agreement);

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

**"Settlement Unit"** means an AP Settlement Unit or a VP Settlement Unit (as applicable);

**"SOTO Code"** means the System Operator – Transmission Owner Code required to be in place pursuant to standard condition B12 (*System Operator – Transmission Owner Code*) of the Electricity Transmission Licence;

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

- (A) generating facilities which deploy CO<sub>2</sub> Capture Technology, or CO<sub>2</sub> Capture Technology forming part of such generating facilities, and not to other generating facilities, or the generation from, or generation related processes carried out at, other generating facilities;
- (B) generating facilities the generation output of which is subject to a CCUS Programme DPA, and not in respect of any generating facilities not subject to a CCUS Programme DPA, or the generation from, or generation-related processes carried out at, any such generating facilities; or
- (C) 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 facilities referred to in paragraph (A) or (B) above and not to other generating facilities;

**"Specified Expiry Date"** has the meaning given to that term in the Agreement;

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

**"Start Date"** has the meaning given to that term in Condition 3.23 (*Notification of Start Date*);

**"Start Date Notice"** has the meaning given to that term in Condition 3.22 (*Notification of Start Date*);

**"Start Up (Shutdown) Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Start Up (Shutdown) Test Commencement"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Start Up Times"** means each time taken (*expressed in minutes*) to start up the Facility from a: (i) Hot Start, (ii) Warm Start and (iii) Cold Start, with the Capture Assets achieving (where applicable): (i) the OCP Required CO<sub>2</sub> Capture Rate, as demonstrated by the OCP Performance Test; or (ii) the Required CO<sub>2</sub> Capture Rate, as demonstrated by either the OCP Performance Test or the Longstop Date Performance Test (where relevant) during the applicable Test Run Period;

**"Start Up Times Estimates"** has the meaning given to that term in the Agreement;

**"Subsidy"** shall have the meaning given to the term "subsidy" in the Subsidy Control Act 2022;

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

**"Subsidy Control Declaration Date"** means the date the Generator submits an OCP Notice in respect of the Subsidy Control Declaration Operational CP or, where the DPA Counterparty subsequently agrees to waive the Subsidy Control Declaration Operational CP in accordance with Condition 3.50, the date the Generator requests a waiver of the Subsidy Control Declaration Operational CP;



**"Subsidy Control Declaration Operational CP"** means the Operational Condition Precedent set out in paragraph 5 (*Subsidy Control Declaration Operational CP*) of Part B of Annex 1 (*Conditions Precedent*);

**"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"**);

**"Subsidy Interest Rate"** has the meaning given to that term in Condition 24.11(B) (*Subsidy Interest*);

**"Summer Season"** in any calendar year, means the Season commencing on 01 April in that year;

**"Supplier Obligation Regulations"** means regulations made pursuant to the EA 2013 which make provision for Electricity Suppliers to pay the DPA Counterparty for the purpose of enabling the DPA Counterparty to make payments pursuant to CCUS Programme DPAs;

**"Supply Chain Report"** means a report prepared by the Generator and submitted to the DPA Counterparty pursuant to Condition 25.1 (*Supply Chain Report*), which shall be substantially in the form attached at Annex 9 (*Form of Supply Chain Report*);

**"Supply Chain Report Deadline"** has the meaning given to that term in Condition 25.1 (*Supply Chain Report*);

**"Supply Chain Report Fees"** means the following amounts payable by the Generator to the DPA Counterparty pursuant to Condition 25.6 (*Payment of Supply Chain Report Fees*):

- (A) the sum of one thousand pounds sterling (£1,000), which shall be due and payable by the date which falls ten (10) Business Days after the date of the relevant Supply Chain Report Response Notice;
- (B) the sum of one thousand pounds sterling (£1,000), which shall be due and payable by the date which falls one (1) Month and ten (10) Business Days after the date of the relevant Supply Chain Report Response Notice;
- (C) the sum of one thousand pounds sterling (£1,000), which shall be due and payable by the date which falls two (2) Months and ten (10) Business Days after the date of the relevant Supply Chain Report Response Notice;
- (D) the sum of two thousand five hundred pounds sterling (£2,500), which shall be due and payable by the date which falls three (3) Months and ten (10) Business Days after the date of the relevant Supply Chain Report Response Notice; and
- (E) the sum of five thousand pounds sterling (£5,000), which shall be due and payable by the date which falls four (4) Months and ten (10) Business Days after the date of the relevant Supply Chain Report Response Notice, with the same amount to then be due and payable each subsequent Month thereafter;

**"Supply Chain Report Response Notice"** has the meaning given to that term in Condition 25.4 (*Supply Chain Report*);

**"Supporting Information"** means any and all calculations, confirmations, data, documentation, evidence (including experts' reports), explanations, information, measurements, readings, reports (including experts' reports), representations and statements (whether in written or documentary form);

**"Suspension CO<sub>2</sub> Capture Rate"** means fifty per cent. (50%);

**"Suspension CO<sub>2</sub> Capture Rate Breach"** has the meaning given to that term in Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*);

**"Suspension T&S Connection Confirmation Requirement Breach"** has the meaning given to that term in Condition 3.48 (*Failure to comply with T&S Connection Confirmation Requirement: Suspension*);

**"T&S Capacity Charge"** means the transport and storage capacity charge in respect of the DPA Reserved T&S Capacity (*expressed in pounds (£)*) for an AP Billing Period calculated in accordance with the following formula:

(A) if the Generator is a T&S Onshore User:

$$TSCC = (TSONCR \times DRC) + (TSOFFCR \times DRC)$$

(B) if the Generator is a T&S Offshore User:

$$TSCC = TSOFFCR \times DRC$$

where:

$TSCC$  = T&S Capacity Charge (£)

$DRC$  = DPA Reserved T&S Capacity ( $tCO_{2RS}$ )

$TSONCR$  = T&S Onshore Capacity Rate (£/ $tCO_{2RS}$ )

$TSOFFCR$  = T&S Offshore Capacity Rate (£/ $tCO_{2RS}$ )

**"T&S Cessation Event"** means the occurrence of any one of the following:

- (A) a notice of discontinuation is issued by the Secretary of State to the relevant T&S Operator pursuant to a discontinuation agreement entered into between the relevant T&S Operator and the Secretary of State;
- (B) the relevant T&S Operator's licence to operate the relevant T&S Network is: (i) revoked; and (ii) is not transferred to a substitute T&S Operator, such that the relevant T&S Network ceases to operate or the Generator is no longer able to connect to that T&S Network; or
- (C) a determination is made by the relevant Competent Authority that the Generator's connection to the relevant T&S Network is no longer viable<sup>20</sup>;

**"T&S Charges"** means the T&S Flow Charge Payment Rate, the T&S Capacity Charge, and the T&S Network Charge;

**"T&S Commissioning Delay Event"** means an event or circumstance that prevents or delays the development, construction, completion, and/or commissioning of the relevant T&S Network and as a result prevents or delays the Facility from exporting captured CO<sub>2</sub> Rich Stream to the relevant T&S Network (except to the extent that such event or circumstance arises out of or in connection with an act, omission breach or default of the Generator or its Representatives, including any breach by the Generator or its Representatives of an Industry Document). This includes but is not limited to the failure of the relevant T&S Operator to carry out in a timely

<sup>20</sup>

Note to Reader: This definition is subject to further review as the T&S business model develops.

manner: (A) any connection works specified in the T&S Construction Agreement; or (B) any required works to the relevant T&S Network in order for the Facility to export captured CO<sub>2</sub> Rich Stream to the relevant T&S Network;

**"T&S Connection Agreement"** means the agreement between the relevant T&S Operator and the Generator relating to the export of captured CO<sub>2</sub> Rich Stream to the relevant T&S Network by the Generator;

**"T&S Connection Confirmation CP"** has the meaning given to that term in paragraph 3(D) of Part B of Annex 1 (*Conditions Precedent*);

**"T&S Connection Confirmation Deadline"** means the date which falls six (6) Months after the T&S Network Availability Date, as such date may be extended day for day for each day that the Generator is delayed in achieving the T&S Connection Confirmation Requirement by reason of:

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the relevant T&S Operator to carry out in a timely manner any required system reinforcement or connection works specified in the T&S Construction Agreement attributable to the T&S Connection Confirmation Requirement and (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives),

and provided that in the case of delays caused by the reasons in (B) above:

- (i) the Generator gives notice to the DPA 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 Generator 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 DPA in any way that is reasonably practicable; and
  - (c) to resume the performance of its obligations under the DPA as soon as reasonably practicable;

**"T&S Connection Confirmation Requirement"** means the evidence, in form and content satisfactory to the DPA Counterparty, that the Facility has connected to the T&S Network in accordance with the relevant T&S Operator's compliance requirements, to be delivered by the Generator to the DPA Counterparty in accordance with Condition 3.43;

**"T&S Construction Agreement"** means the agreement between the relevant T&S Operator and the Generator relating to the construction of infrastructure connecting the Capture Assets to the relevant T&S Network at the CO<sub>2</sub> Delivery Point(s);

**"T&S Flow Charge Payment Rate"** means the transport and storage flow charge payment rate in respect of the Facility (*expressed in £/MWh*) calculated in accordance with the following formula:

(A) if the Generator is a T&S Onshore User:

$$TSFC_{PR} = \left( TSONFR \times \frac{CO2_{exp}}{MWh} \right) + \left( TSOFFFR \times \frac{CO2_{exp}}{MWh} \right)$$

(B) if the Generator is a T&S Offshore User:

$$TSFC_{PR} = TSOFFFR \times \frac{CO2_{exp}}{MWh}$$

where:

$TSFC_{PR}$  = T&S Flow Charge Payment Rate (£/MWh)

$TSONFR$  = T&S Onshore Flow Rate (£/tCO<sub>2RS</sub>)

$TSOFFFR$  = T&S Offshore Flow Rate (£/tCO<sub>2RS</sub>)

$CO2_{exp}$  = VP Metered CO<sub>2</sub> Rich Stream Output (tCO<sub>2RS</sub>)

$MWh$  = Metered Day Electricity Output (MWh)

**"T&S Network"** means a network including but not limited to:

(A) pipelines used for the transportation of captured CO<sub>2</sub> Rich Stream from one capture plant to a storage facility or to or from any captured CO<sub>2</sub> Rich Stream pipeline network; and

(B) storage facilities for the permanent storage of captured CO<sub>2</sub> Rich Stream,

owned or operated by a T&S Operator within the United Kingdom, which may include onshore and offshore components;<sup>21</sup>

**"T&S Network Availability Date"** has the meaning given to that term in Condition 3.43(A) (*T&S Connection Confirmation Requirement*);

**"T&S Network Availability Notice"** has the meaning given to that term in Condition 3.43 (*T&S Connection Confirmation Requirement*);

**"T&S Network Availability Proposer"** has the meaning given to that term in Condition 3.44 (*T&S Connection Confirmation Requirement*);

**"T&S Network Availability Respondent"** has the meaning given to that term in Condition 3.44 (*T&S Connection Confirmation Requirement*);

**"T&S Network Availability Response Notice"** has the meaning given to that term in Condition 3.44 (*T&S Connection Confirmation Requirement*);

**"T&S Network Charge"** means the portion of any transport and storage network charge(s) relevant to the DPA Reserved T&S Delivery Point Size (*expressed in pounds (£)*) payable in respect of an AP Billing Period calculated in accordance with the following formula:

(A) if the Generator is a T&S Onshore User:

$$TSNC = (TSONNCR \times DRDPS) + (TSOFFNCR \times DRDPS)$$

<sup>21</sup>

Note to Reader: This definition is subject to further review as the T&S business model develops.

(B) if the Generator is a T&S Offshore User:

$$TSNC = TSOFFNCR \times DRDPS$$

where:

<i>TSNC</i>	=	T&S Network Charge (£)
<i>TSONNCR</i>	=	T&S Onshore Network Charge Rate (£/tCO <sub>2RS</sub> )
<i>DRDPS</i>	=	DPA Reserved T&S Delivery Point Size (tCO <sub>2RS</sub> )
<i>TSOFFNCR</i>	=	T&S Offshore Network Charge Rate (£/tCO <sub>2RS</sub> )

**"T&S Network Charges Statement"** means the statement setting out: (i) the T&S Offshore Capacity Rate and/or T&S Onshore Capacity Rate; (ii) the T&S Offshore Network Charge Rate and/or T&S Onshore Network Charge Rate; and (iii) the T&S Offshore Flow Rate and/or T&S Onshore Flow Rate, issued by the relevant T&S Operator for each T&S Network Charging Year in accordance with the CCS Network Code;

**"T&S Network Charging Year"** means the period from 1 April in any calendar year until and including 31 March in the following calendar year;

**"T&S Offshore Capacity Rate"** means the transport and storage offshore capacity rate (*expressed in £/tCO<sub>2</sub>*) applicable to an AP Billing Period as set out in the relevant T&S Network Charges Statement, or as otherwise set out in the CCS Network Code;

**"T&S Offshore Flow Rate"** means the transport and storage offshore flow rate (*expressed in £/tCO<sub>2</sub>*) payable in respect of a VP Billing Period as set out in the relevant T&S Network Charges Statement, or as otherwise set out in the CCS Network Code;

**"T&S Offshore Network Charge Rate"** means the transport and storage offshore network charge rate (*expressed in £/tCO<sub>2</sub>*) applicable to an AP Billing Period as set out in the relevant T&S Network Charges Statement for the applicable T&S Network Charging Year issued in accordance with the CCS Network Code;

**"T&S Offshore Transportation System"** means [●];<sup>22</sup>

**"T&S Offshore User"** means a Generator with a CO<sub>2</sub> Delivery Point which connects to the T&S Network at the T&S Offshore Transportation System;

**"T&S Onshore Capacity Rate"** means the transport and storage onshore capacity rate (*expressed in £/tCO<sub>2</sub>*) applicable to an AP Billing Period as set out in the relevant T&S Network Charges Statement, or as otherwise set out in the CCS Network Code;

**"T&S Onshore Flow Rate"** means the transport and storage onshore flow rate (*expressed in £/tCO<sub>2</sub>*) payable in respect of a VP Billing Period as set out in the relevant T&S Network Charges Statement, or as otherwise set out in the CCS Network Code;

**"T&S Onshore Network Charge Rate"** means the transport and storage onshore network charge rate (*expressed in £/tCO<sub>2</sub>*) applicable to an AP Billing Period as set out in the relevant T&S Network Charges Statement for the applicable T&S Network Charging Year issued in accordance with the CCS Network Code;

<sup>22</sup>

Note to Reader: This definition will be developed as the T&S business model develops.

**"T&S Onshore Transportation System"** means [●];<sup>23</sup>

**"T&S Onshore User"** means a Generator with a CO<sub>2</sub> Delivery Point which connects to the T&S Network at the T&S Onshore Transportation System;

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

**"T&S Outage Event"** means an event or circumstance affecting the relevant T&S Network (excluding a T&S Commissioning Delay Event or a T&S Cessation Event), that prevents the Facility from accessing the full entry capacity to the relevant T&S Network that the Generator has reserved under the T&S Connection Agreement (which, for the avoidance of doubt, shall include a Full T&S Outage Event);

**"T&S Prolonged Unavailability Event"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Event Notice"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Further Response Notice"** has the meaning given to that term in Condition 35.12(B)(ii) (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Procedure Obligation"** has the meaning given to that term in Condition 35.16 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*);

**"T&S Prolonged Unavailability Remediation Deadline"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*) as such deadline may be extended in accordance with Condition 35.26 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Response Notice"** has the meaning given to that term in Condition 35.9 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Review Notice"** has the meaning given to that term in Condition 35.11 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Termination Date"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Termination Notice"** has the meaning given to that term in Condition 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

**"T&S Termination Costs"** means all irrecoverable and unavoidable out-of-pocket costs which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from a T&S Prolonged Unavailability Event occurring, if and to the extent that such costs constitute:

- (A) development and pre-development costs in respect of the Generation Assets and/or Capture Assets (including: (i) the costs of surveys and environmental impact assessments in respect of the Generation Assets and/or Capture Assets; (ii) costs incurred in respect of the Generator's successful allocation of the DPA; and (iii) costs incurred in obtaining planning permission for the Generation Assets and/or Capture Assets);

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<sup>23</sup>

Note to Reader: This definition will be developed as the T&S business model develops.

- (B) decommissioning costs in respect of the Generation Assets and/or Capture Assets;
- (C) break costs associated with the Generator's contractual or financing arrangements in respect of the Project; or
- (D) costs which are wholly attributable to the construction, installation, testing, completion or commissioning of the Generation Assets and/or Capture Assets,

provided that:

- (i) such costs exclude: (a) all other compensation which will be or which is reasonably likely to be payable by the Generator in connection with such T&S Prolonged Unavailability Event; and (b) all costs associated with the Generator's financing arrangements in respect of the Project (including all interest incurred in respect of such financing arrangements), except where expressly specified in any of paragraphs (A) to (D) above, and
- (ii) the sum of the costs referred to in paragraphs (A), (B) and (D) shall be depreciated on a straight line basis from the Start Date to zero (0) on the Specified Expiry Date, where the T&S Prolonged Unavailability Event occurs following the Start Date;

**"T&S Termination Payment"** means the compensation in respect of a T&S Prolonged Unavailability Event calculated in accordance with Conditions 36.4 to 36.7 (*Consequences of T&S Prolonged Unavailability Event termination*);

**"T&S Termination Payment Notice"** has the meaning given to that term in Condition 36.3 (*Consequences of T&S Prolonged Unavailability Event termination*);

**"T&S Termination Response Notice"** has the meaning given to that term in Condition 35.23 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

**"T&S Termination Savings"** means, all savings (including avoided out-of-pocket costs and insurance proceeds) which have been or will be or are reasonably likely to be made by the Generator in respect of the Project arising directly from the T&S Prolonged Unavailability Event;

**"Target Commissioning Date"** has the meaning given to that term in the Agreement;

**"Target Commissioning Window"** means the Initial Target Commissioning Window for the Facility as specified in the Agreement, as such period 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 Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (C) the failure of the Gas Licensed Transporter to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement

attributable to the Facility and to which any Gas Licensed Transporter is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or

- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons in (B) and/or (C) above:

- (i) the Generator gives notice to the DPA 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 Generator 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 DPA in any way that is reasonably practicable; and
  - (c) to resume the performance of its obligations under the DPA as soon as reasonably practicable;

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

**"TCDE Deadline"** has the meaning given to that term in Condition 3.30 (*T&S Connection Confirmation CP Relief*);

**"TCDE Notice"** has the meaning given to that term in Condition 3.30 (*T&S Connection Confirmation CP Relief*);

**"TCDE Response Notice"** has the meaning given to that term in Condition 3.32 (*T&S Connection Confirmation CP Relief*);

**"TCDE Supporting Information"** has the meaning given to that term in Condition 3.32(D) (*T&S Connection Confirmation CP Relief*);

**"TCDE Termination Notice"** has the meaning given to that term in Condition 35.30 (*Termination for failing to satisfy the T&S Connection Confirmation Requirement*);

**"Technical Amendment"** means any Proposed Amendment which is: (i) not a Material Amendment; (ii) required to correct a manifest error; or (iii) subject to paragraph 2.13 of Annex 4 (*Change Control Procedure*), required in order to identify a replacement carbon support price to reflect the representative Tax on the CO<sub>2</sub> emissions produced by the Facility including by reference to the consumption of fuel gas, in circumstances where the Carbon Support Price has been or is proposed to be novated or replaced;

**"Technical Amendment Agreement"** has the meaning given to that term in paragraph 2.10 of Annex 4 (*Change Control Procedure*);

**"Technical Amendment Response Notification"** has the meaning given to that term in paragraph 2.6(B)(ii) of Annex 4 (*Change Control Procedure*);



**"Technical Amendment Response Period"** has the meaning given to that term in paragraph 2.6 of Annex 4 (*Change Control Procedure*);

**"Technical Compliance Termination Event"** means an event as set out in Condition 21.10 (*Failure to remedy Metering Obligation breach*);

**"Term"** has the meaning given to that term in Condition 2.1 (*Term and duration*);

**"Termination Event"** has the meaning given to that term in Condition 37.1 (*Termination Events*);

**"Termination Fee Rate"** has the meaning given to that term in paragraph 1.1 of Annex 3 (*Calculation of Default Termination Payment*);

**"Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Achieved CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) for the Facility during a Test and calculated as follows:

$$TACR_{ph} = \frac{CO_{2exp}}{CO_{2gen}}$$

where:

$TACR_{ph}$  = Test Achieved CO<sub>2</sub> Capture Rate (*expressed as a percentage (%)*)

$CO_{2exp}$  = Metered CO<sub>2</sub> Output in a Test Run Period (*tCO<sub>2</sub>*)

$CO_{2gen}$  = Calculated CO<sub>2</sub> Generated in a Test Run Period (*tCO<sub>2</sub>*)

**"Test Performance Standards"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Procedure"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Procedure Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Report"** means the Performance Test Report or the Annual NDC Test Report (as applicable);

**"Test Report Minimum Technical Requirements"** has the meaning given to such term in paragraph 1 of this Annex 2 (*Testing Requirements*);

**"Test Run Period"** means the applicable period of time during which each Test needs to be carried out as specified in Annex 2 (*Testing Requirements*);

**"Third Party"** has the meaning given to that term in Condition 65.1 (*Third party rights*);

**"Third Party Provisions"** has the meaning given to that term in Condition 65.1 (*Third party rights*);

**"Total Metered Fuel Consumption"** means the metered fuel consumption of the Facility during the relevant period, as measured at the Gas Supply Point(s) during such period;

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

**"Transfer"** has the meaning given to that term in Condition 61.1 (*Restriction on Transfers*);

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

**"Transferee"** has the meaning given to that term in Condition 61.1 (*Restriction on Transfers*);

**"Transferring Rights and Obligations"** has the meaning given to that term in Condition 61.5(A) (*General provisions relating to permitted transfers*);

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

**"Tribunal"** has the meaning given to that term in the FoIA;

**"UK Allowance"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract Trading Price"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract Trading Volume"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures Index"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK Competent Authority"** means a Competent Authority of the United Kingdom;

**"UK Emissions Trading Registry"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK Emissions Trading Scheme"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK REMIT"** means the dedicated 'REMIT' section of the [Balancing Mechanism Reporting Service (BMRS) operated by Elexon] pursuant to Regulation (EU) No 1227/2011 as it forms part of domestic law by virtue of the EU(W)A 2018;<sup>24</sup>

**"Unadjusted Metered Electricity Output"** means the BM Unit Metered Volume for the Facility during a Settlement Unit as measured by the Electricity Metering Equipment during such period;

**"Uniform Network Code"** means the uniform network code prepared pursuant to the Gas Transporter Licence;

**"Union Funding"** means any funding from European Union resources (regardless of whether such funding constitutes subsidy or State aid), including funding under the NER 300 and Horizon 2020 programmes;

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<sup>24</sup>

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

**"Variable Payment"** means the payment calculated in accordance with Condition 10.1 (*Variable Payment Calculation*);

**"Variable Payment Billing Statement"** has the meaning given to that term in Condition 12.8 (*Delivery of Variable Payment Billing Statement*);

**"Variable Payment Rate"** means the payment rate (*expressed in £/MWh*) calculated in accordance with Condition 10.1 (*Variable Payment calculation*);

**"VP Billing Period"** means the period starting at 00:00 on a day and ending at 23:59 on the same day;

**"VP Compensatory Interest"** means the interest that is due and payable at the VP Compensatory Interest Rate in accordance with Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Compensatory Interest Amount"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Compensatory Interest Rate"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Metered CO<sub>2</sub> Rich Stream Output"** means the Metered CO<sub>2</sub> Rich Stream Output, as measured by the CO<sub>2</sub> Metering Equipment, during a VP Billing Period. If the actual VP Metered CO<sub>2</sub> Rich Stream Output is greater than an amount equal to the Maximum VP Metered CO<sub>2</sub> Rich Stream Output, the VP Metered CO<sub>2</sub> Rich Stream Output for such VP Billing Period shall be deemed to be equal to the Maximum VP Metered CO<sub>2</sub> Rich Stream Output.

**"VP Net Payable Amount"** has the meaning given to that term in Condition 12.14 (*Calculation of VP Net Payable Amount*);

**"VP Reconciliation Amounts"** has the meaning given to that term in Condition 12.12 (*Calculation of VP Reconciliation Amounts*);

**"VP Reconciliation Billing Period"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Settlement Unit"** means each day occurring during the Term after the Start Date and starting at 00:00 on a day and ending at 23:59 on the same day;

**"Warm Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*); and

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

### **BSC definitions**

#### 1.2

- (A) References in these Conditions to **"Apparatus"**, **"BM Unit"**, **"BM Unit Metered Volume"**, **"Boundary Point"**, **"BSC Agent"**, **"BSC Company"**, **"Communications Equipment"**, **"Metering System"**, **"Registrant"**, **"Settlement Run"**, and **"Trading Dispute"** have the meanings given to such terms in the BSC.
- (B) Condition 1.2(A) shall operate without prejudice to the application of Part 8 (*Changes in Law*) to changes in the meaning of those terms under the BSC after the Agreement Date.

### **Interpretation**

1.3 Any reference in the DPA to:

- (A) (save as provided in (C)) 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 pursuant to any other enactment before, on or after the Agreement Date;
  - (ii) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
  - (iii) any subordinate legislation made (before, on or after the Agreement Date) pursuant to any enactment, including an enactment falling within Condition 1.3(A)(i) or 1.3(A)(ii);
- (B) an Industry Document includes references to such Industry Document as amended, supplemented, restated, novated or replaced from time to time,

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

- (C) a specific European Union instrument shall not include any amendment, supplement, re-enactment, restatement or replacement of such European Union instrument that:
- (i) is made by a Competent Authority of the European Union; and
  - (ii) is not required to be implemented by, and does not have effect in the United Kingdom by reason of, any Law or otherwise pursuant to an international agreement to which the United Kingdom is a signatory.

1.4 Unless otherwise expressly specified:

- (A) any reference in the DPA or any other DPA Document (or in any certificate or other document made or delivered pursuant to the DPA or any other DPA Document) to:
- (i) these Conditions shall be deemed to include the Annexes and the Schedule (*Gain Share*);
  - (ii) the DPA shall be deemed to include any schedules or annexes to the Agreement;
  - (iii) a **"company"** shall be construed as including any corporation or other body corporate, wherever and however incorporated or established;
  - (iv) the expressions **"holding company"** and **"subsidiary"** shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006, the expressions **"parent undertaking"** and **"subsidiary undertaking"** shall have the meanings respectively ascribed to them by section 1162 of the Companies Act 2006 and the expression **"associated undertaking"** shall have the meaning ascribed to it in Schedule 6 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2013 (but for this purpose ignoring paragraph 19(1)(b) of those regulations);
  - (v) a **"person"** shall be construed as including any individual, firm, company, unincorporated organisation, government, state or agency of a state or any

- association, trust or partnership (whether or not having separate legal personality) or any other entity;
- (vi) a person shall be construed as including its successors, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
  - (vii) an **"agreement"** shall be construed as including any commitment or arrangement, whether legally binding or not, and references to being party to an agreement or having agreed to do anything shall be construed accordingly;
  - (viii) any agreement or document shall be construed as a reference to that agreement or document as amended, supplemented, restated, novated or replaced from time to time;
  - (ix) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as including what most nearly approximates in that jurisdiction to the English legal term;
  - (x) time shall be a reference to time in London, England;
  - (xi) words in the singular shall be interpreted as including the plural and vice versa;
  - (xii) in the definition of Qualifying Shutdown Event, the term EU law shall include any retained EU law other than as that body of law is added to or otherwise modified under the EU(W)A 2018 or other domestic law; and
  - (xiii) the expression **"retained EU law"** shall have the meaning given to that expression in the EU(W)A 2018.
- (B) in construing the DPA or any other DPA Document (or any certificate or other document made or delivered pursuant to the DPA or any other DPA Document):
- (i) the rule of interpretation known as the *ejusdem generis* rule shall not apply and, accordingly, general words introduced by the word **"other"** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
  - (ii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (C) any reference in these Conditions to a **"paragraph"**, **"Condition"**, **"Part"** or **"Annex"** or **"Schedule"** is a reference to a paragraph, Condition or Part of, or Annex or Schedule to these Conditions; and
- (D) any reference in the Agreement to a **"paragraph"**, **"Condition"**, **"Part"**, **"Annex"** or **"Schedule"** is a reference to a paragraph or Condition of, or Annex or Schedule to, the Agreement.
- 1.5 These Conditions form part of the DPA and shall have the same force and effect as if expressly set out in the body of the DPA, and any reference to the DPA shall include the Annexes and the Schedules.

- 1.6 Headings and sub-headings used in the DPA are for ease of reference only and shall not affect the interpretation of the DPA.
- 1.7 If there is a conflict between:
- (A) subject to the Paragraph 1.3 of Part A (*Introduction*) of the Schedule (*Gain Share*), the main body of these Conditions and any Annex or Schedule, the main body of these Conditions shall prevail; or
  - (B) these Conditions and the Agreement, the Agreement shall prevail.
- 1.8 Condition 1.4(A)(vi) shall apply (without limitation) to any references in the DPA to the Authority, the Economic Regulator, the Environment Agencies and the Secretary of State.

***Symbols and currency***

- 1.9 Any reference in these Conditions to "**£**" or "**pounds**" or "**pence**" or "**Sterling**" is to the lawful currency of the United Kingdom.
- 1.10 Any reference in these Conditions to "**MW**" is to megawatts, to "**MWh**" is to megawatt hours and to "**MWe**" is to electrical megawatts.
- 1.11 Any reference in these Conditions to "**tCO<sub>2</sub>**" is to tonnes of carbon dioxide, "**tCO<sub>2RS</sub>**" is to tonnes of carbon dioxide rich stream and to "**tCO<sub>2e</sub>**" is to tonnes of carbon dioxide equivalent.
- 1.12 Any reference in these conditions to "**therms**" is to thermal units of natural gas.
- 1.13 Any value referenced in these Conditions as being expressed as a percentage (%) is to be expressed as a decimal fraction for the purposes of any calculations.

***No interest in the Facility***

- 1.14 Nothing in the DPA is intended to create, or shall create, a legal or beneficial interest in the Facility, the Generating Station or the Project in favour of any person other than the Generator.

**Part 2**  
**Term**

**2. TERM**

***Term and duration***

**2.1**

- (A) Subject to Condition 3 (*Conditions Precedent*), the provisions of, and the rights and obligations of the Parties under, the DPA shall become effective and binding on the Agreement Date; and
- (B) (except in circumstances in which the DPA is terminated pursuant to Conditions 35.1 (*Pre-Start Date Termination*), 35.5 (*Termination for Prolonged Force Majeure*), 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.27 (*Default Termination*), 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), 35.31 (*Qualifying Change in Law Termination*) or 35.33 (*QCIL Compensation termination*)), the DPA shall continue in full force and effect until the Specified Expiry Date,

(such period being the "**Term**").

***Consequences of expiry***

- 2.2** Subject to Condition 2.3: (i) the DPA shall expire automatically on the Specified Expiry Date; and (ii) upon expiry of the DPA:

- (A) no termination payment shall be payable by either Party to the other Party;
- (B) all rights and obligations of the Parties under the DPA shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party pursuant to the DPA.

- 2.3** The expiry of the DPA:

- (A) shall not affect, and shall be without prejudice to, accrued rights and liabilities and rights and liabilities arising as a result of:
  - (i) any antecedent breach of any provision of the DPA; and
  - (ii) any breach of any provisions of the DPA which are expressed to survive expiry pursuant to Condition 38 (*Survival*); and
- (B) shall be subject to Condition 38 (*Survival*).

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

**3. CONDITIONS PRECEDENT**

***Provisions effective and binding from Agreement Date***

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

***Initial Conditions Precedent***

- 3.2 The provisions of, and the rights and obligations of the Parties pursuant to, the Initial CP Provisions are conditional upon the Initial Conditions Precedent being:

- (A) fulfilled by the Generator; or
- (B) waived by the DPA Counterparty in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*).

- 3.3 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Initial Conditions Precedent as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after the Agreement Date.

- 3.4 The DPA Counterparty shall notify the Generator as soon as reasonably practicable after the DPA Counterparty considers that the Initial Conditions Precedent have been fulfilled or after the DPA Counterparty has decided to waive such conditions in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*).

***Operational Conditions Precedent***

- 3.5 The provisions of, and the rights and obligations of the Parties pursuant to, the Operational CP Provisions are conditional upon the Initial Conditions Precedent and the Operational Conditions Precedent being:

- (A) fulfilled by the Generator; or
- (B) waived by the DPA Counterparty in accordance with Conditions 3.28 (*Waiver of Conditions Precedent and Default*) and/or 3.50 (*Waiver of Subsidy Control Declaration Operational CP*).

- 3.6 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Operational Conditions Precedent (save for the Subsidy Control Declaration Operational CP) as soon as reasonably practicable, and in any event before the Longstop Date. The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Subsidy Control Declaration Operational CP before the Longstop Date.

***Operational Conditions Precedent: General Reporting Obligations***

- 3.7 The Generator shall keep the DPA Counterparty reasonably informed as to progress towards fulfilment of the Operational Conditions Precedent and in particular (but without limitation) shall:

- (A) provide the DPA Counterparty with reports (in form and content reasonably satisfactory to the DPA Counterparty and in accordance with the reasonable requirements of the DPA Counterparty as to the timing and frequency of such reports) of the progress made in or towards fulfilment of the Operational Conditions Precedent; and



- (B) give the DPA Counterparty a notice each time the Generator considers an Operational Condition Precedent has been fulfilled (an "**OCP Notice**"). Each OCP Notice shall:
    - (i) identify the Operational Condition Precedent which the Generator considers to have been fulfilled; and
    - (ii) include such Supporting Information as the Generator considers to be relevant to evidence the fulfilment of the relevant Operational Condition Precedent.
- 3.8 Each OCP Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Notice.
- 3.9 The DPA Counterparty shall, no later than ten (10) Business Days after receipt of an OCP Notice, give a notice to the Generator (an "**OCP Response Notice**"). An OCP Response Notice shall specify whether the DPA Counterparty considers that:
- (A) the Generator has or has not fulfilled the Operational Condition Precedent to which the OCP Notice relates; or
  - (B) it has not been provided with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent to which the OCP Notice relates and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Generator has fulfilled the Operational Condition Precedent (the "**OCP Supporting Information**").
- 3.10 If the DPA Counterparty states in the OCP Response Notice that:
- (A) the Generator has fulfilled the Operational Condition Precedent, then the Operational Condition Precedent will be deemed to have been fulfilled for the purposes of the DPA;
  - (B) the Generator has not fulfilled the Operational Condition Precedent, then the Operational Condition Precedent will be deemed not to have been fulfilled for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or
  - (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent:
    - (i) the Generator shall provide the OCP Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the OCP Response Notice, or such longer period as is specified by the DPA Counterparty; and
    - (ii) upon receipt of the OCP Supporting Information, the DPA Counterparty shall as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of such OCP Supporting Information, give a further OCP Response Notice to the Generator (a "**Further OCP Response Notice**"). A Further OCP Response Notice shall specify whether the DPA Counterparty considers that the Generator has or has not fulfilled the Operational Condition Precedent.
- 3.11 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware:
- (A) of any fact, matter or circumstance which will or is reasonably likely to prevent any of the Operational Conditions Precedent from being fulfilled by the Longstop Date; or

- (B) that any of the Operational Conditions Precedent which had previously been notified to the DPA Counterparty as fulfilled pursuant to Condition 3.7(B) is no longer fulfilled at any time prior to the Start Date,

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

- (i) identify the Affected Operational CP;
- (ii) specify the reasons why the Affected Operational CP:
  - (a) will, or is reasonably likely, not to be fulfilled; or
  - (b) is no longer fulfilled;
- (iii) include such Supporting Information as the Generator considers to be relevant to the content of the OCP Non-Compliance Notice; and
- (iv) include details of any remedial action that the Generator is taking or proposes to take,

provided that no OCP Non-Compliance Notice need be given by the Generator to the DPA Counterparty if the Affected Operational CP has been waived by the DPA Counterparty in accordance with Conditions 3.28 (*Waiver of Conditions Precedent and Default*) and/or 3.50 (*Waiver of Subsidy Control Declaration Operational CP*).

- 3.12 Each OCP Non-Compliance Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Non-Compliance Notice.
- 3.13 Nothing in this Condition 3 (*Conditions Precedent and Milestone Requirement*) shall require the DPA Counterparty to specify in any OCP Response Notice or Further OCP Response Notice that the DPA Counterparty accepts that an Operational Condition Precedent has been fulfilled unless the DPA Counterparty is satisfied of the same.

***Operational Conditions Precedent: Construction Reporting Requirements***

- 3.14 The Generator shall keep the DPA Counterparty fully informed as to the progress in relation to the Pre-Operation Activities from the Agreement Date until the Start Date and in particular (but without limitation) shall, on or prior to every 1 February, 1 May, 1 September and 1 November that fall within such period (or, if such date is a day other than a Business Day, on the next Business Day after that date):
- (A) provide the DPA Counterparty with reports (in form and content reasonably satisfactory to the DPA Counterparty) detailing the progress in relation to the Pre-Operation Activities. As a minimum, each report shall satisfy the Minimum Reporting Content Requirements; and
  - (B) provide the DPA Counterparty with any Supporting Information provided to the Generator's board of Directors (or an equivalent body or committee, as applicable) relating to the matters referred to in Condition 3.14(A).
- 3.15 The Generator shall notify the DPA Counterparty in writing (a "**Project Delay Notice**"), together with Supporting Information, promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to delay any Pre-Operation Activity, with such notice to include:

- (A) details of the relevant fact, matter or circumstance;
- (B) any remedial action that the Generator is taking or proposes to take in relation to such fact, matter or circumstance;
- (C) a revised Project timetable (by reference to the Target Commissioning Date, the Target Commissioning Window and the Longstop Date); and
- (D) the estimated additional costs to the Project arising as a result of such fact, matter or circumstance.

3.16 Each Project Delay Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Project Delay Notice.

**Reporting Obligations Audit Right**

3.17 With effect from the Agreement Date and until the date which falls thirty (30) calendar days after the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty which the DPA Counterparty considers to be suitably qualified) access in accordance with Conditions 3.18 to 3.20 to:

- (A) (i) the Facility; and (ii) any plant, machinery, property, processing or storage facility associated with the Facility, in each case owned, occupied or controlled by the Generator and to which the Generator can lawfully grant access; and
- (B) the Generator's personnel, systems, books, records and any other information,

in each case as the DPA Counterparty considers reasonably necessary for the DPA Counterparty to assess the Generator's compliance with Conditions 3.7 to 3.16 (the "**Audit Right**").

3.18 If the DPA Counterparty intends to exercise its Audit Right, it shall give written notice to the Generator (an "**Audit Notice**"). An Audit Notice shall:

- (A) specify that the DPA Counterparty (or any suitably qualified persons nominated by it under Condition 3.17) intends to exercise the Audit Right; and
- (B) specify a date and time during regular office hours by which the Generator must, in accordance with Condition 3.17, permit the exercise of the Audit Right.

3.19 On receipt of the Audit Notice, the Generator shall permit the DPA Counterparty to exercise the Audit Right at such time as the DPA Counterparty may nominate provided that it is no earlier than two (2) Business Day after the Generator's receipt of the Audit Notice.

3.20 The Generator shall cooperate and provide, and shall procure that any Representative cooperates and provides, all required access, assistance and information to enable the DPA Counterparty to exercise its Audit Right.

3.21 The Generator shall reimburse the DPA Counterparty for all out-of-pocket costs, expenses and fees incurred by the DPA Counterparty arising out of or in connection with exercising the Audit Right.

**Notification of Start Date**

3.22 The Generator shall after giving the OCP Notice relating to the fulfilment of the final Operational Condition Precedent, and in any event no later than ten (10) Business Days after the OCP Response Notice or the Further OCP Response Notice confirming that the DPA Counterparty

considers such Operational Condition Precedent to have been fulfilled is received, give a notice to the DPA Counterparty (a "**Start Date Notice**").

- 3.23 A Start Date Notice shall specify the date that the Generator proposes to be the Start Date for the purposes of the DPA, such date being:
- (A) no earlier than the date on which the OCP Notice relating to the fulfilment of the final Operational Condition Precedent was given;
  - (B) no earlier than the first (1st) day of the Target Commissioning Window;
  - (C) no later than the Longstop Date; and
  - (D) no earlier than the date of the Start Date Notice,
- (the date so notified being, subject to Condition 3.26, the "**Start Date**").
- 3.24 Each Start Date Notice shall be accompanied by a Directors' Certificate in relation to the Information specified in Condition 3.26(C).
- 3.25 On the Start Date (unless the date of the Start Date Notice is the same as the Start Date), the Generator shall deliver to the DPA Counterparty a Directors' Certificate in relation to the Information specified in Condition 3.26(C).
- 3.26 A Start Date Notice shall be effective in determining the Start Date only if:
- (A) the Generator complies with its obligations pursuant to Conditions 3.24 and 3.25;
  - (B) the DPA Counterparty specifies in an OCP Response Notice or a Further OCP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Conditions 3.28 or 3.50; and
  - (C) on the date such Start Date Notice is given and on the proposed Start Date specified in the Start Date Notice:
    - (i) the Generator Repeating Representations are true, accurate and not misleading by reference to the facts and circumstances then existing;
    - (ii) the representations set out in Conditions 18.1(G), 18.1(H) and 18.2 are true, accurate and not misleading by reference to the facts and circumstances then existing;
    - (iii) no Default has occurred which is continuing unremedied and which has not been waived by the DPA Counterparty in accordance with Condition 3.28; and
    - (iv) all Conditions Precedent (except those waived by the DPA Counterparty in accordance with Conditions 3.28 and/or 3.50) continue to be fulfilled.
- 3.27 If the Generator gives a Start Date Notice to the DPA Counterparty and such notice is, pursuant to Condition 3.26, ineffective, this shall not, subject to Part 9 (*Termination*), preclude the Generator from giving a further Start Date Notice to the DPA Counterparty. Conditions 3.22 to 3.26 (inclusive) shall apply, with the necessary modifications, to any such further Start Date Notice.

**Waiver of Conditions Precedent and Default**

- 3.28 Subject to Condition 3.50, the DPA Counterparty may agree by notice to the Generator to waive:
- (A) the fulfilment of any of the Conditions Precedent; and
  - (B) any Default which is continuing unremedied and which would otherwise prevent the Start Date Notice from being effective in determining the Start Date.
- 3.29 Conditions 47 (*No waiver*) and 48 (*Consents*) shall apply to any waiver given by the DPA Counterparty pursuant to Conditions 3.28 and 3.50.

**T&S Connection Confirmation CP Relief**

- 3.30 The Generator may, if it considers that a T&S Commissioning Delay Event has occurred and is still continuing, give a notice to the DPA Counterparty (a "**TCDE Notice**"). A TCDE Notice must be given to the DPA Counterparty no later than the Longstop Date (the "**TCDE Deadline**") and shall:
- (A) specify:
    - (i) the Generator's request for an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date, for any delay to the Project if and to the extent that such delay is directly attributable to the occurrence and continuation of such T&S Commissioning Delay Event; or
    - (ii) the Generator's request for the DPA Counterparty to waive the T&S Connection Confirmation CP in accordance with Condition 3.40 (*Waiver of T&S Connection Confirmation CP*) in order for the Generator to issue a Start Date Notice pursuant to Condition 3.22 (*Notification of Start Date*); and
  - (B) include such Supporting Information as the Generator considers to be relevant to:
    - (i) evidence the occurrence and continuation of the T&S Commissioning Delay Event; and
    - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), evidence that the Generator has fully completed the Generator T&S Connection Works<sup>25</sup>.
- 3.31 Each TCDE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the TCDE Notice.
- 3.32 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of a TCDE Notice, give a notice to the Generator (a "**TCDE Response Notice**"). A TCDE Response Notice shall specify whether the DPA Counterparty considers that:
- (A) a T&S Commissioning Delay Event has or has not occurred; and
  - (B) a T&S Commissioning Delay Event is or is not still continuing; and
  - (C) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator has or has not fully completed the Generator T&S Connection Works; or

<sup>25</sup> Note to Reader: It is expected that a letter from the T&S Operator confirming that the Generator has completed the necessary works will be sufficient evidence.

- (D) it has not been provided with sufficient Supporting Information to determine whether:
- (i) a T&S Commissioning Delay Event has occurred;
  - (ii) a T&S Commissioning Delay Event is still continuing;
  - (iii) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator has or has not fully completed the Generator T&S Connection Works; and/or
  - (iv) any combination of the foregoing,

in which case the DPA Counterparty shall provide details of the additional Supporting Information which the DPA Counterparty requires to determine (as relevant) whether a T&S Commissioning Delay Event has occurred and is still continuing and, if the TCDE Notice relates to Condition 3.30(A)(ii), whether the Generator has fully completed the Generator T&S Connection Works (the "**TCDE Supporting Information**").

3.33 If the DPA Counterparty states in the TCDE Response Notice that it:

- (A) considers that a T&S Commissioning Delay Event has not occurred and/or is not still continuing:
  - (i) if the TCDE Notice relates to Condition 3.30(A)(i), the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date shall remain unadjusted for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; and
  - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator T&S Connection Works will be deemed not to have been fully completed for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure;
- (B) considers that a T&S Commissioning Delay Event has occurred and is still continuing:
  - (i) if the TCDE Notice relates to Condition 3.30(A)(i), then the TCDE Response Notice shall include a confirmation of the Generator's entitlement to an extension to any of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date pursuant to Condition 3.37 (*Relief due to T&S Commissioning Delay Event*); and
  - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), then (except where the DPA Counterparty has requested TCDE Supporting Information relating to the Generator T&S Connection Works) the TCDE Response Notice shall:
    - (a) confirm that the Generator has fully completed the Generator T&S Connection Works, in which case the Generator T&S Connection Works will be deemed to have been fully completed for the purposes of the DPA; or
    - (b) state that the Generator has not fully completed the Generator T&S Connection Works, in which case the Generator T&S Connection Works will be deemed not to have been fully completed for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or
- (C) requires the Generator to provide the TCDE Supporting Information:

- (i) the Generator shall provide the TCDE Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the TCDE Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the TCDE Supporting Information, the DPA Counterparty shall, no later than ten (10) Business Days after receipt of such TCDE Supporting Information, give a further TCDE Response Notice to the Generator (a "**Further TCDE Response Notice**"). A Further TCDE Response Notice shall contain one of the statements set out in Conditions 3.33(A) or 3.33(B).
- 3.34 Nothing in Conditions 3.30 to 3.33 (*T&S Connection Confirmation CP Relief*) shall require the DPA Counterparty to specify in any TCDE Response Notice or Further TCDE Response Notice that a T&S Commissioning Delay Event has occurred, is still continuing or, if the TCDE Notice relates to Condition 3.30(A)(ii), that the DPA Counterparty accepts that the Generator T&S Connection Works have been fully completed, unless and until the DPA Counterparty is satisfied of the same.
- 3.35 Any TCDE Notice shall be irrevocable and, if the T&S Connection Confirmation CP is waived pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*), the Generator may not subsequently issue a TCDE Notice which relates to Condition 3.30(A)(i).
- 3.36 Any TCDE Notice received by the DPA Counterparty after the TCDE Deadline shall be invalid and of no effect.

***Relief due to T&S Commissioning Delay Event***

- 3.37 Subject to Condition 3.38, the Generator shall be entitled to an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date where it is agreed under Condition 3.33(B) or determined pursuant to the Dispute Resolution Procedure that any delay to the Project is directly attributable to the occurrence and continuation of a T&S Commissioning Delay Event, until the T&S Connection Confirmation CP is waived pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*).
- 3.38 The Generator's entitlement to an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date pursuant to Condition 3.37 shall be subject to and conditional upon the Generator using reasonable endeavours to:
- (A) mitigate the effects of the T&S Commissioning Delay Event (including the consequential delay to the Project);
  - (B) carry out its obligations under the DPA and each other DPA Document in any way that is reasonably practicable; and
  - (C) resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable.
- 3.39 Nothing in Conditions 3.30 to 3.38 shall affect the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*).

***Waiver of T&S Connection Confirmation CP***

- 3.40 The fulfilment of the T&S Connection Confirmation CP shall be deemed to have been waived where it is agreed under Condition 3.33(B) or determined pursuant to the Dispute Resolution

Procedure that: (i) a T&S Commissioning Delay Event has occurred and is still continuing; and (ii) the Generator T&S Connection Works have been fully completed.

- 3.41 If the T&S Connection Confirmation CP is deemed to have been waived in accordance with Condition 3.40 and the T&S Connection Confirmation CP is the final Operational Condition Precedent to be fulfilled by the Generator for the purposes of Condition 3.22:
- (A) the request for a waiver in accordance with Condition 3.30, including the Supporting Information and Directors' Certificate, shall be treated as the OCP Notice, and
  - (B) the waiver shall be treated as the OCP Response Notice.
- 3.42 If the T&S Connection Confirmation CP is deemed to have been waived in accordance with Condition 3.40, the Generator shall:
- (A) using reasonable endeavours mitigate the effects of the T&S Network not being available (including the Facility being unable to export captured CO<sub>2</sub> to the T&S Network);
  - (B) using reasonable endeavours continue to carry out its obligations under the DPA and each other DPA Document;
  - (C) give notice as soon as reasonably practicable to the DPA Counterparty:
    - (i) the steps being taken by the Generator to mitigate the effect of the T&S Network not being available (including the Facility being unable to export captured CO<sub>2</sub> to the T&S Network);
    - (ii) the anticipated date of the T&S Network becoming available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement;
    - (iii) such other details relating to the availability of the T&S Network and its effects on the Facility as may be reasonably requested by the DPA Counterparty,

and, to the extent that such information is not available at the time of a notice is given, the Generator shall provide such Information to the DPA Counterparty as soon as it becomes available to it; and
  - (D) give notice to the DPA Counterparty every twenty (20) Business Days of any update to the Information provided pursuant to limb (C) and shall give notice as soon as reasonably practicable to the DPA Counterparty upon the Generator becoming aware of any material developments or additional material Information relating to the availability of the T&S Network and whether the Facility can export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement.

### ***T&S Connection Confirmation Requirement***

- 3.43 If the T&S Connection Confirmation CP is deemed to have been waived in accordance with Condition 3.40 (*Waiver of T&S Connection Confirmation CP*), either Party shall give notice to the other Party that the relevant T&S Network is available to enable the Facility to export captured CO<sub>2</sub> to the relevant T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement (a "**T&S Network Availability Notice**"). A T&S Network Availability Notice shall:



- (A) specify the date on which the T&S Network is available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network (a "**T&S Network Availability Date**"); and
  - (B) include such Supporting Information, in reasonable detail, which the relevant party considers to be relevant and supportive of the foregoing.
- 3.44 The Party receiving the T&S Network Availability Notice (the "**T&S Network Availability Respondent**") shall, no later than ten (10) Business Days after receipt of the T&S Network Availability Notice, give notice (a "**T&S Network Availability Response Notice**") to the other Party (the "**T&S Network Availability Proposer**"). A T&S Network Availability Response Notice shall specify whether or not the T&S Network Availability Respondent accepts the T&S Network Availability Notice.
- 3.45 If the T&S Network Availability Respondent states in the T&S Network Availability Response Notice that it:
- (A) considers that the T&S Network is not available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement, such event shall be deemed not to have occurred for purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure;
  - (B) considers that the T&S Network is available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement, the proposed T&S Network Availability Date in the relevant T&S Network Availability Notice will be deemed to have occurred and Condition 3.47 shall apply.
  - (C) requires the T&S Network Availability Proposer to provide the necessary Supporting Information to determine whether the T&S Network is available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement:
    - (i) the T&S Network Availability Proposer shall provide the necessary Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the T&S Network Availability Response Notice, or such longer period as is specified by the DPA Counterparty; and
    - (ii) upon receipt of the Supporting Information, the T&S Network Availability Respondent shall, no later than ten (10) Business Days after receipt of such Supporting Information, give a further T&S Network Availability Response Notice to the T&S Network Availability Proposer (a "**Further T&S Network Availability Response Notice**"). A Further T&S Network Availability Response Notice shall contain one of the statements set out in Conditions 3.45(A) or 3.45(B).
- 3.46 Any T&S Network Availability Notice given by the Generator to the DPA Counterparty shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with such T&S Network Availability Notice.
- 3.47 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement as soon as reasonably practicable, and in any event before the T&S Connection Confirmation Deadline.

***Failure to comply with T&S Connection Confirmation Requirement: Suspension***

- 3.48 Without prejudice to Condition 35.30 (*Termination for failing to satisfy the T&S Connection Confirmation Requirement*), if the Generator fails to satisfy the T&S Connection Confirmation Requirement within three (3) consecutive AP Billing Periods following the T&S Network Availability Date (a "**Suspension T&S Connection Confirmation Requirement Breach**") then the DPA Counterparty may at any time following such failure, elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which such failure persists, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension. Notwithstanding the foregoing, during such period of suspension, the Availability of Capture shall be deemed to be zero (0) for the purposes of calculating the Availability Payment in accordance with Condition 9.1 (*Availability Payment Calculation*).
- 3.49 If the Generator evidences to the satisfaction of the DPA Counterparty that the T&S Connection Confirmation Requirement has been satisfied, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 3.48. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 3.49.

***Waiver of Subsidy Control Declaration Operational CP***

- 3.50 The DPA Counterparty shall agree by notice to the Generator to waive the fulfilment of the Subsidy Control Declaration Operational CP if the Generator evidences to the satisfaction of the DPA Counterparty that the granter(s) of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)), in full or in part. If the Generator seeks a waiver of the Subsidy Control Declaration Operational CP, the Generator shall:
- (A) provide the DPA Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment, in accordance with this Condition 3.50; and
  - (B) provide the DPA Counterparty with such additional Supporting Information as the DPA Counterparty reasonably requires, as soon as reasonably practicable, and in any event no later than ten (10) Business Days following receipt of the DPA Counterparty's request,
- in each case accompanied with a Directors' Certificate in respect of such Supporting Information.
- 3.51 If the DPA Counterparty agrees to waive the Subsidy Control Declaration Operational CP in accordance with Condition 3.50:
- (A) the DPA Counterparty shall also notify the Generator of:
    - (i) the amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) which has not been repaid to the granter as at that date ("**Previous Subsidy**"); and
    - (ii) the Subsidy Interest Rate currently applicable;
  - (B) Condition 3.53 shall apply; and

- (C) where the Subsidy Control Declaration Operational CP is the final Operational Condition Precedent to be fulfilled, for the purposes of Condition 3.22:
- (i) the request for a waiver in accordance with Condition 3.50, including the Supporting Information and Directors' Certificate, shall be treated as the OCP Notice, and
  - (ii) the waiver shall be treated as the OCP Response Notice.

3.52 Nothing in this Condition 3 shall require the DPA Counterparty to waive the Subsidy Control Declaration Operational CP, unless the DPA Counterparty is satisfied that the requirements of Condition 3.50 have been met.

***Set-Off of Previous Subsidy***

3.53 The Previous Subsidy (as adjusted for interest in accordance with Condition 24.11 (Subsidy Interest)) shall be set off against any amounts payable to the Generator under the DPA, so that no payment shall be made to the Generator until such amount has been set off in its entirety.

3.54 Where any provision of the DPA would, but for this Condition 3.54, require:

- (A) the DPA Counterparty to make any payment or otherwise do anything (including without limitation, the making of any adjustment payment under any Initial CP Provision) which would amount to the giving of Subsidy, no such payment or thing shall be required to be made or done unless and until the Subsidy Control Declaration Operational CP has been satisfied or waived; or
- (B) any payment to be made by the DPA Counterparty on a date falling prior to the satisfaction or waiver of the Subsidy Control Declaration Operational CP, such payment shall not fall due for payment until the date falling ten (10) Business Days following the satisfaction or waiver of the Subsidy Control Declaration Operational CP. No interest shall accrue in respect of any such payment.

3.55 Subject to Condition 3.56, not less than three (3) Months before the Generator's intended Start Date, the Generator shall give the DPA Counterparty a written confirmation, in form and content satisfactory to the DPA Counterparty (acting reasonably), of whether any Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project, and, where applicable, details of all such Subsidy, State aid and/or Union Funding, accompanied by a Directors' Certificate in relation to the confirmation and the information accompanying it.

3.56 The Generator is not required to give a confirmation to the DPA Counterparty under Condition 3.55 if the Subsidy Control Declaration Operational CP has previously been fulfilled (or waived in accordance with Condition 3.50).

**4. MILESTONE REQUIREMENT**

***Milestone Requirement Notice***

4.1 No later than the Milestone Delivery Date, the Generator shall give a notice to the DPA Counterparty (a "**Milestone Requirement Notice**") that the Generator considers that it has complied with and fulfilled a Milestone Requirement. A Milestone Requirement Notice shall include either:

- (A) such invoices, payment receipts and other Supporting Information with respect to the Project as the Generator considers relevant to evidence that it and its direct

shareholders have in aggregate spent ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or

- (B) such Information as is specified, identified or listed as the Project Commitments and such Supporting Information as the Generator 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 DPA 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**").

For the purposes of paragraph (A) above:

- (i) money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place; and
- (ii) money spent by the Generator for the purpose of connecting the Facility to any relevant Electricity Transmission System, Electricity Distribution System, Gas Distribution System or T&S Network may be taken into account, notwithstanding that assets comprised or to be comprised within any such Electricity Transmission System, Electricity Distribution System, Gas Distribution System or T&S Network do not form part of the Facility.

4.2 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.

4.3 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of a Milestone Requirement Notice, give a notice to the Generator (a "**Milestone Assessment Response Notice**"). A Milestone Assessment Response Notice shall specify whether the DPA Counterparty considers that:

- (A) the Generator has or has not complied with and fulfilled a Milestone Requirement; or
- (B) it has not been provided with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Generator has complied with and fulfilled a Milestone Requirement (the "**Requested Milestone Supporting Information**").

4.4 If the DPA Counterparty states in a Milestone Assessment Response Notice that:

- (A) the Generator has complied with and fulfilled a Milestone Requirement, then the Milestone Requirement will be deemed to have been complied with and fulfilled for the purposes of the DPA;
- (B) the Generator 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 DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or

- (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement:
- (i) the Generator shall provide the Requested Milestone Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of a Milestone Assessment Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Requested Milestone Supporting Information, the DPA 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 Generator (a "**Further Milestone Assessment Response Notice**"). A Further Milestone Assessment Response Notice shall specify whether the DPA Counterparty considers that the Generator has or has not complied with and fulfilled a Milestone Requirement.

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

***Waiver of Milestone Requirement***

- 4.6 The DPA Counterparty may agree by notice to the Generator to waive the fulfilment of any Milestone Requirement.
- 4.7 Conditions 47 (*No waiver*) and 48 (*Consents*) shall apply to any waiver given by the DPA Counterparty pursuant to Condition 4.6.

***Difficulties in achieving the Milestone Requirement***

- 4.8 The Generator shall give the DPA Counterparty a written notice (a "**Milestone Delay Notice**") promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to prevent the Generator fulfilling the Milestone Requirement by the Milestone Delivery Date.
- 4.9 A Milestone Delay Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, such notice.

***Effectiveness of a Milestone Requirement Notice***

- 4.10 If the Generator gives a Milestone Requirement Notice to the DPA Counterparty and such notice is ineffective, this shall not, subject to Part 9 (*Termination*), preclude the Generator from giving a further Milestone Requirement Notice to the DPA Counterparty.
- 4.11 Without limitation, a Milestone Requirement Notice shall be deemed to be ineffective if:
- (A) it does not include the information specified in either Condition 4.1(A) or Condition 4.1(B);
  - (B) it is not accompanied by a Directors' Certificate in accordance with Condition 4.2; or
  - (C) the DPA Counterparty states in the Milestone Assessment Response Notice that the Generator has not complied with and fulfilled a Milestone Requirement.

**Part 4**  
**Adjustments**

**5. ADJUSTMENT TO NET DEPENDABLE CAPACITY ESTIMATE: PERMITTED REDUCTION**

5.1 The Generator may, if it considers that the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate, give a notice to the DPA Counterparty (an "**NDCE Adjustment Notice**"). An NDCE Adjustment Notice must be given to the DPA Counterparty no later than the Milestone Delivery Date (the "**NDCE Adjustment Deadline**") and shall:

- (A) specify:
  - (i) the amount by which the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate; and
  - (ii) the new Net Dependable Capacity Estimate which is to apply to the Facility as a result of such reduction (the "**Revised NDCE**");
- (B) include details of any change in the Facility which will result from the reduction to the Net Dependable Capacity Estimate (which shall include revised details of the assets comprising the Facility and any revised aerial view of the unique geographical location of (a) the Facility, (b) the Facility Metering Equipment, and (c) the Facility Connection Points, as well as any change to the geographical coordinates specified in Annex 1 (*Conditions Precedent*) of the Agreement;
- (C) include such Supporting Information as the Generator considers to be relevant to evidence any changes to the asset comprising the Facility which will result from the reduction to the Net Dependable Capacity Estimate; and
- (D) if there are any changes to the Initial Heat and Material Balance Diagram as a result of such reduction, include the proposed Heat and Material Balance Diagram which will apply for the purposes of the DPA ("**NDCE Adjusted Heat and Material Balance Diagram**") and any Supporting Information as the Generator considers to be relevant to evidence such changes to the Initial Heat and Material Balance Diagram.

5.2 Subject to Condition 5.5, the Revised NDCE shall constitute the Net Dependable Capacity Estimate with effect from the date of the NDCE Adjustment Notice, provided that if an NDCE Adjustment Notice specifies a Revised NDCE which is less than ninety per cent. (90%) of the Initial Net Dependable Capacity Estimate, such NDCE Adjustment Notice shall be invalid and of no effect.

5.3 An NDCE Adjustment Notice shall be irrevocable and the Generator may not subsequently increase the Net Dependable Capacity Estimate.

5.4 The Generator may give an NDCE Adjustment Notice on only one (1) occasion prior to the NDCE Adjustment Deadline. Any NDCE Adjustment Notice given to the DPA Counterparty after the NDCE Adjustment Deadline shall be invalid and of no effect.

5.5 If the NDCE Adjustment Notice includes an NDCE Adjusted Heat and Material Balance Diagram, the DPA Counterparty shall confirm whether it approves such NDCE Adjusted Heat and Material Balance Diagram within twenty (20) Business Days of receipt of the NDCE Adjustment Notice (such approval not to be unreasonably withheld or delayed).

5.6 An NDCE Adjusted Heat and Material Balance Diagram included in an NDCE Adjustment Notice shall constitute the Facility Heat and Material Balance Diagram for the purposes of the DPA, with effect from the date of the DPA Counterparty's approval pursuant to Condition 5.5,

unless further adjusted pursuant to paragraphs 1.1 to 1.5 (*Test Procedure*) of Part A (*Testing Requirements*).

## 6. LONGSTOP DATE CAPACITY NOTICE

6.1 The Generator shall, following the Start Date, and in any event no later than ten (10) Business Days after the Longstop Date, give a notice to the DPA Counterparty (a "**Longstop Date Capacity Notice**"). A Longstop Date Capacity Notice shall:

- (A) specify:
  - (i) the Net Dependable Capacity;
  - (ii) the Test Achieved CO<sub>2</sub> Capture Rate;
  - (iii) the Plant Net Efficiency; and
  - (iv) the Start Up Times,

demonstrated by the Longstop Date Performance Tests and which have been Commissioned as at the date of such notice;
- (B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to demonstrate that the Minimum Longstop Date Commissioning Requirements have been met; and
- (C) include a description of the Facility (as prescribed in Annex 1 (*Conditions Precedent*), Part A (*Initial Conditions Precedent*) as at the date of such notice).

6.2 A Longstop Date Capacity Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Longstop Date Capacity Notice.

6.3 The Generator shall not give to the DPA Counterparty more than one (1) Longstop Date Capacity Notice.

6.4 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of the Longstop Date Capacity Notice, give a notice to the Generator (a "**Longstop Date Capacity Response Notice**"). A Longstop Date Capacity Response Notice shall specify that either:

- (A) the DPA Counterparty agrees with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice and considers that the Generator has met the Minimum Longstop Date Commissioning Requirements; or
- (B) the DPA Counterparty:
  - (i) has not been provided with sufficient Supporting Information to: (a) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; (b) determine whether the Generator has met the Minimum Longstop Date Commissioning Requirements; and/or (c) identify the assets comprising the Facility (as prescribed in Annex 1 (*Conditions Precedent*), Part A (*Initial Conditions Precedent*)); and/or
  - (ii) does not agree with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times which have been Commissioned as specified in the Longstop Date Capacity Notice (giving

reasons), and therefore considers that the Generator has not demonstrated the Minimum Longstop Date Commissioning Requirements,

as at the date of the Longstop Date Capacity Notice, in which case the Longstop Date Capacity Response Notice shall provide details of any additional or revised Supporting Information which the DPA Counterparty requires to: (a) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; (b) determine whether the Minimum Longstop Date Commissioning Requirements have been met; and/or (c) identify the assets comprising the Facility, in each case as at the date of the Longstop Date Capacity Notice (the "**Longstop Date Capacity Supporting Information**").

6.5 If the DPA Counterparty:

- (A) gives a Longstop Date Capacity Response Notice pursuant to Condition 6.4(A), the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times shall be the values so specified in the Longstop Date Capacity Notice with effect from the date of the Longstop Date Capacity Notice; or
- (B) gives a Longstop Date Capacity Response Notice pursuant to Condition 6.4(B):
  - (i) the Generator shall provide the Longstop Date Capacity Supporting Information, and where relevant if Condition 6.4(B)(ii) applies, a response to the reasons for disagreement with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as proposed by the DPA Counterparty as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of the Longstop Date Capacity Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Longstop Date Capacity Supporting Information, and where relevant if Condition 6.4(B)(ii) applies, a response to the reasons for disagreement with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as proposed by the DPA Counterparty, the DPA Counterparty shall, no later than twenty (20) Business Days after receipt of the Longstop Date Capacity Supporting Information, give a further Longstop Date Capacity Response Notice to the Generator (a "**Further Longstop Date Capacity Response Notice**"). A Further Longstop Date Capacity Response Notice shall specify whether the DPA Counterparty agrees with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as specified in the Longstop Date Capacity Notice and whether the DPA Counterparty considers that the Generator has or has not demonstrated the Minimum Longstop Date Commissioning Requirements.

6.6 Nothing in this Condition 6 (*Longstop Date Capacity Notice*) shall require the DPA Counterparty to specify in any Longstop Date Capacity Response Notice that the DPA Counterparty accepts the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times notified to it by the Generator unless and until the DPA Counterparty is satisfied of the same.

6.7 Without prejudice to the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), if the Generator does not give the DPA Counterparty a Longstop Date Capacity Notice on or prior to the date which is ten (10) Business Days after the later of:



- (A) the Longstop Date; and
- (B) the date which is ten (10) Business Days after the DPA Counterparty has given notice to the Generator (on or at any time after the date falling ten (10) Business Days prior to the Longstop Date) reminding the Generator of the requirement to give a Longstop Date Capacity Notice,

then with effect from the Longstop Date:

- (i) the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Net Dependable Capacity that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to an OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the Net Dependable Capacity Operational Conditions Precedent specified in paragraph 2(A) of Part B (*Operational Conditions Precedent*) of Annex 1 (*Conditions Precedent*) has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary Net Dependable Capacity figure will apply under the DPA, that temporary Net Dependable Capacity; and
- (ii) the Test Achieved CO<sub>2</sub> Capture Rate shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Test Achieved CO<sub>2</sub> Capture Rate that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to a OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the OCP Required CO<sub>2</sub> Capture Rate has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary CO<sub>2</sub> capture rate will apply under the DPA, that temporary CO<sub>2</sub> capture rate.

6.8 Without prejudice to the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), if:

- (A) the Generator does not provide the additional or revised Longstop Date Capacity Supporting Information which is sufficient for the DPA Counterparty to: (i) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times; (ii) determine whether the Generator has demonstrated that the Minimum Longstop Date Commissioning Requirements have been met; and/or (iii) identify the assets comprising the Facility; or
- (B) the Generator fails to: (i) demonstrate the determination of the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; and/or (ii) fulfil the Minimum Longstop Date Commissioning Requirements to the satisfaction of the DPA Counterparty,

then within ten (10) Business Days after receipt of the Further Longstop Date Capacity Response Notice, or such longer period as is specified by the DPA Counterparty:

- (i) the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Net Dependable Capacity that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to an OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the Net Dependable Capacity Operational Conditions Precedent specified in paragraph 2(A) of Part B (*Operational Conditions Precedent*) of Annex 1 (*Conditions Precedent*) has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary Net Dependable Capacity figure will apply under the DPA, that temporary Net Dependable Capacity; and
- (ii) the Test Achieved CO<sub>2</sub> Capture Rate shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Test Achieved CO<sub>2</sub> Capture Rate that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to a OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the OCP Required CO<sub>2</sub> Capture Rate has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary CO<sub>2</sub> capture rate will apply under the DPA, that temporary CO<sub>2</sub> capture rate.

until such time as the DPA Counterparty agrees that the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times fulfil the Minimum Longstop Date Commissioning Requirements.

## 7. ADJUSTMENTS TO THE NET DEPENDABLE CAPACITY: ANNUAL NDC TEST

### ***Undertaking: Annual NDC Test***

- 7.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:
- (A) conduct an Annual NDC Test during the Annual NDC Test Window in each year during the Term, with the first such test to be carried out in the year after the year in which the Start Date occurs;
  - (B) no later than twenty (20) Business Days prior to the start of an Annual NDC Test Window, give a notice to the DPA Counterparty specifying the date within the Annual NDC Test Window that the Generator intends to carry out the relevant Annual NDC Test (an "**Initial Notified Annual NDC Test Date**");
  - (C) if the Generator proposes to change the date that it will carry out the relevant Annual NDC Test from the Initial Notified Annual NDC Test Date, the Generator shall give a notice to the DPA Counterparty (an "**Annual NDC Test Date Adjustment Notice**"). The Generator shall give such Annual NDC Test Date Adjustment Notice to the DPA Counterparty at least three (3) Business Days prior to carrying out the relevant Annual NDC Test and the Annual NDC Test Date Adjustment Notice shall:

- (i) specify the new date within the Annual NDC Test Window on which the Generator proposes to carry out the relevant Annual NDC Test (the "**Revised Notified Annual NDC Test Date**"); and
  - (ii) include such Supporting Information as the Generator considers to be relevant to evidence the reasons for the change from the Initial Notified Annual NDC Test Date to the Revised Notified Annual NDC Test Date;
- (D) conduct the relevant Annual NDC Test on the Notified Annual NDC Test Date; and
- (E) promptly following an Annual NDC Test and in any event no later than thirty (30) Business Days after the date of such Annual NDC Test (an "**Annual NDC Test Notice Deadline**"), give the DPA Counterparty a notice (an "**Annual NDC Test Notice**"):
  - (i) specifying:
    - (a) the net generating capacity demonstrated at the relevant Annual NDC Test; and
    - (b) the Net Dependable Capacity which reflects such demonstrated capacity which will apply for the purposes of the DPA (an "**Annual Adjusted NDC**"); and
  - (ii) including:
    - (a) the relevant Annual NDC Test Report;
    - (b) such Supporting Information as the Generator considers to be relevant to the Annual NDC Test; and
    - (c) a Directors' Certificate in relation to the information contained in, and enclosed with, the Annual NDC Test Notice,

(each of limbs (A) to (E) an "**Annual NDC Test Obligation**" and together the "**Annual NDC Test Obligations**").

***Suspension of Payments (Annual NDC Test Obligation breach)***

- 7.2 If the Generator is in breach of an Annual NDC Test Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such Annual NDC Test Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 7.3 If the Generator subsequently complies with the relevant Annual NDC Test Obligation(s), then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 7.2. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 7.3.

***DPA Counterparty Response Notification***

- 7.4 The DPA Counterparty shall, no later than thirty (30) Business Days after receipt of an Annual NDC Test Notice, give a notice to the Generator (an "**Annual NDC Test Response Notice**"). An Annual NDC Test Response Notice shall specify whether the DPA Counterparty:

- (A) agrees or does not agree with the Annual Adjusted NDC; or
- (B) has not been provided with sufficient Supporting Information to determine whether to agree with the Annual Adjusted NDC to which the Annual NDC Test Response Notice relates and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether to agree with the Annual Adjusted NDC (the "**Annual NDC Test Supporting Information**").

7.5 If the DPA Counterparty states in an Annual NDC Test Response Notice that the DPA Counterparty:

- (A) does not agree with the Annual Adjusted NDC specified in the Annual NDC Test Notice, then Condition 7.9 shall apply;
- (B) agrees with the Annual Adjusted NDC specified in the Annual NDC Test Notice, then the Annual Adjusted NDC shall constitute the Net Dependable Capacity with the effect from the Annual Adjusted NDC Implementation Date; or
- (C) requires the Generator to provide the Annual NDC Test Supporting Information to determine whether to agree with the Annual Adjusted NDC then:
  - (i) the Generator shall provide the Annual NDC Test Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Annual NDC Test Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Annual NDC Test Supporting Information, the DPA Counterparty shall, as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of such Annual NDC Test Supporting Information, give a further Annual NDC Test Response Notice to the Generator (a "**Further Annual NDC Test Response Notice**"). A Further Annual NDC Test Response Notice shall specify whether the DPA Counterparty agrees or does not agree with the Annual Adjusted NDC.

7.6 Nothing in this Condition 7 (*Adjustments to Net Dependable Capacity: Annual NDC Test*) shall require the DPA Counterparty to specify in any Annual NDC Test Response Notice or Further Annual NDC Test Response Notice that the DPA Counterparty agrees with any Annual Adjusted NDC unless and until the DPA Counterparty is satisfied of the same.

7.7 Any Annual NDC Test Notice shall be irrevocable and the Generator may give an Annual NDC Test Notice on only one (1) occasion in an Annual NDC Test Window.

**Revised NDC Effective Date**

7.8 If the Parties agree an Annual Adjusted NDC in accordance with Conditions 7.4 and 7.5, the Annual Adjusted NDC shall constitute the Net Dependable Capacity for the purposes of calculating the Availability Payment from the Annual Adjusted NDC Implementation Date.

7.9 Without prejudice to the DPA Counterparty's right to suspend payments pursuant to Condition 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), if the Generator fails to obtain the DPA Counterparty's agreement to the Annual Adjusted NDC on or prior to the Annual Adjusted NDC Implementation Date, then with effect from the Annual Adjusted NDC Implementation Date, the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the Net Dependable Capacity immediately prior to the Annual Adjusted NDC Implementation Date until such time as the DPA Counterparty agrees pursuant to Condition

7.5(B), or it is determined that, the Annual Adjusted NDC constitutes the Net Dependable Capacity.

***Annual NDC Test Access Right***

- 7.10 With effect from the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility if the DPA Counterparty intends to witness an Annual NDC Test (the "**Annual NDC Test Access Right**").
- 7.11 If the DPA Counterparty intends to exercise the Annual NDC Test Access Right it shall give a notice to the Generator (an "**Annual NDC Test Access Notice**"). An Annual NDC Test Access Notice shall specify that the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) intends to exercise the Annual NDC Test Access Right.
- 7.12 On receipt of an Annual NDC Test Access Notice, the Generator shall permit the DPA Counterparty to exercise the Annual NDC Test Access Right on the date which the Generator notifies the DPA Counterparty the Generator intends to carry out the relevant Annual NDC Test in accordance with Condition 7.1(B) provided that it is no earlier than one (1) Business Day after receipt of the Annual NDC Test Access Notice.

***Suspension of Payments (Annual NDC Test Access Right breach)***

- 7.13 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Annual NDC Test Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 7.14 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Annual NDC Test Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 7.13. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 7.14.

**Part 5**  
**Payment Calculations**

8. **DEFINITIONS: PART 5**

In this Part 5 (*Payment Calculations*):

**"AP Other Metered Data Cut-Off Time"** means, in relation to each AP Billing Period, 14:00 on the fifth (5th) Business Day following such AP Billing Period;

**"APR Indexation Anniversary"** has the meaning given to that term in Condition 9.14 (*APR Indexation Adjustment*);

**"CMRP Fallback Settlement Unit"** has the meaning given to that term in Condition 10.9(B) (*Carbon Price calculation*);

**"Estimated Fuel Settlement Unit"** has the meaning given to that term in Condition 9.19 (*Estimates of AP Fuel Composition*);

**"Estimated Output Billing Statement"** has the meaning given to that term in Condition 11.2 (*Estimates of Unadjusted Metered Electricity Output*);

**"Estimated Output Settlement Unit"** has the meaning given to that term in Condition 11.2 (*Estimates of Unadjusted Metered Electricity Output*);

**"Further Outage Relief Response Notice"** has the meaning given to that term in Condition 9.9(C)(ii) (*Outage Relief Events*);

**"Gas GB Day Ahead Volume"** means the quantity of Gas (*expressed in therms*) traded for delivery in a VP Settlement Unit via the auction occurring on the previous GRP Trading Day (or, in respect of the last VP Settlement Unit of any day which is also the first (1st) VP Settlement Unit of a GRP Trading Day, occurring on such GRP Trading Day) and conducted by the operator of the relevant Gas Price Source;

**"GRP Fallback Settlement Unit"** has the meaning given to that term in Condition 10.4(B) (*Gas Price calculation*);

**"Incomplete AP Settlement Unit"** has the meaning given to that term in Condition 9.17 (*AP Other Metered Data Fallback*);

**"Maximum Metered Sub-Period Electricity Output"** means for each sub-period (i) between 0:00 and 04:59 and (ii) between 05:00 and 23:59, falling within each VP Billing Period, the product of the Net Dependable Capacity and the total duration (*expressed in hours*) of all AP Settlement Units (excluding any AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending and/or continuing) in which the BM Unit Metered Volume for the Facility, as measured by the Electricity Metering Equipment, is greater than zero (0) for such sub-period;

**"Metered Electricity Output Cut-Off Time"** means, in relation to each Billing Period, 14:00 on the sixth (6th) Business Day following such Billing Period;

**"Metered Sub-Period Electricity Output"** means, in a VP Billing Period, the Unadjusted Metered Electricity Output (*expressed in MWh*) as reported by a BSC Company or BSC Agent to the DPA Counterparty for the sub-periods; (i) between 0:00 and 04:59; and (ii) between 05:00 and 23:59, adjusted to disregard all Unadjusted Metered Electricity Output in any AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending and/or continuing. If the actual Metered Sub-Period Electricity Output

for either sub-period (i) or (ii) is greater than an amount equal to the Maximum Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii), the Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii) be deemed to be equal to the Maximum Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii);

**"Outage Relief Event"** means a Generation Outage Relief Event or a Capture Outage Relief Event;

**"Outage Relief Notice"** has the meaning given to that term in Condition 9.6 (*Outage Relief Events*);

**"Outage Relief Response Notice"** has the meaning given to that term in Condition 9.8 (*Outage Relief Events*);

**"Outage Relief Supporting Information"** has the meaning given to that term in Condition 9.8(B) (*Outage Relief Events*);

**"Reference Site Conditions"** has the meaning given to that term in paragraph 1 of Part B (*Reference Site Conditions*) of Annex 2 (*Testing Requirements*);

**"Relief Event Settlement Unit"** has the meaning given to that term in Condition 9.6(A) (*Outage Relief Events*); and

**"Required AP Other Metered Data"** has the meaning given to that term in Condition 9.17 (*AP Other Metered Data Fallback*).

## 9. AVAILABILITY PAYMENT CALCULATION

9.1 The **"Availability Payment"** in respect of each AP Billing Period shall be calculated in accordance with the following formula:

$$AP = \sum (AG_i \times AC_i \times NDC \times APR_i) + TSCC + TSNC$$

where:

$AP$	=	Availability Payment in AP Billing Period (£)
$AG_i$	=	Availability of Generation ( <i>expressed as a percentage (%)</i> ) in AP Settlement Unit (i)
$AC_i$	=	Availability of Capture ( <i>expressed as a percentage (%)</i> ) in AP Settlement Unit (i)
$NDC$	=	Net Dependable Capacity ( <i>MW</i> )
$APR_i$	=	Availability Payment Rate in AP Settlement Unit (i) (£/MW)
$TSCC$	=	T&S Capacity Charge (£)
$TSNC$	=	T&S Network Charge (£)

### ***Application of the Declared CO<sub>2</sub> Capture Rate***

9.2 Where the Declared CO<sub>2</sub> Capture Rate is applicable to an AP Settlement Unit pursuant to the definition of **"Availability of Capture"** (as such term is defined in Condition 8 (*Definitions: Part 5*)), the Declared CO<sub>2</sub> Capture Rate shall be equal to the Declared CO<sub>2</sub> Capture Rate for that

AP Settlement Unit provided by the Generator to the DPA Counterparty pursuant to Condition 23.1(C) (*Declaration Obligation*), subject to Conditions 9.3 and 9.4.

- 9.3 If the Generator notifies the DPA Counterparty of an Amended Declared CO<sub>2</sub> Capture Rate pursuant to Condition 23.1(D):
- (A) then, subject to Condition 9.3(B), the Declared CO<sub>2</sub> Capture Rate shall be deemed to be equal to the Amended Declared CO<sub>2</sub> Capture Rate for the relevant Amended DCR Settlement Unit upon the DPA Counterparty's receipt of the Amended DCR Notice:
  - (B) if the Generator fails to provide an Amended DCR Notice within [two (2)] Business Days of the Amended DCR Settlement Unit, the DPA Counterparty shall be entitled to disregard the Amended DCR Notice [and deem the Declared CO<sub>2</sub> Capture Rate to be zero (0)] in the relevant Amended DCR Settlement Unit;
- 9.4 If a T&S Outage Event arises as a result of or in connection with any act, omission, breach or default of the Generator or its Representatives (including any breach by the Generator or its Representatives of an Industry Document), then the Declared CO<sub>2</sub> Capture Rate shall be deemed to be zero (0) for each AP Settlement Unit during the relevant T&S Outage Event.
- 9.5 If a CO<sub>2</sub> Capture Rate Test is carried out pursuant to Conditions 23.13 and 23.1(I):
- (A) the Declared CO<sub>2</sub> Capture Rate shall be deemed to be equal to the Test Achieved CO<sub>2</sub> Capture Rate specified in the CO<sub>2</sub> Capture Rate Test Report on a forward looking basis, for each AP Settlement Unit from the date the relevant CO<sub>2</sub> Capture Rate Test is carried out until:
    - (i) the next AP Settlement Unit where the Achieved CO<sub>2</sub> Capture Rate is applicable pursuant to the definition of Availability of Capture;
    - (ii) the next AP Settlement Unit where a valid CO<sub>2</sub> Capture Rate Test has been carried out in accordance with the DPA; or
    - (iii) the Generator can demonstrate to the satisfaction of the DPA Counterparty that an alternative Declared CO<sub>2</sub> Capture Rate should apply; and
  - (B) if the Test Achieved CO<sub>2</sub> Capture Rate specified in the relevant CO<sub>2</sub> Capture Rate Test Report is less than two (2) percentage points lower than the Declared CO<sub>2</sub> Capture Rate for the AP Settlement Unit for which the CO<sub>2</sub> Capture Rate Test was requested by the DPA Counterparty, then the Declared CO<sub>2</sub> Capture Rate shall be deemed to be equal to the Test Achieved CO<sub>2</sub> Capture Rate to apply on a backward looking basis to each AP Settlement Unit where the Declared CO<sub>2</sub> Capture Rate is higher than the Test Achieved CO<sub>2</sub> Capture Rate, from the date the relevant CO<sub>2</sub> Capture Rate Test was carried out until the nearest AP Settlement Unit where: (i) the Achieved CO<sub>2</sub> Capture Rate was applicable pursuant to the definition of Availability of Capture; or (ii) a previous CO<sub>2</sub> Capture Rate Test had been undertaken in accordance with the DPA.

### ***Outage Relief Events***

- 9.6 The Generator shall give the DPA Counterparty a notice promptly following the occurrence of an Outage Relief Event (an "**Outage Relief Notice**"). An Outage Relief Notice shall:
- (A) specify the AP Settlement Unit(s) in which the Outage Relief Event occurred (a "**Relief Event Settlement Unit**") within the relevant AP Billing Period(s) (a "**Relief Event AP Billing Period**");



- (B) describe the Outage Relief Event (including the impact, if any, of the Outage Relief Event on the Net Dependable Capacity, Availability Generation and/or Achieved CO<sub>2</sub> Capture Rate);
- (C) include evidence relating to the Outage Relief Event from (as applicable):
  - (i) in relation to a Generation Outage Relief Event:
    - (a) the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor; and
    - (b) the Gas Licensed Transporter; or
  - (ii) in relation to a Capture Outage Relief Event, the relevant T&S Operator;
- (D) include such Supporting Information as the Generator considers to be relevant to the Outage Relief Event (including the impact, if any, of the Outage Relief Event on the Net Dependable Capacity, Availability Generation and/or Achieved CO<sub>2</sub> Capture Rate); and
- (E) include details of the steps that the Generator has taken and/or proposes to take to mitigate the effect of the relevant Outage Relief Event.

9.7 Each Outage Relief Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Outage Relief Notice.

9.8 The DPA Counterparty shall, no later than ten (10) Business Days after receipt of an Outage Relief Notice, give a notice to the Generator (an "**Outage Relief Response Notice**"). An Outage Relief Response Notice shall specify whether the DPA Counterparty considers that:

- (A) the Outage Relief Event to which the Outage Relief Notice relates has or has not occurred; or
- (B) it has not been provided with sufficient Supporting Information to determine whether the Outage Relief Event to which the Outage Relief Response Notice relates has occurred and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Outage Relief Event to which the Outage Relief Response Notice relates has occurred (the "**Outage Relief Supporting Information**").

9.9 If the DPA Counterparty states in the Outage Relief Response Notice that:

- (A) the Outage Relief Event to which the Outage Relief Response Notice relates has occurred, then an Outage Relief Event will be deemed to have occurred for the purposes of the DPA;
- (B) the Outage Relief Event to which the Outage Relief Response Notice relates has not occurred, then an Outage Relief Event will be deemed not to have occurred for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Expert Determination Procedure; or
- (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Outage Relief Event to which the Outage Relief Response Notice relates has occurred then:
  - (i) the Generator shall provide the Outage Relief Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Outage Relief Response Notice, or such longer period as is specified by the DPA Counterparty; and

- (ii) upon receipt of the Outage Relief Supporting Information, the DPA Counterparty shall, as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of such Outage Relief Supporting Information, give a further Outage Relief Response Notice to the Generator (a "**Further Outage Relief Response Notice**"). A Further Outage Relief Response Notice shall specify whether the DPA Counterparty considers that the Outage Relief Event to which the Outage Relief Response Notice relates has occurred.

9.10 If an Outage Relief Event is deemed to have occurred in accordance with Condition 9.9(A) or 9.9(C)(ii) and such event is:

- (A) a Generation Outage Relief Event, the Availability of Generation for each applicable Relief Event Settlement Unit shall be equal to one (1); and/or
- (B) a Capture Outage Relief Event, the Availability of Capture for each applicable Relief Event Settlement Unit shall be equal to the Declared CO<sub>2</sub> Capture Rate,

and for the purposes of calculating the Availability Payment in accordance with Condition 9.1 (*Availability Payment Calculation*):

- (i) the DPA Counterparty shall recalculate the Availability Payment for such Relief Event Settlement Unit; and
- (ii) the DPA Counterparty shall calculate any adjustment to the Availability Payment for the Relief Event AP Billing Period ("**Relief Event Recalculation Amount**"); and
- (iii) such Relief Event Recalculation Amount shall be included as such in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

#### ***T&S Capacity Charge and T&S Network Charge***

9.11 If there is a T&S Commissioning Delay Event then:

- (A) the T&S Capacity Charge and T&S Network Charge components of the Availability Payment shall not be payable by the DPA Counterparty to the Generator, until such time as the T&S Network is so available; and
- (B) the T&S Capacity Charge and the T&S Network Charge shall be deemed to be zero (0) during such period for the purposes of calculating the Availability Payment in accordance with Condition 9.1 (*Availability Payment Calculation*).

#### ***Availability Payment Rate***

9.12 The Availability Payment Rate shall be adjusted only in accordance with the express provisions of the DPA.

#### ***APR Indexation Adjustment***

9.13 The DPA Counterparty shall calculate an indexation adjustment to the Availability Payment Rate in each calendar year of the Term (each such adjustment, an "**APR Indexation Adjustment**").

9.14 Each APR Indexation Adjustment shall:

- (A) become effective on the first (1st) day of the Summer Season in the calendar year in which the APR Indexation Adjustment is calculated (each such date, an "**APR Indexation Anniversary**"); and
- (B) use the CPI for January of the relevant calendar year save where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, in which case the Reference CPI shall be used.

- 9.15 The Availability Payment Rate which is to apply with effect from each APR Indexation Anniversary as a result of the APR Indexation Adjustment shall be calculated by the DPA Counterparty in accordance with the following formula:

$$APR = APR_{Base} \times \Pi_i$$

where:

$APR$	=	Availability Payment Rate
$APR_{Base}$	=	Initial Availability Payment Rate
$\Pi_i$	=	the Inflation Factor applicable to AP Settlement Unit ( $i$ )

- 9.16 The DPA Counterparty shall notify the Generator of the revised Availability Payment Rate no later than five (5) Business Days after each APR Indexation Anniversary.

#### **AP Other Metered Data Fallback**

- 9.17 If the DPA Counterparty has not received from [*the relevant metering bodies*]<sup>26</sup> one (1) or more of the AP Other Metered Data (such missing data being the "**Required AP Other Metered Data**") for any AP Settlement Unit (an "**Incomplete AP Settlement Unit**") which falls within an AP Billing Period (an "**Incomplete AP Billing Period**") on or prior to the AP Other Metered Data Cut-Off Time, the Incomplete AP Settlement Unit will not be taken into account by the DPA Counterparty for the purpose of calculating the Achieved CO<sub>2</sub> Capture Rate in such Incomplete AP Billing Period.

#### **Recalculations of Other Metered Data**

- 9.18 If *the relevant metering body*<sup>27</sup> subsequently notifies the DPA Counterparty of the Required AP Other Metered Data relating to an Incomplete AP Settlement Unit the DPA Counterparty shall recalculate the Availability Payment for the affected AP Billing Period(s) using such AP Other Metered Data and any adjustment to the Availability Payment for the affected AP Billing Period(s) ("**AP Other Metered Data Recalculation Amount**") shall be included in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

#### **Estimates of AP Fuel Composition**

- 9.19 If the DPA Counterparty has not received from [*the relevant metering bodies*]<sup>28</sup> all required data relating to the AP Fuel Composition for any AP Settlement Unit (an "**Estimated Fuel Settlement Unit**") within an AP Billing Period (an "**Estimated Fuel Billing Period**") on or prior to the AP Other Metered Data Cut-Off Time, the AP Fuel Composition for such Estimated

<sup>26</sup> Note to Reader: The relevant company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

<sup>27</sup> Note to Reader: The relevant company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

<sup>28</sup> Note to Reader: The company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

Fuel Settlement Unit as set out in the Availability Payment Billing Statement relating to such Estimated Fuel Billing Period, shall be deemed to be equal to the AP Fuel Composition in the most recent AP Settlement Unit in respect of which the DPA Counterparty has received all required data relating to the AP Fuel Composition from [*the relevant metering bodies*].

### **Recalculations of Estimated AP Fuel Composition**

9.20 If *the relevant metering body*<sup>29</sup> subsequently provides all required data relating to the AP Fuel Composition for an Estimated Fuel Settlement Unit the DPA Counterparty shall recalculate the Availability Payment for the affected AP Billing Period(s) using such Estimated Fuel Settlement Unit and any adjustment to the Availability Payment for the affected AP Billing Period(s) ("**AP Fuel Composition Recalculation Amount**") shall be included in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

### 10. VARIABLE PAYMENT CALCULATION

10.1 The "**Variable Payment**" in respect of each VP Billing Period shall be calculated in accordance with the following formula:

$$VP = VPR \times MWh$$

$$VPR = GC + CC + OC + TSFC_{PR}$$

where:

<i>VP</i>	=	Variable Payment in VP Billing Period (£)
<i>VPR</i>	=	Variable Payment Rate (£/MWh)
<i>MWh</i>	=	Metered Day Electricity Output (MWh)
<i>GC</i>	=	Gas Cost Differential (£/MWh)
<i>CC</i>	=	CO <sub>2</sub> Cost Differential (£/MWh)
<i>OC</i>	=	Other Extra Variable Costs (£/MWh)
<i>TSFC<sub>PR</sub></i>	=	T&S Flow Charge Payment Rate (£/MWh)

### **Variable Payment**

10.2 If, in respect of a VP Settlement Unit, the Variable Payment:

- (A) is greater than zero (0), the DPA Counterparty shall pay the Generator such Variable Payment for the relevant VP Settlement Unit; or
- (B) is less than or equal to zero (0), no Variable Payment will be due by either Party for the relevant VP Settlement Unit.

### **Gas Price calculation**

<sup>29</sup> Note to Reader: The company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

- 10.3 The DPA Counterparty shall calculate the Gas Price in respect of each VP Settlement Unit. The "Gas Price" shall be expressed in pence/therm and shall, in respect of each VP Settlement Unit, be calculated in accordance with the following formula:

$$\text{Gas Price} = \frac{((GRP)_{k1} \times MWh_{k1}) + ((GRP)_{k2} \times MWh_{k2})}{Total_{MWh}}$$

where:

<i>Gas Price</i>	=	Gas Price in respect of VP Settlement Unit (i) ( <i>pence/therm</i> )
<i>GRP<sub>k1</sub></i>	=	The applicable Gas Reference Price between 0:00 and 04:59 of VP Settlement Unit (i) ( <i>pence/therm</i> )
<i>MWh<sub>k1</sub></i>	=	The Metered Sub-Period Electricity Output between 0:00 and 04:59 of VP Settlement Unit (i) ( <i>MWh</i> )
<i>GRP<sub>k2</sub></i>	=	The applicable Gas Reference Price between 05:00 and 23:59 of VP Settlement Unit (i) ( <i>pence/therm</i> )
<i>MWh<sub>k2</sub></i>	=	The Metered Sub-Period Electricity Output between 05:00 and 23:59 of VP Settlement Unit (i) ( <i>MWh</i> )
<i>Total<sub>MWh</sub></i>	=	Metered Day Electricity Output in VP Settlement Unit (i) ( <i>MWh</i> )

- 10.4 The "**Gas Reference Price**" shall be expressed in pence/therm and shall, in respect of each VP Settlement Unit, be calculated as follows:

- (A) The Gas Reference Price in relation to VP Settlement Unit (t) shall be calculated in accordance with the following formula:

$$\text{Gas Reference Price} = \left( \frac{\sum_{t=1}^e (GDAP_t \times GDAV_t)}{\sum_{t=1}^e (GDAV_t)} \right)$$

where:

<i>e</i>	=	is the number of Gas Price Sources
<i>GDAP<sub>t</sub></i>	=	is the Gas GB Day Ahead Price in VP Settlement Unit (i) as determined in the auction on the previous GRP Trading Day conducted by the operator of each Gas Price Source (t) ( <i>pence/therm</i> )
<i>GDAV<sub>t</sub></i>	=	is the Gas GB Day Ahead Volume traded on Gas Price Sources (t) in respect of VP Settlement Unit (i) ( <i>therms</i> )

- (B) If no Gas Reference Price is capable of being calculated pursuant to Condition 10.4(A) (whether due to the unavailability of all Gas Price Sources pursuant to Condition 10.5 or otherwise) in respect of any VP Settlement Unit (an "**GRP Fallback Settlement Unit**"), the Gas Reference Price for such GRP Fallback Settlement Unit shall be the Gas Reference Price as calculated in accordance with Condition 10.4(A) for the VP Settlement Unit corresponding to the nearest prior corresponding day to the GRP Fallback Settlement Unit for which a Gas Reference Price has been calculated in accordance with Condition 10.4(A).

- 10.5 If any Gas Price Source is not available to the DPA Counterparty on commercially reasonable terms in relation to any VP Settlement Unit, such Gas Price Source shall be excluded from the calculation of the Gas Reference Price in relation to such VP Settlement Unit.
- 10.6 The DPA Counterparty shall as soon as reasonably practicable prior to:
- (A) excluding any Gas Price Source from the calculation of the Gas Reference Price in relation to any VP Settlement Unit pursuant to Condition 10.5, notify the Generator of such exclusion; and
  - (B) including any Gas Price Source in the calculation of the Gas Reference Price which was previously excluded pursuant to Condition 10.5, notify the Generator of such inclusion.
- 10.7 Condition 8 (*Definitions: Part 5*) and Conditions 10.3 and 10.4 (*Gas Price calculation*) may be amended, supplemented or replaced in accordance with Annex 6 (*Gas Reference Price Review*).

### **Carbon Price calculation**

- 10.8 The DPA Counterparty shall calculate the Carbon Price respect of each VP Settlement Unit. The "**Carbon Price**" shall be expressed in £/tCO<sub>2</sub> and shall, in respect of each VP Settlement Unit, be equal to the sum of the prevailing: (i) Carbon Support Price; and (ii) Carbon Market Reference Price, for such VP Settlement Unit.
- 10.9 The "**Carbon Market Reference Price**" shall be expressed in £/tCO<sub>2e</sub> and shall, in respect of each VP Settlement Unit, be calculated as follows:
- (A) The Carbon Market Reference Price in relation to VP Settlement Unit (i) shall be calculated in accordance with the following formula:

$$\text{Carbon Market Reference Price} = \left( \frac{\sum_{t=1}^e (UKCTP_t \times UKCTV_t)}{\sum_{t=1}^e (UKCTV_t)} \right)$$

where:

- $e$  = is the number of CMRP Sources
  - $UKCTP_t$  = is the UKA Futures December Contract Trading Price in VP Settlement Unit (i) as determined in the auction on the previous CMRP Trading Day conducted by the operator of each CMRP Source (t) (£/tCO<sub>2e</sub>)
  - $UKCTV_t$  = is the UKA Futures December Contract Trading Volume traded on CMRP Sources (t) in respect of VP Settlement Unit (i) (tCO<sub>2e</sub>)
- (B) If no Carbon Market Reference Price is capable of being calculated pursuant to Condition 10.9(A) (whether due to the unavailability of all CMRP Sources pursuant to Condition 10.10 or otherwise) in respect of any VP Settlement Unit (a "**CMRP Fallback Settlement Unit**"), the Carbon Market Reference Price for such CMRP Fallback Settlement Unit shall be the Carbon Market Reference Price as calculated in accordance with Condition 10.9(A) for the VP Settlement Unit corresponding to the nearest prior corresponding day to the CMRP Fallback Settlement Unit for which a Carbon Market Reference Price has been calculated in accordance with Condition 10.9(A).

- 10.10 If any CMRP Source is not available to the DPA Counterparty on commercially reasonable terms in relation to any VP Settlement Unit, such CMRP Source shall be excluded from the calculation of the Carbon Market Reference Price in relation to such VP Settlement Unit.
- 10.11 The DPA Counterparty shall as soon as reasonably practicable prior to:
- (A) excluding any CMRP Source from the calculation of the Carbon Market Reference Price in relation to any VP Settlement Unit pursuant to Condition 10.10, notify the Generator of such exclusion; and
  - (B) including any CMRP Source in the calculation of the Carbon Market Reference Price in relation to any VP Settlement Unit which was previously excluded pursuant to Condition 10.10, notify the Generator of such inclusion.
- 10.12 Condition 8 (*Definitions: Part 5*) and Conditions 10.8 to 10.12 (*Carbon Price calculation*) may be amended, supplemented or replaced in accordance with Annex 7 (*Carbon Market Reference Price Review*).
- 10.13 The DPA Counterparty may amend, supplement or replace the Carbon Support Price in accordance with Annex 4 (*Change Control Procedure*).

**Other Extra Variable Costs**

- 10.14 The Other Extra Variable Costs shall be adjusted only in accordance with the express provisions of the DPA.

**Other Extra Variable Costs indexation**

- 10.15 The DPA Counterparty shall calculate an indexation adjustment to the Other Extra Variable Costs in each calendar year of the Term (each such adjustment, an "**OEVC Indexation Adjustment**").
- 10.16 Each OEVC Indexation Adjustment shall:
- (A) become effective on the first (1st) day of the Summer Season in the calendar year in which the OEVC Indexation Adjustment is calculated (each such date, an "**OEVC Indexation Anniversary**"); and
  - (B) use the CPI for January of the relevant calendar year save where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, in which case the Reference CPI shall be used.
- 10.17 The Other Extra Variable Costs which are to apply with effect from each OEVC Indexation Anniversary as a result of the OEVC Indexation Adjustment shall be calculated by the DPA Counterparty in accordance with the following formula:

$$OEVC = OEVC_{Base} \times \Pi_i$$

where:

$OEVC$  = Other Extra Variable Costs

$OEVC_{Base}$  = Initial Other Extra Variable Costs

$\Pi_i$  = the Inflation Factor applicable to VP Settlement Unit ( $i$ )

- 10.18 The DPA Counterparty shall notify the Generator of the revised Other Extra Variable Costs no later than five (5) Business Days after each OEVC Indexation Anniversary.

**Base Performance Assumptions Adjustments**

- 10.19 The Base Performance Assumptions may be amended, supplemented or replaced in accordance with Annex 8 (*Reference Plant Review*).

**11. METERED ELECTRICITY OUTPUT**

***Metered Day Electricity Output calculation***

- 11.1 The DPA Counterparty shall calculate:

- (A) the Metered Day Electricity Output in respect of each VP Settlement Unit; and
- (B) the Metered Electricity Output in respect of each AP Settlement Unit and VP Settlement Unit.

***Estimates of Unadjusted Metered Electricity Output***

- 11.2 If the DPA Counterparty has not received notification from a BSC Company or a BSC Agent of the Unadjusted Metered Electricity Output for any Settlement Unit (an "**Estimated Output Settlement Unit**") within a Billing Period (an "**Estimated Output Billing Period**") on or prior to the Metered Electricity Output Cut-Off Time, the Unadjusted Metered Electricity Output for the Estimated Output Settlement Unit, as set out in the Billing Statement relating to such Estimated Output Billing Period (an "**Estimated Output Billing Statement**"), shall be calculated by the DPA Counterparty in accordance with Condition 11.3.

- 11.3 The estimated Unadjusted Metered Electricity Output for each Estimated Output Settlement Unit comprised within an Estimated Output Billing Period (the "**Estimated Metered Electricity Output**") shall be calculated by the DPA Counterparty as being the Unadjusted Metered Electricity Output in the most recent Settlement Unit prior to the Estimated Output Settlement Unit for which the DPA Counterparty has received notification of the Unadjusted Metered Electricity Output from a BSC Company or a BSC Agent.

***Recalculations of Estimated Metered Electricity Output***

- 11.4 If a BSC Company or a BSC Agent subsequently notifies the DPA Counterparty of the Unadjusted Metered Electricity Output for an Estimated Output Settlement Unit:

- (A) the DPA Counterparty shall recalculate the Metered Electricity Output for such Settlement Unit using such Unadjusted Metered Electricity Output; and
- (B) if the calculation performed by the DPA Counterparty pursuant to Condition 11.4(A) results in a different Metered Electricity Output than that calculated by the DPA Counterparty in relation to the Estimated Output Settlement Unit and reflected in the relevant Estimated Output Billing Statement, then:
  - (i) the recalculated Metered Electricity Output shall be used by the DPA Counterparty to recalculate the Payment for the relevant Estimated Output Settlement Unit; and
  - (ii) any adjustment to the Payment for the Estimated Output Billing Period ("**Metered Electricity Output Recalculation Amount**") shall be included as such in the Billing Statement which is next issued by the DPA Counterparty.



**Part 6**  
**Billing and payment**

**12. BILLING STATEMENTS**

***Delivery of Availability Payment Billing Statement***

12.1 The DPA Counterparty:

- (A) may, in relation to any period from and including the Agreement Date to, but excluding, the date on which the Start Date Notice is given; and
- (B) shall, in relation to each AP Billing Period from and including the date on which the Start Date Notice is given,

deliver a billing statement to the Generator (each, an **"Availability Payment Billing Statement"**) in relation to the previous AP Billing Period.

12.2 Subject to Condition 12.3, each Availability Payment Billing Statement issued after the date on which the Start Date Notice is given shall be delivered to the Generator no later than seven (7) Business Days after the end of the relevant AP Billing Period.

12.3 If not previously the subject of an Availability Payment Billing Statement, the first (1st) Availability Payment Billing Statement in relation to an AP Billing Period on or after the date on which the Start Date Notice is given shall commence on the Start Date and end on the last day of the Month in which the DPA Counterparty notifies the Generator pursuant to an OCP Response Notice or a Further OCP Response Notice (as relevant) in which the DPA Counterparty has specified that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*) and/or Condition 3.50 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable).

***Contents of Availability Payment Billing Statement***

12.4 Each Availability Payment Billing Statement shall set out or identify:

*Identification information*

- (A) the AP Billing Period or other period to which the Availability Payment Billing Statement relates;
- (B) the name of the Generator (or a unique identifier attributed to the Generator by the DPA Counterparty);
- (C) the details of the Facility (or a unique identifier attributed to the Facility by the DPA Counterparty);

*Availability Payment calculation*

- (D) in respect of each Availability Payment Billing Statement issued on or after the date on which the Start Date Notice is given:
  - (i) the Availability Payment for the relevant AP Billing Period;
  - (ii) the Availability of Generation in respect of each AP Settlement Unit falling within the relevant AP Billing Period;

- (iii) the Availability of Capture in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (iv) the Availability Payment Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (v) the T&S Capacity Charge for the relevant AP Billing Period;
- (vi) the T&S Onshore Capacity Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (vii) the T&S Offshore Capacity Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (viii) the T&S Network Charge for the relevant AP Billing Period;
- (ix) the T&S Onshore Network Charge Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (x) the T&S Offshore Network Charge Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (xi) the Net Dependable Capacity for each AP Settlement Unit falling within the relevant AP Billing Period;

*Availability of Generation calculation*

- (xii) the Net Available Capacity for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xiii) if applicable, the duration of each Generation Outage Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Generation Outage Event occurs;
- (xiv) if applicable, the duration of each Generation Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Generation Outage Relief Event occurs;

*Availability of Capture calculation*

- (xv) the Achieved CO<sub>2</sub> Capture Rate for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xvi) the AP Metered CO<sub>2</sub> Output for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xvii) the AP Calculated CO<sub>2</sub> Generated for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xviii) the AP Total Metered Fuel Consumption for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xix) the AP Fuel Composition (or, if relevant, the Estimated AP Fuel Composition) for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xx) if applicable, the AP Calculated CO<sub>2</sub> Generated with Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period;

- (xxi) if applicable, the AP Metered CO<sub>2</sub> Output with Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xxii) if applicable, the duration of each Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Capture Outage Relief Event occurs and the corresponding Declared CO<sub>2</sub> Capture Rate for each such AP Settlement Unit;
- (xxiii) if applicable, the Declared CO<sub>2</sub> Capture Rate for each AP Settlement Unit falling within the relevant AP Billing Period; and
- (xxiv) the Metered Electricity Output (or, if relevant, the Estimated Metered Electricity Output) for each AP Settlement Unit falling within the relevant AP Billing Period.

*Additional components*

- (E) any AP Reconciliation Amounts;
- (F) any AP Compensatory Interest Amount;

*AP Net Payable Amount*

- (G) the AP Net Payable Amount in respect of the relevant AP Billing Period or other period to which the Availability Payment Billing Statement relates;

*Subsidy Control Set Off Amount*

- (H) any amount set off against the AP Net Payable Amount pursuant to Condition 3.53 (*Set-Off of Previous Subsidy*) or Condition 24.15 (*Set Off of Other Subsidy*); and

*Project Gain Share Amount*

- (I) any Project Gain Share Amount.

**Calculation of AP Reconciliation Amounts**

12.5 The "**AP Reconciliation Amounts**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), comprise any revisions to the AP Net Payable Amount in respect of any preceding AP Billing Period (or any other prior period in respect of which an Availability Payment Billing Statement was issued) which are required to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Disputes;
- (C) any Metered Electricity Output Recalculation Amount pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);
- (D) any AP Other Metered Data Recalculation Amount pursuant to Condition 9.18 (*Recalculations of Other Metered Data*);
- (E) any AP Fuel Composition Recalculation Amount pursuant to Condition 9.20 (*Recalculations of Estimated AP Fuel Composition*);
- (F) any Relief Event Recalculation Amount pursuant to Condition 9.10 (*Outage Relief Events*);

- (G) any amount payable pursuant to:
  - (i) Conditions 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), 7.13 (*Suspension of Payments (Annual NDC Test Access Right breach)*), Condition 20.2 (*Failure to comply with compliance of technology undertaking*), Condition 21.13 (*Failure to comply with Metering Schematic Obligation*), Condition 21.19 (*Failure to provide Metering Access Right*), Condition 21.24 (*Failure to comply with SCADA Systems Obligations*), Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), Condition 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*), Condition 23.14 (*Failure to provide Declaration Access Right*), Condition 35.16 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*), or Condition 3.48 (*Failure to comply with T&S Connection Confirmation Requirement: Suspension*); or
  - (ii) Conditions 24.6 (*Suspension of Payments*), 24.9 (*Suspension of Payments (Failure to Provide Information)*) or 24.12 (*Waiver of Generator's Obligation to Repay Subsidy, State aid or Union Funding*);
- (H) any agreed or determined adjustment to the Net Dependable Capacity;
- (I) any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture);
- (J) any QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment);
- (K) any APR Indexation Adjustment; and
- (L) the correction of any error in any previous Availability Payment Billing Statement.

**Calculation of AP Compensatory Interest Amount**

- 12.6 The "**AP Compensatory Interest Amount**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), comprise interest due and payable in relation to each AP Reconciliation Amount reflected in the Availability Payment Billing Statement for the relevant AP Billing Period or such other period (an "**AP Reconciliation Billing Period**"), calculated on the basis that interest on each AP Reconciliation Amount shall accrue on such amount at the AP Compensatory Interest Rate for the period from (and including):
- (A) the relevant AP Settlement Unit(s) in the AP Billing Period to which a Settlement Run relates in respect of any AP Reconciliation Amount resulting from a Settlement Run;
  - (B) the relevant AP Settlement Unit(s) in the AP Billing Period to which a Metering Dispute relates in respect of any AP Reconciliation Amount resulting from the resolution of a Metering Dispute;
  - (C) the earlier of: (i) the Longstop Date; and (ii) the date of the Longstop Date Capacity Notice, in respect of any AP Reconciliation Amount resulting from the agreement or determination of the Net Dependable Capacity;
  - (D) the Annual Adjusted NDC Implementation Date, in respect of any AP Reconciliation Amount resulting from the agreement or determination of the Net Dependable Capacity;

- (E) the Incomplete AP Billing Period to which an adjustment to the AP Other Metered Data relates pursuant to Condition 9.18 (*Recalculations of Other Metered Data*);
- (F) the Estimated Fuel Billing Period to which an adjustment to the AP Fuel Composition relates pursuant to Condition 9.20 (*Recalculations of Estimated AP Fuel Composition*);
- (G) the Relief Event AP Billing Period to which an adjustment to the Availability of Generation or Availability of Capture relates pursuant to Condition 9.10;
- (H) the QCiL Compensation Date in respect of any AP Reconciliation Amount to reflect any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture) or QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment);
- (I) the relevant Indexation Anniversary in respect of any APR Indexation Adjustment; and
- (J) the relevant AP Settlement Unit(s) in the AP Billing Period to which any adjustment to correct any error in any previous Availability Payment Billing Statement relates in respect of any AP Reconciliation Amount to correct such an error (or if such AP Reconciliation Amount to correct such error was included in an Availability Payment Billing Statement issued prior to the Start Date, the date of the prior Availability Payment Billing Statement in which such error was included),

to the final AP Settlement Unit in the relevant AP Reconciliation Billing Period. For this purpose: (i) interest shall accrue on such amounts from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days; and (ii) the "**AP Compensatory Interest Rate**" shall be the prevailing Base Rate on each day during the relevant calculation period.

#### **Calculation of AP Net Payable Amount**

- 12.7 The "**AP Net Payable Amount**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), be an amount (*expressed in pounds (£)*) calculated in accordance with the following formula:

$$AP \text{ Net Payable Amount} = AP + APRA + APCIA$$

where:

- AP* = is the Availability Payment in respect of such AP Billing Period;
- APRA* = is any AP Reconciliation Amount in respect of such AP Billing Period (or such other period to which the Availability Payment Billing Statement relates); and
- APCIA* = is any AP Compensatory Interest Amount in respect of such AP Billing Period (or such other period to which the Availability Payment Billing Statement relates),

and if such amount is:

- (i) positive, it shall represent an amount payable by the DPA Counterparty to the Generator; or

- (ii) negative, it shall represent an amount payable by the Generator to the DPA Counterparty.

***Delivery of Variable Payment Billing Statement***

12.8 The DPA Counterparty:

- (A) may in relation to any period from and including the Agreement Date to, but excluding, the date on which the Start Date Notice is given; and
- (B) shall in relation to each VP Billing Period from and including the date on which the Start Date Notice is given,

deliver a billing statement to the Generator (each, a "**Variable Payment Billing Statement**") in relation to the previous VP Billing Period.

12.9 Subject to Condition 12.10, each Variable Payment Billing Statement issued after the date on which the Start Date Notice is given shall be delivered to the Generator no later than seven (7) Business Days after the end of the relevant VP Billing Period.

12.10 If not previously the subject of a Variable Payment Billing Statement, the first (1st) Variable Payment Billing Statement in relation to a VP Billing Period on or after the date on which the Start Date Notice is given shall cover the VP Billing Periods falling within the period from and including the Start Date to and including the date of the OCP Response Notice or Further OCP Response Notice (as relevant) in which the DPA Counterparty specifies that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*) and/or Condition 3.50 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable).

***Contents of Variable Payment Billing Statement***

12.11 Each Variable Payment Billing Statement shall set out or identify:

*Identification information*

- (A) the VP Billing Period or other period to which the Variable Payment Billing Statement relates;
- (B) the name of the Generator (or a unique identifier attributed to the Generator by the DPA Counterparty);
- (C) the details of the Facility (or a unique identifier attributed to the Facility by the DPA Counterparty);

*Variable Payment calculation*

- (D) in respect of each Variable Payment Billing Statement issued on or after the date on which the Start Date Notice is given:
  - (i) the Variable Payment for the relevant VP Billing Period;
  - (ii) the Metered Day Electricity Output in respect of the relevant VP Billing Period;
  - (iii) the Metered Electricity Output (or, if relevant, the Estimated Metered Electricity Output) in respect of the relevant VP Billing Period;

- (iv) the Variable Payment Rate for the relevant VP Billing Period including the following:
  - (a) the Gas Cost Differential for the relevant VP Billing Period;
  - (b) the CO<sub>2</sub> Cost Differential for the relevant VP Billing Period;
  - (c) the Other Extra Variable Costs for the relevant VP Billing Period;
  - (d) the T&S Flow Charge Payment Rate for the relevant VP Billing Period;<sup>30</sup>
  - (e) the Gas Price in respect of the relevant VP Billing Period;
  - (f) the Gas Reference Prices in respect of the relevant VP Billing Period;
  - (g) the Carbon Price in respect of the relevant VP Billing Period;
  - (h) the Carbon Market Reference Price in respect of the relevant VP Billing Period;
  - (i) the Carbon Support Price in respect of the relevant VP Billing Period;
  - (j) the T&S Onshore Flow Rate in respect of the relevant VP Billing Period; and<sup>31</sup>
  - (k) the T&S Offshore Flow Rate in respect of the relevant VP Billing Period; and<sup>32</sup>
  - (l) the VP Metered CO<sub>2</sub> Rich Stream Output in respect of the relevant VP Billing Period;

*Additional components*

- (E) any VP Reconciliation Amounts;
- (F) any VP Compensatory Interest Amount; and

*Net Payable Amount*

- (G) the VP Net Payable Amount in respect of the relevant VP Billing Period or other period to which the Variable Payment Billing Statement relates.

**Calculation of VP Reconciliation Amounts**

12.12 The "**VP Reconciliation Amounts**" shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which a Variable Payment Billing Statement is issued), comprise any revisions to the VP Net Payable Amount in respect of any preceding VP Billing Period (or any other prior period in respect of which a Variable Payment Billing Statement was issued) which are required to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Dispute;

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<sup>30</sup> Note to Reader: This Condition is subject to further development as the T&S business model is developed.

<sup>31</sup> Note to Reader: This Condition is subject to further development as the T&S business model is developed.

<sup>32</sup> Note to Reader: This Condition is subject to further development as the T&S business model is developed.

- (C) any Metered Electricity Output Recalculation Amount pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);
- (D) any amount payable pursuant to:
  - (i) Conditions 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), 7.13 (*Suspension of Payments (Annual NDC Test Access Right breach)*), Condition 20.2 (*Failure to comply with compliance of technology undertaking*), Condition 21.13 (*Failure to comply with Metering Schematic Obligation*), Condition 21.19 (*Failure to provide Metering Access Right*), [Condition 21.24 (*Failure to comply with SCADA Systems Obligations*),] Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), Condition 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*), Condition 23.14 (*Failure to provide Declaration Access Right*), Condition 35.16 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*), or 3.48 (*Failure to comply with T&S Connection Confirmation Requirement: Suspension*); or
  - (ii) Conditions 24.6 (*Suspension of Payments*), 24.9 (*Suspension of Payments (Failure to Provide Information)*) or 24.12 (*Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding*);
- (E) any QCiL Compensation (including any adjustments to the Variable Payment);
- (F) any QCiL True-Up Compensation (including any adjustments to the Variable Payment);
- (G) any agreed or determined adjustment to the Base Performance Assumptions; and
- (H) the correction of any error in any previous Variable Payment Billing Statement.

**Calculation of VP Compensatory Interest Amount**

- 12.13 The "**VP Compensatory Interest Amount**" shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which a Variable Payment Billing Statement is issued), comprise interest due and payable in relation to each VP Reconciliation Amount reflected in the Variable Payment Billing Statement for the relevant VP Billing Period or such other period (a "**VP Reconciliation Billing Period**"), calculated on the basis that interest on each VP Reconciliation Amount shall accrue on such amount at the VP Compensatory Interest Rate for the period from (and including):
- (A) the VP Billing Period to which a Settlement Run relates in respect of any VP Reconciliation Amount resulting from a Settlement Run;
  - (B) the VP Billing Period to which a Metering Dispute relates in respect of any VP Reconciliation Amount resulting from the resolution of a Metering Dispute;
  - (C) the Estimated Output Billing Period to which an adjustment to the Metered Electricity Output relates pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);
  - (D) the Reference Plant Criteria Review Implementation Date, in respect of any VP Reconciliation Amount resulting from the agreement or determination of the Base Performance Assumptions;
  - (E) the QCiL Compensation Date in respect of any VP Reconciliation Amount to reflect any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the



Availability of Capture) or QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment); and

- (F) the VP Billing Period to which any adjustment to correct any error in any previous Variable Payment Billing Statement relates in respect of any VP Reconciliation Amount to correct such an error (or if such VP Reconciliation Amount to correct such error was included in an Variable Payment Billing Statement issued prior to the Start Date, the date of the prior Variable Payment Billing Statement in which such error was included);

to (but excluding) the date of the relevant VP Reconciliation Billing Period. For this purpose: (i) interest shall accrue on such amounts from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days; and (ii) the "VP Compensatory Interest Rate" shall be the prevailing Base Rate on each day during the relevant calculation period.

### **Calculation of VP Net Payable Amount**

- 12.14 The "**VP Net Payable Amount**" shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which an Variable Payment Billing Statement is issued), be an amount (*expressed in pounds (£)*) calculated in accordance with the following formula:

$$VP \text{ Net Payable Amount} = VP + VPRA + VPCIA$$

where:

<i>VP</i>	=	is the Variable Payment in respect of such VP Billing Period;
<i>VPRA</i>	=	is any VP Reconciliation Amount in respect of such VP Billing Period (or such other period to which the Variable Payment Billing Statement relates); and
<i>VPCIA</i>	=	is any VP Compensatory Interest Amount in respect of such VP Billing Period (or such other period to which the Variable Payment Billing Statement relates),

and if such amount is:

- (i) positive, it shall represent an amount payable by the DPA Counterparty to the Generator; or
- (ii) negative, it shall represent an amount payable by the Generator to the DPA Counterparty.

## **13. SETTLEMENT**

### **Payment from Generator**

- 13.1 If the AP Net Payable Amount is a negative number, no later than the end of the tenth (10th) Business Day following the delivery of the relevant Availability Payment Billing Statement, the Generator shall pay to the DPA Counterparty the absolute value of the AP Net Payable Amount in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17(A).
- 13.2 If the VP Net Payable Amount is a negative number, no later than the end of the tenth (10th) Business Day following the delivery of the relevant Variable Payment Billing Statement, the

Generator shall pay to the DPA Counterparty the absolute value of the VP Net Payable Amount in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17(A).

**Payment from DPA Counterparty**

13.3 Subject to Condition 3.53 (*Set-Off of Previous Subsidy*) and Condition 24.15 (*Set-Off of Other Subsidy*):

- (A) if the AP Net Payable Amount is a positive number, no later than twenty eight (28) calendar days following the AP Billing Period or other period to which the Availability Payment Billing Statement relates, the DPA Counterparty shall pay to the Generator the AP Net Payable Amount in relation to the relevant AP Billing Period in accordance with the Availability Payment Billing Statement; and
- (B) if the VP Net Payable Amount is a positive number, no later than twenty eight (28) calendar days following the VP Billing Period or other period to which the Variable Payment Billing Statement relates, the DPA Counterparty shall pay to the Generator the VP Net Payable Amount in relation to the relevant VP Billing Period in accordance with the Variable Payment Billing Statement,

such payments shall be made in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the DPA Counterparty pursuant to Condition 17(B).

**Billing Statement Disputes**

13.4 Conditions 13.1 to 13.3 (inclusive) shall apply notwithstanding any dispute with respect to any Billing Statement and, if a Party wishes to dispute any amount shown in a Billing Statement, it shall give a notice to the other Party (a "**Billing Statement Dispute Notice**") which shall:

- (A) specify the Billing Statement(s) to which the Dispute relates;
- (B) specify the name of the Generator (or the unique identifier attributed to the Generator by the DPA Counterparty);
- (C) specify the name of the Facility (or the unique identifier attributed to the Facility by the DPA Counterparty);
- (D) specify the Billing Statement items to which the Dispute relates;
- (E) specify the amount in dispute and the apportionment of such amount in relation to the relevant Billing Statement items;
- (F) include details of any other Billing Statement dispute which the referring Party considers should be consolidated with or joined to the dispute;
- (G) specify the position the Party considers is correct and the Party's reasons for that position;
- (H) include copies of any Supporting Information on which the referring Party intends to rely; and
- (I) include any other Information that the Party deems relevant in relation to the dispute.

13.5 The making of a payment pursuant to Condition 13.1, 13.2 or 13.3 shall not prevent a Party from raising a dispute pursuant to Condition 13.4.

**Electricity Metering Dispute**

- 13.6 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the Metered Electricity Output<sup>33</sup> in respect of a Settlement Unit (an "**Electricity Metering Dispute**"):
- (A) such Electricity Metering Dispute shall be treated as a Trading Dispute pursuant to the BSC and shall be resolved in accordance with the provisions set out therein (to the exclusion of the Dispute Resolution Procedure);
  - (B) the Parties shall continue to comply with their obligations under the DPA notwithstanding such Electricity Metering Dispute;
  - (C) the final determination of the Electricity Metering Dispute in accordance with Condition (A) shall be binding on the Parties; and
  - (D) neither Party shall dispute or attempt to dispute a final determination made in accordance with Condition (A).
- 13.7 Any Electricity Metering Dispute must be brought by the Party within the limitation period set out in the BSC with respect to Trading Disputes.
- 13.8 The Generator shall inform the DPA Counterparty as soon as reasonably practicable (and, in respect of Condition 13.6(A), no later than five (5) Business Days) after the Generator:
- (A) commences or becomes engaged in any Trading Dispute; or
  - (B) becomes aware of any fact, matter or circumstance which will or is reasonably likely to give rise to a Trading Dispute,

where (in either case) the resolution of such Trading Dispute will or may impact the calculation of the Unadjusted Metered Electricity Output for the purposes of the DPA.

**CO<sub>2</sub> Metering Dispute<sup>34</sup>**

- 13.9 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the Metered CO<sub>2</sub> Output and/or the Metered CO<sub>2</sub> Rich Stream Output in respect of a Settlement Unit (a "**CO<sub>2</sub> Metering Dispute**"):
- (A) such CO<sub>2</sub> Metering Dispute shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes);
  - (B) such CO<sub>2</sub> Metering Dispute must be brought by the Party before the Metering Dispute Deadline in relation to all Settlement Units to which the CO<sub>2</sub> Metering Dispute relates;
  - (C) the Parties shall continue to comply with their obligations under the DPA notwithstanding such CO<sub>2</sub> Metering Dispute;
  - (D) the final determination of the CO<sub>2</sub> Metering Dispute in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure

<sup>33</sup> Note to Reader: BEIS is considering how an Imported Input Electricity Dual Scheme Facility will be considered in respect of Electricity Disputes.

<sup>34</sup> Note to Reader: The dispute resolution procedures for Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes are subject to change as industry codes and procedures are established and developed.

which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes) shall be binding on the Parties; and

- (E) neither Party shall dispute or attempt to dispute a final determination made in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes).

### **Gas Supply Metering Dispute**

13.10 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the AP Calculated CO<sub>2</sub> Generated in respect of a Settlement Unit (a "**Gas Supply Metering Dispute**"):

- (A) such Gas Supply Metering Dispute shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes);
- (B) such Gas Supply Metering Dispute must be brought by the Party before the Metering Dispute Deadline in relation to all Settlement Units to which the CO<sub>2</sub> Metering Dispute relates;
- (C) the Parties shall continue to comply with their obligations under the DPA notwithstanding such Gas Supply Metering Dispute;
- (D) the final determination of the Gas Supply Metering Dispute in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes) shall be binding on the Parties; and
- (E) neither Party shall dispute or attempt to dispute a final determination made in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes).

## **14. DEFAULT INTEREST**

### **Calculation of Default Interest**

14.1 "**Default Interest**" as applied for any period (a "**calculation period**") shall be calculated as follows:

$$\prod_{i=1}^D \left( \frac{BR_i + 5\%}{365} \right)$$

where:

- $i$  = is a series of whole numbers from one (1) to "**D**" each representing the relevant day in chronological order from, and including, the first (1st) day in such calculation period;
- $D$  = is the number of days in such calculation period; and
- $BR_i$  = is the prevailing Base Rate on the relevant day in the calculation period.

### **Application of Default Interest**

- 14.2 Subject to Conditions 14.4, 14.5 and 63 (*Costs*), if either Party fails to pay any sum payable by it pursuant to the DPA (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).
- 14.3 The right to receive Default Interest pursuant to the DPA (and as calculated in accordance with this Condition 14 (*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 DPA.
- 14.4 Default Interest shall be payable by the DPA Counterparty only in circumstances in which the DPA Counterparty is in breach of Condition 53.2, 53.3 or 53.4 (*DPA Counterparty payment undertakings*), but not otherwise.
- 14.5 Subject to Condition 14.4, no Default Interest shall be payable by one Party to the other Party in relation to a Reconciliation Amount in respect of the period during which a Compensatory Interest Amount has accrued and been calculated pursuant to Condition 12.6 or Condition 12.13, except that Default Interest shall accrue in respect of any Compensatory Interest Amount (and the Reconciliation Amount to which it relates) if and to the extent that such Compensatory Interest Amount has accrued and become due and payable and has not been paid.

### 15. **SET-OFF**

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

### 16. **DEDUCTIONS AND WITHHOLDINGS**

Subject to Condition 15 (*Set-off*), all payments required to be made by the Generator pursuant to the DPA shall be made in full, free and clear of any right of set-off and from any restriction, condition or deduction because of any counterclaim.

### 17. **PAYMENT ACCOUNTS**

Any payments made pursuant to or in connection with the DPA and made to:

- (A) the DPA Counterparty shall be made to such account as may be notified to the Generator by the DPA Counterparty from time to time; and
- (B) the Generator shall be made to such account in the United Kingdom as may be notified to the DPA Counterparty by the Generator from time to time.

**Part 7**  
**Representations, warranties and undertakings**

**18. GENERATOR REPRESENTATIONS AND WARRANTIES**

***Agreement Date representations***

18.1 The Generator represents and warrants to the DPA Counterparty that, as at the Agreement Date, the following statements are true, accurate and not misleading:

- (A) *Status*: The Generator:
- (i) is duly formed and validly existing under the laws of its jurisdiction of formation; and
  - (ii) has the power to own its assets and carry on its business as it is currently being conducted and as contemplated by the DPA and the other DPA Documents.
- (B) *Power and authority*: The Generator has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the DPA and the other DPA Documents (including the obligations of the Generator, and the transactions contemplated by or provided for by the DPA and the other DPA Documents).
- (C) *Enforceability*: The obligations expressed to be assumed by the Generator pursuant to the DPA and the other DPA Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into, delivery and performance by the Generator of, and the transactions contemplated by, the DPA and the other DPA Documents does not conflict with:
- (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
  - (iii) any Required Authorisations to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect; or
  - (iv) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect.
- (E) *Required Authorisations*:
- (i) All Required Authorisations which are required to be obtained or effected by the Generator on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been obtained or effected by the Generator and are in full force and effect, save to the extent that failure to do so has not had and is not reasonably expected to have a Material Adverse Effect.
  - (ii) All conditions of, and all obligations and liabilities under, Required Authorisations which are required to be performed, complied with or satisfied by the Generator on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been performed, complied with

or satisfied, save where failure to do so has not had and is not reasonably expected to have a Material Adverse Effect.

- (F) *No Default*: No Default with respect to the Generator has occurred and is continuing or might reasonably be expected to result from its entry into or performance of the DPA or any of the other DPA Documents.
- (G) *No litigation*: No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claim or Tax investigation against the Generator (or, so far as the Generator is aware, relating to the Project) is:
- (i) current;
  - (ii) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or
  - (iii) so far as the Generator is aware, by reason of receipt of a formal written notice before action or similar, threatened,

and which, if adversely determined, would have or would reasonably be expected to have a Material Adverse Effect.

- (H) *No requirement to deduct or withhold*: The Generator is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the DPA Counterparty pursuant to the DPA or any of the other DPA Documents.
- (I) *CO<sub>2</sub> capture*: As far as the Generator is aware (having made all due and careful enquiries), the CO<sub>2</sub> captured by the Facility and transferred to a T&S Network will be permanently stored.
- (J) *Generator Ownership*: The legal and beneficial ownership of the Generator and HoldCo is as set out in the Agreement and that, other than any shareholder pre-emption rights, no arrangements are in place that will or may result in any Change of Ownership.

### **Start Date representation**

18.2 The Generator represents and warrants to the DPA Counterparty that, as at and from the Start Date, the following statements are true, accurate and not misleading:

- (A) *Ownership*: The Generator is the legal and beneficial owner of the Facility, subject only to such rights and benefits as have been assigned by way of security to or in favour of any Lender, Affected Person or parent undertaking of the Generator (or an agent or security trustee on its behalf) in accordance with Condition 61 (*Transfers*).
- (B) *Compliance of technology*:
- (i) The generation and capture technology deployed by the Facility is the Facility Generation Technology and the Facility Capture Technology (as applicable).
  - (ii) The fuel used by the Facility is the Facility Fuel.

### **Repeating representations**

18.3 The Generator Repeating Representations are deemed to be repeated by the Generator on the Start Date in each case by reference to the facts and circumstances then existing.

19. **DPA COUNTERPARTY REPRESENTATIONS AND WARRANTIES**

19.1 The DPA Counterparty represents and warrants to the Generator that as at the Agreement Date, the following statements are true, accurate and not misleading:

- (A) *Status*: The DPA Counterparty:
  - (i) is a limited liability company, duly incorporated and validly existing pursuant to the laws of England and Wales; and
  - (ii) has the power to own its assets and carry on its business as contemplated by the DPA and the other DPA Documents.
- (B) *Power and authority*: The DPA Counterparty has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the DPA and the other DPA Documents (including the obligations of the DPA Counterparty, and the transactions contemplated by or provided for by the DPA and the other DPA Documents).
- (C) *Enforceability*: The obligations expressed to be assumed by the DPA Counterparty pursuant to the DPA and the other DPA Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into, delivery and performance by the DPA Counterparty of the DPA and the other DPA Documents does not conflict with:
  - (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
  - (iii) any 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 DPA and the other DPA Documents to which it is a party, 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) *No requirement to deduct or withhold*: The DPA Counterparty is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the Generator pursuant to the DPA or any of the other DPA Documents.

19.2 The representations in Conditions 19.1(A) to 19.1(D) are deemed to be repeated by the DPA Counterparty on the Start Date in each case by reference to the facts and circumstances then existing.



20. **GENERATOR UNDERTAKINGS: GENERAL**

20.1 The Generator undertakes to the DPA Counterparty as follows:

- (A) *Compliance with Laws and Directives*: The Generator 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 Material Adverse Effect.
- (B) *Required Authorisations*: The Generator shall: (i) promptly obtain all Required Authorisations; (ii) at all times perform, comply with and satisfy all conditions of, and all obligations and liabilities under, all Required Authorisations; and (iii) do all that is necessary to maintain in full force and effect all Required Authorisations, to the extent, in each case, that failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (C) *Industry Documents*: The Generator shall at all times comply with all terms of those Industry Documents to which it is a party or by which it is bound if failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (D) *No insolvency action*: The Generator shall not petition, apply for, institute, support or vote for the administration, winding-up or liquidation of the DPA Counterparty or seek any other relief as against the DPA Counterparty under any administration, insolvency or bankruptcy law or similar law affecting creditors' rights generally.
- (E) *Ownership*: The Generator shall at all times be the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility.
- (F) *Compliance of technology*: The Generator shall at all times ensure that:
  - (i) the generation technology deployed by the Facility is the Facility Generation Technology; and
  - (ii) the capture technology deployed by the Facility is the Facility Capture Technology,  
  
provided that (without prejudice to any other provision of the DPA) Condition 20.1(F)(i) and Condition 20.1(F)(ii) shall not prevent the operation of the Generation Assets in unabated mode; and
  - (iii) the fuel used by the Facility is the Facility Fuel.
- (G) *Notification*: The Generator shall:
  - (i) provide the DPA Counterparty as soon as reasonably practicable with such Information regarding compliance or non-compliance by the Generator with the undertakings in this Condition 20.1 as the DPA Counterparty may reasonably request; and
  - (ii) give notice to the DPA Counterparty as soon as reasonably practicable upon becoming aware of the occurrence of any Default (together with details of the steps, if any, being taken to remedy it).

***Failure to comply with compliance of technology undertaking***

20.2 If the Generator fails to comply with Condition 20.1(F), the DPA Counterparty:

- (A) may withhold payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition; and
- (B) shall be entitled to recover from the Generator any amounts paid by the DPA Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition.

## 21. GENERATOR UNDERTAKINGS: METERING

### *Undertakings: Electricity Metering Obligation*

21.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times, the Electricity Metering Equipment relating to the Facility:
  - (i) has been installed at the metering point(s) identified in the Agreement;
  - (ii) has been and is installed, configured, registered and maintained in accordance with the requirements of the BSC;
- (B) ensure that at all times:
  - (i) the Electricity Metering Equipment accurately records the BM Unit Metered Volume, such BM Unit Metered Volume comprising:
    - (a) all output electricity generated by the Facility; and
    - (b) all input electricity used by the Facility (excluding, if the Facility is a Dual Scheme Facility, the Imported Input Electricity); and
  - (ii) where the Facility is a Dual Scheme Facility, the Electricity Metering Equipment accurately records all Imported Input Electricity in relation to the Generating Station;
- (C) without prejudice to Condition (E), ensure that at all times, the Electricity Metering Equipment measures the input and output electricity referred to in Condition (B) separately from any other input and output electricity;
- (D) investigate any fault or issue with the Electricity Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the BSC; and
- (E) ensure that at all times that no Electricity Storage Facility shall be used by or otherwise associated with the Facility,

(each an "**Electricity Metering Obligation**" and together the "**Electricity Metering Obligations**").

### *Undertakings: CO<sub>2</sub> Metering Obligation*

21.2 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times the CO<sub>2</sub> Metering Equipment relating to the Facility:
  - (i) has been installed at the CO<sub>2</sub> Delivery Point(s) identified in the Agreement;

- (ii) has been and is installed, configured, registered, operated and maintained in accordance with the requirements of the CO<sub>2</sub> Metering Specification, including to ensure that captured CO<sub>2</sub> Rich Stream which fails to comply with the Delivery CO<sub>2</sub> Quality Standards is not exported to a T&S Network;
  - (iii) is configured exclusively in relation to the Facility and no other CO<sub>2</sub> Rich Stream output is metered through such CO<sub>2</sub> Metering Equipment; and
  - (iv) is operational and capable of measuring accurately the CO<sub>2</sub> Rich Stream and the CO<sub>2</sub> output from the Facility at the CO<sub>2</sub> Delivery Point(s);
- (B) ensure that at all times the captured CO<sub>2</sub> Rich Stream from the Facility complies with the Delivery CO<sub>2</sub> Quality Standards; and
- (C) investigate any fault or issue with the CO<sub>2</sub> Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to [insert relevant code(s)],<sup>35</sup>

(each a "**CO<sub>2</sub> Metering Obligation**" and together the "**CO<sub>2</sub> Metering Obligations**").

***Undertakings: Gas Supply Metering Obligation***

21.3 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times the Gas Supply Metering Equipment relating to the Facility:
- (i) has been installed at the metering point(s) identified in the Agreement;
  - (ii) has been installed, configured, registered, operated and maintained in accordance with the requirements of the Uniform Network Code;
  - (iii) is configured exclusively in relation to the Facility and no other Gas supply is metered through such meters; and
  - (iv) is operational and capable of measuring accurately the Gas supply to the Facility at the Gas Supply Point for each AP Settlement Unit; and
- (B) investigate any fault or issue with the Gas Supply Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the Uniform Network Code,

(each a "**Gas Supply Metering Obligation**" and together the "**Gas Supply Metering Obligations**").

***Notification of Metering Obligation breach***

21.4 The DPA Counterparty may at any time submit a notice to the Generator (a "**Metering Breach Notice**") if it considers that the Generator is in breach of a Metering Obligation. A Metering Breach Notice shall:

- (A) specify which Metering Obligation the DPA Counterparty considers that the Generator has breached; and
- (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the breach of the Metering Obligation.

<sup>35</sup>

Note to Reader: BEIS to confirm the relevant codes.

**Response to notification of Metering Obligation breach**

- 21.5 No later than ten (10) Business Days after receipt of a Metering Breach Notice (a "**Metering Breach Response Notice Period**"), the Generator shall investigate whether it is in breach of the relevant Metering Obligation and submit a notice to the DPA Counterparty (a "**Metering Breach Response Notice**"). A Metering Breach Response Notice shall state that either:
- (A) the Generator accepts that there has been a breach of the Metering Obligation (and, in such case, the notice shall include confirmation of the date from which the Generator accepts that there has been a breach of the relevant Metering Obligation); or
  - (B) the Generator does not accept that there has been a breach of the Metering Obligation.
- 21.6 If:
- (A) the Generator submits a Metering Breach Response Notice in accordance with Condition 21.5(A), the provisions of Condition 21.7 shall apply; or
  - (B) the Generator fails to submit a Metering Breach Response Notice within the Metering Breach Response Notice Period or submits a Metering Breach Response Notice in accordance with Condition 21.5(B), the Expert Determination Procedure shall apply to determine whether there has been a breach of the Metering Obligation and if the Expert Determination Procedure applied pursuant to this Condition 21.6(B) determines that:
    - (i) there has not been a breach of the Metering Obligation, then neither Party shall be required to take any further steps in relation to the Metering Breach Notice; or
    - (ii) there has been a breach of the Metering Obligation, the provisions of Condition 21.7 shall apply.

**Rectification of Metering Obligation breach**

- 21.7 If this Condition 21.7 applies:
- (A) the Generator shall provide a copy of a Metering Remediation Plan to the DPA Counterparty no later than fifteen (15) Business Days after the later of: (i) the expiry of the Metering Breach Response Notice Period; and (ii) the date on which an Expert makes a determination in accordance with Condition 21.6(B)(ii) (as applicable);
  - (B) as soon as reasonably practicable after the date referred to in paragraph (A) above and in any event no later than sixty (60) Business Days after [●]<sup>36</sup> has approved the Metering Remediation Plan, the Generator shall:
    - (i) implement the Metering Remediation Plan and remedy the breach of the Metering Obligation; and
    - (ii) provide the DPA Counterparty with written confirmation that:
      - (a) in the case of a breach of an Electricity Metering Obligation, the relevant BSC Company that the breach of the Electricity Metering Obligation has been remedied, to the satisfaction of such relevant BSC Company;

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<sup>36</sup> Note to Reader: To be confirmed.

- (b) in the case of a breach of a CO<sub>2</sub> Metering Obligation, that the breach of the CO<sub>2</sub> Metering Obligation has been remedied to the satisfaction of [●];<sup>37</sup> and
  - (c) in the case of a breach of a Gas Supply Metering Obligation, that the breach of the Gas Supply Metering Obligation has been remedied to the satisfaction of [●];<sup>38</sup> and
- (C) the Generator shall submit a notice to the DPA Counterparty confirming the fulfilment of its obligations pursuant to Condition (B) no later than five (5) Business Days after remedying the breach and in any event no later than sixty (60) Business Days after [●]<sup>39</sup> has approved the Metering Remediation Plan (a "**Generator Metering Remediation Notice**") together with such Supporting Information as is reasonably necessary to evidence that the breach has been remedied.
- 21.8 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator Metering Remediation Notice, require the Generator to provide such Supporting Information in relation to that Generator Metering Remediation Notice (a "**Generator Metering Remediation Notice Information Request**") as the DPA Counterparty reasonably requests.
- 21.9 If the DPA Counterparty issues a Generator Metering Remediation Notice Information Request, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

***Failure to remedy Metering Obligation breach***

- 21.10 If the Generator has not complied with its obligations under Condition 21.7 or 21.9, then a "**Technical Compliance Termination Event**" will be deemed to have occurred.

***Undertakings: Metering Schematics***

- 21.11 If there is a Material Change to the Facility Metering Equipment, then the Generator shall:
- (A) notify the DPA Counterparty as soon as reasonably practicable and in any event no later than two (2) Business Days after the Material Change occurs, setting out details of the Material Change that has been effected (a "**Metering Schematic Obligation Notice**"); and
  - (B) provide an updated version of the relevant schematic diagram referred to in paragraph 2(C), 3(C) or 4(B) of Part B of Annex 1 (*Conditions Precedent*) (as applicable) and Supporting Information including any technical datasheets relating to the Facility Metering Equipment as soon as reasonably practicable and in any event no later than ten (10) Business Days after the Material Change occurs,
- (the "**Metering Schematic Obligation**").

- 21.12 Any:

<sup>37</sup> Note to Reader: The relevant company to approve a remediation plan in respect of a breach of the CO<sub>2</sub> Metering Obligation is to be confirmed.

<sup>38</sup> The relevant company to approve a remediation plan in respect of a breach of the Gas Supply Metering Obligation is to be confirmed.

<sup>39</sup> Note to Reader: To be confirmed.

- (A) Metering Schematic Obligation Notice shall be accompanied by a Directors' Certificate in relation to the details of the Material Change referred to in the Metering Schematic Obligation Notice; and
- (B) copy of the relevant schematic diagram provided pursuant to Condition 21.11(B) shall be accompanied by a Directors' Certificate in relation to the relevant schematic diagram and Supporting Information (including the date of such diagram and the version number thereof).

***Failure to comply with Metering Schematic Obligation***

- 21.13 If the Generator is in breach of the Metering Schematic Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of the Metering Schematic Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 21.14 If the Generator subsequently complies with its Metering Schematic Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.13. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.14.

***Undertakings: Access to and testing of meters***

- 21.15 With effect from the Start Date, the Generator shall grant (or, if the Generator is not the [Registrant]<sup>40</sup> of the Facility Metering Equipment, shall procure that the [Registrant] grants) the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility, the Facility Metering Equipment and to such plant, property or assets owned, occupied or controlled by the Generator (or the [Registrant] if the Generator is not the [Registrant] of the Facility Metering Equipment) and to which the Generator (or the [Registrant] if the Generator is not the [Registrant] of the Facility Metering Equipment) can lawfully grant access as may be reasonably necessary for the DPA Counterparty to read, test or verify the Facility Metering Equipment and inspect and conduct tests in respect of the Facility Metering Equipment from time to time (the "**Metering Access Right**").
- 21.16 If the DPA Counterparty intends to exercise the Metering Access Right it shall give a notice to the Generator (a "**Metering Inspection Notice**"). A Metering Inspection Notice shall:
- (A) specify that the DPA Counterparty (or suitably qualified persons nominated by it in accordance with Condition 21.15) intends to exercise the Metering Access Right; and
  - (B) specify the date by which the Generator must, in accordance with Condition 21.17, permit the exercise of the Metering Access Right.
- 21.17 If the Generator:
- (A) is the [Registrant] of the Facility Metering Equipment, it shall permit the DPA Counterparty to exercise the Metering Access Right no later than the later of: (i) ten (10) Business Days after receipt of the Metering Inspection Notice; and (ii) the date specified in the Metering Inspection Notice; and

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<sup>40</sup> Note to Reader: To be confirmed whether there will be a "Registrant" in relation to the CO<sub>2</sub> Metering Equipment and Gas Metering Equipment.

- (B) is not the [Registrant] of the Facility Metering Equipment, it shall procure that the DPA Counterparty is permitted to exercise the Metering Access Right no later than the later of: (i) fifteen (15) Business Days after receipt of the Metering Inspection Notice; and (ii) the date specified in the Metering Inspection Notice.

21.18 The DPA Counterparty shall (and shall procure that any suitably qualified persons nominated by it in accordance with Condition 21.15 shall):

- (A) take or refrain from taking all such other action as may be reasonably required by the Generator in order to comply with health and safety rules relating to the Facility; and
- (B) obtain each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval of or from a Competent Authority that is necessary for it to exercise the Metering Access Right.

***Failure to provide Metering Access Right***

21.19 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Metering Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

21.20 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Metering Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.19. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.20.

21.21 If the Generator:

- (A) fails to comply with its obligations under Condition 21.17; and
- (B) has not permitted the DPA Counterparty to exercise its Metering Access Right within twenty (20) Business Days following the latest permitted date for compliance with its obligations pursuant to Condition 21.17(A) or 21.17(B) (as applicable),

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

***Metering Access Right costs***

21.22 If, pursuant to or as a result of the exercise of the Metering Access Right, it is agreed or determined that there has been a breach of a Metering Obligation, the Generator shall promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty in exercising the Metering Access Right.

***Undertakings: SCADA Systems***

21.23 With effect from the Start Date, the Generator shall ensure that:

- (A) a SCADA System is installed and maintained at the Facility in accordance with the Reasonable and Prudent Standard; and

- (B) the DPA Counterparty has full access to all Information from the SCADA System in order to: (i) administer, and discharge all of its obligations under and functions in relation to, the DPA; and (ii) assess compliance by the Generator with all of its obligations under the DPA. Such Information shall include but shall not be limited to live operational data, Facility dispatch information, fuel gas consumption and composition information, CO<sub>2</sub> export information, and Facility equipment data relevant to the status of the Capture Assets (e.g. stored solvent regeneration). The Generator shall provide the DPA Counterparty with such Information via a data communications link or other applicable data link as agreed between the Parties (such agreement not to be unreasonably withheld or delayed by the Generator),

(each a "**SCADA Systems Obligation**" and together the "**SCADA Systems Obligations**").

***Failure to comply with SCADA Systems Obligations***

- 21.24 If the Generator is in breach of a SCADA Systems Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of the SCADA Systems Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 21.25 If the Generator subsequently complies with such SCADA Systems Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.24. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.25.

**22. GENERATOR UNDERTAKING: MINIMUM CO<sub>2</sub> CAPTURE RATE**

***Undertaking: Minimum CO<sub>2</sub> Capture Rate***

- 22.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty that for each AP Billing Period, the Achieved and Declared CO<sub>2</sub> Capture Rate Average will be equal to or greater than the Minimum CO<sub>2</sub> Capture Rate (a "**Minimum CO<sub>2</sub> Capture Rate Obligation**").

***Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***

- 22.2 If the Generator is in breach of the Minimum CO<sub>2</sub> Capture Rate Obligation for either three (3) consecutive AP Billing Periods or three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods (a "**Minimum CO<sub>2</sub> Capture Rate Breach**"), then the DPA Counterparty may at any time following the occurrence of such breach give notice to the Generator (a "**Capture Rate Breach Notice**"). A Capture Rate Breach Notice shall:
- (A) specify the Capture Rate Breach Deadline, being the date on and from which the DPA Counterparty may, subject to the remainder of this Condition 22, give the Generator a Default Termination Notice in respect of the Minimum CO<sub>2</sub> Capture Rate Breach in accordance with Condition 35.27; and
  - (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the Minimum CO<sub>2</sub> Capture Rate Breach.

***Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***



- 22.3 No later than twenty (20) Business Days after receipt of the Capture Rate Breach Notice, the Generator shall submit a notice to the DPA Counterparty (a "**Capture Rate Breach Response Notice**"). A Capture Rate Breach Response Notice shall specify that the Generator intends to either:
- (A) rectify the Minimum CO<sub>2</sub> Capture Rate Breach by achieving an Achieved and Declared CO<sub>2</sub> Capture Rate Average equal to or greater than eighty five per cent. (85%) for three (3) consecutive AP Billing Periods (a "**Capture Rate Breach Rectification**") on or before the Capture Rate Breach Deadline; or
  - (B) provide the DPA Counterparty with and implement a Capture Rate Breach Rectification Plan, following which Condition 22.5 shall apply.
- 22.4 If the Generator fails to submit a Capture Rate Breach Response Notice to the DPA Counterparty in accordance with Condition 22.3, then the Generator will be deemed to have notified the DPA Counterparty that it intends to achieve a Capture Rate Breach Rectification on or before the Capture Rate Breach Deadline in accordance with Condition 22.3(A).

***Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***

- 22.5 If this Condition 22.5 applies:
- (A) the Generator shall prepare and submit to the DPA Counterparty for approval a draft Capture Rate Breach Rectification Plan (with such Supporting Information as the Generator considers to be relevant to the content of the Capture Rate Breach Rectification Plan) no later than sixty (60) Business Days after the date of the Capture Rate Breach Notice, during which period the Generator shall use its best endeavours to mitigate the effects of the Minimum CO<sub>2</sub> Capture Rate Breach; and
  - (B) the DPA Counterparty shall, no later than sixty (60) Business Days after receipt of the draft Capture Rate Breach Rectification Plan (and Supporting Information), provide a notice to the Generator (a "**Capture Rate Breach Rectification Review Notice**") which shall specify whether the DPA Counterparty:
    - (i) approves the draft Capture Rate Breach Rectification Plan without amendment, following which the draft Capture Rate Breach Rectification Plan shall become the "**Approved Capture Rate Breach Rectification Plan**";
    - (ii) requires the Generator to provide additional Supporting Information in relation to the draft Capture Rate Breach Rectification Plan, in order for the DPA Counterparty to determine whether or not to approve such plan;
    - (iii) requires amendments to the draft Capture Rate Breach Rectification Plan, in which case the Capture Rate Breach Rectification Review Notice shall provide the Generator with sufficient detail in relation to such amendments; or
    - (iv) in its sole and absolute discretion, rejects the draft Capture Rate Breach Rectification Plan, in which case the Capture Rate Breach Rectification Review Notice shall provide the Generator with sufficient detail in relation to such rejection and the Generator agrees and acknowledges that it shall not be entitled to refer any decision made by the DPA Counterparty pursuant to this Condition (iv) to the Dispute Resolution Procedure.
- 22.6 The Generator shall no later than fifteen (15) Business Days after receipt of a Capture Rate Breach Rectification Review Notice, submit to the DPA Counterparty:

- (A) if Condition 22.5(B)(ii) applies, the relevant additional Supporting Information specified in the Capture Rate Breach Rectification Review Notice;
- (B) if Condition 22.5(B)(iii) applies, an amended draft Capture Rate Breach Rectification Plan which includes the amendments specified in the Capture Rate Breach Rectification Review Notice; or
- (C) if Condition 22.5(B)(iv) applies, an amended draft Capture Rate Breach Rectification Plan,

following which Condition 22.5(B) shall then reapply.

22.7 If Condition 22.5(B)(i) applies:

- (A) as soon as reasonably practicable after receipt of the Capture Rate Breach Rectification Review Notice, and in any event no later than sixty (60) Business Days after such date, the Generator shall commence the implementation of the Approved Capture Rate Breach Rectification Plan, and the Generator shall continue to implement the Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to remedy the Minimum CO<sub>2</sub> Capture Rate Breach; and
- (B) the Generator shall notify the DPA Counterparty in writing no later than five (5) Business Days following the date on which the Generator fully implements the Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to achieve a Capture Rate Breach Rectification (a "**Generator Capture Rate Breach Remediation Notice**"), together with such Supporting Information as is reasonably necessary to evidence that the breach has been remedied.

***Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach***

22.8 If:

- (A) subject to Condition 22.8(B), the Generator fails to achieve a Capture Rate Breach Rectification by the Capture Rate Breach Deadline; or
- (B) Condition 22.5(B)(i) applies and at and/or following the Capture Rate Breach Deadline the Generator has failed to commence the implementation of and/or continue to implement an Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to achieve a Capture Rate Breach Rectification,

then a "**Capture Rate Termination Event**" will be deemed to have occurred.

***Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension***

22.9 Without prejudice to Conditions 22.1 to 22.7, if the Generator's Achieved and Declared CO<sub>2</sub> Capture Rate Average is less than the Suspension CO<sub>2</sub> Capture Rate for either three (3) consecutive AP Billing Periods or three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods (a "**Suspension CO<sub>2</sub> Capture Rate Breach**"), then the DPA Counterparty may at any time following the occurrence of such breach, elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

22.10 If the Generator evidences to the satisfaction of the DPA Counterparty that it has achieved a Capture Rate Breach Rectification, then the DPA Counterparty shall pay any amounts to the

Generator which would have been payable (which, for the avoidance of doubt, shall be based on the Availability of Capture that is achieved during the suspension period) but for the operation of Condition 22.9. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 22.10.

- 22.11 Any evidence provided by the Generator to the DPA Counterparty pursuant to Condition 22.10 shall be accompanied by a Directors' Certificate in respect of such evidence.

***Relief due to Force Majeure and Capture Outage Relief Event***

- 22.12 The Generator shall be relieved from liability, and deemed not to be in breach of the Minimum CO<sub>2</sub> Capture Rate Obligation and/or Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*), for any failure or delay in the performance of such obligations if and to the extent such failure or delay is directly attributable to the occurrence and continuance of either:

- (A) Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*);
- (B) a Capture Outage Relief Event which directly affects the Generator; or
- (C) without prejudice to Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*), the implementation of the Approved Capture Rate Breach Rectification Plan but only to the extent the Generator is using reasonable endeavours to:
  - (i) implement the Approved Capture Rate Breach Rectification Plan in accordance with its terms;
  - (ii) mitigate the effects of the implementation of the Approved Capture Rate Breach Rectification Plan; and
  - (iii) resume the performance of the Minimum CO<sub>2</sub> Capture Rate Obligation as soon as reasonably practicable.

**23. GENERATOR UNDERTAKING: DECLARATION OBLIGATIONS**

***Declaration Obligations***

- 23.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:
- (A) submit electricity capacity data declarations and details of Generation Outage Events, including:
    - (i) the Net Available Capacity immediately preceding a Generation Outage Event;
    - (ii) the Net Available Capacity during each time segment of a Generation Outage Event;
    - (iii) the duration, start time, and end time of each time segment of a Generation Outage Event; and
    - (iv) the reason for a Generation Outage Event (including, if applicable, a Generation Outage Relief Event),

in all cases, but subject to Condition 23.1(B), in accordance with UK REMIT (the "**Generation Declaration Capacity Data**");

- (B) if UK REMIT is unavailable at any time, promptly provide the Generator Declaration Capacity Data to the DPA Counterparty, in a form and content satisfactory to the DPA Counterparty (acting reasonably), and with the frequency that such data would have been provided had UK REMIT been available;
- (C) submit a Declared CO<sub>2</sub> Capture Rate in respect of AP Settlement Units where:
  - (i) the Metered Electricity Output is equal to or less than zero (0); and/or
  - (ii) a T&S Outage Event occurs,

in a form and content satisfactory to the DPA Counterparty (acting reasonably). For each AP Settlement Unit where: (i) the Metered Electricity Output is equal to or less than zero (0); and/or (ii) a T&S Outage Event occurs immediately following an AP Settlement Unit where the Metered Electricity Output is more than zero (0) and a T&S Outage Event has not occurred ("**Initial DCR Settlement Unit**"), the Declared CO<sub>2</sub> Capture Rate shall be equal to the lower of:

- (a) the lowest Achieved CO<sub>2</sub> Capture Rate in an AP Settlement Unit which falls within the most recent continuous four (4) hour period of eight (8) consecutive AP Settlement Units where: (i) the AP Settlement Unit Calculated CO<sub>2</sub> Generated was equal to or higher than, eighty five per cent (85%) of the AP Settlement Unit Baseline CO<sub>2</sub> Generated; and (ii) there was no regeneration of additional stored (non-circulating) solvent; and
  - (b) (where applicable) the latest Test Achieved CO<sub>2</sub> Capture Rate (as applicable) prior to the Initial DCR Settlement Unit;
- (D) if the Declared CO<sub>2</sub> Capture Rate in respect of an AP Settlement Unit will not be equal to the Declared CO<sub>2</sub> Capture Rate for the previous AP Settlement Unit ("**Amended DCR Settlement Unit**"), notify the DPA Counterparty:
  - (i) as soon as reasonably practicable of the revised Declared CO<sub>2</sub> Capture Rate ("**Amended Declared CO<sub>2</sub> Capture Rate**") for the Amended DCR Settlement Unit; and
  - (ii) of the reasons for the change in the Declared CO<sub>2</sub> Capture Rate, together with Supporting Information in respect of the reasons for such a change and the impact on the Declared CO<sub>2</sub> Capture Rate, such notification to be provided promptly, and no later than [two (2)] Business Days following the Amended DCR Settlement Unit ("**Amended DCR Notice**");
- (E) submit details (to the nearest minute) of the duration, start time and end time of a Full Capture Outage Event and/or a Full T&S Outage Event (as applicable) where a Full Capture Outage Event and/or a Full T&S Outage Event occurs and is continuing, in a form and content satisfactory to the DPA Counterparty (acting reasonably) and no later than five (5) calendar days following the VP Billing Period in which the last such outage event ceases to apply (the "**Capture Declaration Capacity Data**");
- (F) submit details of each Full Capture Outage Event and/or a Full T&S Outage Event (as applicable), including details of the cause of such event(s), together with Supporting Information in respect of such event(s);

- (G) ensure that all Declaration Capacity Data provided by or on behalf of the Generator pursuant to Conditions 23.1(A), 23.1(B), 23.1(C), 23.1(D) 23.1(E) and 23.1(F) is true, complete and accurate in all material respects and is not misleading;
- (H) if the Generator becomes aware at any time that any Declaration Capacity Data (and/or Supporting Information) submitted pursuant to Condition 23.1(A), 23.1(B), 23.1(C), 23.1(D) or 23.1(E) was not true, complete and accurate in all material respects and/or was misleading as at the date of submission, promptly:
  - (i) notify the DPA Counterparty of the relevant error(s); and
  - (ii) provide the DPA Counterparty with updated Declaration Capacity Data and Supporting Information which is true, complete and accurate in all material respects and is not misleading (the "**Revised Declaration Capacity Data**"), together with a Directors' Certificate and Supporting Information in relation to such data;
- (I) if the DPA Counterparty notifies the Generator that the DPA Counterparty considers that any Declaration Capacity Data (and/or Supporting Information) submitted pursuant to Condition 23.1(A), 23.1(B), 23.1(C), 23.1(D) or 23.1(E) was not true, complete and accurate in all material respects and/or was misleading as at the date of submission, promptly investigate such issue and provide the DPA Counterparty with Revised Declaration Capacity Data together with a Directors' Certificate and Supporting Information in relation to such data, and
- (J) if the DPA Counterparty requests a CO<sub>2</sub> Capture Rate Test pursuant to Condition 23.13, perform the CO<sub>2</sub> Capture Rate Test by the date specified in the CO<sub>2</sub> Capture Rate Test Notice,

(each, a "**Declaration Obligation**" and together the "**Declaration Obligations**").

23.2 If the Generator fails to submit the Capture Declaration Capacity Data to the DPA Counterparty in accordance with Condition 23.1(E) for two (2) or more consecutive AP Settlement Units in which:

- (i) the Metered Electricity Output is greater than zero (0); and
- (ii) the Metered CO<sub>2</sub> Output is equal to or less than zero (0),

the Generator will be deemed to be in breach of the Declaration Obligations.

***Notification by DPA Counterparty of Declaration Obligation breach***

23.3 The DPA Counterparty may at any time give a notice to the Generator if it considers that the Generator is in breach of a Declaration Obligation (a "**DPA Counterparty Declaration Breach Notice**"), with such notice to:

- (A) specify which Declaration Obligation the DPA Counterparty considers that the Generator has breached; and
- (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the breach of the Declaration Obligation.

***Notification by Generator of Declaration Obligation breach***

- 23.4 The Generator shall promptly give a notice to the DPA Counterparty if it becomes aware that it is in breach of a Declaration Obligation (a "**Generator Declaration Breach Notice**"). A Generator Declaration Breach Notice shall:
- (A) specify which Declaration Obligation the Generator considers that it has breached; and
  - (B) be accompanied by such Supporting Information as the Generator considers to be relevant to evidence the breach of the Declaration Obligation.
- 23.5 Each Generator Declaration Breach Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Generator Declaration Breach Notice.

***Suspension of Payments (Failure to provide Declaration Capacity Data)***

- 23.6 If the Generator is in breach of a Declaration Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such Declaration Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 23.7 Without prejudice to Condition 23.8, if the Generator subsequently rectifies the breach of the relevant Declaration Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 23.6. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 23.7.

***Misleading Declaration Capacity Data***

- 23.8 If any Declaration Capacity Data provided pursuant to Condition 23.1 is misleading, or the Generator's failure to provide Declaration Capacity Data is misleading, provided that: (i) the Generator knew that such data was, or a failure to provide such data would be, misleading; (ii) the Generator acted recklessly in providing or failing to provide such data; or (iii) the Generator failed to make all due and careful enquiries when providing such data, then a "**Misleading Declaration Termination Event**" will be deemed to have occurred.

***Undertaking: Access to and test of Facility***

- 23.9 With effect from the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty from time to time and considered by the DPA Counterparty to be suitably qualified) access to the Facility and to such plant, property or assets owned, occupied or controlled by the Generator and to which the Generator can lawfully grant access as may be reasonably necessary for the DPA Counterparty to read, test or verify any Declaration Capacity Data or Revised Declaration Capacity Data (or to test or verify whether the Generator should have provided Declaration Capacity Data or Revised Declaration Capacity Data where it has failed to do so) and inspect and conduct tests (including CO<sub>2</sub> Capture Rate Tests, with such tests to be carried out in accordance with the Reasonable and Prudent Standard, and in compliance with industry guidelines, practices and standards) in respect of the Declaration Capacity Data from time to time (the "**Declaration Access Right**").
- 23.10 If the DPA Counterparty intends to exercise the Declaration Access Right it shall give a notice to the Generator (a "**Declaration Inspection Notice**"). A Declaration Inspection Notice shall:

- (A) specify that the DPA Counterparty (or suitably qualified persons nominated by it in accordance with Condition 23.9) intends to exercise the Declaration Access Right; and
  - (B) specify the date by which the Generator must, in accordance with Condition 23.9, permit the exercise of the Declaration Access Right.
- 23.11 The Generator shall permit the DPA Counterparty to exercise the Declaration Access Right no later than the later of: (i) one (1) Business Day after receipt of the Declaration Inspection Notice; and (ii) the date specified in the Declaration Inspection Notice.
- 23.12 The DPA Counterparty shall (and shall procure that any suitably qualified persons nominated by it in accordance with Condition 23.9 shall):
- (A) take or refrain from taking all such other action as may be reasonably required by the Generator in order to comply with health and safety rules relating to the Facility; and
  - (B) obtain each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval of or from a Competent Authority that is necessary for it to exercise the Declaration Access Right.
- 23.13 The DPA Counterparty may request a CO<sub>2</sub> Capture Rate Test at any time to verify a Declared CO<sub>2</sub> Capture Rate. If the DPA Counterparty intends to instruct the Generator to carry out a CO<sub>2</sub> Capture Rate Test, it shall give a notice to the Generator (a "**CO<sub>2</sub> Capture Rate Test Notice**"). A CO<sub>2</sub> Capture Rate Test Notice shall specify the date by which the Generator must: (i) carry out the CO<sub>2</sub> Capture Rate Test (which shall be no earlier than one (1) Business Day after the DPA Counterparty issues the CO<sub>2</sub> Capture Rate Test Notice to the Generator); and (ii) submit the CO<sub>2</sub> Capture Rate Test Report.

***Failure to provide Declaration Access Right***

- 23.14 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Declaration Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 23.15 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Declaration Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 23.14. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 23.15.
- 23.16 If the Generator:
- (A) fails to comply with its obligations under Condition 23.9 to permit the DPA Counterparty to exercise the Declaration Access Right; and
  - (B) has not permitted the DPA Counterparty to exercise its Declaration Access Right within four (4) Business Days of the date on which the DPA Counterparty or its appointed representative first sought to exercise the Declaration Access Right,
- then a "**Declaration Access Termination Event**" will be deemed to have occurred.

***Declaration Access Right costs***

23.17 If, pursuant to or as a result of the exercise of the Declaration Access Right, it is agreed or determined that there has been a breach of a Declaration Obligation, the Generator shall promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty in exercising the Declaration Access Right.

24. **GENERATOR UNDERTAKINGS: INFORMATION PROVISION AND NO CUMULATION OF SUBSIDY, STATE AID AND/OR UNION FUNDING**

***Provision of Information to the DPA Counterparty***

24.1 In addition and without prejudice to its obligations under Condition 3.7 (*Operational Conditions Precedent: General Reporting Obligations*), Condition 4.8 (*Difficulties in achieving the Milestone Requirement*), Condition 20 (*Generator Undertakings: General*) and Condition 51.4 (*Provision of Force Majeure information*), the Generator, acting in accordance with the Reasonable and Prudent Standard, shall provide the DPA Counterparty (and, if requested by the DPA Counterparty, the DPA Settlement Services Provider) with:

- (A) the Generator's estimate of:
  - (i) the expected Start Date;
  - (ii) the Net Dependable Capacity, Plant Net Efficiency, Start Up Times and the Test Achieved CO<sub>2</sub> Capture Rate as at the Start Date;
  - (iii) the Achieved CO<sub>2</sub> Capture Rate and the Availability of Generation during the first AP Billing Period; and
  - (iv) the commissioning profile of the Facility,

each such estimate to be provided on the Agreement Date and at monthly intervals thereafter;
- (B) all Information requested by the DPA Counterparty to comply with its obligations under the DPA (including the DPA Settlement Required Information), such Information to be provided as soon as reasonably practicable, and no later than five (5) Business Days (or, if such Information is not within the possession of the Generator, no later than ten (10) Business Days) or such longer period as is specified by the DPA Counterparty, after the Information is requested;
- (C) all Information relating to the T&S Charges (including any invoice provided by the relevant T&S Operator to the Generator), such Information to be provided as soon as reasonably practicable, and no later than three (3) Business Days after the relevant T&S Operator has notified the Generator of the same;
- (D) the Forecast Data, such Forecast Data to be provided:
  - (i) no later than ten (10) Business Days after the Agreement Date, for the period from the projected Start Date to the following 31 March and in respect of each Month (or part of a Month) during such period (but only if the Start Date is projected to occur before the following 31 March);
  - (ii) not later than 31 January in each year (or, in relation to the first (1st) such forecast, and if the Agreement Date is after 31 January, no later than ten (10) Business Days after the Agreement Date) for the twelve (12) Month period commencing on 01 April in the following year in respect of each Month (or part of a Month) during such period, provided that either:



- (a) such period commences after the Start Date; or
- (b) the Start Date is projected to occur during such period; and
- (iii) not later than six (6) Months prior to the expected Start Date (as provided by the Generator at intervals in accordance with Condition 24.1(A)(i)), for the twelve (12) Month period commencing on the expected Start Date; and
- (iv) not later than five (5) Business Days prior to the first (1st) day of each Month after the Start Date in respect of:
  - (a) the next Month; and
  - (b) any other Months in respect of which the Generator has previously provided forecasts to the DPA Counterparty (but only if any of the Generator's forecasts have changed);
- (E) notification of the occurrence of any event or circumstance which will or is reasonably likely to affect significantly the:
  - (i) Net Dependable Capacity;
  - (ii) Availability of Capture;
  - (iii) Availability of Generation;
  - (iv) Metered Electricity Output;
  - (v) Achieved CO<sub>2</sub> Capture Rate;
  - (vi) Declared CO<sub>2</sub> Capture Rate;
  - (vii) T&S Charges; and
  - (viii) *[any other information to be determined]*,<sup>41</sup>

together with Supporting Information in respect of the reasons for such event or circumstance and the impact on (i) to [(vii)], such notification to be provided as soon as reasonably practicable, and no later than five (5) Business Days after the Generator has become aware of such an event or circumstance;
- (F) all Information reasonably requested by the DPA Counterparty regarding the financial condition, business or operations of the Generator to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes, such Information to be provided as soon as soon as reasonably practicable and no later than ten (10) Business Days, or such longer period as is specified by the DPA Counterparty, after such Information is requested;
- (G) all Information reasonably requested by the DPA Counterparty for the purposes of: (i) compiling and evaluating statistics relating to the outcomes of the DPA and the CCUS Programme and the impact of the CCUS Programme across a range of social and economic factors; and (ii) publishing material relating thereto, including announcements and reports describing the general outcomes, merits and achievements relating to the CCUS Programme, such Information to be provided as soon as soon as reasonably

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practicable and no later than ten (10) Business Days, or such longer period as is specified by the DPA Counterparty, after such Information is requested;

- (H) as soon as reasonably practicable upon request, all Information reasonably requested by the DPA Counterparty for the purposes of assessing compliance by the Generator with the Metering Obligations;
- (I) as soon as reasonably practicable upon becoming aware of them, the details of any litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claim, or Tax investigation against the Generator which is current; pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or, so far as the Generator is aware, for which a formal written notice before action or similar threatening such suit or proceedings has been received and which, if adversely determined, would have or would be reasonably likely to have a Material Adverse Effect;
- (J) the Expected Facility Data, such Expected Facility Data to be provided:
  - (i) no later than two (2) Months after the Agreement Date;
  - (ii) no later than two (2) Months after the Milestone Delivery Date;
  - (iii) no later than the 31 January in each year during the Term, starting with the year after the year in which the Milestone Delivery Date falls,
 

except that where the Expected Facility Data has not changed significantly since the last submission by the Generator to the DPA Counterparty of such information, the Generator is not required to resubmit the Expected Facility Data but must submit to the DPA Counterparty a written confirmation, in form and content satisfactory to the DPA Counterparty (acting reasonably), that such information has not changed significantly since the last submission;
  - (iv) as soon as reasonably practicable and in any event no later than ten (10) Business Days after the Generator has become aware of the occurrence of any event or circumstance which will, or is reasonably likely to, significantly affect the accuracy of the Expected Facility Data last submitted; and
  - (v) as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of a written request by the DPA Counterparty; and
- (K) as soon as reasonably practicable, all Information (kept to the Reasonable and Prudent Standard) 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 a Longstop Date Capacity Notice.

### **Forecast Data**

24.2 For the purposes of Condition 24.1(D), the "**Forecast Data**" means:

- (A) Net Dependable Capacity;
- (B) Availability of Capture;
- (C) Availability of Generation;
- (D) Metered Electricity Output;

- (E) Achieved CO<sub>2</sub> Capture Rate;
- (F) T&S Charges; and
- (G) [any other information to be determined],<sup>42</sup>

in each case in relation to the period referred to in Condition 24.1(D).

**Accuracy of Information**

24.3 The Generator shall ensure that:

- (A) all forecasts, forward-looking statements and data provided by or on behalf of the Generator pursuant to Condition 24.1 are prepared in good faith, on a reasonable basis and with due care and attention; and
- (B) all other Information provided by or on behalf of the Generator pursuant to Condition 24.1 is true, complete and accurate in all material respects and is not misleading.

**Warranty: No Cumulation of Subsidy**

24.4 The Generator represents and warrants to the DPA Counterparty that, as at the Start Date, the following statement is true, accurate and not misleading:

- (A) no Subsidy, State aid or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person), other than:
  - (i) the subsidy arising under the DPA and/or any Approved Scheme of Funding; or
  - (ii) any Subsidy, State aid and/or Union Funding notified to the DPA Counterparty in accordance with the process for the satisfaction or waiver of the Subsidy Control Declaration Operational CP.

**Undertaking: No cumulation of Subsidy, State aid and/or Union Funding**

24.5 With effect from the Subsidy Control Declaration Date, the Generator undertakes to the DPA Counterparty as follows:

- (A) the Generator shall at all times ensure that no Subsidy, State aid and/or Union Funding is received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person), other than the subsidy arising under the DPA;
- (B) *Notification*: the Generator shall:
  - (i) give notice to the DPA Counterparty as soon as reasonably practicable upon becoming aware that any Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person, or is received before, on or after the Subsidy Control Declaration Date) (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 24.4(A)(i) and 24.4(A)(ii)); and

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- (ii) provide the DPA Counterparty with such Supporting Information regarding compliance or non-compliance by the Generator with the undertaking in Condition 24.5(A) as the DPA Counterparty reasonably requires, as soon as reasonably practicable and in any event no later than thirty (30) Business Days following receipt of the DPA Counterparty's request. Any Supporting Information provided by a Generator to the DPA Counterparty under this Condition 24.5(B)(ii) shall be accompanied by a Directors' Certificate in respect of such Supporting Information; and
- (C) *Repayment*: the Generator shall repay or procure the repayment of any Subsidy, State aid and/or Union Funding which has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person or is received before, on or after the Subsidy Control Declaration Date) (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) to the granter of such subsidy, aid or funding (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 24.4(A)(i) and 24.4(A)(ii).

### **Suspension of Payments**

- 24.6 If the Generator breaches Condition 24.4 or fails to comply with Condition 24.5(A), the DPA Counterparty shall:
- (A) suspend payment of any amount(s) which would otherwise be payable by the DPA Counterparty to the Generator, from the date the DPA Counterparty becomes aware that the Generator has breached or failed to comply with such Condition (or as soon as reasonably practicable thereafter); and
  - (B) notify the Generator of any suspension as soon as reasonably practicable.
- 24.7 If the Generator evidences to the satisfaction of the DPA Counterparty that the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) has been repaid in full to the granter, any suspension under Condition 24.6 shall cease and the DPA Counterparty shall (subject to Condition 24.9, where applicable) pay any amounts to the Generator which would have been payable but for the operation of Condition 24.6. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 24.7.
- 24.8 Any evidence provided by the Generator to the DPA Counterparty pursuant to Condition 24.7 shall be accompanied by a Directors' Certificate in respect of such evidence.

### **Suspension of Payments (Failure to Provide Information)**

- 24.9 If the Generator fails to comply with Condition 24.5(B)(ii), the DPA Counterparty shall:
- (A) suspend payment of any amount(s) which would otherwise be payable by the DPA Counterparty to the Generator, from the date the DPA Counterparty becomes aware that the Generator failed to comply with such Condition (or as soon as reasonably practicable thereafter); and
  - (B) notify the Generator of any suspension as soon as reasonably practicable.
- 24.10 Subject to Condition 24.6 and 24.15, if the Generator subsequently provides the DPA Counterparty with the Supporting Information (accompanied by a Directors' Certificate) requested pursuant to Condition 24.5(B)(ii), any suspension under Condition 24.9 shall cease and the DPA Counterparty shall pay any amounts to the Generator which would have been

payable but for the operation of Condition 24.9. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 24.10.

**Subsidy Interest**

- 24.11 Interest shall be due and payable in relation to any amount of Subsidy, State aid and/or Union Funding which has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or any other person), calculated on the basis that interest shall accrue on the outstanding balance of any such amount at the Subsidy Interest Rate from (and including) the date that the Subsidy, State aid and/or Union Funding was received, to (but excluding): (i) the date that the Subsidy, State aid and/or Union Funding and interest is repaid in full to the granter; or (ii) where Condition 24.16 applies, the date that payments equivalent to the amount of Subsidy, State aid and/or Union Funding and interest are recovered in full; or (iii) where Condition 3.53 (*Set-Off of Previous Subsidy*) or 24.15 (*Set-Off of Other Subsidy*) applies, the date the Subsidy, State aid and/or Union Funding and interest are set off in full. For this purpose:
- (A) interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days;
  - (B) the "**Subsidy Interest Rate**" shall be either:
    - (i) the interest rate set out in any recovery order issued by a Subsidy Control Competent Authority;
    - (ii) the interest rate determined by the DPA Counterparty in accordance with the Reference Rate Methodology; or
    - (iii) in the case of State aid or Union Funding only, the interest rate that applies to recovery under the relevant State aid or Union Funding scheme; and
  - (C) to the extent that interest accrues for more than a year, the Subsidy Interest Rate shall be recalculated on an annual basis by the DPA Counterparty in accordance with the Reference Rate Methodology, and interest shall be compounded annually, so that interest accruing in the previous year shall be subject to interest in any subsequent year.

For the avoidance of doubt, interest pursuant to this Condition 24.11 shall not be due and payable in relation to any subsidy arising under the DPA.

**Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding**

- 24.12 The DPA Counterparty shall agree by notice to waive the Generator's obligation under Condition 24.5(C) if the Generator evidences to the satisfaction of the DPA Counterparty that the granter of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11), in full or in part. If the Generator seeks a waiver, the Generator shall:
- (A) provide the DPA Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment in accordance with this Condition 24.12; and
  - (B) provide the DPA Counterparty with such additional Supporting Information as the DPA Counterparty reasonably requires, as soon as reasonably practicable, and in any event

no later than ten (10) Business Days following receipt of the DPA Counterparty's request,

in each case accompanied by a Directors' Certificate in respect of such Supporting Information.

- 24.13 If the DPA Counterparty agrees to waive the Generator's obligation to repay Subsidy, State aid and/or Union Funding pursuant to Condition 24.5(C):
- (A) the DPA Counterparty shall also notify the Generator of:
    - (i) the amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11) which has not been repaid to the granter as at that date (the "**Other Subsidy**"); and
    - (ii) the Subsidy Interest Rate currently applicable;
  - (B) Condition 24.15 shall apply; and
  - (C) subject to Condition 24.15, the suspension under Condition 24.6(A) shall cease and the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 24.6(A). The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable pursuant to this Condition 24.13(C).
- 24.14 Nothing in this Condition 24 shall require the DPA Counterparty to waive the Generator's obligation under Condition 24.5(C), unless the DPA Counterparty is satisfied that the requirements of Condition 24.12 have been met.

***Set-Off of Other Subsidy***

- 24.15 Any amount of Other Subsidy (as adjusted for interest in accordance with Condition 24.11) shall be set off against any amounts payable to the Generator under the DPA, so that no payment shall be made to the Generator until such amount has been set off in its entirety.

***Recovery***

- 24.16 If the DPA expires or terminates and any amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11) has not yet been repaid in full pursuant to Condition 24.5(C) or set off in full, pursuant to Condition 3.53 (*Set-Off of Previous Subsidy*) or Condition 24.15 (*Set Off of Other Subsidy*), the DPA Counterparty shall be entitled to recover any payments made to the Generator under the DPA, up to the value of the outstanding amount. The DPA Counterparty shall give notice to the Generator of the outstanding amount and the currently applicable Subsidy Interest Rate and the Generator shall repay or procure the repayment of the notified amount (as adjusted for interest in accordance with Condition 24.11) to the DPA Counterparty within ten (10) Business Days from the date of the notice.

**25. GENERATOR UNDERTAKING: SUPPLY CHAIN REPORTING**

***Supply Chain Report***

- 25.1 The Generator shall provide the DPA Counterparty with a Supply Chain Report (together with such Supporting Information as the Generator considers to be relevant to the content of the Supply Chain Report):

- (A) no earlier than six (6) Months prior to the Milestone Delivery Date and no later than the Milestone Delivery Date;
- (B) no earlier than six (6) Months prior to the third (3<sup>rd</sup>) anniversary of the Start Date and no later than the third (3<sup>rd</sup>) anniversary of the Start Date; and
- (C) no earlier than six (6) Months prior to the seventh (7<sup>th</sup>) anniversary of the Start Date and no later than the seventh (7<sup>th</sup>) anniversary of the Start Date,

(each a "**Supply Chain Report Deadline**" and together the "**Supply Chain Report Deadlines**").

25.2 Each Supply Chain Report shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Supply Chain Report.

25.3 The Generator acknowledges and agrees that each Supply Chain Report shall be provided by the DPA Counterparty to the Secretary of State.

25.4 The DPA Counterparty shall:

- (A) if the Generator has failed to submit a Supply Chain Report by the relevant Supply Chain Report Deadline, no later than seven (7) Business Days after the relevant Supply Chain Report Deadline; or
- (B) if the Generator has submitted a Supply Chain Report by the relevant Supply Chain Report Deadline, no later than forty (40) Business Days after the relevant Supply Chain Report Deadline,

give a notice to the Generator (a "**Supply Chain Report Response Notice**"). A Supply Chain Report Response Notice shall specify whether the Generator:

- (i) has or has not submitted a Supply Chain Report by the relevant Supply Chain Report Deadline; and/or
- (ii) has or has not submitted a Supply Chain Report which complies with the requirements set out in Annex 9 (*Form of Supply Chain Report*).

25.5 If the DPA Counterparty states in a Supply Chain Report Response Notice that:

- (A) the Supply Chain Report complies with the requirements of a Supply Chain Report as set out in Annex 9 (*Form of Supply Chain Report*), then such Supply Chain Report shall be deemed to be approved by the DPA Counterparty as a valid Supply Chain Report and no Supply Chain Report Fees shall be payable in relation to such Supply Chain Report; or
- (B) the:
  - (i) Supply Chain Report does not comply with the requirements set out in Annex 9 (*Form of Supply Chain Report*) and is therefore not a valid Supply Chain Report; or
  - (ii) Generator has failed to submit a valid Supply Chain Report by the relevant Supply Chain Report Deadline,

then the Supply Chain Report Fees shall be payable by the Generator.

### **Payment of Supply Chain Report Fees**

- 25.6 Subject to Condition 25.7, if Condition 25.5(B) applies, the Generator shall pay the Supply Chain Report Fees in respect of the relevant Supply Chain Report to the DPA Counterparty by the date each Supply Chain Report Fee is due and payable, provided that if at any time after the relevant Supply Chain Report Deadline the Generator submits the relevant Supply Chain Report to the DPA Counterparty which the DPA Counterparty subsequently confirms under Condition 25.5(A) complies with the requirements set out in Annex 9 (*Form of Supply Chain Report*), then no further Supply Chain Report Fees shall be payable by the Generator in relation to such Supply Chain Report.
- 25.7 Any Supply Chain Fees that accrue prior to the Start Date shall not be due and payable by the Generator unless and until the Start Date has occurred, except to the extent that any amounts become due and payable by the DPA Counterparty to the Generator prior to the Start Date whereby such Supply Chain Report Fees shall become due and payable.

***Set-Off of Supply Chain Report Fees***

- 25.8 Without prejudice to the generality of Condition 15 (*Set-off*), the DPA Counterparty may set off any Supply Chain Report Fees that are due and payable by the Generator against any amounts that are due and payable to the Generator under the DPA.



**Part 8  
Changes in Law**

**26. QUALIFYING CHANGE IN LAW: PROCEDURE**

***DPA Counterparty QCiL Notice***

26.1 If the DPA Counterparty considers that a Qualifying Change in Law has been implemented, occurred or become effective (or is shortly to be implemented, to occur or to become effective), it may give a notice to the Generator (a "**DPA Counterparty QCiL Notice**"). A DPA Counterparty QCiL Notice shall:

- (A) include reasonable details of the relevant Qualifying Change in Law;
- (B) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (C) specify why the DPA Counterparty considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether the DPA Counterparty considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law; and
- (D) (if the DPA Counterparty considers it reasonably practicable to do so) specify whether the DPA Counterparty considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings;
  - (ii) QCiL Capital Costs or QCiL Capital Savings;
  - (iii) an Adjusted Revenues Period (and, if so, the DPA Counterparty's ARP Estimate);
  - (iv) a QCiL Construction Event; and/or
  - (v) a QCiL Operations Cessation Event.

***Generator QCiL Response Notice***

26.2 If the DPA Counterparty gives a DPA Counterparty QCiL Notice to the Generator, the Generator shall as soon as reasonably practicable, and in any event no later than forty (40) Business Days after receipt of such DPA Counterparty QCiL Notice, give a notice to the DPA Counterparty (a "**Generator QCiL Response Notice**"). A Generator QCiL Response Notice shall:

- (A) specify whether the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law (and, if the Generator does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, the Generator shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
- (B) include either:
  - (i) a statement that the Generator agrees with the QCiL Effective Date or the Expected QCiL Effective Date specified in the DPA Counterparty QCiL Notice;
  - or

- (ii) if the Generator does not agree with the QCiL Effective Date or the Expected QCiL Effective Date specified in the DPA Counterparty QCiL Notice, an alternative QCiL Effective Date or Expected QCiL Effective Date;
- (C) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
- (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (iii) an Adjusted Revenues Period and, if so the Generator's ARP Estimate;
  - (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or
  - (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings,
- together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing;
- (D) in respect of Conditions 26.2(C)(i), 26.2(C)(iii), and 26.2(C)(v), include Supporting Information evidencing the impact of the Qualifying Change in Law on the Facility's:
- (i) process heat and mass balance data;
  - (ii) cost base data and related process consumption parameters; and
  - (iii) load factor and short run marginal cost; and
- (E) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard,

(the information referred to or specified in paragraphs (A) to (E) above being "**QCiL Response Information**").

- 26.3 If the Generator, in a Generator QCiL Response Notice, indicates that it does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, it shall nonetheless provide the QCiL Response Information on the basis of an assumption that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law.
- 26.4 Any Generator QCiL Response Notice shall be accompanied by a Directors' Certificate in relation to the QCiL Response Information which states (without prejudice to the generality of the certification required pursuant to this Condition 26.4) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.
- 26.5 If the Generator becomes aware before any QCiL Compensation is agreed or determined, or paid, commenced or effected, pursuant to this Part 8 (*Changes in Law*) that any of the QCiL Response Information is no longer true, complete and accurate in all material respects or is

misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 26.4), the Generator shall as soon as reasonably practicable:

- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL Response Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL Response Information.

26.6 The DPA Counterparty may, by notice to the Generator no later than thirty (30) Business Days after receipt of a Generator QCiL Response Notice or any Revised Generator QCiL Response Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL Response Notice or, as the case may be, the Revised Generator QCiL Response Information (a "**Generator QCiL Response Notice Information Request**") as the DPA Counterparty reasonably requests.

26.7 If the DPA Counterparty gives a Generator QCiL Response Notice Information Request to the Generator, the Generator shall, no later than thirty (30) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

#### **Generator QCiL Notice**

26.8 If the Generator considers that a Qualifying Change in Law has been implemented, occurred or become effective or is shortly to be implemented, occur or become effective, it may give a notice to the DPA Counterparty (a "**Generator QCiL Notice**"). A Generator QCiL Notice shall:

- (A) include reasonable details of the relevant Qualifying Change in Law;
- (B) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (C) specify why the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether the Generator considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law (and including Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
- (D) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (iii) an Adjusted Revenues Period and, if so the Generator's ARP Estimate;
  - (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or

- (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings,

together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing; and

- (E) in respect of Conditions 26.8(D)(i), 26.8(D)(iii), 26.8(D)(v), include Supporting Information evidencing the impact of the Qualifying Change in Law on the Facility's:
  - (i) process heat and mass balance data;
  - (ii) cost base data and related process consumption parameters; and
  - (iii) load factor and short run marginal cost; and
- (F) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard,

(the information referred to or specified in paragraphs (A) to (F) above being "**QCIL Supporting Information**").

- 26.9 Any Generator QCiL Notice shall be accompanied by a Directors' Certificate in relation to the QCiL Supporting Information which states (without prejudice to the generality of the certification required pursuant to this Condition 26.9) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.
- 26.10 If the Generator becomes aware before any QCiL Compensation is agreed or determined, or paid, commenced or effected, pursuant to this Part 8 (Changes in Law) that any of the QCiL Supporting Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 26.9), the Generator shall as soon as reasonably practicable:
- (A) notify the DPA Counterparty that this is the case; and
  - (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL Response Information.
- 26.11 The DPA Counterparty may, by notice to the Generator no later than thirty (30) Business Days after receipt of a Generator QCiL Notice or any Revised Generator QCiL Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL Notice or, as the case may be, the Revised Generator QCiL Information (a "**Generator QCiL Notice Information Request**") as the DPA Counterparty reasonably requests.
- 26.12 If the DPA Counterparty gives a Generator QCiL Notice Information Request to the Generator, the Generator shall, no later than thirty (30) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.
- 26.13 The DPA Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL Notice unless and until the Generator shall have provided the DPA Counterparty with all of the QCiL Supporting Information, and the Directors' Certificate, in respect of such Generator QCiL Notice.

**Agreement between the Parties in respect of a Qualifying Change in Law**

26.14 As soon as reasonably practicable, and in any event no later than fifteen (15) Business Days, after either:

- (A) the DPA Counterparty receives from the Generator a Generator QCiL Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL Notice Information Request, fifteen (15) Business Days after the DPA Counterparty has received the requested Supporting Information); or
- (B) the DPA Counterparty receives from the Generator a Generator QCiL Response Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL Response Notice Information Request, fifteen (15) Business Days after the DPA Counterparty has received the requested Supporting Information),

the Parties shall meet to discuss and, in good faith, seek to agree:

- (i) whether the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law;
- (ii) in respect of a Qualifying Change in Law:
  - (a) the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
  - (b) whether the Notified Change in Law will, or is reasonably expected to, result in:
    - (1) QCiL Net Operating Costs or QCiL Net Operating Savings;
    - (2) QCiL Net Capital Costs or QCiL Net Capital Savings;
    - (3) an Adjusted Revenues Period (and, if so, the impact, or the reasonably anticipated impact, of the Notified Change in Law on one (1) or more of the following: (i) the Net Dependable Capacity; (ii) the Availability of Generation; (iii) the Availability of Capture; and/or (iv) the Metered Day Electricity Output);
    - (4) a QCiL Construction Event and if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or
    - (5) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings;
  - (c) the amounts, forecasts and estimates applicable to that Qualifying Change in Law referred to in Condition 26.2(C) or 26.8(D) (as appropriate);
  - (d) the steps or additional steps, as the case may be, which the Generator should take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard; and
  - (e) any other matters necessary to determine the quantum of the QCiL Compensation;

- (iii) the QCiL Compensation in respect of such Qualifying Change in Law; and
- (iv) the QCiL Compensation Date.

***Disputes in respect of a Qualifying Change in Law***

- 26.15 If the Parties are not able to agree any of the matters in Condition 26.14, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.
- 26.16 Until the Dispute has been resolved by agreement between the Parties or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL Compensation payable.

**27. QUALIFYING CHANGE IN LAW: COMPENSATION**

***Categories of Qualifying Change in Law compensation***

- 27.1 Subject to Condition 27.3, compensation in respect of a Qualifying Change in Law shall be calculated:
- (A) if there are QCiL Operating Costs or QCiL Operating Savings, in accordance with Conditions 27.4 to 27.10 (inclusive) (a "**QCIL Opex Payment**");
  - (B) if there are QCiL Capital Costs or QCiL Capital Savings, in accordance with Conditions 27.11 to 27.19 (inclusive) (a "**QCIL Capex Payment**");
  - (C) if there is an Adjusted Revenues Period, in accordance with Conditions 27.20 to 27.25 (inclusive) (a "**QCIL Adjusted Revenues Payment**");
  - (D) if there is a QCiL Construction Event, in accordance with Conditions 27.26 to 27.29 (inclusive) (a "**QCIL Construction Event Payment**"); and/or
  - (E) if there is a QCiL Operations Cessation Event, in accordance with Conditions 27.30 to 27.32 (inclusive) (a "**QCIL Operations Cessation Event Payment**").
- 27.2 Any and all QCiL Compensation to be calculated in accordance with Condition 27.1 shall be payable in accordance with, and subject to, Conditions 28 (*Qualifying Change in Law: Effective date and payment*), 29 (*Qualifying Change in Law: True-up*) and 31 (*Changes in Law: General provisions*).
- 27.3 If a Qualifying Change in Law occurs which gives rise to or results in: (i) QCiL Operating Costs; (ii) QCiL Capital Costs; (iii) a QCiL Adjusted Revenues Payment; or (iv) any combination of the foregoing:
- (A) before the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Operating Costs, QCiL Capital Costs and/or QCiL Adjusted Revenues Payment is greater than the amount of the QCiL Construction Event Payment that would have been payable under Conditions 27.26 to 27.29 if such Qualifying Change in Law were to have constituted a QCiL Construction Event; or
  - (B) on or after the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Operating Costs, QCiL Capital Costs and/or QCiL Adjusted Revenues Payment is greater than the amount of the QCiL

Operations Cessation Event Payment that would have been payable under Conditions 27.30 to 27.32 if such Qualifying Change in Law were to have constituted a QCiL Operations Cessation Event,

then the amount of the QCiL Compensation payable by the DPA Counterparty to the Generator in respect of the Qualifying Change in Law shall be limited to:

- (i) if Condition 27.3(A) applies, the amount of the QCiL Construction Event Payment that would have been payable under Conditions 27.26 to 27.29; or
- (ii) if Condition 27.3(B) applies, the amount of the QCiL Operations Cessation Event Payment that would have been payable under Conditions 27.30 to 27.32.

### **QCIL Opex Payment**

27.4 Any and all QCiL Opex Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), either as staged payments and/or as daily payments, either on an Ex-Ante and/or Ex-Post basis, which shall be payable:

- (A) by the DPA Counterparty to the Generator if there are QCiL Net Operating Costs; or
- (B) by the Generator to the DPA Counterparty if there are QCiL Net Operating Savings,

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.5 For the purposes of Condition 27.4, each QCiL Opex Payment shall, subject to Condition 27.10, be an amount (*expressed in pounds (£)*) calculated in accordance with:

- (A) Condition 27.7 if the QCiL Opex Payment is to be paid by means of staged payments; or
- (B) Condition 27.8 if the QCiL Opex Payment is to be paid by means of daily payments.

27.6 In order to calculate the QCiL Opex Payment pursuant to Condition 27.7 and Condition 27.8, the QCiL Opex Payment shall first be calculated on a lump sum basis in accordance with one (1) of the following formulae:

- (A) if the QCiL Opex Payment is to be effected on an Ex-Ante basis:

$$QCIL\ Opex\ Payment = \sum_{j=1}^n \frac{C_{I,j} - C_{S,j}}{(1 + R_S)^{j-1}}$$

- (B) if the QCiL Opex Payment is to be effected on an Ex-Post basis:

$$QCIL\ Opex\ Payment = \sum_{j=1}^n [(C_{I,j} - C_{S,j}) \times (1 + R_S)^{n-j}]$$

27.7 If Condition 27.5(A) applies:

- (A) the QCiL Opex Payment shall be equivalent to the QCiL Opex Payment calculated as a lump sum payment in accordance with Condition 27.6; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made within forty (40) Business Days of the Specified Expiry Date.

27.8 If Condition 27.5(B) applies, the QCiL Opex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL\ Opex\ Payment\ (daily\ payments) = OP \times \frac{R_d}{1 - \left(\frac{1}{(1 + R_d)^N}\right)} \times \frac{CPI_t}{CPI_q}$$

27.9 For the purposes of the formulae in Conditions 27.6 to 27.8:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the ( $n-1$ )th period ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each;
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the final QCiL Opex Payment is payable and ending on the date that such final QCiL Opex Payment is paid;
- $n$  = is a whole number integer which defines the number of calendar year periods ( $j$ ) covered by the QCiL Opex Payment calculation, including the year in which the QCiL Compensation Date falls and the year in which the final QCiL Opex Payment is payable;
- $C_{i,j}$  = are, subject to Condition 27.10(B), the QCiL Operating Costs in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date;
- $C_{s,j}$  = are subject to Condition 27.10(B), the QCiL Operating Savings in period ( $j$ ) expressed in pounds in real terms as at the QCiL Compensation Date;
- $OP$  = is the QCiL Opex Payment (lump sum), as calculated in accordance with Condition 27.6;
- $R_d$  is the Daily Discount Rate;
- $R_s$  = is the Post-Tax Real Discount Rate;
- $N$  = is the duration, in days, of the period commencing on the QCiL Compensation Date and ending on the date on which the final QCiL Opex Payment is payable; and
- $CPI_t$  = denotes the CPI applicable during Billing Period ( $t$ ); and
- $CPI_q$  = denotes the CPI applicable at the QCiL Compensation Date.

27.10 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Operating Costs or QCiL Operating Savings; and (ii) an Adjusted Revenues Period, then:



- (A) subject to Condition 27.10(B), such QCiL Operating Costs or QCiL Operating Savings shall be used for the purposes of calculating the QCiL Opex Payment in accordance with Conditions 27.4 and 27.5; and
- (B) if and to the extent that any QCiL Operating Costs or QCiL Operating Savings are (or are reasonably likely to be) incurred, made or received solely in connection with, and during, the Adjusted Revenues Period, such QCiL Operating Costs or QCiL Operating Savings shall be excluded from the calculation of the QCiL Opex Payment in accordance with Conditions 27.4, 27.5 and 27.10(A) and shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 27.20, 27.21, and Conditions 27.22, 27.23 or 27.25 (as applicable).

### **QCIL Capex Payment**

27.11 Any and all QCiL Capex Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), as a lump sum payment, staged payments and/or daily payments which shall be payable:

- (A) by the DPA Counterparty to the Generator if there are QCiL Net Capital Costs; or
- (B) by the Generator to the DPA Counterparty where there are QCiL Net Capital Savings, irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.12 For the purposes of Condition 27.11, each QCiL Capex Payment shall, subject to Condition 27.18, be an amount (*expressed in pounds (£)*) calculated in accordance with:

- (A) Condition 27.13 or 27.14 (as applicable) if the QCiL Capex Payment is to be paid as a lump sum;
- (B) Condition 27.15 if the QCiL Capex Payment is to be paid by means of staged payments; or
- (C) Condition 27.16 or 27.17 (as applicable) if the QCiL Capex Payment is to be paid by means of daily payments.

27.13 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$QCIL\ Capex\ Payment = \sum_{j=1}^n \frac{C_{I,j} - S_j}{(1 + R_s)^{j-1}}$$

27.14 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$QCIL\ Capex\ Payment = \frac{L - X}{L - N} \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}}$$

27.15 If Condition 27.12(B) applies:

- (A) the QCiL Capex Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Capex Payment been effected as a lump sum payment in accordance with Condition 27.13 or 27.14 (as applicable) or as daily payments in accordance with Condition 27.16 or 27.17 (as applicable); and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first date following the expiry of the period which is equal to the number of days in the Term divided by three (3) (*to the nearest integer*) following the QCiL Effective Date; and (ii) the Specified Expiry Date.

27.16 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL \text{ Capex Payment} = \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}} \times \frac{R_d}{1 - \left(\frac{1}{1 + R_d}\right)^{365(L - X)}} \times \frac{CPI_t}{CPI_q}$$

27.17 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL \text{ Capex Payment} = \frac{L - X}{L - N} \times \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}} \times \frac{R_d}{1 - \left(\frac{1}{1 + R_d}\right)^{365(L - X)}} \times \frac{CPI_t}{CPI_q}$$

27.18 For the purposes of the formulae in Conditions 27.13, 27.14, 27.16 and 27.17:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the  $(n-1)$ th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;
- $C_j$  = are the QCiL Capital Costs in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date;
- $S_j$  = are the QCiL Capital Savings in period ( $j$ ) expressed in pounds in real terms as at the QCiL Compensation Date;

$R_s$	=	is the Post-Tax Real Discount Rate;
$L$	=	is the period between: (a) the Start Date; and (b) the Specified Expiry Date, in years, and expressed as an integer;
$X$	=	is the number of days that have passed or will have passed from and including the Start Date to the QCiL Compensation Date divided by 365 (or, if such number would be a negative number, 0);
$N$	=	is equal to $L$ multiplied by 0.8, and expressed to the nearest integer;
$R_d$	=	is the Daily Discount Rate;
$CPI_t$	=	denotes the CPI applicable during Billing Period (t); and
$CPI_q$	=	denotes the CPI applicable at the QCiL Compensation Date.

27.19 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Capital Costs or QCiL Capital Savings; and (ii) an Adjusted Revenues Period, then:

- (A) subject to Condition 27.19(B), such QCiL Capital Costs or QCiL Capital Savings shall be used for the purposes of calculating the QCiL Capex Payment in accordance with Conditions 27.11, and 27.12 and Condition 27.13, 27.14, 27.15, 27.16 or 27.17 (as applicable); and
- (B) if and to the extent that any QCiL Capital Savings are (or are reasonably likely to be) made or received solely in connection with, and during, the Adjusted Revenues Period, then such QCiL Capital Savings shall be excluded from the calculation of the QCiL Capex Payment in accordance with Conditions 27.11, 27.12, and (A), and Condition 27.13, 27.14, 27.15, 27.16 or 27.17 (as applicable), and such QCiL Capital Savings shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 27.20, 27.21 and Conditions 27.21 or 27.22 (as applicable).

### **QCiL Adjusted Revenues Payment**

27.20 Any and all QCiL Adjusted Revenues Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), as a lump sum payment, staged payments, daily payments and/or an adjustment to the Net Dependable Capacity, the Availability of Capture and/or the Availability of Generation, either on an Ex-Ante and/or Ex-Post basis, which shall be payable:

- (A) by the DPA Counterparty to the Generator if the relevant Qualifying Change in Law results in a: (i) decrease or increase in the Generator's Revenue; (ii) a decrease or increase in the Availability Payments paid or payable to the Generator resulting from an increase or decrease in the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture; and/or (iii) a decrease or increase in Variable Payments paid or payable to the Generator, in each case as a direct result of the relevant Qualifying Change in Law and where the sum of (i), (ii) and (iii) is greater than zero (0); or

- (B) by the Generator to the DPA Counterparty if the relevant Qualifying Change in Law results in a: (i) decrease or increase in the Generator's Revenue; (ii) a decrease or increase in the Availability Payments paid or payable to the Generator resulting from an increase or decrease in the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture; and/or (iii) a decrease or increase in Variable Payments paid or payable to the Generator, in each case as a direct result of the relevant Qualifying Change in Law and where the sum of (i), (ii) and (iii) is less than zero (0),

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.21 For the purposes of Condition 27.20, each QCiL Adjusted Revenues Payment shall be an amount (*expressed in pounds (£)*) calculated in accordance with:

- (A) Condition 27.22 if the QCiL Adjusted Revenues Payment is to be paid as a lump sum on an Ex-Post basis;
- (B) Condition 27.23 if the QCiL Adjusted Revenues Payment is to be paid by means of staged payments on an Ex-Post basis;
- (C) Condition 27.24 if the QCiL Adjusted Revenues Payment is to be paid by means of daily payments; or
- (D) Condition 27.25 if the QCiL Adjusted Revenues Payment is to be paid by means of an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture component(s) of the Availability Payment on Ex-Ante basis.

27.22 If Condition 27.21(A) applies, the QCiL Adjusted Revenues Payment shall be calculated in accordance with the following formula:

$$QCiL \text{ Adjusted Revenues Payment (lump sum)} = \sum_{j=1}^n [(\Delta AP_j + \Delta VP_j + \Delta Revenue_j) \times (1 + R_S)^{n-j}]$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the last day of the Adjusted Revenues Period falls and ending on the last day of the Adjusted Revenues Period.
- $\Delta AP_j$  = is the Availability Payment QCiL Differential in period ( $j$ ) (£) (as calculated in accordance with Condition 27.34);

- $\Delta VP_j$  = is the Variable Payment QCiL Differential in period (j) (£) (as calculated in accordance with Condition 27.34);
- $\Delta Revenue_j$  = is the Generator's Revenue Differential (Ex-Post Basis) in period (j) (£) (as calculated in accordance with Condition 27.34; and
- $R_s$  = is the Post-Tax Real Discount Rate.

27.23 If Condition 27.21(B) applies:

- (A) the QCiL Adjusted Revenues Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Adjusted Revenues Payment been effected as a lump sum payment in accordance with Condition 27.22 or as daily payments in accordance with Condition 27.24; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made within forty (40) Business Days of the Specified Expiry Date.

27.24 If Condition 27.21(C) applies, the QCiL Adjusted Revenues Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL \text{ Adjusted Revenues Payment (daily payments)} = ARP \times \frac{R_d}{1 - \left(\frac{1}{1 + R_d}\right)^N} \times \frac{CPI_t}{CPI_q}$$

where:

- $ARP$  = is the QCiL Adjusted Revenues Payment (lump sum), as calculated in accordance with Condition 27.22;
- $R_d$  = is the Daily Discount Rate;
- $N$  = is the duration, in days, of the Adjusted Revenues Period; and
- $CPI_t$  = denotes the CPI applicable during Billing Period (t); and
- $CPI_q$  = denotes the CPI applicable at the QCiL Compensation Date.

27.25 If Condition 27.21(D) applies and the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture component(s) of the Availability Payment on an Ex-Ante basis, then such adjustment shall be calculated in accordance with the following formula:

- (A) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Net Dependable Capacity, the Net Dependable Capacity in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to:

$$NDC_i + (NDC_{i,NoQCIL} - NDC_{i,QCiL})$$

where:

- $NDC_i$  = is the Net Dependable Capacity applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- $NDC_{i,NoQCIL}$  = is the Net Dependable Capacity for the AP Settlement Unit prior to the QCiL Effective Date (MW); and
- $NDC_{i,QCiL}$  = is the Net Dependable Capacity after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (MW),

- (B) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Availability of Generation, the Availability of Generation in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to:

$$AG_i + (AG_{i,NoQCIL} - AG_{i,QCiL})$$

where:

- $AG_i$  = is the Availability of Generation applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- $AG_{i,NoQCIL}$  = is the average Availability of Generation for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*); and
- $AG_{i,QCiL}$  = is the Availability of Generation after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*),

- (C) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Availability of Capture, the Availability of Capture in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to

$$AC_i + (AC_{i,NoQCIL} - AC_{i,QCiL})$$

where:

- $AC_i$  = is the Availability of Capture applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- $AC_{i,NoQCIL}$  = is the average Achieved CO<sub>2</sub> Capture Rate for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*); and
- $AC_{i,QCiL}$  = is the Availability of Capture after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*),

except that where the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture in any AP Settlement Unit is equal to zero (0), then the Net Dependable

Capacity, the Availability of Generation and/or the Availability of Capture (as applicable) shall be deemed to be zero (0) and the adjustments in this Condition 27.25 shall not apply.

**QCIL Construction Event Payment**

27.26 Any QCIL Construction Event Payment shall be effected at the election of the DPA Counterparty (after consultation with the Generator) as a lump sum payment or staged payments and shall be payable to the Generator by the DPA Counterparty.

27.27 For the purposes of Condition 27.26, the QCIL Construction Event Payment shall be an amount (*expressed in pounds (£)*) calculated in accordance with:

- (A) Condition 27.28 if the QCIL Construction Event Payment is to be paid as a lump sum; or
- (B) Condition 27.29 if the QCIL Construction Event Payment is to be paid by means of staged payments.

27.28 If Condition 27.27(A) applies, the QCIL Construction Event Payment shall be calculated in accordance with the following formula:

$$QCIL\ Construction\ Event\ Payment = \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-m}}$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the date the first QCIL Construction Event Cost was incurred to 31 December in that year;
  - the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the final QCIL Construction Event Cost was incurred and ending on the last date of that year;
- $C_j$  = are all QCIL Construction Event Costs in period ( $j$ ), expressed in pounds in real terms as at the QCIL Compensation Date;
- $S_j$  = are all QCIL Construction Event Savings in period ( $j$ ), expressed in pounds in real terms as at the QCIL Compensation Date;
- $R_s$  = is the Post-Tax Real Discount Rate; and
- $m$  = is a whole number integer that defines the calendar year period within which the QCIL Compensation Date falls, defined as the number of years since the date the first QCIL Construction Event Cost was incurred in relation to

the QCiL Construction Event, rounded up to the nearest integer.

27.29 If Condition 27.27(B) applies:

- (A) the QCiL Construction Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Construction Event Payment been effected as a lump sum payment in accordance with Condition 27.28; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first day following the expiry of the period which is equal to the number of days in the Term divided by three (3) (*to the nearest integer*) following the QCiL Effective Date; and (ii) the Specified Expiry Date.

### **QCIL Operations Cessation Event Payment**

27.30 Any QCiL Operations Cessation Event Payment shall be effected at the election of the DPA Counterparty (after consultation with the Generator) as a lump sum payment or staged payments and shall be payable to the Generator by the DPA Counterparty.

27.31 For the purposes of Condition 27.30, the QCiL Operations Cessation Event Payment shall be an amount (*expressed in pounds (£)*) calculated in accordance with:

- (A) Condition 27.32 if the QCiL Operations Cessation Event Payment is to be paid as a lump sum; or
- (B) Condition 27.33 if the QCiL Operations Cessation Event Payment is to be paid by means of staged payments.

27.32 If Condition 27.31(A) applies, the QCiL Operations Cessation Event Payment shall be calculated in accordance with the following formula:

$$QCIL\ Operation\ Cessation\ Event\ Payment\ (lump\ sum) = \sum_{j=1}^n \frac{(\Delta AP_j + \Delta VP_j + Revenue_j) + (C_j - S_j)}{(1 + R_s)^{j-1}}$$

where:

- $\Delta AP_j$  = is the Availability Payment QCiL Differential in period (j) (£) (as calculated in accordance with Condition 27.34);
- $\Delta VP_j$  = is the Variable Payment QCiL Differential in period (j) (£) (as calculated in accordance with Condition 27.34);
- $Revenue_j$  = is the Generator's Revenue (Ex-Ante Basis) in period (j) (£) (as calculated in accordance with Condition 27.34);
- $C_j$  = are all QCiL Operations Cessation Event Costs in period (j), expressed in real terms as at the QCiL Compensation Date;
- $S_j$  = are all QCiL Operations Cessation Event Savings in period (j), expressed in real terms as at the QCiL Compensation Date;



$j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:

- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2nd) to the  $(n-1)$ th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
- the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date; and

$R_s$  = is the Post-Tax Real Discount Rate.

27.33 If Condition 27.31(B) applies:

- (A) the QCiL Operations Cessation Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Operations Cessation Event Payment been effected as a lump sum payment in accordance with Condition 27.32; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first day following the expiry of the period which is equal to the number of days in the Term divided by three (3) (*to the nearest integer*) from the QCiL Effective Date; and (ii) the Specified Expiry Date.

27.34 For purposes of Conditions 27.22 and 27.32:

**"Actual Load Factor"** means (i) the Unadjusted Metered Electricity Output during the relevant period divided by (ii) the product of the Net Dependable Capacity Estimate (in MW) and the duration of the relevant period (in hours); and which shall not exceed one hundred per cent. (100%);

**"Actual Net Efficiency"** means the plant net efficiency of the Facility, equal to the PNE Metered Electricity Output divided by the PNE Facility Heat Input during the relevant period;

**"Adjusted Revenues Sub-Period"** means each component of an Adjusted Revenues Period in respect of which the Generator's Revenue Differential (Ex-Post Basis) is calculated and paid in accordance with Condition 27.24, with the duration of each such period and the frequency of the associated Generator's Revenue Differential (Ex-Post Basis) payments as determined by the DPA Counterparty (after consultation with the Generator);

**"Assumed CO<sub>2</sub> Capture Rate"** means the Achieved CO<sub>2</sub> Capture Rate of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law or the T&S Prolonged Unavailability Event (as applicable);

**"Assumed Load Factor"** means (i) the expected Unadjusted Metered Electricity Output during the relevant period divided by (ii) the maximum Unadjusted Metered Electricity Output for the same period which could be achieved with the Facility operating at full load, as determined by an analysis of the Facility's relative competitive position in the GB electricity market as derived from a GB Power Market Model procured from an Energy Economist, with

due consideration of the Assumed Net Dependable Capacity, Assumed Net Efficiency and Assumed CO<sub>2</sub> Capture Rate for such period;

**"Assumed Net Dependable Capacity"** means the net generating capacity of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law or the T&S Prolonged Unavailability Event (as applicable);

**"Assumed Net Efficiency"** means the plant net efficiency of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law or the T&S Prolonged Unavailability Event (as applicable);

**"Availability Payment QCiL Differential"** means the difference in Availability Payments in period (j), calculated in accordance with the following formula:

$$\Delta AP_j = \sum_{j=1}^n [(AG_{j,NoQCIL} \times AC_{j,NoQCIL} \times NDC_{j,NoQCIL}) \times APR_j] - [(AG_{j,QCiL} \times AC_{j,QCiL} \times NDC_{j,QCiL}) \times APR_j]$$

where:

$\Delta AP_j$	=	is the Availability Payment QCiL Differential in the relevant period (j) (£);
$AG_{j,NoQCIL}$	=	is the average Availability of Generation for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods ( <i>expressed as a percentage (%)</i> );
$AC_{j,NoQCIL}$	=	is the average Achieved CO <sub>2</sub> Capture Rate for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods ( <i>expressed as a percentage (%)</i> );
$NDC_{j,NoQCIL}$	=	is the Net Dependable Capacity used for the AP Settlement Unit (i) prior to the QCiL Effective Date ( <i>MW</i> );
$APR_j$	=	is the Availability Payment Rate in the relevant period (j) ( <i>£/MWh</i> );
$AG_{j,QCiL}$	=	is the Availability of Generation in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law ( <i>expressed as a percentage (%)</i> );
$AC_{j,QCiL}$	=	is the Availability of Capture in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law ( <i>expressed as a percentage (%)</i> );
$NDC_{j,QCiL}$	=	is the Net Dependable Capacity in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law ( <i>MW</i> ); and
$j$	=	is a whole number integer from one (1) to n; such integers referring to distinct time periods as follows:

- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2nd) to the  $(n-1)$ th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
- the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;

**"Daily Discount Rate"** means the rate calculated in accordance with the following formula:

$$\text{Daily Discount Rate} = (1 + R_s)^{\frac{1}{365}} - 1$$

where:

$R_s$  = is the Post-Tax Real Discount Rate.

**"Energy Economist"** means an internationally recognised, leading energy market consultancy firm (not being an Affiliate of either Party or any other DPA Generator) experienced in advising clients in the UK electricity generation sector;

**"GB Power Market Model"** means a software model that, as a minimum, forecasts GB half hourly electricity market dispatch decisions, load factors, day ahead wholesale electricity market prices out to 2050, along with plant new build and retirement decisions;

**"Generator's Revenue Differential (Ex-Post Basis)"** means the revenue that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, the Generator (i) would have generated during each Adjusted Revenues Sub-Period (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility would have generated during such period, in each case but for the occurrence of the Qualifying Change in Law, minus (ii) actually generated in such Adjusted Revenues Sub-Period (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of the Loss Adjusted Metered Electricity Output in each such period, with such revenue difference:

- (A) calculated periodically and paid on an Ex-Post basis in respect of each Adjusted Revenues Sub-Period;
- (B) based on the Facility's Assumed Net Dependable Capacity, Assumed Net Efficiency and Assumed CO<sub>2</sub> Capture Rate which would have been achieved but for the occurrence of the Qualifying Change in Law (with each such term reflecting forecast degradation factors and other appropriate factors), compared to the Facility's average Availability of Generation, Actual Net Efficiency and average Availability of Capture; and
- (C) based on the Facility's Assumed Load Factor which, but for the occurrence of the Qualifying Change in Law, would have been achieved for the Facility's relative competitive position in the GB electricity market as derived from a GB Power Market Model produced by an Energy Economist, compared to the Facility's Actual Load Factor;

**"Generator's Revenue (Ex-Ante Basis)"** means the revenue that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, the Generator would have generated (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) from electricity that the Facility would have generated from the date of the QCiL Operations Cessation Event until the date on which the Term would have expired but for the occurrence of the QCiL Operations Cessation Event, with such revenue:

- (A) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
- (B) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
- (C) based on the Facility's wholesale market revenues forecast for the day-ahead market, in accordance with an operating regime that stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist; and

**"Variable Payment QCiL Differential"** means the difference in Variable Payments in period (j), calculated in accordance with the following formula:

$$\Delta VP_j = \sum_{i=1}^n \Delta VP_i$$

$$\Delta VP_i = \left[ \frac{GP_i}{100} \times (GU_{CCUS, QCiL} - GU_{CCUS, NoQCiL}) + CP_i \times (CO_2E_{CCUS, QCiL} - CO_2E_{CCUS, NoQCiL}) + (OC_{i, QCiL} - OC_{i, NoQCiL}) \right] \times MWh_i$$

where:

$\Delta VP_j$	=	is the Variable Payment QCiL Differential in year (j) (£);
$\Delta VP_i$	=	is the Variable Payment QCiL Differential in VP Settlement Unit (i);
$i$	=	is a whole number integer from (1) to (n) with each such integer referring to distinct VP Settlement Units in the period (j);
$n$	=	is the number of VP Settlement units in the period (j);
$CP_i$	=	Carbon Price in VP Settlement Unit (i) (£/tCO <sub>2</sub> );
$GU_{i, CCUS, QCiL}$	=	is the Facility Gas Consumption in VP Settlement Unit (i) after the QCiL Effective Date ( <i>therms/MWh</i> );
$GU_{i, CCUS, NoQCiL}$	=	is the Facility Gas Consumption used in the VP Settlement Unit (i) prior to the QCiL Effective Date ( <i>therms/MWh</i> );
$CO_2E_{i, CCUS, QCiL}$	=	is the Facility CO <sub>2</sub> Emissions in VP Settlement Unit (i) after the QCiL Effective Date ( <i>tCO<sub>2</sub>/MWh</i> );
$CO_2E_{i, CCUS, NoQCiL}$	=	is the Facility CO <sub>2</sub> Emissions used in the VP Settlement Unit (i) prior to the QCiL Effective Date ( <i>tCO<sub>2</sub>/MWh</i> );

$OC_{i,QCiL}$	=	is the Other Extra Variable Costs in VP Settlement Unit (i) after the QCiL Effective Date (£/MWh);
$OC_{i,NoQCiL}$	=	is the Other Extra Variable Costs used in the VP Settlement Unit (i) prior to the QCiL Effective Date (£/MWh); and
$MWh_i$	=	is the Metered Day Electricity Output in VP Settlement Unit (i) (MWh).

## 28. QUALIFYING CHANGE IN LAW: EFFECTIVE DATE AND PAYMENT

28.1 Any and all QCiL Compensation in respect of a Notified Change in Law (or, in the case of paragraph (D) below, in respect of a Qualifying Shutdown Event) shall be calculated as at and be effective from:

- (A) (if the QCiL Compensation takes the form of a QCiL Opex Payment or a QCiL Capex Payment) the earlier of: (i) the QCiL Effective Date; and (ii) the date on which the Generator (acting in accordance with the Reasonable and Prudent Standard) first incurs QCiL Operating Costs or QCiL Capital Costs, or makes or realises QCiL Operating Savings or QCiL Capital Savings, in anticipation of such Notified Change in Law being implemented, occurring or becoming effective;
- (B) (if the QCiL Compensation takes the form of a QCiL Adjusted Revenues Payment) the first (1st) day of the relevant Adjusted Revenues Period;
- (C) (if the QCiL Compensation takes the form of a QCiL Construction Event Payment) the date of the QCiL Construction Event; or
- (D) (if the QCiL Compensation takes the form of a QCiL Operations Cessation Event Payment) the date of the QCiL Operations Cessation Event,

(the "**QCiL Compensation Date**").

28.2 Subject to Condition 28.3:

- (A) any and all QCiL Compensation effected as a lump sum payment shall be paid by the DPA Counterparty or the Generator (as applicable) no later than ten (10) Business Days after the later of:
  - (i) the QCiL Compensation Date; and
  - (ii) the date on which the amount of the QCiL Compensation is agreed or determined;
- (B) any and all QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture shall be reflected in the calculation of the Availability Payment in the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date (or, if necessary, reflected as a Reconciliation Amount in respect of each relevant Billing Period); and
- (C) any and all QCiL Compensation effected as daily or staged payments shall commence no later than ten (10) Business Days after the later of:
  - (i) the QCiL Compensation Date; and

- (ii) the date on which the amount of the QCiL Compensation is agreed or determined,

and, in either case, the final payment shall be made by the earlier of: (i) the date that falls on the first day following the expiry of the period which is equal to the number of days in the Term divided by three (3) (to the nearest integer) following the QCiL Effective Date; and (ii) the Specified Expiry Date, in accordance with Condition 27.15(B), 27.23(B), 27.29(B) or 27.33(B) (as appropriate),

provided that, in each case, if the amount of any QCiL Compensation is agreed or determined after the QCiL Compensation Date, such QCiL Compensation shall be reflected as a Reconciliation Amount (pursuant to Condition 12.5(I)) in respect of the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date.

- 28.3 No QCiL Compensation shall be payable if and for so long as the DPA Counterparty withholds or suspends payment pursuant to Conditions 20.2 (*Failure to comply with compliance of technology undertaking*), 21.13 (*Failure to comply with Metering Schematic Obligation*), 21.19 (*Failure to provide Metering Access Right*), 21.24 (*Failure to comply with SCADA Systems Obligations*), 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*) or 23.14 (*Failure to provide Declaration Access Right*).
- 28.4 All QCiL Compensation shall be made by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17(A) (*Payment Accounts*) or the DPA Counterparty pursuant to Condition 17(B) (*Payment Accounts*) (as relevant).

## 29. QUALIFYING CHANGE IN LAW: TRUE-UP

### **DPA Counterparty QCiL True-Up Notice**

- 29.1 If any QCiL Compensation has been agreed or determined, or paid, commenced or effected, in respect of any Qualifying Change in Law or a Qualifying Shutdown Event, the DPA Counterparty may, subject to Condition 29.2, give the Generator a notice (a "**DPA Counterparty QCiL True-Up Notice**"), requiring the Generator to confirm:
- (A) the impact of the relevant Qualifying Change in Law having occurred, having being implemented or having become effective or, as the case may be, the Qualifying Shutdown Event having occurred (including all out-of-pocket costs (including QCiL Tax Liabilities) which have been incurred in respect of the Project by the Generator, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been made or received in respect of the Project by the Generator, all revenue decreases or increases which were incurred, received or made by the Generator and which arose directly from the relevant Qualifying Change in Law being implemented, occurring or becoming effective or, as the case may be, the Qualifying Shutdown Event having occurred, and/or the duration and impact of any Adjusted Revenues Period affecting the Facility);
  - (B) that no amount has been recovered (or is entitled to be recovered) by the Generator pursuant to Conditions 46.5 (*No double recovery*) and 46.7 (*No double recovery*) or, if any amount has been so recovered, confirmation of such amount; and
  - (C) such other matters which were pertinent to the calculation of the QCiL Compensation (including the steps that the Generator has taken to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard), the information referred to or specified in paragraphs (A) to (C) above being "**QCiL True-Up Information**".

- 29.2 No DPA Counterparty QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.

**Generator QCiL True-Up Response Notice**

- 29.3 If the DPA Counterparty gives a DPA Counterparty QCiL True-Up Notice to the Generator, the Generator shall, as soon as reasonably practicable and in any event no later than forty (40) Business Days after receipt of such DPA Counterparty QCiL True-Up Notice, give a notice to the DPA Counterparty (a "**Generator QCiL True-Up Response Notice**"). A Generator QCiL True-Up Response Notice shall:

- (A) contain the QCiL True-Up Information; and
- (B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the QCiL True-Up Information,

(the information referred to or specified in paragraphs (A) and (B) above being the "**QCiL True-Up Response Information**").

- 29.4 A Generator QCiL True-Up Response Notice shall be accompanied by a Directors' Certificate in relation to the QCiL True-Up Response Information.

- 29.5 If the Generator becomes aware before QCiL True-Up Compensation is agreed or determined, or paid, effected or commenced, pursuant to this Condition 29 (*Qualifying Change in Law: True-up*) that the QCiL True-Up Response Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 29.4), the Generator shall as soon as reasonably practicable:

- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL True-Up Response Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL True-Up Response Information.

- 29.6 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator QCiL True-Up Response Notice or any Revised Generator QCiL True-Up Response Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL True-Up Response Notice or, as the case may be, the Revised Generator QCiL True-Up Response Information (a "**Generator QCiL True-Up Response Notice Information Request**") as the DPA Counterparty reasonably requests.

- 29.7 If the DPA Counterparty gives a Generator QCiL True-Up Response Notice Information Request to the Generator, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

**Generator QCiL True-Up Notice**

- 29.8 If any QCiL Compensation has been agreed or determined, or paid, commenced or effected, in respect of any Qualifying Change in Law, the Generator may, subject to Condition 29.13, give the DPA Counterparty a notice (a "**Generator QCiL True-Up Notice**"). A Generator QCiL True-Up Notice shall:

- (A) contain the QCiL True-Up Information; and

(B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the QCiL True-Up Information,

(the information referred to or specified in paragraphs (A) and (B) above being "**QCiL True-Up Supporting Information**").

- 29.9 A Generator QCiL True-Up Notice shall be accompanied by a Directors' Certificate in relation to the QCiL True-Up Supporting Information.
- 29.10 If the Generator becomes aware before QCiL True-Up Compensation is agreed or determined, or paid, effected or commenced, pursuant to this Condition 29 (*Qualifying Change in Law: True-up*), that the QCiL True-Up Supporting Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 29.9), the Generator shall as soon as reasonably practicable:
- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL True-Up Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL True-Up Information.
- 29.11 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator QCiL True-Up Notice or any Revised Generator QCiL True-Up Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL True-Up Notice or, as the case may be, the Revised Generator QCiL True-Up Information (a "**Generator QCiL True-Up Notice Information Request**") as the DPA Counterparty reasonably requests.
- 29.12 If the DPA Counterparty gives a Generator QCiL True-Up Notice Information Request to the Generator, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.
- 29.13 No Generator QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.
- 29.14 The DPA Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL True-Up Notice unless and until the Generator shall have provided the DPA Counterparty with all the QCiL True-Up Information, and the Directors' Certificate in respect of such Generator QCiL True-Up Notice.

***Agreement between the Parties in respect of a true-up***

- 29.15 The Parties shall meet to discuss and, in good faith, seek to agree:
- (A) the QCiL True-Up Information;
- (B) any such other matters which the Parties consider pertinent to the calculation of the QCiL True-Up Compensation (if any);
- (C) the QCiL True-Up Compensation (if any) that shall be payable by the DPA Counterparty or the Generator (as the case may be); and
- (D) the manner in which such QCiL True-Up Compensation (if any) shall be paid by the DPA Counterparty or the Generator (as the case may be), provided that:



- (i) where the QCiL True-Up Compensation relates to a QCiL Adjusted Revenues Period Adjustment, the QCiL True-Up Compensation shall be effected by way of a QCiL True-Up Adjusted Revenues Period Adjustment; and
- (ii) where the QCiL True-Up Compensation does not relate to a QCiL Adjusted Revenues Period Adjustment, the QCiL True-Up Compensation shall be paid in the same manner as the QCiL Compensation agreed in respect of that Qualifying Change in Law, unless the Parties expressly agree otherwise.

Such meeting shall be convened: (i) as soon as reasonably practicable, and in any event no later than twenty (20) Business Days, after the DPA Counterparty receives a Generator QCiL True-Up Response Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL True-Up Response Notice Information Request, no later than twenty (20) Business Days after the DPA Counterparty receives the requested Supporting Information); or (ii) if the Generator gives the DPA Counterparty a Generator QCiL True-Up Notice and the associated Directors' Certificate, at such date as is determined by the DPA Counterparty in its sole and absolute discretion.

- 29.16 Any and all QCiL True-Up Compensation is to be calculated and paid in accordance with and subject to Conditions 27 (*Qualifying Change in Law: Compensation*), 28 (*Qualifying Change in Law: Effective date and payment*) and 31 (*Changes in Law: General provisions*) (in each case with the necessary modifications).

***Disputes in respect of a true-up***

- 29.17 If the Parties are not able to agree any of the matters in Condition 29.15, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.
- 29.18 Until the Dispute has been resolved by agreement between the Parties or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL True-Up Compensation payable.

**30. QUALIFYING SHUTDOWN EVENT: PROCEDURE**

- 30.1 If a Qualifying Shutdown Event has occurred, the Generator may give notice to that effect to the DPA Counterparty (a "**QSE Notice**"). A QSE Notice shall:
- (A) include reasonable details of the Qualifying Shutdown Event;
  - (B) specify the date on which the Qualifying Shutdown Event occurred;
  - (C) specify the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings;
  - (D) include such Supporting Information, in reasonable detail, which the Generator considers to be relevant and supportive of the foregoing; and
  - (E) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard.
- 30.2 Any QSE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the QSE Notice.

- 30.3 A QSE Notice shall be deemed to constitute a Generator QCiL Notice and the provisions of Conditions 26 (*Qualifying Change in Law: Procedure*) to 29 (*Qualifying Change in Law: True-up*) (inclusive) shall apply (with the necessary modifications) for the purposes of:
- (A) agreeing or determining whether a Qualifying Shutdown Event has occurred;
  - (B) (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 Operations Cessation Event) and the terms and conditions upon which such QCiL Compensation will be paid or effected; and
  - (C) agreeing or determining any and all other related matters pertinent to the foregoing.

### 31. **CHANGES IN LAW: GENERAL PROVISIONS**

#### ***Indemnity***

- 31.1 The Generator shall, promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty and which would not have been incurred but for a Generator QCiL Notice (including any QSE Notice) having been given. This Condition 31.1 shall not apply in respect of any such costs resulting from the DPA Counterparty having disputed that a Qualifying Change in Law or Qualifying Shutdown Event has occurred if a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure.

#### ***Excluded Change in Law***

- 31.2 There shall be no amendment to the DPA, adjustments to any components of the Availability Payment formula and/or other compensation in respect of or on account of any Excluded Change in Law other than pursuant to the Change Control Procedure.

### 32. **CHANGE IN APPLICABLE LAW: PROCEDURE**

#### ***Requirement to undertake a CiAL Review***

- 32.1 The DPA Counterparty shall conduct a CiAL Review if:
- (A) it determines that:
    - (i) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and
    - (ii) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiAL Amendment Objectives will cease to be met; or
  - (B) the CiAL Request Criterion is met,
- (each, a "**CiAL Review Trigger**").
- 32.2 If the Generator considers that:
- (A) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and

- (B) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiAL Amendment Objectives will cease to be met,

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

- (i) shall specify why, and the date on which, the Generator considers that a Change in Applicable Law: (a) has been implemented, has occurred or has become effective; or (b) is expected to be implemented, occur or become effective;
- (ii) shall specify why the Generator considers that the Change in Applicable Law results or will result in one (1) or more of the Required CiAL Amendment Objectives ceasing to be met; and
- (iii) may set out the Generator's opinion of the Required CiAL Amendment(s),

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

32.3 For the purposes of Condition 32.1(B), the "**CiAL Request Criterion**" is that thirty per cent. (30%) or more of all DPA Generators as at the date of the CiAL Request Notice, by volume or number, have given the DPA Counterparty a CiAL Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the CiAL Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CiAL Request Notice as a percentage of the total number of DPA Generators as at the date of the CiAL Request Notice; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CiAL Request Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity Estimate in each relevant CCUS Programme DPA).

#### **Validity of CiAL Request Notices**

32.4 The Generator acknowledges and agrees that all CiAL Request Notices shall be invalid and of no effect if the CiAL Request Criterion is not met.

32.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CiAL Request Criterion has been met (a "**CiAL Request Validity Notice**").

#### **Notification of CiAL Review**

32.6 If the DPA Counterparty is required or elects to undertake a CiAL Review pursuant to Condition 32.1, the DPA Counterparty shall give a notice to the Generator (a "**CiAL Review Notice**"). A CiAL Review Notice shall specify:

- (A) the CiAL Review Trigger which has occurred; and
- (B) a deadline by which the Generator must provide a CiAL Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the CiAL Review Notice is received by the Generator (the "**CiAL Review Response Deadline**").

- 32.7 The Generator shall, as soon as reasonably practicable and not later than the CiAL Review Response Deadline, give a notice to the DPA Counterparty (the "**CiAL Review Response Notice**"). A CiAL Review Response Notice:
- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the CiAL Review; and
  - (B) may set out the Generator's opinion of the Required CiAL Amendment(s).
- 32.8 The DPA Counterparty may disregard any CiAL Review Response Notice received after the CiAL Review Response Deadline.

***Notification of outcome of CiAL Review***

- 32.9 The DPA Counterparty shall give a notice to the Generator 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 CiAL Amendments; and
  - (B) specify the date from which such Required CiAL Amendments are to take effect.

**33. CHANGE IN APPLICABLE LAW: DISPUTE PROCESS**

***Procedure for raising a Dispute***

- 33.1 The Generator may, no later than twenty (20) Business Days after receipt of a CiAL Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such CiAL Review (a "**CiAL Dispute**", such notice a "**CiAL Dispute Notice**" and any such Generator, a "**CiAL Dispute Generator**"). Each CiAL Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

***Validity of CiAL Dispute Notices***

- 33.2 The Generator acknowledges and agrees that all CiAL Dispute Notices shall be invalid and of no effect if the CiAL Dispute Threshold Criterion in respect of the relevant CiAL Dispute is not met.
- 33.3 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CiAL Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a CiAL Dispute Generator) (a "**CiAL Dispute Validity Notice**"). A CiAL Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the CiAL Dispute (the "**Proposed CiAL Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed CiAL Expert to determine such CiAL Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed CiAL Expert from determining the CiAL Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

**Permitted bases of Dispute: CiAL Review**

33.4 The Generator 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 DPA Counterparty as to:

- (A) the outcome of the CiAL Review; or
- (B) the Required CiAL Amendments,

in each case contained within the CiAL Review Outcome Notice, and any CiAL Dispute Notice which is based upon grounds other than those specified in this Condition 33.4 shall be invalid and of no effect.

**Resolution of valid CiAL Disputes**

33.5 If:

- (A) the CiAL Dispute Threshold Criterion is met in respect of the relevant CiAL Dispute; and
- (B) the relevant CiAL Dispute complies with Condition 33.4,

then such CiAL Dispute shall be finally resolved in accordance with Condition 33.6.

33.6 If Condition 33.5 applies to any CiAL Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such CiAL Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant CiAL Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such CiAL Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such CiAL Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such CiAL Dispute on the basis that:
  - (i) (if the Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed CiAL Expert;
  - (ii) (if the Expert Appointment Threshold is not met) the DPA Counterparty may, within ten (10) Business Days, either:
    - (a) make an alternative proposal as to the identity and the terms of reference of an Expert to determine the CiAL Dispute; or
    - (b) (1) request the LCIA to nominate an Expert for the purposes of determining the CiAL Dispute in accordance with Condition 41.4; and (2) following such nomination by the LCIA, the DPA Counterparty shall make

an alternative proposal as to the terms of reference of such Expert to determine the CiAL Dispute,

in each case, Conditions 33.3(A) and 33.6(E)(i), and this Condition 33.6(E)(ii), shall apply to such proposed Expert as if that Expert were a Proposed CiAL Expert. The identity and the terms of reference of the Proposed CiAL Expert shall be determined by the DPA Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any DPA Generator) and any such determination shall be final and binding on the parties, provided that the terms of reference shall be sufficiently broad to enable the Expert to determine the CiAL Dispute;

- (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the parties agreeing the identity and terms of reference of an Expert in accordance with Condition 33.6(E)(i) or 33.6(E)(ii), as applicable, such matter shall be determined by the DPA Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any DPA Generator) and any such determination shall be final and binding on the parties, provided that the terms of appointment shall comply with the requirements of Condition 33.6(E)(iv);
- (iv) Condition 41.5 shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator; or
  - (b) the DPA Counterparty to the Expert in consequence of, or in respect of, their appointment as the Expert to any DPA Generator other than the Generator;
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the CiAL Dispute, to afford the Generator an opportunity to make submissions in respect of the CiAL Dispute irrespective of whether or not the Generator is a CiAL Dispute Generator;
- (vi) if the circumstances described in Condition 41.8 arise, Conditions 33.3(A), 33.6(E)(i) and 33.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
- (vii) for the purposes of Condition 41.12, the Expert shall be: (a) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the CiAL Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the CiAL Dispute Generators; and (b) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the CiAL Dispute Generators; and
- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and

- (F) the Generator acknowledges and agrees that the determination of the Expert in any CiAL Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the CiAL Dispute giving rise to that determination.

**Expert Appointment Threshold**

33.7 For the purposes of Conditions 33.6(E)(i) and 33.6(E)(ii), the "**Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed CiAL Expert. For the purposes of determining whether the Expert Appointment Threshold is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed CiAL Expert as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed CiAL Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

**Provisions applying pending resolution of a CiAL Dispute**

33.8 If there is a valid CiAL Dispute requiring resolution in accordance with the provisions of Conditions 33.5 and 33.6 then, pending resolution of such CiAL Dispute, there shall be no amendments or supplements to the DPA as a result of the Change in Applicable Law.

**CiAL Dispute Threshold Criterion**

33.9 For the purposes of this Condition 33 (*Change in Applicable Law: Dispute process*), the "**CiAL Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CiAL Dispute Notice in respect of any given CiAL Dispute prior to the date specified in Condition 33.1. For the purposes of determining whether the CiAL Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CiAL Dispute Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CiAL Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

**34. CHANGE IN APPLICABLE LAW: GENERAL PROVISIONS**

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

- (A) constitute Force Majeure or a Payment Disruption Event for the purposes of the DPA; or
- (B) provide either Party the right to suspend or terminate its obligations under the DPA,

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

- 34.2 Subject to the provisions of Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), the Parties shall be relieved from liability, and deemed not to be in breach of the DPA (or any other DPA Document) for any failure or delay in the performance under the DPA (or any other DPA Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuation of a Change in Applicable Law, provided that nothing in Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), shall relieve either Party from any obligation to pay any sum due and payable to the other Party pursuant to the DPA (or any other DPA Document) (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise).
- 34.3 Any costs and expenses, or risks, arising from a Change in Applicable Law which are not of a type provided for in the DPA are not intended by the provisions of Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), to be allocated to one (1) Party; and any such costs and expenses, or risks, shall be borne by the affected Party.



**Part 9**  
**Termination**

**35. TERMINATION**

***Pre-Start Date termination***

35.1 If:

- (A) (i) the Generator fails to deliver the Milestone Requirement Notice by the Milestone Delivery Date; or (ii) (subject to Condition 35.3) neither Milestone Requirement has been complied with and fulfilled by the Milestone Delivery Date;
- (B) at any time prior to the Start Date, any Directors' Certificate provided pursuant to Condition 4.2 (*Milestone Requirement Notice*) is not true, complete or accurate in any material respect or is misleading as at the date thereof;
- (C) at any time prior to the Start Date, a Termination Event occurs and is continuing;
- (D) any of the Initial Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty within twenty (20) Business Days of the Agreement Date; or
- (E) (subject to Condition 35.4) any of the Operational Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty by the Longstop Date,

then the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Pre-Start Date Termination Notice**"). A Pre-Start Date Termination Notice shall specify:

- (i) the date (on or following the date of the Pre-Start Date Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being the "**Pre-Start Date Termination Date**"); and
- (ii) in the case of termination pursuant to Condition 35.1(C), the Termination Event which has occurred.

35.2 If the DPA Counterparty gives a Pre-Start Date Termination Notice, the DPA shall terminate on the Pre-Start Date Termination Date even if (as the context requires):

- (A) a Milestone Requirement has been complied with and fulfilled prior to such date;
- (B) the Termination Event is no longer continuing as at such date; or
- (C) the Conditions Precedent remaining to be fulfilled when the Pre-Start Date Termination Notice was given have been fulfilled.

35.3 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.1(A) in circumstances in which the Generator has provided a Milestone Requirement Notice no later than the Milestone Delivery Date unless and until:

- (A) the DPA Counterparty has given the Generator a Milestone Assessment Response Notice specifying that it requires Requested Milestone Supporting Information to be provided to it by the Generator; and
- (B) either:

- (i) the Generator fails to provide to the DPA Counterparty the Requested Milestone Supporting Information within the period specified in Condition 4.4(C)(i) (*Milestone Requirement Notice*); or
  - (ii) (a) the Requested Milestone Supporting Information is provided to the DPA Counterparty within the period specified in Condition 4.4(C)(i) (*Milestone Requirement Notice*); and (b) the DPA Counterparty has given the Generator a Further Milestone Assessment Response Notice specifying that the DPA Counterparty does not consider a Milestone Requirement to have been complied with and fulfilled.
- 35.4 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.1(E) in circumstances in which the Generator has provided an OCP Notice no later than the Longstop Date unless and until:
- (A) the DPA Counterparty has given the Generator a OCP Response Notice specifying that it requires OCP Supporting Information to be provided to it by the Generator; and
  - (B) either:
    - (i) the Generator fails to provide to the DPA Counterparty the OCP Supporting Information within the period specified in Condition 3.10(C)(i) (*Operational Conditions Precedent: General Reporting Obligations*); or
    - (ii) (a) the requested OCP Supporting Information is provided to the DPA Counterparty within the period specified in Condition 3.10(C)(i) (*Operational Conditions Precedent: General Reporting Obligations*); and (b) the DPA Counterparty has given the Generator a Further OCP Response Notice specifying that the DPA Counterparty does not consider the Operational Condition Precedent to have been fulfilled.

***Termination for Prolonged Force Majeure***

- 35.5 If an event or circumstance of Force Majeure (excluding Force Majeure that occurs by reason of a Change in Law) that first occurs between the Agreement Date and the Milestone Satisfaction Date, prevents or delays the development, construction, completion, testing and/or commissioning of the Facility for a continuous period of at least twelve (12) Months as determined by the DPA Counterparty (a "**Prolonged FM Event**"), then the DPA Counterparty shall have the right, but not the obligation, to notify the Generator in writing (a "**Prolonged FM Event Notice**") that the DPA Counterparty may terminate the DPA following the expiry of a further six (6) Month period from the date of such Prolonged FM Event Notice (a "**Prolonged FM Trigger Date**") in accordance with Condition 35.6. A Prolonged FM Event Notice shall:
- (A) specify the Prolonged FM Trigger Date; and
  - (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the relevant Prolonged FM Event.
- 35.6 If a Prolonged FM Event has not been remedied and is continuing at the Prolonged FM Trigger Date, the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Prolonged FM Termination Notice**"). A Prolonged FM Termination Notice shall specify the date (on or following the date of the Prolonged FM Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being the "**Prolonged FM Termination Date**").

- 35.7 If the DPA Counterparty issues a Prolonged FM Termination Notice in accordance with Condition 35.6, the DPA shall terminate on the Prolonged FM Termination Date even if (as the context requires):
- (A) a Milestone Requirement has been complied with and fulfilled (such that the Milestone Satisfaction Date has occurred) prior to such date; or
  - (B) the Prolonged FM Event is no longer continuing as at such date.

***Termination for T&S Prolonged Unavailability Event<sup>43</sup>***

- 35.8 If, at any time after the Agreement Date, the DPA Counterparty determines that:
- (A) one (1) of the following events has occurred and has been continuing for a continuous period of at least [six (6)] Months:
    - (i) a T&S Commissioning Delay Event; or
    - (ii) a Full T&S Outage Event<sup>44</sup> which does not arise out of or in connection with any act, omission, breach or default by the Generator or its Representatives (including any breach by the Generator or Representatives of any Industry Document); or
  - (B) a T&S Cessation Event has occurred,

(a **"T&S Prolonged Unavailability Event"**), the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator of the occurrence of such T&S Prolonged Unavailability Event (a **"T&S Prolonged Unavailability Event Notice"**) and the Generator agrees and acknowledges that it shall not be entitled to refer any determination made by the DPA Counterparty pursuant to this Condition 35.8 to the Dispute Resolution Procedure. A T&S Prolonged Unavailability Event Notice shall:

- (i) specify the date:
    - (a) by which the Generator shall give a notice responding to the DPA Counterparty in accordance with Condition 35.9, being the date which falls [six (6)] Months after the date of the T&S Prolonged Unavailability Event Notice (the **"Generator T&S Prolonged Unavailability Response Deadline"**); and
    - (b) on and from which, without prejudice to the DPA Counterparty's rights under Condition 35.16, the DPA Counterparty may terminate the DPA being the date which falls [thirty (30)] Months after the date of the T&S Prolonged Unavailability Event Notice (the **"T&S Prolonged Unavailability Remediation Deadline"**); and
  - (ii) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the T&S Prolonged Unavailability Event.
- 35.9 No later than the Generator T&S Prolonged Unavailability Response Deadline, the Generator shall give a notice to the DPA Counterparty (a **"T&S Prolonged Unavailability Response Notice"**). A T&S Prolonged Unavailability Response Notice shall:

<sup>43</sup> Note to Reader: The time periods in this section are subject to further consideration by BEIS.

<sup>44</sup> Note to Reader: BEIS is considering whether this termination right will also apply to substantial outages of the relevant T&S Network.

- (A) specify that:
- (i) the T&S Prolonged Unavailability Event is no longer continuing as at such date, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same;<sup>45</sup>
  - (ii) the Generator considers that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same;
  - (iii) the Generator intends to provide the DPA Counterparty with and implement an Alternative T&S Network Solution Plan, following which Condition 35.13 shall apply; or
  - (iv) the Generator considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to one (1) or more of the following reasons (each a **"No Alternative T&S Solution Reason"**):
    - (a) it is not technically feasible for the Generator, acting in accordance with the Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage site;
    - (b) the implementation of an Alternative T&S Network Solution Plan would be illegal;
    - (c) it is not economically feasible for the Generator, acting in accordance with the Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage site;
    - (d) there is no feasible alternative T&S Network which can permanently store the captured CO<sub>2</sub> from the Facility; and/or
    - (e) any other reason which will, or is reasonably likely to, justify the decision not to provide an Alternative T&S Network Solution Plan; and
- (B) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard.

- 35.10 Each T&S Prolonged Unavailability Response Notice and (where Condition 35.12(B)(ii) applies) T&S Prolonged Unavailability Further Response Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the T&S Prolonged Unavailability Response Notice or T&S Prolonged Unavailability Further Response Notice (as applicable).
- 35.11 The DPA Counterparty shall, no later than [thirty (30)] Business Days after: (i) the date of a T&S Prolonged Unavailability Response Notice in accordance with Condition 35.9(A)(i), 35.9(A)(ii) or 35.9(A)(iv); (ii) receipt of Supporting Information in accordance with Condition 35.12(A)(iii), 35.12(B)(iii) or 35.12(C)(iii); or (iii) the date of a T&S Prolonged Unavailability

<sup>45</sup> Note to Reader: BEIS is considering what is needed from the relevant T&S Operator to verify that the T&S Prolonged Unavailability Event has been remedied.

Further Response Notice in accordance with Condition 35.12(B)(ii), give a notice to the Generator (a **"T&S Prolonged Unavailability Review Notice"**). A T&S Prolonged Unavailability Review Notice shall specify whether the DPA Counterparty considers that:

- (A) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i) or the DPA Counterparty has received Supporting Information in accordance with Condition 35.12(A)(iii) or the DPA Counterparty has received the T&S Prolonged Unavailability Further Response Notice in accordance with Condition 35.12(B)(ii)(a)(aa):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the T&S Prolonged Unavailability Event is no longer continuing as at such date; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event is no longer continuing as at such date and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination;
- (B) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(ii), the DPA Counterparty has received Supporting Information in accordance with Condition 35.12(B)(iii) or the DPA Counterparty has received a T&S Prolonged Unavailability Further Response Notice in accordance with Condition 35.12(B)(ii)(a)(bb):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination;
- (C) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(iv), the DPA Counterparty has received Supporting Information in accordance with Condition 35.12(C)(iii) or the DPA Counterparty has received a T&S Prolonged Unavailability Further Response Notice in accordance with Condition 35.12(B)(ii)(a)(dd):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Solution Reason; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and/or the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Solution Reason and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination.

35.12 If the DPA Counterparty states in the T&S Prolonged Unavailability Review Notice that:

- (A) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i):
- (i) the Generator has delivered satisfactory evidence that the T&S Prolonged Unavailability Event is no longer continuing as at such date, then the T&S Prolonged Unavailability Event will be deemed to have been remedied for the purposes of the DPA;
  - (ii) the Generator has not delivered satisfactory evidence that the T&S Prolonged Unavailability Event is no longer continuing as at such date, then the T&S Prolonged Unavailability Event will be deemed to have not been remedied for the purposes of the DPA; or
  - (iii) the Generator has not provided sufficient Supporting Information to enable the DPA Counterparty to determine whether the T&S Prolonged Unavailability Event is no longer continuing as at the date of such notice, then the Generator shall provide such Supporting Information to the DPA Counterparty within [twenty (20)] Business Days of the date of the T&S Prolonged Unavailability Review Notice and Condition 35.11 shall reapply;
- (B) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(ii):
- (i) the Generator has delivered satisfactory evidence that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, then the Generator shall notify the DPA Counterparty in writing no later than [five (5)] Business Days following the date on which the T&S Prolonged Unavailability Event has been remedied together with such Supporting Information, in form and content satisfactory to the DPA Counterparty (acting reasonably), to evidence that the T&S Prolonged Unavailability Event is no longer continuing as at such date;
  - (ii) if the Generator has not delivered satisfactory evidence that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline then, as soon as reasonably practicable but no later than the Alternative T&S Network Solution Plan Deadline, the Generator shall give a further notice to the DPA Counterparty (a "**T&S Prolonged Unavailability Further Response Notice**"). A T&S Prolonged Unavailability Further Response Notice shall:
    - (a) specify that:
      - (aa) the T&S Prolonged Unavailability Event is no longer continuing as at the date of such notice, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply;
      - (bb) the Generator considers that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply;
      - (cc) the Generator intends to implement an Alternative T&S Network Solution Plan, whereby such notice shall be accompanied by a

draft Alternative T&S Network Solution Plan (with Supporting Information), following which Condition 35.13 shall apply; or

- (dd) the Generator considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to one (1) or more of the No Alternative T&S Network Solution Reasons, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply; and
  - (b) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard; or
  - (iii) if the Generator has not provided sufficient Supporting Information to enable the DPA Counterparty to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, then the Generator shall provide such Supporting Information to the DPA Counterparty within [twenty (20)] Business Days of the date of the T&S Prolonged Unavailability Review Notice and Condition 35.11 shall reapply;
- (C) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(iv):
- (i) the Generator has delivered satisfactory evidence that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Solution Reason, then the DPA Counterparty shall have the right, but not the obligation, to terminate the DPA pursuant to Condition 35.22(B);
  - (ii) the Generator has not delivered satisfactory evidence that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Solution Reason, then the T&S Prolonged Unavailability Event will be deemed to have not been remedied for the purposes of the DPA; or
  - (iii) the Generator has not provided sufficient Supporting Information to enable the DPA Counterparty to determine whether the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and/or the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Solution Reason, then the Generator shall provide such Supporting Information to the DPA Counterparty within [twenty (20)] Business Days of the date of the T&S Prolonged Unavailability Review Notice and Condition 35.11 shall reapply.

35.13 If this Condition 35.13 applies:

- (A) the Generator shall prepare and submit to the DPA Counterparty for the DPA Counterparty's approval a draft Alternative T&S Network Solution Plan (with Supporting Information) no later than the Alternative T&S Network Solution Plan Deadline; and

- (B) the DPA Counterparty shall, no later than [six (6)] Months after receipt of the draft Alternative T&S Network Solution Plan (and Supporting Information) in accordance with Condition 35.13(A) or the relevant additional Supporting Information in accordance with 35.14(A) or an amended draft Alternative T&S Network Solution Plan in accordance with Conditions 35.14(B) or 35.14(C), give a notice to the Generator (an "**Alternative T&S Network Review Notice**") which shall specify whether the DPA Counterparty (in its sole and absolute discretion):
- (i) approves the draft Alternative T&S Network Solution Plan without amendment, following which the draft Alternative T&S Network Solution Plan shall become the "**Approved Alternative T&S Network Solution Plan**";
  - (ii) requires the Generator to provide additional Supporting Information in relation to the draft Alternative T&S Network Solution Plan, in order for the DPA Counterparty to assess whether or not to approve such draft Alternative T&S Network Solution Plan;
  - (iii) requires amendments to the draft Alternative T&S Network Solution Plan, in which case the Alternative T&S Network Review Notice shall provide the Generator with sufficient detail in relation to such required amendments; or
  - (iv) rejects the draft Alternative T&S Network Solution Plan, in which case the Alternative T&S Network Review Notice shall provide the Generator with such Supporting Information as the DPA Counterparty considers necessary to evidence the reasons for such rejection and the Generator agrees and acknowledges that it shall not be entitled to refer any decision made by the DPA Counterparty pursuant to this Condition 35.13(B)(iv) to the Dispute Resolution Procedure.

35.14 The Generator shall no later than [twenty (20)] Business Days after the date of an Alternative T&S Network Review Notice, submit to the DPA Counterparty:

- (A) if Condition 35.13(B)(ii) applies, the relevant additional Supporting Information specified in the Alternative T&S Network Review Notice;
- (B) if Condition 35.13(B)(iii) applies, an amended draft Alternative T&S Network Solution Plan which includes the amendments specified in the Alternative T&S Network Review Notice; or
- (C) if Condition 35.13(B)(iv) applies, an amended draft Alternative T&S Network Solution Plan,

and Condition 35.13(B) shall then reapply.

35.15 Nothing in Conditions 35.8 to 35.14 (*Termination for T&S Prolonged Unavailability Event*) shall require the DPA Counterparty to specify in:

- (A) any T&S Prolonged Unavailability Review Notice or any T&S Prolonged Unavailability Further Response Notice that a T&S Prolonged Unavailability Event is no longer continuing; and
- (B) any Alternative T&S Network Review Notice that a draft Alternative T&S Network Solution Plan is approved,

unless and until the DPA Counterparty is satisfied of the same.

***Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension***



- 35.16 If the Generator fails to give:
- (A) a T&S Prolonged Unavailability Response Notice to the DPA Counterparty by the T&S Prolonged Unavailability Response Deadline pursuant to Condition 35.9;
  - (B) if applicable, a T&S Prolonged Unavailability Further Response Notice to the DPA Counterparty by the Alternative T&S Network Solution Plan Deadline pursuant to Condition 35.12(B)(ii);
  - (C) if applicable, the relevant Supporting Information in accordance with Condition 35.12(A)(iii), Condition 35.12(B)(iii) or Condition 35.12(C)(iii) (as applicable) to enable the DPA Counterparty to assess the T&S Prolonged Unavailability Response Notice;
  - (D) if applicable, a draft Alternative T&S Network Solution Plan to the DPA Counterparty by the Alternative T&S Network Solution Plan Deadline pursuant to Condition 35.13(A);
  - (E) if applicable, the relevant additional Supporting Information specified in the Alternative T&S Network Review Notice pursuant to Condition 35.14(A);
  - (F) if applicable, an amended draft Alternative T&S Network Solution Plan which includes the amendments specified in the Alternative T&S Network Review Notice pursuant to Condition 35.14(B); and/or
  - (G) if applicable, an amended draft Alternative T&S Network Solution Plan pursuant to Condition 35.14(C),

(each a "**T&S Prolonged Unavailability Procedure Obligation**"),

the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of a T&S Prolonged Unavailability Procedure Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

- 35.17 If the Generator subsequently complies with the relevant T&S Prolonged Unavailability Procedure Obligation(s), then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 35.16. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 35.17.

- 35.18 If Condition 35.13(B)(i) applies:

- (A) as soon as reasonably practicable and in any event, no later than [sixty (60)] Business Days after the date of the Alternative T&S Network Review Notice, the Generator shall commence the implementation of the Approved Alternative T&S Network Solution Plan, and the Generator shall continue to implement the Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event; and
- (B) the Generator shall notify the DPA Counterparty in writing no later than [five (5)] Business Days following the date on which the Generator fully implements the Approved Alternative T&S Network Solution Plan such that the T&S Prolonged Unavailability Event has been remedied (a "**Generator T&S Prolonged Unavailability Remediation Notice**") together with such Supporting Information, in form and content

satisfactory to the DPA Counterparty (acting reasonably), to evidence that the T&S Prolonged Unavailability Event has been remedied.

- 35.19 The Generator shall keep the DPA Counterparty reasonably informed as to the progress towards remediation of the T&S Prolonged Unavailability Event and, in particular, shall provide the DPA Counterparty with reports (in a form, content and frequency satisfactory to the DPA Counterparty) of the progress made in or towards the remediation of the T&S Prolonged Unavailability Event.
- 35.20 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to:
- (A) significantly affect the accuracy of any T&S Prolonged Unavailability Response Notice or T&S Prolonged Unavailability Further Response Notice, including any accompanying Supporting Information;
  - (B) where the Generator has notified the DPA Counterparty that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, prevent (or delay) the remediation of the T&S Prolonged Unavailability Event by the T&S Prolonged Unavailability Remediation Deadline; or
  - (C) where Condition 35.13(B)(i) applies, prevent (or delay) the implementation of an Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event.
- 35.21 The Generator shall ensure that:
- (A) all forecasts, forward-looking statements and data provided by or on behalf of the Generator pursuant to Conditions 35.9 to 35.20 are prepared in good faith, on a reasonable basis and with due care and attention; and
  - (B) all other Information provided by or on behalf of the Generator pursuant to Conditions 35.9 to 35.20 is true, complete and accurate in all material respects and is not misleading.

***Termination for failing to remedy a T&S Prolonged Unavailability Event***

- 35.22 If:
- (A) subject to limbs (B), (C) and (D), the T&S Prolonged Unavailability Event has not been remedied by the T&S Prolonged Unavailability Remediation Deadline;
  - (B) where Condition 35.9(A)(iv) applies, the Generator has delivered evidence to the satisfaction of the DPA Counterparty that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to a No Alternative T&S Reason;
  - (C) where Condition 35.13 applies, the DPA Counterparty rejects the draft Alternative T&S Network Solution Plan pursuant to Condition 35.13(B)(iv); or
  - (D) where Condition 35.13(B)(i) applies but no earlier than the T&S Prolonged Unavailability Remediation Deadline, and subject to Condition 35.26, the Generator fails to commence and continue to implement an Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event (notwithstanding that the T&S Prolonged Unavailability Event has not been remedied by the T&S Prolonged Unavailability Remediation Deadline),

then the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**T&S Prolonged Unavailability Termination Notice**"). A T&S Prolonged Unavailability Termination Notice shall specify the date (on or following the date of the T&S Prolonged Unavailability Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**T&S Prolonged Unavailability Termination Date**").

35.23 No later than ten (10) Business Days after receipt of a T&S Prolonged Unavailability Termination Notice, the Generator shall give notice to the DPA Counterparty (a "**T&S Termination Response Notice**"). A T&S Termination Response Notice shall:

- (A) specify the Generator's good faith estimate of the T&S Termination Payment; and
- (B) include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to calculate the T&S Termination Payment, in particular the details required to calculate the formula set out in Condition 36.4 (*Consequences of T&S Prolonged Unavailability Event termination*).

35.24 A T&S Termination Response Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the T&S Termination Response Notice.

35.25 Following the delivery of a T&S Prolonged Unavailability Termination Notice, the DPA shall terminate on the T&S Prolonged Unavailability Termination Date even if the T&S Prolonged Unavailability Event is no longer continuing on the T&S Prolonged Unavailability Termination Date.

35.26 To the extent that the Generator is prevented from or delayed in implementing an Approved Alternative T&S Network Solution Plan in accordance with Condition 35.22(D) as a direct result of the occurrence and continuance of Force Majeure in respect of which the Generator is the FM Affected Party, then:

- (A) the Generator shall be relieved from liability and deemed not to be in breach of Condition 35.22(D); and
- (B) any agreed milestones set out in the Approved Alternative T&S Network Solution Plan shall be extended day for day for each day of delay to the implementation of the Approved Alternative T&S Network Solution Plan,

but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*).

#### **Default termination**

35.27 If, at any time on or after the Start Date, a Termination Event has occurred and is continuing, the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Default Termination Notice**"). A Default Termination Notice shall specify:

- (A) the date (on or following the date of the Default Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being the "**Default Termination Date**"); and
- (B) the Termination Event which has occurred.

- 35.28 If the DPA Counterparty gives a Default Termination Notice to the Generator, the DPA shall terminate on the Default Termination Date even if the Termination Event is no longer continuing on the Default Termination Date.

***Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements***

35.29 If:

- (A) the Generator fails to satisfy the Minimum Longstop Date Commissioning Requirements at the Longstop Date Performance Tests; or
- (B) the Generator does not give a Longstop Date Capacity Notice on or prior to the date which is ten (10) Business Days after the later of:
  - (i) the Longstop Date; and
  - (ii) the date which is ten (10) Business Days after the DPA Counterparty has given notice to the Generator reminding the Generator of the requirement to give a Longstop Date Capacity Notice,

the DPA Counterparty shall have the right, but not the obligation, to terminate the DPA with immediate effect upon giving the Generator notice (a "**Minimum Longstop Date Termination Notice**").

***Termination for failing to satisfy the T&S Connection Confirmation Requirement***

- 35.30 If the DPA Counterparty has waived the T&S Connection Confirmation CP pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*), and the T&S Connection Confirmation Requirement is not fulfilled by the Generator on or before the T&S Connection Confirmation Deadline, the DPA Counterparty shall have the right, but not the obligation, to terminate the DPA with immediate effect upon giving the Generator notice (a "**TCDE Termination Notice**").

***Qualifying Change in Law termination***

- 35.31 Subject to Condition 35.32, if a Qualifying Change in Law is implemented, occurs or becomes effective and gives rise to or results in a QCiL Construction Event or a QCiL Operations Cessation Event (including a Qualifying Shutdown Event), the DPA Counterparty shall give notice to the Generator terminating the DPA (a "**QCiL Termination Notice**"). A QCiL Termination Notice shall specify the date (on or following the date of the QCiL Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being the "**QCiL Termination Date**").

- 35.32 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.31 in circumstances in which the Generator has provided a Generator QCiL Notice or a Generator QCiL Response Notice unless and until the Parties have agreed that a QCiL Construction Event or QCiL Operations Cessation Event has occurred or a determination to that effect has been made pursuant to the Dispute Resolution Procedure.

***QCiL Compensation termination***

- 35.33 The DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA if:
- (A) a Qualifying Change in Law occurs, is implemented or becomes effective; and
  - (B) either:

- (i) (a) such Qualifying Change in Law occurs, is implemented or becomes effective before the Start Date and does not constitute a QCiL Construction Event; and (b) Condition 27.3(A) applies; or
- (ii) (a) such Qualifying Change in Law occurs, is implemented or becomes effective on or after the Start Date and does not constitute a QCiL Operations Cessation Event; and (b) Condition 27.3(B) applies,

(a "**QCiL Compensation Termination Notice**"). A QCiL Compensation Termination Notice shall specify the date (on or following the date of the QCiL Compensation Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**QCiL Compensation Termination Date**").

**No other termination rights**

35.34 The termination rights in this Condition 35 (*Termination*) are the only rights that either Party has to terminate the DPA.

**Notice provisions**

35.35 Any Pre-Start Date Termination Notice, Prolonged FM Termination Notice, Default Termination Notice, T&S Prolonged Unavailability Termination Notice or QCiL Compensation Termination Notice issued by the DPA Counterparty pursuant to this Condition 35 (*Termination*) may be revoked by the DPA Counterparty giving written notice of the same to the Generator at any time prior to the Pre-Start Date Termination Date, Prolonged FM Termination Date, T&S Prolonged Unavailability Termination Date, Default Termination Date or QCiL Compensation Termination Date (as applicable) and, upon such revocation, the Pre-Start Date Termination Notice, Prolonged FM Termination Notice, Default Termination Notice, T&S Prolonged Unavailability Termination Notice or QCiL Compensation Termination Notice (as applicable) shall cease to have any effect.

**36. CONSEQUENCES OF TERMINATION**

**Consequences of termination: General**

36.1 Termination of the DPA pursuant to Condition 35.1 (*Pre-Start Date termination*), 35.6 (*Termination for Prolonged Force Majeure*), 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.27 (*Default termination*), 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), Condition 35.30 (*Termination for failing to satisfy the T&S Connection Confirmation Requirement*) 35.31 (*Qualifying Change in Law Termination*) or 35.33 (*QCiL Compensation termination*):

- (A) shall not affect, and shall be without prejudice to, the accrued rights and liabilities of each Party and the rights and liabilities of each Party arising as a result of:
  - (i) any antecedent breach of any provision of the DPA; and
  - (ii) any breach of any provisions of the DPA which are expressed to survive expiry pursuant to Condition 38 (*Survival*); and
- (B) shall be subject to Condition 38 (*Survival*).

**Consequences of Pre-Start Date termination; termination for Prolonged Force Majeure; termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements and termination for failing to satisfy the T&S Connection Confirmation Requirement**

- 36.2 Subject to Condition 36.1, if the DPA Counterparty terminates the DPA pursuant to Condition 35.1 (*Pre-Start Date termination*), Condition 35.6 (*Termination for Prolonged Force Majeure*), Condition 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*) or Condition 35.30 (*Termination for failing to satisfy the T&S Connection Confirmation Requirement*):
- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
  - (B) all rights and obligations of the Parties under the DPA shall end; and
  - (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.

**Consequences of T&S Prolonged Unavailability Event termination**

- 36.3 If the DPA Counterparty terminates the DPA pursuant to Condition 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), as soon as reasonably practicable after receipt of the T&S Termination Response Notice pursuant to Condition 35.23 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), the DPA Counterparty shall:
- (A) calculate the T&S Termination Payment; and
  - (B) give a notice to the Generator (a "**T&S Termination Payment Notice**"). A T&S Termination Payment Notice shall specify:
    - (i) the amount of the T&S Termination Payment;
    - (ii) the principal inputs used by the DPA Counterparty to calculate the T&S Termination Payment; and
    - (iii) whether the T&S Termination Payment shall be effected (after consultation with the Generator) as a lump sum payment or staged payments.
- 36.4 If the T&S Termination Payment is to be paid as a lump sum, the T&S Termination Payment shall be calculated in accordance with the following formula:

$$T\&S\ Termination\ Payment = \sum_{j=1}^n \frac{C_j - S_j - RVA_j}{(1 + R_s)^{j-1}}$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the T&S Prolonged Unavailability Termination Date to 31 December in the year of the T&S Prolonged Unavailability Termination Date;
  - the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and

- the  $n$ th period ( $i = j$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;

$RVA_j$  = is the Residual Value Adjustment relevant to period ( $j$ ) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;

$C_j$  = are all T&S Termination Costs in period ( $j$ ) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;

$S_j$  = are all T&S Termination Savings in period ( $j$ ) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;

$R_s$  = is the Post-Tax Real Discount Rate.

36.5 If the T&S Termination Payment is to be paid by means of staged payments:

- the T&S Termination Payment shall be effected on the basis that such compensation shall be equivalent to the amount that the Generator would have received had the T&S Termination Payment been effected as a lump sum payment in accordance with Condition 36.4; and
- the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the date of the T&S Termination Payment Notice; and (ii) the Specified Expiry Date.

36.6 Subject to Condition 36.7:

- if the T&S Termination Payment is to be effected as a lump sum payment, the DPA Counterparty shall no later than thirty (30) Business Days after the date of the T&S Termination Payment Notice, pay to the Generator (or such person as the Generator may direct) the T&S Termination Payment; or
- if the T&S Termination Payment is to be effected as staged payments, the DPA Counterparty shall commence payment no later than ten (10) Business Days after the date of the T&S Termination Payment Notice and the final payment shall be made by the earlier of: (i) the date that is five (5) years from the date of the T&S Termination Payment Notice; and (ii) the Specified Expiry Date.

36.7 The DPA Counterparty may set off against the T&S Termination Payment any or all other amounts owing (whether or not matured, contingent or invoiced) by the Generator to the DPA Counterparty as at the T&S Prolonged Unavailability Termination Date. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled. If an amount is unascertained, the DPA Counterparty may reasonably estimate the amount to be set off, subject to subsequent adjustment within twenty eight (28) calendar days of the amount becoming ascertained.

36.8 Subject to Conditions 36.1, 36.3, 36.4, 36.5, 36.6 and 36.7, if the DPA Counterparty terminates the DPA pursuant to Condition 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*):

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
- (B) all rights and obligations of the Parties under the DPA shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.

**Consequences of default termination**

- 36.9 If the DPA Counterparty terminates the DPA pursuant to Condition 35.27 (*Default termination*) on, or as soon as reasonably practicable after, the Default Termination Date the DPA Counterparty shall:
- (A) calculate the Default Termination Payment; and
  - (B) give a notice to the Generator (a "**Default Termination Payment Notice**"). A Default Termination Payment Notice shall specify the amount of the Default Termination Payment along with the principal inputs used by the DPA Counterparty to calculate such Default Termination Payment.
- 36.10 The Generator shall no later than thirty (30) Business Days after notification of the amount of the Default Termination Payment, pay to the DPA Counterparty (or such person as the DPA Counterparty may direct) the Default Termination Payment, which amount shall bear interest in accordance with Condition 14 (*Default Interest*), and no dispute by the Generator as to the amount of the Default Termination Payment shall relieve it of its obligation pursuant to this Condition 36.10.
- 36.11 If the DPA Counterparty terminates the DPA pursuant to Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*), the Default Termination Payment shall be reduced by any payments which the DPA Counterparty has suspended in accordance with Condition 22.9 to 22.11 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*) and not subsequently paid to the Generator in accordance with Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*).
- 36.12 Subject to Conditions 36.1, 36.9 and 36.10, if the DPA Counterparty terminates the DPA pursuant to Condition 35.27 (*Default termination*):
- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
  - (B) all rights and obligations of the Parties under the DPA shall end; and
  - (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.

**Consequences of Qualifying Change in Law termination and QCiL Compensation termination**

- 36.13 Subject to Condition 36.1, if the DPA Counterparty terminates the DPA pursuant to Condition 35.31 (*Qualifying Change in Law Termination*) or 35.33 (*QCIL Compensation termination*):
- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination, except that such termination shall be without prejudice to each Party's obligation to pay any QCiL Compensation and QCiL True-Up Compensation;
  - (B) all rights and obligations of the Parties under the DPA shall end; and



- (C) (subject to paragraph (A) above) neither Party shall be entitled to make any claim against the other Party pursuant to the DPA.

### 37. TERMINATION EVENTS

#### Termination Events

37.1 A "**Termination Event**" means the occurrence at any time with respect to the Generator of any of the following events.

- (A) *Insolvency*: the Generator:
- (i) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger) or becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); or
  - (iii) is subject to any event with respect to it which, pursuant to the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Conditions 37.1(A)(i) or 37.1(A)(ii),

except where any of the events set out in this Condition 37.1(A) is attributable to the DPA Counterparty not paying when due any amount which, but for the operation of Condition 53 (*Limited recourse arrangements, undertakings and acknowledgements*), would have been due pursuant to the DPA.

- (B) *Non-payment*: the Generator fails to pay any Generator Net Payable Amount on the due date pursuant to the DPA at the place at and in the currency in which it is expressed to be payable and that failure is not remedied on or before the twentieth (20th) Business Day after the DPA Counterparty gives the Generator notice of that failure (the "**NPA Payment Cure Period**") unless the failure is caused by a Payment Disruption Event in which case the NPA Payment Cure Period shall be extended day for day for each day on which the Payment Disruption Event continues.
- (C) *Breach of key obligations*:
- (i) the Generator is in breach of any of Condition 20.1(E) (*Ownership*) or Condition 61 (*Transfers*); or
  - (ii) any director, officer or other senior manager of the Generator commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the DPA or any other DPA Document.
- (D) *Metering*: a Technical Compliance Termination Event or a Metering Access Termination Event occurs.
- (E) *Minimum CO<sub>2</sub> Capture Rate*: a Capture Rate Termination Event occurs.
- (F) *Declarations*: a Misleading Declaration Termination Event or a Declaration Access Termination Event occurs.
- (G) *Credit Support Default*:

- (i) the Generator fails to transfer, deliver, extend, renew or replace (or procure the transfer, delivery, extension, renewal or replacement of) Acceptable Collateral in accordance with the Schedule (*Gain Share*);
  - (ii) any Acceptable Collateral provided pursuant to the Schedule (*Gain Share*) expires or terminates or fails or ceases to be in full force and effect in breach of, and is not extended, renewed or replaced in accordance with the Schedule (*Gain Share*); or
  - (iii) the Generator, or the issuer of any Acceptable Collateral, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Acceptable Collateral provided to the DPA Counterparty pursuant to the Schedule (*Gain Share*) unless such disclaimer, repudiation, rejection or challenge is withdrawn or a substitute Acceptable Collateral is provided to the DPA Counterparty no later than five (5) Business Days after such disclaimer, repudiation, rejection or challenge.
- (H) *Cross-default*: the T&S Connection Agreement is terminated due to the Generator's breach or default.<sup>46</sup>

### 38. SURVIVAL

- 38.1 Upon termination or expiry of the DPA, the Parties shall have no further obligations under the DPA but termination or expiry shall not affect:
- (A) (save to the extent taken into account in the calculation of the Default Termination Payment or the T&S Termination Payment (if any)), the provisions of the DPA as they relate to the payment of any sum due by one Party to the other pursuant to the DPA; and
  - (B) the continued existence and validity of, and the rights and obligations of the Parties pursuant to Part 1 (*Introduction*), Conditions 3.53 and 3.54 (*Set-Off of Previous Subsidy*), Part 6 (*Billing and payment*), this Part 9 (*Termination*), Part 10 (*Dispute Resolution*) to Part 13 (*Miscellaneous*) (inclusive) and the Schedule (*Gain Share*);.

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<sup>46</sup> Note to Reader: This is subject to the development of the T&S Business Model, including details on the remediation process in respect of such a default under the T&S Connection Agreement.

**Part 10**  
**Dispute Resolution**

**39. DISPUTE RESOLUTION PROCEDURE: GENERAL PROVISIONS<sup>47</sup>**

***Objective for resolution of Disputes***

39.1 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 all Disputes through negotiation.

***Compliance with obligations during a Dispute***

39.2 The Generator and the DPA Counterparty shall continue to comply with all of their respective obligations under the DPA notwithstanding any Dispute which falls to be resolved in accordance with this Condition 39 (*Dispute Resolution Procedure: General provisions*).

***Outline of Dispute Resolution Procedure***

39.3 Except as otherwise expressly provided in these Conditions, if a Dispute arises either Party may give a notice to the other Party to initiate the Dispute Resolution Procedure (a "**Dispute Notice**"). A Dispute Notice:

- (A) shall include a description of the subject matter of the Dispute and the issues to be resolved;
- (B) shall include a statement identifying the Condition to which the Dispute relates or pursuant to which the Dispute arises;
- (C) shall include a description of the position the referring Party considers is correct and the referring Party's reasons for that position;
- (D) (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) shall include details of any other dispute or claim relating to or arising out of another CCUS Programme DPA which the referring Party considers should be consolidated with or joined to the Dispute;
- (E) may, where the referring Party considers it appropriate, include copies of any Supporting Information on which the referring Party intends to rely;
- (F) shall include a statement outlining the relief, determination, remedy or recourse which the referring Party seeks in relation to the Dispute;
- (G) (except where the DPA expressly provides for the Dispute, including any Gas Supply Metering Dispute and any CO<sub>2</sub> Metering Dispute, to be subject to determination in accordance with the Expert Determination Procedure) shall include a statement as to whether the referring Party considers that the Dispute should (without a Senior Representatives Settlement being reached) be referred for determination in accordance with the Expert Determination Procedure or resolution in accordance with the Arbitration Procedure; and
- (H) shall include the identity of the referring Party's Senior Representative.

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<sup>47</sup> Note to Reader: The Dispute Resolution Procedure may need to be updated in light of the incorporation of the Gain Share Schedule into the DPA in order to accommodate multi-party disputes.

- 39.4 Following the service by either Party of a Dispute Notice:
- (A) (subject to Condition 39.5) the Parties shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties in accordance with Condition 40 (*Resolution by Senior Representatives*) but, if and to the extent that the Senior Representatives are unable to agree, settle, compromise or resolve the Dispute in accordance with Condition 40 (*Resolution by Senior Representatives*), Condition 39.4(B) shall apply;
  - (B) (subject to Condition 39.6) either Party may refer the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing within the Resolution Period (or such longer period as they may agree in writing) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure; and
  - (C) (subject to Condition 39.6) either Party may refer a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute for determination by an Expert in accordance with the Expert Determination Procedure.
- 39.5 Condition 39.4(A) shall not apply where the DPA expressly provides that Condition 40 (*Resolution by Senior Representatives*) shall not apply to the relevant Dispute.
- 39.6 If the DPA expressly provides for the relevant Dispute to be subject to determination in accordance with the Expert Determination Procedure:
- (A) Conditions 39.4(B) and 39.4(C) shall not apply to such Dispute; and
  - (B) if and to the extent that the Senior Representatives are unable to agree, settle, compromise or resolve the Dispute in accordance with Condition 40 (*Resolution by Senior Representatives*), such Dispute shall be referred by the referring Party to an Expert for determination in accordance with the Expert Determination Procedure (but subject to such amendments to the Expert Determination Procedure as are expressly provided for in the relevant provisions of the DPA).
- 39.7 Subject to Condition 39.8, all communications between the Parties with respect to a Dispute (including any statement, concession, waiver or agreement made by a Party during discussions and meetings pursuant to Condition 40 (*Resolution by Senior Representatives*)) (and any minutes or statements relating to such discussions or meetings) shall be "without prejudice" to the Dispute (or "without prejudice save as to costs" if expressly communicated or stated to be as such) (together, "**Dispute Information**"). Dispute Information shall be inadmissible in any Proceedings that may follow whether related to the Dispute or otherwise (including pursuant to the Expert Determination Procedure or the Arbitration Procedure), except that those expressly stated to be "without prejudice save as to costs" shall be admissible for the purposes of Conditions 41.12 and 42.2.
- 39.8 Condition 39.7 shall not apply to:
- (A) any Dispute Notice;
  - (B) any Senior Representatives Settlement;
  - (C) any communications between the Parties once an Expert Determination Procedure or an Arbitration Procedure has commenced, save for such communications expressly communicated or stated to be "without prejudice" or "without prejudice save as to costs";  
or

- (D) any communications between the Parties where the Parties agree in writing that Condition 39.7 shall not apply.

#### 40. **RESOLUTION BY SENIOR REPRESENTATIVES**

40.1 The Parties shall procure that their respective Senior Representatives shall meet no later than ten (10) Business Days after the date of service of a Dispute Notice. If the Senior Representatives of the Parties:

- (A) are able to resolve the Dispute within thirty (30) Business Days of the date of service of the Dispute Notice (or within such longer period as the Senior Representatives of the Parties may agree in writing) (the "**Resolution Period**"), the terms of the agreement, settlement, compromise or resolution reached between the Senior Representatives in respect of the Dispute (a "**Senior Representatives Settlement**") shall be documented in writing and shall be signed by the Senior Representative of each Party;
- (B) are unable to resolve the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) within the Resolution Period, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing within the Resolution Period (or such longer period as they may agree in writing) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure; or
- (C) are unable to resolve a Gas Supply Metering Dispute and/or CO<sub>2</sub> Metering Dispute (as applicable) within the Resolution Period, either Party may refer such Gas Supply Metering Dispute and/or CO<sub>2</sub> Metering Dispute (as applicable) for determination by an Expert in accordance with the Expert Determination Procedure.

40.2 If, at any time during the Resolution Period, both Parties agree that the Senior Representatives of the Parties will not be able to agree, settle, compromise or resolve the Dispute, then:

- (A) either Party may refer the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure;
- (B) either Party may refer a Gas Supply Metering Dispute and/or a CO<sub>2</sub> Metering Dispute (as applicable) for determination by an Expert in accordance with the Expert Determination Procedure; and
- (C) there shall be no requirement for the Parties to wait until the expiry of the Resolution Period before making any such reference.

40.3 Neither Party may commence the Expert Determination Procedure nor the Arbitration Procedure prior to the expiry of the Resolution Period except in the circumstances specified in Condition 40.2.

40.4 The rules, obligations and procedures set out in this Condition 40 (*Resolution by Senior Representatives*) shall apply to all Disputes unless expressly stated to the contrary in the DPA.

#### 41. **EXPERT DETERMINATION PROCEDURE**

41.1 Either Party may, subject to Condition 40 (*Resolution by Senior Representatives*), refer a Dispute to be determined by an Expert if either: (i) the Parties have agreed in writing that a

Dispute is amenable to determination by an Expert pursuant to Condition 40.1(B) or 40.2(A); or (ii) the DPA expressly provides for the relevant Dispute to be determined by an Expert. Such referral shall be effected by either Party giving a notice (an "**Expert Determination Notice**") to the other Party. An Expert Determination Notice shall:

- (A) include the information required to be included in a Dispute Notice pursuant to Conditions 39.3(A) to 39.3(F); and
- (B) include a proposal as to the identity, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies the proposed Expert to determine the relevant Expert Dispute.

41.2 Any Expert appointed to determine any Expert Dispute shall be required to have an appropriate level of experience in relation to matters of the same general description as the matter in Dispute.

41.3 The Party receiving the Expert Determination Notice (the "**Respondent**") shall, no later than ten (10) Business Days after receipt of the Expert Determination Notice, give a notice (an "**Expert Determination Response Notice**") to the other Party (the "**Claimant**"). An Expert Determination Response Notice shall specify whether or not the Respondent accepts:

- (A) the Expert proposed by the Claimant (and, if the Respondent does not accept the Expert proposed by the Claimant, it shall specify an alternative Expert for consideration by the Claimant); and
- (B) the terms of reference for the Expert proposed by the Claimant (and, if the Respondent does not accept the terms of reference for the Expert proposed by the Claimant, it shall propose alternative terms of reference for the Expert for consideration by the Claimant).

41.4 If the Parties fail to agree on the identity of the Expert within twenty (20) Business Days of the date of service of the Expert Determination Notice (or such other period as the Parties may agree in writing), either Party may request that the Expert be nominated by the LCIA, which shall be requested to choose a suitably qualified and experienced Expert for the Expert Dispute in question. The LCIA's nomination shall, subject to Condition 41.5(A)(i), be binding on the Parties.

41.5 The Parties shall:

- (A) use reasonable endeavours to procure that no later than ten (10) Business Days after the Parties have agreed the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with Condition 41.4):
  - (i) the Expert confirms in writing to the Parties that:
    - (a) the Expert is willing and available to act in relation to the Expert Dispute; and
    - (b) the Expert has no conflict of interest which prevents the Expert from determining the Expert Dispute; and
  - (ii) (subject to the confirmation referred to in Condition 41.5(A)(i) having been given) the terms of appointment and the terms of reference of the Expert are agreed between the Parties and the Expert (and an appointment letter entered into among them), such terms:
    - (a) to include an undertaking that the Expert shall not disclose to any person any Supporting Information disclosed or delivered by a Party to the

Expert in consequence of, or in respect of, their appointment as the Expert; and

- (b) to exempt the Expert (and any employee, agent or adviser of or to the Expert) from liability for anything done or omitted in the discharge or purported discharge of the Expert's functions, unless such act or omission is fraudulent or in bad faith;
- (B) instruct the Expert:
- (i) to act fairly and impartially;
  - (ii) to reach its decision in accordance with the applicable Laws in relation to the Dispute referred to the Expert;
  - (iii) to take the initiative in ascertaining the facts and the law, including by:
    - (a) considering any Supporting Information submitted to the Expert by the Parties;
    - (b) instructing an expert and/or taking counsel's opinion as to any matter raised in connection with the Dispute, provided that the Expert shall not be entitled to delegate any decision to such expert or counsel;
    - (c) requiring the Parties to produce any Supporting Information (excluding any of the foregoing which would be privileged from production in court proceedings); and
    - (d) opening up, reviewing and revising any opinion, assessment, certificate, instruction, determination or decision of whatsoever nature given or made pursuant to the DPA, provided that the Expert may not in so doing purport: (i) to open up, review or revise any matter determined pursuant to an earlier dispute under the Dispute Resolution Procedure or included with a negotiated settlement; or (ii) to decide any matter which falls outside the Expert's terms of reference in relation to the relevant Expert Dispute or is otherwise excluded from the Expert Determination Procedure; and
  - (iv) if requested by either Party in writing, to provide reasons for their decision, which shall be communicated to the Parties;
- (C) afford the Expert the discretion to establish the procedure (including the timetable) for the determination of the Expert Dispute, it being agreed by the Parties that:
- (i) the Expert shall be requested to confirm to the Parties the proposed procedure for the relevant Expert Dispute as soon as reasonably practicable after the Expert Appointment Date and, in any event, no later than ten (10) Business Days after such date and the Parties agree that:
    - (a) the Expert shall be requested to afford (and shall so afford) the Parties the opportunity to address the Expert in a meeting at which both Parties shall have the right to be present, where either Party requests such a meeting in writing or the Expert otherwise considers it to be necessary or desirable to reach a determination in respect of the relevant Expert Dispute, with the format and procedure applicable to any such meeting

being a matter for the Expert to decide in their sole and absolute discretion;

- (b) subject to (c) below, the Expert may modify the time periods provided for in Condition 41.6 and otherwise modify the procedure contemplated by such Condition; and
  - (c) any modification(s) to the time periods and/or procedure for the determination of an Expert Dispute shall not extend the overall timetable of the Expert Determination Procedure by more than sixty (60) calendar days without the agreement of both Parties;
- (ii) all submissions made by a Party to the Expert (including all Supporting Information provided to the Expert) shall be provided to the other Party contemporaneously with such submissions being made to the Expert; and
  - (iii) the Parties shall (without prejudice to Condition 41.5(C)(i)) request the Expert to determine the Expert Dispute within the earlier of:
    - (a) thirty (30) Business Days following the date on which a Response Submission has been provided by the Respondent; and
    - (b) sixty (60) Business Days after the First Submission Deadline; and
- (D) afford the Expert all Supporting Information and assistance which the Expert requires to determine the Expert Dispute (and, if a Party fails to produce any such Supporting Information or assistance, the Expert may continue the determination process without that Supporting Information or assistance).

41.6 Subject to Condition 41.5(C):

- (A) the Claimant shall provide the Expert with a copy of the Expert Determination Notice no later than ten (10) Business Days after the Expert Appointment Date (the date on which the Expert receives the copy of the Expert Determination Notice being the "**Expert Referral Date**");
- (B) the Claimant shall provide a written statement of its case, together with any Supporting Information, to the Expert (the "**First Submission**") no later than twenty (20) Business Days after the Expert Referral Date (the "**First Submission Deadline**") and, without limitation, the First Submission may cover any of the matters required to be contained in the relevant Dispute Notice pursuant to Conditions 39.3(A) to 39.3(F) (inclusive) and shall include copies of any Supporting Information which the Claimant considers to be important and relevant and a copy of such First Submission shall be provided to the Respondent at the same time as it is provided to the Expert; and
- (C) the Respondent may, but is not obliged to, submit a response to the Claimant's First Submission, together with any Supporting Information on which the Respondent intends to rely (a "**Response Submission**") no later than thirty (30) Business Days after receipt of the First Submission.

41.7 The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or their determination or the procedure by which the Expert reaches their determination.

41.8 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. The provisions of the Expert Determination Procedure shall apply to any replacement Expert and the replacement Expert shall be authorised to determine any Expert Dispute which was submitted to their predecessor but which their predecessor had not determined at the time when their predecessor became unable or unwilling to act.

- 41.9 The Expert's determination shall be final and binding upon the Parties, except in the event of fraud or manifest error.
- 41.10 No Expert determination shall have the effect of amending the DPA unless expressly permitted pursuant to the DPA.
- 41.11 If either Party does not comply with the decision of the Expert, the other Party may commence proceedings in the English Courts to secure enforcement of that decision.
- 41.12 The Expert may, in their determination, provide that one or other or both of the Parties pay the Expert's fees and expenses and each other's costs (including the fees and expenses of external advisers and consultants) in such proportions as the Expert may specify on the general principle that the allocation of costs should reflect the Parties' relative success and failure in the Expert Determination Procedure. In the absence of such a direction, each Party shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the Parties.

## 42. **ARBITRATION PROCEDURE**

- 42.1 Either Party may, subject to Condition 40 (*Resolution by Senior Representatives*), refer an Arbitration Dispute to arbitration. Any Arbitration Dispute so referred to arbitration shall be resolved in accordance with the LCIA Arbitration Rules, which rules are to be treated as incorporated by reference into this Condition 42.
- 42.2 The Arbitral Tribunal shall make its award in writing (the "**Arbitral Award**") and the Parties agree that all final Arbitral Awards shall be binding on the Parties.
- 42.3 No Arbitral Award shall have the effect of amending the DPA unless expressly permitted pursuant to the DPA.
- 42.4 The Arbitral Tribunal shall consist of three (3) Arbitrators except where the Parties have agreed in writing that the Arbitral Tribunal shall consist of one (1) Arbitrator (the "**Mutual Appointment Decision**").
- 42.5 If the Arbitral Tribunal is to consist of:
- (A) three (3) Arbitrators, each Party shall nominate one (1) Arbitrator to be appointed by the LCIA as contemplated by the LCIA Arbitration Rules and the third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chair; or
  - (B) 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.
- 42.6 The seat, or legal place, of any arbitration shall be London.
- 42.7 The language to be used in any arbitral proceedings shall be English.
- 42.8 This Condition 42 shall not apply to any Gas Supply Metering Dispute or any CO<sub>2</sub> Metering Dispute.

### 43. CONSOLIDATION OF CONNECTED DISPUTES

43.1 If:

- (A) any Dispute raises issues which are substantially the same as, connected with or related to issues raised in any dispute or claim relating to or arising out of any other CCUS Programme DPA (each, a **"Connected Dispute"**);
- (B) the Dispute Resolution Procedure has been commenced in relation to the Dispute; and
- (C) a dispute resolution procedure under the other CCUS Programme DPA has been commenced in relation to the Connected Dispute under that contract,

then either Party may request consolidation of those Connected Disputes at any time so that the Connected Disputes shall be determined together and in respect of any Connected Dispute, the Parties consent, pursuant to Article 22.7 and/or Article 22.8 of the LCIA Arbitration Rules (or any equivalent provisions in any version of the LCIA Arbitration Rules that may come into force hereafter), to the consolidation of an arbitration commenced pursuant to the DPA with an arbitration commenced under the relevant other CCUS Programme DPA(s).

43.2 Where a Party wishes to consolidate Connected Disputes pursuant to Condition 43.1, that Party shall give notice in writing to all of the parties to the Connected Disputes (a **"Consolidation Request"**). A Consolidation Request shall be copied to the Expert or Arbitrator(s) (as relevant) of each Connected Dispute at the same time that it is given to the parties to each Connected Dispute, or, to the extent that the Expert or Arbitrator(s) have not been appointed at that date, forthwith upon appointment of the Expert or Arbitrator(s).

43.3 Following delivery of a Consolidation Request to every party who is to receive it under Condition 43.2, the Parties shall use reasonable endeavours (including cooperating with the parties to the other CCUS Programme DPA(s)) to procure that the Expert or Arbitrator(s) (as relevant) of each Connected Dispute shall, within five (5) Business Days after the delivery of the Consolidation Request, determine between them whether:

- (A) they are satisfied that the issues of both fact and/or law raised in each of the Connected Disputes are substantially the same as, or substantially connected or related to, each other; and
- (B) consolidation of the Connected Disputes will not materially affect the timetable for resolution of any Connected Disputes.

43.4 If:

- (A) the Expert(s) or Arbitrator(s) are so satisfied by majority and provide notice of that fact to the parties to all of the Connected Disputes; and
- (B) the parties to the other CCUS Programme DPA(s) consent to consolidation;

the Dispute may be consolidated with any relevant Connected Disputes (including, in the case of two or more arbitrations, pursuant to the relevant provisions of the LCIA Arbitration Rules).

43.5 If the Expert(s) or Arbitrator(s) are not so satisfied by majority or one (1) or more parties to another CCUS Programme DPA does not consent to the consolidation, the Dispute shall not be consolidated with the Connected Dispute under that contract.

43.6 If the Parties or either of them receive(s) one (1) or more notice(s) from a party or parties to one (1) or more other CCUS Programme DPA(s) seeking to consolidate a dispute under the other CCUS Programme DPA(s) with a Dispute under the DPA for reasons similar to those set

out in Condition 43.3 above, neither Party shall unreasonably withhold its consent to consolidation of the Dispute with the relevant dispute(s) under the other CCUS Programme DPA(s) and shall use reasonable endeavours to facilitate the consolidation of the disputes.

- 43.7 If there has been a request for consolidation, whether by way of Consolidation Request under the DPA or an equivalent notice under one (1) or more other CCUS Programme DPA(s) and it is determined that two or more disputes shall be consolidated,
- (A) the Parties shall use reasonable endeavours to procure that the outcome described in Condition 43.8 below is achieved; and
  - (B) neither Party shall unreasonably withhold consent to any reasonable proposal by a party to another CCUS Programme DPA which has as its objective the procuring of an outcome equivalent to that described in Condition 43.8 below.
- 43.8 If different Experts or Arbitrators have been appointed in respect of Connected Disputes prior to their being consolidated in accordance with the Dispute Resolution Procedure and those Experts or Arbitrator(s) give a notice, in accordance with Condition 43.4, that the Connected Disputes shall be consolidated, the Parties shall use reasonable endeavours to agree in writing with each other and the parties to any relevant Connected Dispute, no later than five (5) Business Days after the giving of that notice, which of the Experts or Arbitrators shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes. If no such agreement can be reached, the parties to the Dispute shall request that the president or vice-president of the LCIA court select, no later than five (5) Business Days after such request, which of those Experts or Arbitrator(s) shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes, provided the parties to any relevant Connected Dispute(s) consent to this step.
- 43.9 If the Expert(s) or Arbitrator(s) of consolidated Connected Disputes is or are unable to give their award in respect of the consolidated Connected Disputes at the same time then the award in respect of the Dispute may be given in such order as the Expert(s) or Arbitrator(s) may determine.
- 43.10 This Condition 43 shall not apply to any Gas Supply Metering Dispute, any CO<sub>2</sub> Metering Dispute.

#### 44. **NO OTHER PROCEEDINGS**

- 44.1 Subject to Conditions 44.2 and 45.1, any and all Disputes are to be finally resolved in accordance with the Dispute Resolution Procedure, and neither Party shall commence any Proceedings in respect of a Dispute other than in accordance with the Dispute Resolution Procedure. If either Party commences any Proceedings in breach of the Dispute Resolution Procedure, it shall not oppose an application for strike-out, termination, discontinuance or stay of such Proceedings.
- 44.2 Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time:
- (A) commence, prosecute and/or defend Proceedings against the other Party in the courts of England and Wales for:
    - (i) an order to obtain urgent injunctive or other equitable relief, including specific performance;
    - (ii) judgment to enforce a Senior Representatives Settlement, the determination of an Expert, or an Arbitral Award; and/or

- (B) 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.

45. **METERING DISPUTES**

- 45.1 Electricity Metering Disputes shall be resolved solely as a Trading Dispute in accordance with the Balancing and Settlement Code pursuant to Conditions 13.6 to 13.8 (*Electricity Metering Dispute*) and the Dispute Resolution Procedure shall not apply to any such Electricity Metering Disputes.
- 45.2 Notwithstanding any Electricity Metering Dispute, the Parties shall continue to comply with all of their respective obligations under the DPA.
- 45.3 Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes).<sup>48</sup>

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<sup>48</sup> Note to Reader: The dispute resolution procedures for Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes are subject to change as industry codes and procedures are established and developed.

**Part 11**  
**General provisions regarding liabilities, remedies and waivers**

**46. EXCLUDED LOSSES AND LIABILITIES**

***Interpretation***

- 46.1 Any and all compensation in respect of any event to be calculated, agreed or determined, and paid, commenced or effected, pursuant to the DPA shall be calculated on the basis that the Generator:
- (A) has complied, and will comply, with the general mitigation obligation set out in Condition 46.3, irrespective of whether the Generator has in fact complied, or will comply, with such obligation; and
  - (B) has complied, and will comply, with the Reasonable and Prudent Standard, including with respect to the incurrence of costs in relation to the Project, irrespective of whether the Generator has in fact complied, or will comply, with such standard.
- 46.2 Any notification by the Generator to the DPA Counterparty of the mitigating steps that the Generator has taken, or proposes to take, in order to comply with the general mitigation obligation set out in Condition 46.3, or the Reasonable and Prudent Standard, shall be of indicative value only and, as such, shall not be determinative of whether it has complied, or will comply, with such general mitigation obligation or Reasonable and Prudent Standard.

***Mitigation***

- 46.3 The Generator shall promptly take all reasonable steps to mitigate any loss or, as the case may be, maximise any benefit, in respect of which a claim could be brought under the DPA or any other DPA Document (including by recommencing generation and/or CO<sub>2</sub> capture as soon as reasonably practicable), provided that this obligation to mitigate shall not be construed as relieving the Generator from complying in full with its obligations under the DPA or any other DPA Document.
- 46.4 The Generator shall give notice as soon as reasonably practicable to the DPA Counterparty of the mitigating steps that it has taken or procured, is taking or procuring or proposes to take or procure and shall as soon as reasonably practicable provide such Supporting Information regarding such mitigation as the DPA Counterparty may reasonably request.

***No double recovery***

- 46.5 The Generator may recover only once in respect of the same loss. The DPA Counterparty shall not be liable to pay any compensation under any term of the DPA to the extent that the subject of the claim has been compensated for, or the same loss has been recovered by the Generator under the DPA or any other DPA Document.
- 46.6 If the Generator is at any time entitled to recover from a third party any sum (whether under a power purchase agreement, an electricity sale contract, an insurance policy or otherwise) in respect of any matter or circumstance giving rise to a claim under the DPA or any other DPA Document, the Generator shall take all necessary steps to enforce such recovery.
- 46.7 If the Generator (or its nominee) recovers any amount from: (i) the DPA Counterparty as a consequence of any claim under the DPA or any other CCUS Programme DPA to which it is a party; or (ii) such other person as is referred to in Condition 46.6:
- (A) such amount shall be taken into account in the calculation of any compensation payable pursuant to the DPA or any other DPA Document;

- (B) no claim shall be made by the Generator pursuant to the DPA or any other DPA Document in respect of the amounts so recovered; and
- (C) if the Generator has previously received compensation in relation to the same claim, they or it shall pay promptly to the DPA Counterparty an amount equal to the lesser of:
  - (i) the amount so recovered; and
  - (ii) the amount so previously received.

**General limitation on liability**

46.8 Subject to Condition 46.9, neither Party shall be liable to the other Party under or pursuant to the DPA or any other DPA Document, in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (A) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties at the Agreement Date as the probable result of such breach; or
- (B) any special, indirect or consequential loss including any such loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue,

in each case incurred by the other Party in respect of any breach of the terms of the DPA or any other DPA Document.

46.9 Condition 46.8 shall not operate so as to prejudice or override:

- (A) the express terms of any obligation to pay, indemnity or costs reimbursement provision contained within the DPA or any other DPA Document;
- (B) the express terms relating to the calculation of any QCiL Compensation or QCiL True-Up Compensation, or the obligation of either Party to pay any QCiL Compensation or QCiL True-Up Compensation to the other Party (or to commence or effect such compensation), in each case in accordance with Part 8 (*Changes in Law*); or
- (C) the express terms relating to the calculation of the Default Termination Payment or the obligation of the Generator to pay the Default Termination Payment to the DPA Counterparty, in accordance with Condition 36.10, it being agreed that the DPA Counterparty has a legitimate interest to which the Default Termination Payment is proportionate in light of factors including but not limited to the anticipated harm that the DPA Counterparty would suffer and the difficulty of estimation or calculation of actual damages upon early termination of the DPA.<sup>49</sup>

**T&S Operator actions**

46.10 Any payments to the Generator in respect of or pursuant to instructions issued by any T&S Operator shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting losses.

**Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor actions**

46.11 Any payments to the Generator in respect of or pursuant to:

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<sup>49</sup> Note to Reader: This provision is subject to further review by BEIS.

- (A) instructions issued by any Electricity Transmission System Operator, Electricity Transmission Licensee or an Electricity Licensed Distributor, as the case may be; or
- (B) directions given or actions taken pursuant to the Fuel Security Code (as such term is defined in the Electricity Transmission Licence),

shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting losses.

***Gas Licensed Transporter or Gas Licensed Shipper actions***

46.12 Any payments to the Generator in respect of or pursuant to instructions issued by any Gas Licensed Transporter or Gas Licensed Shipper, as the case may be, shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting lost supply.

**47. NO WAIVER**

47.1 No waiver by either Party of any breach by the other Party of the DPA or any other DPA Document shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.

47.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or pursuant to the DPA or any other DPA Document shall:

- (A) affect that right, power or remedy; or
- (B) operate as a waiver of it.

47.3 The single or partial exercise by either Party of any right, power or remedy provided by law or pursuant to the DPA or any other DPA Document shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

47.4 Any legal privilege attaching to information or documents that are:

- (A) made available by the Generator or its Representatives to the DPA Counterparty or its Representatives remains for the benefit of the Generator; or
- (B) made available by the DPA Counterparty or its Representatives to the Generator or its Representatives remains for the benefit of the DPA Counterparty,

and, in each case, disclosure is not intended to amount to a waiver of legal privilege.

**48. CONSENTS**

48.1 Any consents, confirmations, approvals, waivers or agreements to be given by the DPA Counterparty pursuant to the DPA or any other DPA Document:

- (A) shall be effective only if given in writing; and
- (B) except as otherwise expressly provided in the DPA, may be given or withheld by the DPA Counterparty in its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the DPA Counterparty may in its sole and absolute discretion determine.

48.2 The exercise of discretion by the DPA Counterparty (including in respect of the grant or withholding of any consent, confirmation, approval, waiver or agreement) shall in no way limit the manner in or extent to which that discretion may be exercised in future or give rise to any amendment or modification to the DPA or any other DPA Document.

49. **ENTIRE AGREEMENT**

49.1 The DPA, together with the other DPA Documents and other Gain Share Transaction Documents, constitutes the entire agreement, understanding and representations of the Parties in respect of its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made in respect thereof other than those included in the DPA, the other DPA Documents or the other Gain Share Transaction Documents.

49.2 Each Party acknowledges that in entering into the DPA it has not relied on, and shall have no right or remedy in respect of, any draft, agreement, undertaking, representation, warranty, promise, assurance, arrangement or public statement of any nature whatsoever, whether or not in writing, relating to the subject matter of the DPA, any other DPA Document or any other Gain Share Transaction Document made or given by or on behalf of either Party or the Secretary of State at any time prior to the Agreement Date or Accession Date (as applicable) (whether made negligently or innocently) other than as expressly set out in the DPA, any other DPA Document or any other Gain Share Transaction Document.

49.3 Nothing in this Condition 49 (*Entire agreement*) shall limit or exclude liability for fraud.

50. **PAYMENT DISRUPTION EVENT**

***Relief due to Payment Disruption Event***

50.1 Subject to Condition 50.2, a Party affected by a Payment Disruption Event (a "**PDE Affected Party**") shall be relieved from liability, and deemed not to be in breach of the DPA (or any other DPA Document), for:

- (A) any failure to pay (or delay in paying) to the other Party any sum due and payable pursuant to the DPA (or any other DPA Document) (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise); and
- (B) (in the case of the Generator) any failure to transfer, deliver, extend, renew or replace (or procure the transfer, delivery, extension, renewal or replacement of) Acceptable Collateral in accordance with the Schedule (*Gain Share*), or any delay in doing so,

(such obligations "**PDE Obligations**") in each case if and to the extent that such failure or delay is directly attributable to the occurrence and continuance of such Payment Disruption Event.

***Conditions to Payment Disruption Event relief***

50.2 The PDE Affected Party's relief from liability pursuant to Condition 50.1 is subject to and conditional upon:

- (A) the PDE Affected Party giving notice as soon as reasonably practicable to the other Party of the nature and extent of the Payment Disruption Event causing its failure or delay in performance; and
- (B) the PDE Affected Party using reasonable endeavours:
  - (i) to mitigate the effects of the Payment Disruption Event;



- (ii) to carry out and perform its obligations under the DPA (and each other DPA Document) in any way that is reasonably practicable; and
- (iii) to pay the sum due and payable or transfer, deliver, extend, renew or replace Acceptable Collateral in accordance with the Schedule (*Gain Share*) (as relevant) immediately upon cessation of the Payment Disruption Event.

## 51. FORCE MAJEURE

### ***Relief due to Force Majeure***

- 51.1 Subject to the provisions of this Condition 51 (*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 DPA (or any other DPA Document), for any failure or delay in the performance of any of its obligations under the DPA (or any other DPA Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuance of such Force Majeure; and
  - (B) be entitled to an extension of one (1) or more of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window, for any delay to the Project 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.
- 51.2 Nothing in this Condition 51 (*Force Majeure*) shall relieve either Party from its obligations to perform or comply with any PDE Obligations.
- 51.3 Nothing in this Condition 51 (*Force Majeure*) shall affect the DPA Counterparty's right to terminate the DPA pursuant to Conditions 35.5 to 35.7 (*Termination for Prolonged Force Majeure*) and, subject to Condition 35.26, Conditions 35.8 to 35.26 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*).

### ***Conditions to Force Majeure relief***

- 51.4 The FM Affected Party's relief from liability and/or entitlement to an extension of any of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window pursuant to Condition 51.1 is subject to and conditional upon (and in the case of 52.1(B) shall only be available to the extent that the failure or delay in performance and/or delay to the Project could not have been avoided by):
- (A) the FM Affected Party giving notice as soon as reasonably practicable to the other Party (the "**Non-affected Party**") in writing of the nature and extent of: (i) any Force Majeure of which it is aware which it considers will or is likely to cause its failure or delay in performance and/or delay to the Project; and (ii) any Force Majeure that has caused or is causing failure or delay in performance and/or delay to the Project; and
  - (B) the FM Affected Party using reasonable endeavours:
    - (i) to mitigate the effects of the Force Majeure (including delay to the Project);
    - (ii) to carry out its obligations under the DPA and each other DPA Document in any way that is reasonably practicable; and
    - (iii) to resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable.

### ***Provision of Force Majeure information***

51.5 In addition to its notification obligation pursuant to Condition 51.4, 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 available to the FM Affected Party) of:

- (A) 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 DPA (or the relevant DPA Document);
- (B) the anticipated date of resumption of performance of its obligations under the DPA (or the relevant DPA Document); and
- (C) 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 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 available to it.

51.6 The FM Affected Party shall give notice to the Non-affected Party every twenty (20) Business Days:

- (A) of any update to the Information provided pursuant to Condition 51.5 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
- (B) 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 of the requirements of the definition of Force Majeure.

## 52. SEVERABILITY

If any provision or part of a provision of the DPA or any other DPA Document is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of the DPA or of any other DPA Document; or
- (B) the legality, validity or enforceability in other jurisdictions of that or any other provision of the DPA or of any other DPA Document.

## 53. LIMITED RECOURSE ARRANGEMENTS, UNDERTAKINGS AND ACKNOWLEDGEMENTS

### *DPA Counterparty payment undertakings*

53.1 For the purpose of Conditions 53.2 to 53.8, references in Conditions 53.2 to 53.5 to "liabilities" shall be construed as if the limited recourse provisions set out in Condition 53.7 do not apply.

53.2 The DPA Counterparty shall make appropriate requests to Electricity Suppliers on the basis provided for by the Supplier Obligation Regulations for the purpose of ensuring that it is in sufficient funds to meet its liabilities in full pursuant to the DPA.

53.3 The DPA Counterparty shall, to the extent consistent with the DPA Counterparty's proper exercise of its functions and duties pursuant to the EA 2013 or any other statutory function or duty, as soon as reasonably practicable:

- (A) take such steps as are necessary to recover from an Electricity Supplier any sum which the Electricity Supplier is required by virtue of the Supplier Obligation Regulations to pay to the DPA Counterparty and which has not been paid by the date on which it is required by virtue of the Supplier Obligation Regulations to be paid and which is necessary to ensure the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
- (B) at the times and otherwise in the manner prescribed by the Supplier Obligation Regulations, issue and enforce notices to Electricity Suppliers requiring the provision and/or payment of financial collateral to ensure the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
- (C) take such action (including the taking and prosecution of legal proceedings) against Electricity Suppliers as is necessary to ensure that the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
- (D) pursue any Electricity Supplier which has defaulted in making payment pursuant to the Supplier Obligation Regulations as a civil debtor unless (acting reasonably) the DPA Counterparty considers that there are more appropriate means of pursuing the defaulting Electricity Supplier or securing payment due to the Generator;
- (E) take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds (if any) available to the DPA Counterparty, including:
  - (i) moneys standing to the credit of any designated risk, reserve or shortfall fund; and/or
  - (ii) moneys available by reason of any 'make whole', loss mutualisation or similar arrangements among Electricity Suppliers or others in respect of any shortfall in amounts due and owing but not paid by Electricity Suppliers to the DPA Counterparty for the purposes of enabling the DPA Counterparty to make payments pursuant to CCUS Programme DPAs,

as is necessary for the purpose of meeting its liabilities in full pursuant to the DPA; and
- (F) notify the Secretary of State if the DPA Counterparty has reason to believe that it will have insufficient funds available to make when due the totality of the payments to generators that are required pursuant to CCUS Programme DPAs.

53.4 The DPA Counterparty shall notify the Generator if it is of the opinion that it will have insufficient funds to meet its liabilities in full pursuant to the DPA.

53.5 The DPA Counterparty agrees that in circumstances where the DPA Counterparty has failed to pay an amount on the due date thereof pursuant to the DPA:

- (A) damages alone would not be an adequate remedy for any breach by it of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 53.3;
- (B) accordingly, the Generator will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the DPA Counterparty of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 53.3; and
- (C) it will not raise any objection to an application by the Generator for any such remedies.

- 53.6 Without prejudice to Condition 53.7, the maximum liability of the DPA Counterparty in respect of breach by it of Condition 53.2, 53.3 or 53.4 shall be limited to an amount equivalent to the Default Interest on the amount which has not been paid by the DPA Counterparty to the Generator pursuant to the DPA by reason of the relevant breach for the period from what would have been the date of payment but for such breach to the date of actual payment, provided that the limit of liability in this Condition 53.6 shall not apply where the breach is caused by the gross negligence or wilful misconduct of the DPA Counterparty.

**Limited recourse**

- 53.7 Notwithstanding any other provision of the DPA:

- (A) the liability of the DPA Counterparty pursuant to the DPA shall not exceed the aggregate of:
- (i) the amounts from time to time received and held by the DPA Counterparty, and allocated to the DPA, pursuant to the Supplier Obligation Regulations; and
  - (ii) any other funds of the type referred to in Condition 53.3(E) from time to time received and held by the DPA Counterparty, and allocated to the DPA, whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (B) the DPA Counterparty shall not be in default pursuant to the DPA in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in Condition 53.7(A) which are necessary to make such payment, but if and to the extent that such payment is not made, the DPA Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

**Damages for breach**

- 53.8 The Parties acknowledge and agree that:

- (A) the DPA Counterparty shall have full right and liberty to recover from the Generator any loss, damage, cost or expense suffered or incurred by the DPA Counterparty as a result of a breach by the Generator of the DPA or any other DPA Document and for this purpose no regard shall be had to the right or ability (if any) of the DPA Counterparty to recover such loss, damage, cost or expense from all or any Electricity Suppliers or any other person pursuant to any regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations); and
- (B) to the extent that any such loss, damage, cost or expense is recovered by the DPA Counterparty from the Generator, it is the intent that the DPA Counterparty will not keep those amounts but will, pursuant to the regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations):
- (i) use such amounts to make good any loss, damage, cost or expense suffered or incurred by the DPA Counterparty;
  - (ii) pass or return those amounts to the Electricity Supplier(s) or other persons entitled thereto pursuant to such regulations; and/or
  - (iii) use such amounts for the benefit of such Electricity Supplier(s) or other person(s).

**Part 12**  
**Confidentiality, announcements and freedom of information**

**54. CONFIDENTIALITY**

***Confidentiality restrictions: application to the terms of the DPA***

54.1 Subject to Condition 55 (*Announcements*), the Parties agree that the provisions of the DPA shall not be treated as Confidential Information and may be disclosed without restriction.

***Generator Confidential Information***

54.2 The DPA Counterparty shall keep all Generator Confidential Information confidential and shall not disclose Generator Confidential Information without the prior written consent of the Generator, other than as permitted by Condition 54.3 or to fulfil the DPA Counterparty Permitted Purposes.

54.3 Condition 54.2 shall not prevent the disclosure of Generator Confidential Information by the DPA Counterparty:

- (A) on a confidential basis:
  - (i) to its Representatives to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
  - (ii) to any Transferee to fulfil the DPA Counterparty Permitted Purposes;
  - (iii) to any person engaged in providing services to the DPA Counterparty to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
  - (iv) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the DPA Counterparty considers such disclosure is required to enable or assist:
    - (a) the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
    - (b) such person to: (i) fulfil any of its functions arising out of or in connection with the DPA or for the purposes of any other CCUS Programme DPA or any other DPA Document; or (ii) perform any function ancillary or related to its functions arising out of or for the purposes of the DPA or any other CCUS Programme DPA or any other DPA Document or the CCUS Programme; or (iii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the EA 2013; or
    - (c) any transfer under a Transfer Scheme; or
  - (v) to any Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the Gas Licensed Transporter, a T&S Operator, the Economic Regulator, the DPA Settlement Services Provider, any BSC Company or any BSC Agent, the Secretary of State (or to their respective Representatives) to the extent that the DPA Counterparty considers such disclosure is necessary to enable or assist: (a) the DPA Counterparty to fulfil the DPA 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 DPA or for the purposes of any other CCUS Programme DPA or DPA Document or to fulfil or perform any ancillary or related

function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013),

provided that: (i) the DPA Counterparty shall use reasonable endeavours to inform the recipient of the Generator Confidential Information of the DPA Counterparty's obligations pursuant to Condition 54.2; and (ii) in the case of disclosure of Generator Confidential Information pursuant to Condition 54.3(A)(i), 54.3(A)(ii) or 54.3(A)(iii), the DPA Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Condition 54.2;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant Generator Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;
- (D) (subject to Condition 54.4) to Parliament or to any Parliamentary committee, but only if and to the extent that the DPA Counterparty considers such disclosure is required to enable or assist it to fulfil any DPA Counterparty Permitted Purpose;
- (E) (subject to Condition 54.4) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that the Secretary of State has notified the DPA Counterparty that such disclosure is required to enable or assist the Secretary of State to fulfil its functions;
- (F) (subject to Condition 54.4) to any 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 DPA Counterparty considers (or the Secretary of State has notified the DPA Counterparty that) 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;
- (G) (subject to Condition 54.4) 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 DPA 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;
- (H) (subject to Condition 54.4) which is required to comply with any Law or Directive having the force of law or, if not having the force of law, compliance with which is in accordance with accepted general practice;
- (I) (subject to Condition 56 (*Freedom of information*)) which is required:
  - (i) by the FoIA; or
  - (ii) by the EIR;
- (J) to the National Audit Office for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DPA Counterparty has used its resources;

- (K) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the DPA or any other DPA Document; or
- (L) to any Secretary of State or Government Entity to enable or assist the Secretary of State or Government Entity to: (i) make a disclosure to the European Commission or other Competent Authority in order to fulfil a legal obligation and/or (ii) facilitate transparent public reporting by the Secretary of State or Government Entity, and the Generator agrees and acknowledges that such Information may be published by the Secretary of State, Government Entity, European Commission and/or any other Competent Authority.

54.4 Prior to any disclosure of Generator Confidential Information by the DPA Counterparty pursuant to any of Conditions 54.3(D), 54.3(E), 54.3(F), 54.3(G) and 54.3(H), the DPA Counterparty shall use reasonable endeavours to give notice to the Generator of the Generator Confidential Information to be disclosed, provided that:

- (A) it is lawful and reasonably practicable in the circumstances to do so; and
- (B) in the case of any disclosure pursuant to Condition 54.3(D) or 54.3(E), it is not inconsistent with Parliamentary convention.

***DPA Counterparty: insider dealing and market abuse***

54.5 The Generator shall consult with the DPA Counterparty in good faith, from time to time upon request by the DPA Counterparty, in relation to whether Generator Confidential Information held by the DPA Counterparty (or its Representatives) constitutes at that time Inside Information. Nothing in this Condition 54.5 is intended to or shall result in the Generator or any of its Representatives: (i) incurring any liability whatsoever under or in respect of the DPA Counterparty's (or any of its Representatives') obligations and responsibilities pursuant to the FSMA or the CJA, or (ii) being obliged to consult with the DPA Counterparty on Generator Confidential Information to be provided to the DPA Counterparty which constitutes (or may constitute) "inside information" (within the meaning of section 118C of the FSMA or section 56 of the CJA) in respect of any person other than the Generator or any members of its Group.

***DPA Counterparty: liability for Representatives and service providers***

54.6 The DPA Counterparty shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 54.3(A)(ii) or 54.3(A)(iii) to comply with Condition 54.2 as if they were subject to it; and
- (B) any use by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 54.3(A)(ii) or 54.3(A)(iii), of any Generator Confidential Information in breach of Condition 54.2 as if they were subject to it.

***DPA Counterparty Confidential Information:***

54.7 The Generator shall keep all DPA Counterparty Confidential Information confidential and shall not disclose DPA Counterparty Confidential Information without the prior written consent of the DPA Counterparty other than as permitted by Condition 54.8 or to fulfil the Generator Permitted Purposes.

54.8 Condition 54.7 shall not prevent the disclosure of DPA Counterparty Confidential Information by the Generator:

- (A) on a confidential basis:
- (i) to its Representatives to enable or assist the Generator to fulfil the Generator Permitted Purposes;
  - (ii) to members of its Group (and their respective Representatives) to enable or assist the Generator to fulfil the Generator Permitted Purposes;
  - (iii) to any Transferee to fulfil the Generator Permitted Purposes;
  - (iv) to providers or prospective providers to the Generator of debt financing, refinancing or credit support and their professional advisers, provided that such disclosure is restricted to Information necessary for the purposes of assessing the provision or potential provision of such financing, refinancing or credit support;
  - (v) to *bona fide* prospective purchasers of the Facility or, where the Facility is a Dual Scheme Facility, the Generating Station, provided that such disclosure is restricted to Information necessary for the purpose of assessing such potential purchase;
  - (vi) to any Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the Gas Licensed Transporter, any T&S Operator, the Economic Regulator, the DPA Settlement Services Provider, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the Generator considers such disclosure is required to enable or assist: (a) the Generator to fulfil the Generator Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with the DPA or any other CCUS Programme DPA or to fulfil or perform any ancillary or related function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013);
  - (vii) for the purposes of:
    - (a) the examination and certification by its auditors of the Generator's accounts; or
    - (b) complying with a proper request from the Generator's insurance adviser or insurer on placing or renewing any insurance policies,

provided that: (i) the Generator shall use reasonable endeavours to inform the recipient of the DPA Counterparty Confidential Information of the Generator's obligations pursuant to Condition 54.7; and (ii) in the case of disclosure of DPA Counterparty Confidential Information pursuant to Condition 54.8(A)(i), 54.8(A)(ii), 54.8(A)(iii), 54.8(A)(iv) or 54.8(A)(v), the Generator shall ensure that the recipient of the DPA Counterparty Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Condition 54.7;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant DPA Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;



- (D) (subject to Condition 54.9) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator; or
- (E) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the DPA or any other DPA Document.

54.9 Prior to any disclosure of DPA Counterparty Confidential Information by the Generator pursuant to Condition 54.8(D), the Generator shall use reasonable endeavours to give notice to the DPA Counterparty of the DPA Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

***Generator: liability for Representatives and service providers***

54.10 The Generator shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(ii), 54.8(A)(iii), 54.8(A)(iv) or 54.8(A)(v) to comply with Condition 54.7 as if they were subject to it;
- (B) any use by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(ii) or 54.8(A)(iii), of any DPA Counterparty Confidential Information in breach of Condition 54.7 as if they were subject to it; and
- (C) any failure by any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(iv) or 54.8(A)(v) to comply with the restrictions on usage of DPA Counterparty Confidential Information provided for in such Conditions.

***No licence***

54.11 No right or licence is granted to any person in relation to any Confidential Information save as explicitly set out in this Condition 54 (*Confidentiality*).

**55. ANNOUNCEMENTS**

***No announcements***

55.1 The Generator:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

make, publish, issue or release any announcement or public statement in relation to, or which refers to, the DPA or any other DPA Document or any related or ancillary matter, without the express prior consent of the DPA Counterparty (such consent not to be unreasonably withheld or delayed).

***Generator permitted announcements***

55.2 Notwithstanding Condition 55.1 (*No announcements*):

- (A) the Generator (and its directors, officers and employees) may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the DPA or any other DPA Document or any related or ancillary matter if and to the extent required by any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator, provided that:
- (i) the Generator shall use (and shall procure that its directors, officers and employees shall use) reasonable endeavours to agree the contents of such announcement or public statement with the DPA Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed); or
  - (ii) if the contents of such announcement or public statement are not able to be agreed before the making, publishing, issuing or releasing of such announcement or public statement, notify the DPA Counterparty of such announcement or public statement immediately following its being made, published, issued or released; and
- (B) neither the Generator (nor any of its directors, officers or employees) shall be precluded from making, publishing, issuing or releasing any announcement or publication in relation to, or which refers to, the DPA or any other DPA Document or any related or ancillary matter if such announcement or publication:
- (i) does not contain any DPA Counterparty Confidential Information;
  - (ii) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon the DPA Counterparty Permitted Purposes or the DPA Counterparty's ability to fulfil the DPA Counterparty Permitted Purposes (whether in relation to the DPA or any other CCUS Programme DPA);
  - (iii) does not relate or refer to any fact, matter or circumstance in respect of a Dispute or an Electricity Metering Dispute or which will, or is reasonably likely to, give rise to a Dispute or an Electricity Metering Dispute (whether in relation to the DPA or any other CCUS Programme DPA); and
  - (iv) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon:
    - (a) the allocation by the Secretary of State or the DPA Counterparty of CCUS Programme DPAs or Other CCUS Programme Contracts, including any auction process in relation thereto;
    - (b) any application by any person for a CCUS Programme DPA or Other CCUS Programme Contract,

provided that the Generator shall notify the DPA Counterparty of such announcement or public statement immediately following its being made, published, issued or released.

- 55.3 Condition 55.2 shall apply (with the necessary modifications) to any announcement or public statement made, published, issued or released (or proposed to be so made, published, issued or released) by any of the persons referenced in Condition 55.1(B).

**DPA Counterparty permitted announcements**

- 55.4 The DPA Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the DPA or any other DPA Document or any related or ancillary matter that it considers to be necessary, desirable or appropriate (acting reasonably), provided that, if and to the extent that such announcement or statement contains any Generator Confidential Information, the making, publication, issue or release of such announcement or public statement does not breach Condition 54 (*Confidentiality*).

**Publication of DPA Register Information**

- 55.5 Nothing in Condition 54 (*Confidentiality*) shall restrict or prevent the publication by the DPA Counterparty of any DPA Register Information or any other information which in its opinion would facilitate the administration of the DPA.
- 55.6 The Generator may make representations in respect of any information that the Generator considers (acting reasonably) should be excluded from publication on the basis that such information is commercially sensitive, and the DPA Counterparty may (but shall not be obliged to) take into consideration any such representations prior to publishing the relevant information.

**56. FREEDOM OF INFORMATION****Generator acknowledgements and undertakings**

- 56.1 The Generator acknowledges and agrees that the DPA Counterparty:

- (A) is subject to the requirements of the FoIA and the EIR;
- (B) may be obliged under the FoIA or the EIR to disclose Generator Confidential Information:
  - (i) in certain circumstances without consulting or obtaining consent from the Generator; or
  - (ii) following consultation with the Generator and having taken their views into account,

provided always that where (i) above applies the DPA Counterparty shall draw this to the attention of the Generator prior to any disclosure; and

- (C) shall be responsible for determining in its absolute discretion (subject to any decision of the Information Commissioner following an application under section 50 of the FoIA and the outcome of any subsequent appeal to the Tribunal if applicable), whether the FoIA Information it holds (or that is held on its behalf) that is the subject of a Request for Information:
  - (i) is exempt or excepted from disclosure pursuant to the FoIA or the EIR, as appropriate; or
  - (ii) is to be disclosed in response to a Request for Information,

and, for the purposes of this Condition 56.1(C), any notification to the DPA Counterparty which identifies FoIA Information as being Generator Confidential Information is of indicative value only and the DPA Counterparty may nevertheless be obliged to disclose such FoIA Information in accordance with the requirements of the FoIA and the EIR.

- 56.2 The Generator:
- (A) shall not, and shall ensure that its directors, officers and employees do not; and
  - (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,
- respond directly to a Request for Information unless expressly authorised to do so in writing by the DPA Counterparty.
- 56.3 The Generator undertakes to assist and co-operate with the DPA Counterparty, at the Generator's cost, to enable the DPA Counterparty to comply with its obligations pursuant to the FoIA and the EIR.

**Requests for Information: procedure**

- 56.4 If the DPA Counterparty receives a Request for Information in relation to FoIA Information that the Generator is holding on behalf of the DPA Counterparty and which the DPA Counterparty does not hold itself, the DPA Counterparty shall notify the Generator as to the FoIA Information to which the Request for Information relates and the Generator shall:
- (A) as soon as reasonably practicable (and in any event within five (5) Business Days, or such longer period as is specified by the DPA Counterparty, after the DPA Counterparty's request) provide the DPA Counterparty with a copy of all such FoIA Information in the form that the DPA Counterparty requests; and
  - (B) provide all assistance reasonably requested by the DPA Counterparty in respect of any such FoIA Information to enable the DPA 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.
- 56.5 Following notification under Condition 56.4 and until the Generator has provided the DPA Counterparty with all the FoIA Information specified in Condition 56.4(A), the Generator may make representations to the DPA Counterparty whether or on what basis the FoIA Information requested should be disclosed, and whether further Information should reasonably be provided to identify and locate the FoIA Information requested.
- 56.6 The Generator shall ensure that all FoIA Information held on behalf of the DPA Counterparty is retained for disclosure and shall permit the DPA Counterparty to inspect such FoIA Information as requested from time to time.
- 56.7 If the Generator receives a Request for Information in relation to the DPA Counterparty or in connection with the DPA, the Generator shall as soon as reasonably practicable and in any event within two (2) Business Days after receipt forward such Request for Information to the DPA Counterparty, and this Condition 56 (*Freedom of information*) shall apply as if the Request for Information had been received by the DPA Counterparty.

**Publication schemes**

- 56.8 Nothing in this Condition 56 (*Freedom of information*) shall restrict or prevent the publication by the DPA Counterparty of any FoIA Information in accordance with:
- (A) any publication scheme (as defined in the FoIA) adopted and maintained by the DPA Counterparty in accordance with the FoIA;

- (B) any model publication scheme applicable to the DPA Counterparty as may be approved by the Information Commissioner; or
- (C) the obligation to proactively release information under Regulation 4(1)(a) of the EIR,

provided that, in deciding whether to publish Generator Confidential Information in accordance with any such publication scheme or model publication scheme, the DPA Counterparty shall take account of whether such Generator Confidential Information would be exempt from disclosure pursuant to the FoIA or the EIR.

**Part 13**  
**Miscellaneous**

**57. INTELLECTUAL PROPERTY RIGHTS**

***Retention of Intellectual Property Rights***

57.1 Nothing in the DPA shall transfer any ownership of any Intellectual Property Rights acquired or developed by or on behalf of any Party, whether pursuant to or independently from (and whether before or during the term of) the DPA, any other DPA Document or (in the case of the DPA Counterparty) any other CCUS Programme DPA.

***Licence of Intellectual Property Rights***

57.2 Each Party hereby grants to the other Party with effect from the Agreement Date and subject to Condition 57.3(B) for the duration of the Term, a licence of any Intellectual Property Rights that are created by it, or on its behalf, pursuant to the terms of the DPA, any other DPA Document or (in the case of the DPA Counterparty) any other CCUS Programme DPA that:

- (A) it owns; or
- (B) is licensed to it (but only to the extent that it has the right to sub-license such Intellectual Property Rights),

on a non-exclusive, royalty-free, non-transferable basis and (subject to Condition 57.3) solely for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty as licensee) or the Generator Permitted Purpose (in the case of the Generator as licensee).

57.3 The licence granted pursuant to Condition 57.2 shall:

- (A) permit each Party to sub-license to the extent required for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty as licensee) or the Generator Permitted Purpose (in the case of the Generator as licensee); and
- (B) permit each Party to use and sub-license the Intellectual Property Rights after expiry or termination of the DPA, but only for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty) or the Generator Permitted Purpose (in the case of the Generator).

***Indemnity for infringement of Intellectual Property Rights***

57.4 The Generator shall promptly on demand from time to time indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against all liabilities, costs, expenses, damages and losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the DPA Counterparty (or any entity that is sub-licensed in accordance with Condition 57.3) of Intellectual Property Rights licensed to the DPA Counterparty by the Generator pursuant to Condition 57.2, provided that such infringement has arisen from the use of such Intellectual Property Rights in accordance with the DPA Counterparty Restricted Purposes.

57.5 The DPA Counterparty shall promptly on demand from time to time indemnify the Generator, and keep the Generator fully and effectively indemnified, against all liabilities, costs, expenses, damages and losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the Generator (or any entity that is sub-licensed in accordance with Condition 57.3(A)) of Intellectual Property Rights licensed to the Generator by the DPA Counterparty pursuant to Condition 57.2, provided that such

infringement has arisen from the use of such Intellectual Property Rights in accordance with the Generator Permitted Purpose.

**58. GENERATOR CO-OPERATION: SUBSIDY CONTROL RULES**

58.1 If the DPA Counterparty is notified or becomes aware that a Subsidy Control Competent Authority or other Competent Authority has decided that the DPA Counterparty or other public body must recover any subsidy granted or paid in relation to the DPA and that decision has not been annulled, the DPA Counterparty shall, if it is the party to which such order is addressed or if otherwise required by the Secretary of State, give notice as soon as reasonably practicable to the Generator of the sums to be repaid and any other actions necessary to ensure compliance with a Subsidy Control Competent Authority or other Competent Authority's decision and the Generator shall repay or procure the repayment of the relevant sums so notified to the DPA Counterparty or as the DPA Counterparty directs and take any other necessary actions so notified without delay.

58.2 The Generator shall, on reasonable notice and at its own cost:

(A) do or procure the doing of all acts and execute or procure the execution of all documents; and

(B) provide the DPA Counterparty with the Information and assurances,

reasonably necessary for the DPA Counterparty or other public body 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 DPA and any other CCUS Programme DPA(s).

**59. GENERATOR ACKNOWLEDGEMENTS: GENERAL**

***Generator responsibility for advice and appraisal***

59.1 The Generator acknowledges and agrees that none of the DPA Counterparty, the DPA Settlement Services Provider or the Secretary of State (nor any of their respective Representatives):

(A) is:

(i) acting as a fiduciary of the Generator; or

(ii) advising the Generator (including as to any financial, legal, tax, investment, accounting or regulatory matters in any jurisdiction); or

(B) shall have any liability, duty, responsibility or obligation to the Generator with respect thereto.

***DPA Counterparty contracting as principal***

59.2 The Generator acknowledges and irrevocably and unconditionally agrees that:

(A) the DPA Counterparty is contracting as principal and not on behalf of or as an agent for the Secretary of State;

(B) it shall not have or bring any claim or action against the Secretary of State (or their respective Representatives), or the Representatives of the DPA Counterparty, in respect of the DPA or any other DPA Document;

- (C) nothing in the DPA or any other DPA Document shall impute or impose any liability, duty, responsibility or obligation upon the DPA Counterparty (other than pursuant to and in accordance with the express terms of the DPA or any other DPA Document); and
- (D) it shall not hold itself out as having any authority to act for or represent the DPA Counterparty in any way, nor act in any way which confers on the Generator any express, implied or apparent authority to incur any obligation or liability on behalf of the DPA Counterparty.

***Generator's relationship with the DPA Settlement Services Provider***

59.3 The Generator acknowledges and agrees that it shall not have or bring any claim or action against the DPA Settlement Services Provider in respect of any breach of the DPA (or any other DPA Document) or any loss, damage, cost or expense suffered or incurred thereunder and that its sole recourse for any breach of the DPA (or any other DPA Document) or any loss, damage, cost or expense suffered or incurred thereunder shall be against the DPA Counterparty.

**60. NO PARTNERSHIP**

Nothing in the DPA or any other DPA Document and no action taken by the Parties pursuant to the DPA or any other DPA Document shall constitute a partnership, joint venture or agency relationship between the Parties.

**61. TRANSFERS**

***Restriction on Transfers***

61.1 Save as expressly permitted by this Condition 61 (*Transfers*), neither Party may:

- (A) assign to any person all or any of its rights or benefits under the DPA or any other DPA Document;
- (B) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under the DPA or any other DPA Document; or
- (C) transfer (whether by way of novation, sub-contract, delegation or otherwise) to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the DPA or any other DPA Document,

(each, a "**Transfer**", and "**Transferee**", which expression shall (where the context so requires) be deemed to include any transferee under a Transfer Scheme, shall be construed accordingly), without the prior written consent of the other Party.

***Permitted Transfers by the DPA Counterparty***

61.2 Notwithstanding Condition 61.1 (*Restriction on Transfers*), a Transfer of the DPA Counterparty's rights or obligations may be effected, without the consent of the Generator, to any person by or by virtue of a Transfer Scheme.

***Other permitted assignments by the DPA Counterparty***

61.3 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the DPA Counterparty shall be entitled, without the consent of the Generator, to assign to any person all or any of its rights or



benefits under the DPA and any other DPA Document on such terms as the DPA Counterparty considers appropriate.

***Permitted delegation by the DPA Counterparty***

61.4 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the DPA Counterparty shall be entitled, without the consent of the Generator, to sub-contract or delegate to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the DPA and any other DPA Document on such terms as the DPA Counterparty considers appropriate, provided that the DPA Counterparty shall not be relieved of any of its obligations under the DPA and any other DPA Document and shall be liable for the acts and omissions of any person to whom it sub contracts or delegates or with whom it enters into an arrangement to perform any or all of its obligations under the DPA and any other DPA Document.

***General provisions relating to permitted transfers***

61.5

- (A) If the DPA Counterparty effects or proposes to effect a Transfer referred to in Conditions 61.2, 61.3 or 61.4, the Generator shall enter into such further agreements and do all such other things as are necessary to substitute the relevant Transferee for the DPA Counterparty in respect of the rights, benefits, obligations or liabilities that are, or are to be, the subject of the Transfer (the "**Transferring Rights and Obligations**") and to give effect to any consequential amendments to the DPA (or other relevant DPA Document) that are necessary to give effect to such transfer.
- (B) To the extent practicable, the DPA Counterparty shall give the Generator not less than ten (10) Business Days' prior written notice specifying the identity of the Transferee and the Transferring Rights and Obligations, provided that no such prior written notice shall be required in respect of any Transfer: (i) by or by virtue of a Transfer Scheme; or (ii) pursuant to Condition 61.4 (*Permitted delegation by the DPA Counterparty*).

***Permitted assignment by the Generator***

61.6 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the Generator shall be entitled, without the consent of the DPA Counterparty, to assign all (but not part only) of its rights and benefits under the DPA and any other DPA Document by way of security to or in favour of:

- (A) a Lender;
- (B) any Affected Person;
- (C) any parent undertaking of the Generator which provides funding in relation to the Facility; or
- (D) any agent or security trustee on behalf of any Lender or Affected Person or any parent undertaking of the Generator referred to in (C) above.

The Generator shall give the DPA Counterparty not less than ten (10) Business Days' written notice prior to effecting an assignment pursuant to this Condition 61.6 and shall specify in such notice the identity of the assignee and provide such details in relation to such assignee as the DPA Counterparty may reasonably request having received such notification.

**Direct Agreement**

61.7 The DPA Counterparty shall enter into a Direct Agreement with, and at the request of, any person (or with any agent or security trustee on the relevant person's behalf):

(A)

(i) who is a Lender with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the DPA); or

(ii) who is an Affected Person (or an agent or security trustee on an Affected Person's behalf) with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the DPA); and

(B) in whose favour the Generator assigns its rights under the DPA and any other DPA Document in accordance with Condition 61.6.

**Other Transfers by the Generator; Stapling obligation**

61.8 If the consent of the DPA Counterparty to the transfer by the Generator of all or substantially all of the Generator's rights, benefits and obligations under the DPA and any other DPA Document to a Transferee is required and is given, the Generator shall transfer ownership of the Facility to the same Transferee contemporaneously with the Transfer. Any Transfer effected, or purported to be effected, in breach of this Condition 61.8 shall be ineffective and void.

**Costs**

61.9 The DPA Counterparty shall, promptly on demand from time to time, indemnify the Generator, and keep the Generator fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the Generator and which would not have been incurred but for a Transfer of the rights and obligations of the DPA Counterparty being effected by or by virtue of a Transfer Scheme.

**Change of Ownership**

61.10 No Change of Ownership may occur during the Lock-in Period unless it is approved by the DPA Counterparty pursuant to Conditions 61.12 to 61.15.

61.11 No Restricted Share Transfer may occur without the prior written approval of the DPA Counterparty.

61.12 Subject to Condition 61.16, the Generator shall notify the DPA Counterparty of any proposed Change of Ownership as soon as reasonably practicable prior to its occurrence ("**Change of Ownership Notice**"). A Change of Ownership Notice shall include:

(A) details of the new ownership structure (legal and beneficial) that would apply following such Change of Ownership; and

(B) where such Change of Ownership is proposed to occur during the Lock-in Period, such Supporting Information as the Generator considers to be relevant to evidence:

(i) that the Investor Requirements would be fulfilled following the proposed Change of Ownership; and

- (ii) whether or not the proposed Change of Ownership is a Restricted Share Transfer.

61.13 Each Change of Ownership Notice shall be accompanied by a Director's Certificate in relation to the information contained in, and enclosed with, the Change of Ownership Notice.

61.14 Where such Change of Ownership is proposed to occur during the Lock-in Period, the DPA Counterparty shall, no later than twenty (20) Business Days after receipt of a Change of Ownership Notice, give a notice to the Generator (a "**Change of Ownership Response Notice**"). A Change of Ownership Response Notice shall specify whether the DPA Counterparty considers that:

- (A) the Investor Requirements would or would not be fulfilled following the proposed Change of Ownership; and
- (B) the Generator has or has not evidenced that the proposed Change of Ownership is a Restricted Share Transfer; or
- (C) it has not been provided with sufficient Supporting Information to determine:
  - (i) whether or not the Investor Requirements would be fulfilled following the proposed Change of Ownership; and/or
  - (ii) whether or not the proposed Change of Ownership is a Restricted Share Transfer,

and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine such matters (the "**Change of Ownership Supporting Information**").

61.15 If the DPA Counterparty states in the Change of Ownership Response Notice that:

- (A) the Generator has evidenced that:
  - (i) the Investor Requirements would be fulfilled following the proposed Change of Ownership; and
  - (ii) the proposed Change of Ownership is not a Restricted Share Transfer,

then the Change of Ownership will be deemed to have been approved by the DPA Counterparty for the purposes of the DPA;

- (B) the Generator has not evidenced that:
  - (i) the Investor Requirements would be fulfilled following the proposed Change of Ownership; and/or
  - (ii) the proposed Change of Ownership is not a Restricted Share Transfer,

then the Change of Ownership will be deemed not to have been approved by the DPA Counterparty for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or

- (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether or not: (i) the Investor Requirements would be fulfilled following the proposed Change of Ownership; and/or (ii) whether or not the proposed Change of Ownership is a Restricted Share Transfer:

- (i) the Generator shall provide the Change of Ownership Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Change of Ownership Response Notice, or such longer period as is specified by the DPA Counterparty; and
- (ii) upon receipt of the Change of Ownership Supporting Information, the DPA Counterparty shall as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after receipt of such Change of Ownership Supporting Information, give a further Change of Ownership Response Notice to the Generator which shall contain the information set out in paragraphs (A) or (B) above, or this paragraph (C) if the DPA Counterparty has still not been provided with sufficient Supporting Information.

61.16 The prior written approval of the DPA Counterparty shall not be required in respect of any Change of Ownership which occurs after the Lock-in Period unless it is a Restricted Share Transfer in which case the Generator shall obtain the prior written approval of the DPA Counterparty prior to such Change of Ownership taking place pursuant to Condition 61.11.

## 62. NOTICES

### ***Form of notices***

62.1 Any notice to be given pursuant to or in connection with the DPA, or any other DPA Document, shall be effective only if it is in writing and is in English. Faxes are not permitted and, unless otherwise expressly stated, website publication is not permitted, but email and submission to the DPA Counterparty's electronic portal are permitted.

### ***Pro forma notices***

62.2 Where these Conditions permit, or require, either Party to give a notice to the other Party such notice shall be in substantially the form set out in Annex 10 (*Pro forma notices*) (each such notice, a "Pro Forma"). The foregoing: (i) shall be without prejudice to the requirement for the relevant notice to include such content as may be prescribed by the relevant Condition; and (ii) shall apply only if a Pro Forma in respect of the relevant Condition is contained in Annex 10 (*Pro forma notices*).

### ***Notice details***

62.3 The notice details of the Parties as at the Agreement Date are set out in the Agreement.

### ***Changes to notice details***

62.4 A Party may change its notice details on giving notice to the other Party in accordance with this Condition 62 (*Notices*). Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three (3) Business Days after the date of delivery or deemed delivery of such notice); or
- (B) (if no date is specified in such notice or the date specified is fewer than three (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

### ***Deemed delivery***

62.5 Any notice given pursuant to or in connection with the DPA or any other DPA Document shall, in the absence of evidence of earlier receipt, be deemed to have been received:

- (A) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (B) if sent by first class post within the United Kingdom, on the third (3rd) Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth (5th) Business Day after the day of posting;
- (D) if sent by email, when sent except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification; or
- (E) if submitted to the DPA Counterparty's electronic portal, when submitted except that an electronic portal submission shall be deemed not to have been submitted if the Party submitting the electronic portal submission receives an upload failure notification,

provided that any notice given outside Working Hours in the place to which it is addressed (or, in the case of a notice sent by email, the location of the person to whom it is addressed) shall be deemed not to have been given until the start of the next period of Working Hours in such place.

#### **Notice requirements**

- 62.6 Except where expressly stated to the contrary, each notice given by the DPA Counterparty to the Generator, or by the Generator to the DPA Counterparty, pursuant to the DPA or any other DPA Document must be duly signed (including, in the case of notice by way of email, by Electronic Signature (and "**Electronic Signature**" shall have the meaning given to that term in the Electronic Communications Act 2000)):
- (A) in the manner, and by the person, specified in the relevant provision of the DPA or DPA Document; or
  - (B) (where no such requirement is specified) by an authorised signatory of the relevant Party.

#### **Disapplication of notice provisions**

- 62.7 This Condition 62 (*Notices*) shall not apply in relation to any document relating to service of process (including in respect of the service of Service Documents).

#### **63. COSTS**

- 63.1 Subject to Condition 63.2, each Party shall bear all costs and expenses incurred by it in connection with the entry into the DPA and each other DPA Document, including all costs and expenses incurred in connection with the negotiation, preparation, execution, performance and carrying into effect of, and compliance with, the DPA and each other DPA Document.

- 63.2 Condition 63.1 is subject to any provision of the DPA or any other DPA Document which expressly provides for the Generator to bear the costs and expenses of the DPA Counterparty (or to pay or reimburse or indemnify the DPA Counterparty in respect of such costs and expenses) in respect of which such costs and expenses shall comprise all out-of-pocket costs and expenses (including all legal and other advisory and consultants' fees) properly incurred by the DPA Counterparty in relation to the relevant matter. Where such costs and expenses are required to be apportioned between the Generator and one (1) or more other DPA Generators, the DPA Counterparty shall apportion such costs between the Generator and such other DPA Generators (for this purpose ignoring the proviso in the definition of DPA Generators

in Condition 1.1) in such proportion as the DPA Counterparty (acting reasonably) deems fair and equitable.

**64. 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 and securing to the other Party the full benefit of the rights, powers and benefits conferred upon it under or pursuant to the DPA and all other DPA Documents save that the DPA Counterparty shall not be required pursuant to this Condition 64 (*Further assurance*) to exercise or perform any statutory power or duty.

**65. THIRD PARTY RIGHTS**

65.1 Conditions 59.1, 59.2 and 59.3 confer benefits on the DPA Settlement Services Provider, the Secretary of State, and their respective Representatives (each, a "**Third Party**") (such Conditions being "**Third Party Provisions**").<sup>50</sup>

65.2 Subject to the remaining provisions of this Condition 65 (*Third party rights*), the Third Party Provisions are intended to be enforceable by the Third Parties by virtue of the C(RTP) Act.

65.3 The Parties do not intend that any term of the DPA, other than the Third Party Provisions, should be enforceable, by virtue of the C(RTP) Act, by any person who is not a Party.

65.4 Notwithstanding this Condition 65 (*Third party rights*), the DPA may be varied in any way and at any time by the Parties without the consent of any Third Party.

**66. NO VARIATION**

66.1 Subject to Condition 66.2, no variation to the provisions of the DPA shall be valid unless it is in writing and signed by each Party.

66.2 Condition 66.1 is subject to the operation of:

- (A) Condition 32 (*Change in Applicable Law: Procedure*);
- (B) Annex 4 (*Change Control Procedure*);
- (C) Annex 6 (*Gas Reference Price Review*);
- (D) Annex 7 (*Carbon Market Reference Price Review*); and
- (E) Annex 8 (*Reference Plant Review*).

**67. COUNTERPARTS**

The DPA may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one (1) counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

<sup>50</sup> Note to Reader: Third party rights provisions are subject to further review by BEIS in light of the development of the declarations and metering framework for CO<sub>2</sub>.

## 68. GOVERNING LAW AND JURISDICTION

- 68.1 The DPA, the other DPA Documents and any matter, claim or dispute arising out of or in connection with any of them (including any Dispute) shall be governed by and construed in accordance with English law.
- 68.2 Any Dispute shall be finally determined or resolved in accordance with the Dispute Resolution Procedure.
- 68.3 Any Electricity Metering Dispute shall be finally determined or resolved in accordance with Condition 45.1 (*Metering Disputes*).

## 69. AGENT FOR SERVICE OF PROCESS

### ***Application***

- 69.1 This Condition 69 (*Agent for service of process*) shall apply to the DPA only if it is expressed to apply to the DPA in the Agreement.

### ***Service Agent***

- 69.2 The Generator irrevocably appoints the Service Agent to be its agent for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute. It agrees that any Service Document and any claim form, application notice, order, judgment or other document relating to any Dispute or Electricity Metering Dispute may be effectively served on it in England and Wales by service on its Service Agent effected in any manner permitted by the Civil Procedure Rules.

### ***Replacement***

- 69.3 If the Service Agent at any time ceases for any reason to act as such, the Generator shall appoint a replacement agent for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute having an address for service in England or Wales and shall notify the DPA Counterparty of the name and address of the replacement agent. Failing such appointment and notification, the DPA Counterparty shall be entitled by notice to the Generator to appoint a replacement agent to act on behalf of the Generator for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute. The provisions of this Condition 69 (*Agent for service of process*) applying to service on a Service Agent apply equally to service on a replacement agent.

### ***Service of process***

- 69.4 A copy of any Service Document or any claim form, application notice, order, judgment or other document relating to any Dispute or Electricity Metering Dispute served on an agent shall be sent by post to the Generator. Failure or delay in so doing shall not prejudice the effectiveness of service of the relevant document.

## 70. LANGUAGE

### ***English language***

- 70.1 All Information provided by the Generator to the DPA Counterparty pursuant to or in connection with the DPA or any other DPA Document shall be in English unless otherwise agreed in writing by the DPA Counterparty.

***Translations***

- 70.2 In the case of any Information which is translated into English, prior to its being delivered to the DPA Counterparty pursuant to the DPA or any other DPA Document, the Generator shall ensure that any such translation is carried out (at the Generator's cost) by a recognised and appropriately qualified and skilled translation agent.
- 70.3 The DPA Counterparty shall be entitled to assume the accuracy of and rely upon the English translation of any Information provided pursuant to Condition 70.2 and the English translation shall prevail.



**Annex 1**  
**Conditions Precedent**

**Part A**  
**Initial Conditions Precedent**

**1. LEGAL OPINION**

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

- (A) is duly formed and validly existing under the laws of the jurisdiction of formation; and
- (B) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the DPA and the other DPA Documents.

**2. KYC DOCUMENTATION**

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

**3. THE FACILITY**

Delivery to the DPA Counterparty of the following:

- (A) a description of the Generation Assets, in form and content satisfactory to the DPA Counterparty (acting reasonably), including:
  - (i) details of the assets comprising the Generation Assets;
  - (ii) an aerial view of the unique geographical location of the Generation Assets, whether an extract from the Ordnance Survey map or equivalent, showing the existing or proposed locations of: (a) the Generation Assets; (b) the Electricity Metering Equipment; (c) the Gas Supply Metering Equipment; (d) the Electricity Delivery Points; and (e) the Gas Supply Points; and
  - (iii) a process flow diagram of the Generation Assets; and
- (B) a description of the Capture Assets, in form and content satisfactory to the DPA Counterparty (acting reasonably), including:
  - (i) details of the assets comprising the Capture Assets;
  - (ii) an aerial view of the unique geographical location of the Capture Assets, whether an extract from the Ordnance Survey map or equivalent, showing the proposed locations of: (a) the Capture Assets; (b) the CO<sub>2</sub> Metering Equipment; and (c) the CO<sub>2</sub> Delivery Points; and
  - (iii) a process flow diagram of the Capture Assets, demonstrating that the Capture Assets will comply with the CO<sub>2</sub> Metering Specification.

#### 4. **KEY PROJECT DOCUMENTS**

Delivery to the DPA Counterparty of evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the following documents have been entered into or obtained by the Generator:

- (A) a grid connection offer signed by the Generator and the Electricity Transmission System Operator;
- (B) a gas connection offer signed by the Generator and the Gas Licensed Transporter;
- (C) a T&S Connection Agreement signed by the Generator and the T&S Operator;
- (D) a T&S Construction Agreement signed by the Generator and the T&S Operator;
- (E) a Code Agreement signed by [the Generator, all T&S Operators and all other generators which are party to a CCUS Programme DPA]; and
- (F) Applicable Planning Consents for the Facility and associated infrastructure, with the challenge period having expired with no challenge being brought (or any challenge having been unsuccessful with no further rights of appeal).

#### 5. **OTHER**

Delivery to the DPA Counterparty of evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), of the following:

- (A) the Generator's:
  - (i) certificate of incorporation (if applicable);
  - (ii) most recent annual return (where available); and
  - (iii) VAT certificate of registration;
- (B) a copy of the resolution of the Generator's board of directors approving the terms of and the transactions contemplated by the DPA and resolving that it executes, delivers and performs the DPA; and
- (C) a declaration by the authorised person(s) of the Generator that it is:
  - (i) not in receipt of any other scheme of funding by a Government Entity; or
  - (ii) in receipt of another scheme of funding by a Government Entity and/or any other Approved Scheme of Funding, together with Supporting Information in relation to such scheme of funding.

**Part B**  
**Operational Conditions Precedent**

**1. DPA SETTLEMENT SERVICES PROVIDER**

Delivery to the DPA Counterparty of written confirmation from the DPA Settlement Services Provider that:

- (A) it has received the DPA Settlement Required Information which is required from the Generator prior to the Start Date; and
- (B) the Generator has in place the systems and processes which are necessary for the continued provision of the DPA Settlement Required Information.

**2. ELECTRICITY GENERATION**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that a Net Dependable Capacity of not less than eighty five per cent. (85%) of the Net Dependable Capacity Estimate has been Commissioned;
- (B) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the Electricity Metering Obligations at Condition 21.1 (*Undertakings: Electricity Metering Obligation*);
- (C) a date and time stamped copy of the electrical schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the Electricity Metering Equipment associated with all assets comprised within the Facility (including details of the type of BSC approved metering and all Communications Equipment installed in compliance with the Electricity Metering Obligations);
- (D) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that all Communications Equipment relating to the Electricity Metering Equipment is fully compliant with the BSC;
- (E) the expected generation output data, in form and content satisfactory to the DPA Counterparty (acting reasonably), not to be delivered before delivery of the evidence referred to in paragraph 2(A) of this Part B of Annex 1 (*Conditions Precedent*); and
- (F) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that Start Up Times of not more than the Required Start Up Times have been Commissioned.

**3. CO<sub>2</sub> CAPTURE**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the CO<sub>2</sub> Metering Obligations at Condition 21.2 (*Undertakings: CO<sub>2</sub> Metering Obligation*);
- (B) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), of the Test Achieved CO<sub>2</sub> Capture Rate to demonstrate that the OCP Required CO<sub>2</sub> Capture Rate has been Commissioned;

- (C) 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 Generator and showing the locations of the CO<sub>2</sub> Metering Equipment (including CO<sub>2</sub> Delivery Points) associated with all assets comprised within the Facility (including details of the type of metering and CO<sub>2</sub> Metering Equipment installed in compliance with the CO<sub>2</sub> Metering Obligation); and
- (D) evidence, in form and content satisfactory to the DPA Counterparty, that the Facility has connected to the T&S Network in accordance with the T&S Operator's compliance requirements ("**T&S Connection Confirmation CP**")<sup>51</sup>.

#### 4. **GAS SUPPLY AND PLANT EFFICIENCY**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the Gas Supply Metering Obligations at Condition 21.3 (*Undertakings: Gas Supply Metering Obligation*);
- (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 Generator and showing the locations of the Gas Supply Metering Equipment (including Gas Supply Points) associated with all assets comprised within the Facility (including details of the type of metering and Gas Supply Metering Equipment installed in compliance with the Gas Supply Metering Obligation); and
- (C) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that a Plant Net Efficiency of not less than ninety per cent. (90%) of the Plant Net Efficiency Estimate has been Commissioned.

#### 5. **SUBSIDY CONTROL DECLARATION OPERATIONAL CP**

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

- (A) no Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the subsidy arising under the DPA and/or any other Approved Scheme of Funding); or
- (B) Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the subsidy arising under the DPA and/or any other Approved Scheme of Funding), and that such Subsidy, State aid and/or Union Funding (as applicable) (adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) has been repaid to the granter of the subsidy, aid or funding in full.

#### 6. **INTERIM OPERATIONAL NOTIFICATION**

Delivery to the DPA Counterparty of either:

- (A) if the Facility is connected directly to the Electricity Transmission System, a certified copy of the Interim Operational Notification issued by the Electricity Transmission System Operator under the Grid Code; or

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<sup>51</sup> Note to Reader: This condition is subject to further development as the T&S business model is developed however BEIS expects this to include the relevant certification of connection.

- (B) if the Facility is not connected directly to the Electricity Transmission System:
- (i) written confirmation from the relevant Electricity Licensed Distributor or, if no such confirmation is applicable, evidence (in form and content reasonably satisfactory to the DPA Counterparty) that the Electricity Distribution Code compliance process for connection to and export to the Electricity Distribution System has been satisfied; and
  - (ii) if applicable, the Interim Operational Notification issued by the Electricity Transmission System Operator under the Grid Code.

## Annex 2 Testing Requirements

### 1. DEFINITIONS

#### 1.1 In this Annex 2 (*Testing Requirements*):

**"Approved Test Procedure"** has the meaning given to that term in paragraph 1.2(A) (*Test Procedure*) of Part A (*Testing Requirements*);

**"CO<sub>2</sub> Capture Rate Test Report"** means a report to be supplied to the DPA Counterparty in accordance with paragraph 6.6 (*CO<sub>2</sub> Capture Rate Test Report*) of Part A (*Testing Requirements*);

**"Cold Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Correction Curves"** means the Generator's Required Correction Curves from time to time, being the Initial Correction Curves as may be adjusted pursuant to paragraphs 1.1 to 1.5 (*Test Procedure*) of Part A (*Testing Requirements*);

**"Facility Heat and Material Balance Diagram"** means the Generator's Heat and Balance Diagram from time to time, being the Initial Heat and Material Balance Diagram as may be adjusted pursuant to:

(A) Conditions 5.1, 5.5, and 5.6 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*); and/or

(B) paragraphs 1.1 to 1.5 (*Test Procedure*) of Part A (*Testing Requirements*);

**"Facility Shutdown"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Full Load Operation"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Full Load Test"** the performance test procedure detailed paragraph 3 (*Full Load Test*) of Part A (*Testing Requirements*);

**"Full Load Test Performance Outputs"** has the meaning given to that term in paragraph 3.1 (*General*) of Part A (*Testing Requirements*);

**"Heat and Material Balance Diagram"** means a diagram detailing the energy and material output from a system that is equal to the energy input to such system at Reference Site Conditions, with such diagram to include a process flow diagram, operating conditions (including mass flow, enthalpy, pressure, temperature, composition and steam quality), compositions and key physical properties of each major process line and equipment of the Facility;

**"Hot Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Initial Correction Curves"** has the meaning given to that term in the Agreement;

**"Performance Test"** means the OCP Performance Test and/or the Longstop Date Performance Test (as applicable);

**"Performance Test Access Notice"** has the meaning given to that term in paragraph 2.3 (*Performance Test Access Right*) of Part A (*Testing Requirements*);

**"Performance Test Access Right"** has the meaning given to that term in paragraph 2.2 (*Performance Test Access Right*) of Part A (*Testing Requirements*);

**"Performance Test Date Notice"** has the meaning given to that term in paragraph 2.1 (*Notification of Performance Test Date*) of Part A (*Testing Requirements*);

**"Performance Test Report"** means a report to be supplied to the DPA Counterparty in accordance with paragraph 2.4 (*Performance Test Report*) of Part A (*Testing Requirements*);

**"Pre-Start Up (Shutdown) Test Conditions"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Proposed Correction Curves"** has the meaning given to that term in paragraph 1.1(C) (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"PTP Response Notice"** has the meaning given to that term in paragraph 1.2 (*Test Procedure*) of Part A (*Testing Requirements*);

**"Required Correction Curves"** means the correction curves listed in paragraph 1 (*Required Correction Curves*) of Part C, in a form and content satisfactory to the DPA Counterparty;

**"Start Up (Shutdown) Test"** means the test procedure detailed in paragraph 4 (*Start Up (Shutdown) Test*);

**"Start Up (Shutdown) Test Commencement"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Test"** means the OCP Performance Test, the Longstop Date Performance Test, the Annual NDC Test or the CO<sub>2</sub> Capture Rate Test (as applicable);

**"Test Performance Standards"** the industry guidelines, practices and standards which:

- (A) are relevant or apply to the completion, testing and commissioning of generating and carbon capture facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology and the Facility Capture Technology);
- (B) are required to be complied with, followed or passed (as appropriate): (i) in order for a generating facility to generate and export electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation;
- (C) are required to be complied with, followed or passed (as appropriate): (i) in order for a capturing facility to capture and export CO<sub>2</sub> emissions; or (ii) to demonstrate that a capturing facility is fit for commercial operation; and
- (D) if applicable, include the following ASME standards:
  - (i) ASME PTC 46 "Overall Plant Performance";
  - (ii) ASME PTC-48, or ISO 27919; and
  - (iii) ASME PTC-4.4;

**"Test Procedure"** means the performance test procedure for the Full Load Tests, Start Up (Shutdown) Tests and CO<sub>2</sub> Capture Rate Tests to be carried out by the Generator, in accordance with the Test Performance Standards, to be prepared by the Generator and approved by the DPA Counterparty pursuant to paragraphs 1.1 to 1.9;

**"Test Procedure Notice"** has the meaning given to that term in paragraph 1.1 (*Test Procedure*) of Part A (*Testing Requirements*);

**"Test Report"** means a Performance Test Report or a CO<sub>2</sub> Capture Rate Test Report (as applicable);

**"Test Report Minimum Technical Requirements"** means the minimum required technical content of each Test Report as required by the relevant Test Performance Standards and as required to comply with the Reasonable and Prudent Standard which shall include, but shall not be limited to, the following:

- (A) procedure for testing and calculation;
- (B) details of relevant calculations with definitions of terminology, including showing actual manipulation of test data such as averaging and determination and application of correction factors;
- (C) details of relevant results (corrected to Reference Site Conditions and uncorrected at test conditions);
- (D) Correction Curves;
- (E) copies of log sheets and raw data in electronic format;
- (F) field data sheets;
- (G) exported CO<sub>2</sub> analyses;
- (H) fuel analyses;
- (I) post-test uncertainty analyses; and
- (J) details of calibrations of all instruments and copies of associated calibration certificates;

**"Test Run Period"** means the applicable period(s) of time during which each Test is required to be conducted which, in respect of:

- (A) a Full Load Test shall be the time periods set out in paragraph 3.2(B) (*Full Load Test Run Periods*);
- (B) a Start Up (Shutdown Test) shall be the time periods set out in paragraph 4.4 (*Start Up (Shutdown) Test Run Periods*); or
- (C) a CO<sub>2</sub> Capture Rate Test shall be the time periods set out in paragraph 6.3 (*CO<sub>2</sub> Capture Rate Test Run Period*); and

**"Warm Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*).



**Part A**  
**Testing Requirements**

**1. TEST PROCEDURE**

***Test Procedure***

- 1.1 The Generator shall, at least six (6) Months prior to the date on which it proposes to conduct the first Performance Test, give a notice to the DPA Counterparty (a "**Test Procedure Notice**") with such notice to:
- (A) include the draft Test Procedure it proposes to be adopted for the purposes of Performance Tests, Annual NDC Tests, and CO<sub>2</sub> Capture Rate Tests;
  - (B) include the Facility's pre-test uncertainty calculations for the instrumentation to be used for the performance test measurements (as detailed in ASME PTC 19.1) in each Test;
  - (C) specify the proposed Correction Curves which should apply for the purposes of the Tests and, if applicable, include such Supporting Information as the Generator considers to be relevant to evidence any changes to the Initial Correction Curves ("**Proposed Correction Curves**");
  - (D) specify the proposed Heat and Material Balance Diagram which should apply for the purposes of the Tests and, if applicable, include such Supporting Information as the Generator considers to be relevant to evidence any changes to the Initial Heat and Material Balance Diagram (or if applicable, the NDCE Adjusted Heat and Material Balance Diagram) ("**Proposed Heat and Material Balance Diagram**"); and
  - (E) confirm the date on which it proposes to carry out such Performance Test.
- 1.2 The DPA Counterparty shall, no later than [thirty (30)] Business Days after receipt of a Test Procedure Notice, give a notice to the Generator (a "**PTP Response Notice**"). A PTP Response Notice shall specify whether the DPA Counterparty:
- (A) approves the draft Test Procedure without amendment, following which the draft Test Procedure shall become the "**Approved Test Procedure**";
  - (B) requires the Generator to provide additional Supporting Information in relation to the draft Test Procedure, in order for the DPA Counterparty to assess whether or not to approve such procedure; or
  - (C) requires amendments to the draft Test Procedure, in which case the PTP Response Notice shall provide the Generator with sufficient detail in relation to such required amendments.
- 1.3 The Generator shall, no later than twenty (20) Business Days after receipt of a PTP Response Notice, submit to the DPA Counterparty:
- (A) if the PTP Response Notice relates to paragraph 1.2(B), the relevant additional Supporting Information specified in the PTP Response Notice; or
  - (B) if the PTP Response Notice relates to paragraph 1.2(C), an amended draft Test Procedure which includes the amendments specified in the PTP Response Notice,
- and in either case, paragraph 1.2 shall then reapply.
- 1.4 The Generator shall conduct each Test in accordance with the Approved Test Procedure.

- 1.5 With the effect from the date of the PTP Response Notice which approved the Test Procedure:
- (A) the Proposed Correction Curves included in the Approved Test Procedure shall constitute the Correction Curves for the purposes of the DPA; and
  - (B) the Proposed Heat and Material Balance Diagram included in the Approved Test Procedure shall constitute the Heat and Material Balance Diagram for the purposes of the DPA.
- 1.6 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to significantly affect the accuracy of the Approved Test Procedure.
- 1.7 Nothing in paragraphs 1.1 to 1.3 shall require the DPA Counterparty to specify in any PTP Response Notice that the DPA Counterparty accepts any draft Test Procedure unless and until the DPA Counterparty is satisfied of the same.
- 1.8 Any Test Procedure Notice shall be irrevocable.
- 1.9 The Generator may give a Test Procedure Notice pursuant to paragraph 1.1 on only one (1) occasion.

## 2. **PERFORMANCE TESTS: GENERAL**

### ***Notification of Performance Test Date***

- 2.1 The Generator shall, no later than one (1) Month prior to the anticipated date of each Performance Test, give a notice to the DPA Counterparty confirming such date (an "**Performance Test Date Notice**").

### ***Performance Test Access Right***

- 2.2 With effect from the Agreement Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility if the DPA Counterparty intends to witness a Performance Test (the "**Performance Test Access Right**").
- 2.3 If the DPA Counterparty intends to exercise the Performance Test Access Right it shall give a notice to the Generator (a "**Performance Test Access Notice**"). A Performance Test Access Notice shall specify that the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) intends to exercise the Performance Test Access Right.
- 2.4 On receipt of a Performance Test Access Notice, the Generator shall permit the DPA Counterparty to exercise the Performance Test Access Right provided that the date requested by DPA Counterparty to exercise the Performance Test Access Right is no earlier than one (1) Business Day after receipt of the Performance Test Access Notice.

### ***Performance Test Report***

- 2.5 The Generator shall, as soon as reasonably practicable after the completion of a Performance Test, submit a test report of such Performance Test to the DPA Counterparty (a "**Performance Test Report**"). A Performance Test Report shall include, but shall not be limited to, the following:
- (A) a description of the Facility;

- (B) the Test Report Minimum Technical Requirements; and
- (C) evidence (including any test review reports) from the Generator's engineer and (if applicable) the Lender's engineer:
  - (i) of the results of the Performance Test;
  - (ii) that the Performance Test Report complies with the Test Report Minimum Technical Requirements; and
  - (iii) that the Generator has conducted the relevant Performance Test in accordance with the Approved Test Procedure.

### 3. **FULL LOAD TEST**

#### ***General***

- 3.1 The purpose of each Full Load Test shall be for the Generator to determine (simultaneously) the Facility's:
- (A) Net Dependable Capacity;
  - (B) Plant Net Efficiency; and
  - (C) Test Achieved CO<sub>2</sub> Capture Rate,
- (the "**Full Load Test Performance Outputs**").

#### ***Full Load Test Run Periods***

- 3.2 Each Full Load Test shall:
- (A) include three (3) Test Run Periods; and
  - (B) for the purposes of a Full Load Test, each Test Run Period shall be a minimum of one (1) hour duration, or such longer duration as required by the Test Performance Standards.
- 3.3 The Generator shall ensure that each Full Load Test is carried out in accordance with the Test Performance Standards.

#### ***Facility Mode of Operation***

- 3.4 Each Full Load Test shall not commence until the Facility:
- (A) has satisfied the required stabilisation criteria for steady state operation in accordance the Test Performance Standards; and
  - (B) is in the same condition as the condition upon which the Net Dependable Capacity Estimate, the Plant Net Efficiency Estimate and the CO<sub>2</sub> Capture Rate Estimate were determined and the Facility Heat and Material Balance Diagram was calculated.
- 3.5 The Generator shall use reasonable endeavours to conduct each Full Load Test at the Reference Site Conditions, and as a minimum shall ensure that:
- (A) the Facility is operated at full load which can be maintained on a continual basis with normal scheduled plant maintenance intervals (excluding any peak firing operation);

- (B) any power augmentation which cannot be maintained in operation on a continuous basis, or which has a detrimental impact on plant net efficiency and normal economic operation, is switched off (including GT inlet cooling, and supplementary firing);
- (C) all standby auxiliaries are operational, but in standby position;
- (D) variations exceeding steady state conditions invalidate the applicable Test Run Period which shall then be repeated;
- (E) cycle blowdown and make-up water (as applicable) are not isolated during the Test Run Period;
- (F) emissions to atmosphere are maintained within the environmental permit limits, as measured by the calibrated Continuous Emissions Monitoring System (CEMS) equipment during the Test Run Period;
- (G) there is no import of electricity from the grid during the Test Run Period;
- (H) the Facility is operated in a normal mode which is representative of long term operating configuration with all equipment operating as designed and within specification and alarm limits consistent with the Reasonable and Prudent Standard;
- (I) no normally operating systems are taken out of service including suppressed alarms unless specifically allowed in the Performance Test Procedure; and
- (J) the auxiliary power consumers in operation during each Full Load Test include all electrical consumers normally used to operate the equipment.

***Adjustment: Reference Site Conditions and Correction Curves***

- 3.6 The Full Load Test Performance Outputs for each Full Load Test shall be adjusted to the Reference Site Conditions based upon the Correction Curves.
- 3.7 The Full Load Test Performance Outputs shall not be adjusted for:
  - (A) degradation; or
  - (B) tolerance to account for instrument uncertainty.

**4. START UP (SHUTDOWN) TEST**

***General***

- 4.1 The purpose of each Start Up (Shutdown) Test shall be for the Generator to determine the Facility's Start Up Times during a:
  - (A) Cold Start;
  - (B) Warm Start; and
  - (C) Hot Start,
 and to determine the Test Achieved CO<sub>2</sub> Capture Rate for each Start Up (Shutdown) Test Run Period.
- 4.2 The Generator shall ensure that each Start Up (Shutdown) Test is carried out in accordance with the Test Performance Standards.

4.3 For the purposes of this paragraph 4 (*Start Up (Shutdown) Test*):

**"Cold Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than sixty four (64) hours prior to a Start Up (Shutdown) Test Commencement;

**"Facility Shutdown"** means the completion of a controlled shutdown of the Facility to the point in time where the Metered Electricity Output from the Facility is equal to or less than zero (0);

**"Full Load Operation"** means where the Facility's gas turbine is operating at full load on temperature control with the inlet guide vane position established at the scheduled full load position (as applicable) and the Facility's steam turbine HP and hot reheat bypass valves are closed (as applicable) pursuant to a Start Up (Shutdown) Test;

**"Hot Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than eight (8) hours prior but less than twelve (12) hours prior to a Start Up (Shutdown) Test Commencement;

**"Pre-Start Up (Shutdown) Test Conditions"** means, prior to a Start Up (Shutdown) Test:

- (A) the preceding Facility Shutdown has been conducted as a normal shutdown procedure as detailed in the operation and maintenance manuals; and
- (B) during the [preceding] Facility Shutdown:
  - (i) the Facility has been maintained as detailed in the operation and maintenance manuals; and
  - (ii) if applicable, the Facility's gas turbine and flue gas paths have been purged and secured in order to avoid any purge sequence during the restart of the Facility.

**"Start Up (Shutdown) Test Commencement"** means when the Facility's gas turbine rolls off the turning gear pursuant to a Start Up (Shutdown) Test; and

**"Warm Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than twelve (12) hours but less than sixty four (64) hours prior to a Start Up (Shutdown) Test Commencement.

#### ***Start Up (Shutdown) Test Run Periods***

4.4 The applicable Test Run Period for a Start Up (Shutdown) Test shall be:

- (A) for a Cold Start:
  - (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation; plus
  - (ii) twelve (12) hours at Full Load Operation; plus
  - (iii) the period between Full Load Operation and Facility Shutdown;
- (B) for a Warm Start:
  - (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;

- (ii) twelve (12) hours at Full Load Operation; plus
  - (iii) the period between Full Load Operation and Facility Shutdown;
- (C) for a Hot Start:
- (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;
  - (ii) two (2) hours at Full Load Operation;
  - (iii) the period between Full Load Operation and Facility Shutdown;
  - (iv) the period of two (2) hours off load prior to the Start Up (Shutdown) Test Commencement specified in limb (v);
  - (v) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;
  - (vi) two (2) hours at Full Load Operation; plus
  - (vii) the period between Full Load Operation and Facility Shutdown.
- 4.5 For the purposes of paragraph 4 a Start Up Time shall be the period of time in the Test Run Period, which for:
- (A) a Cold Start shall be the period of time referred to in paragraph 4.4(A)(i);
  - (B) a Warm Start shall be the period of time referred to in paragraph 4.4(B)(i); or
  - (C) a Hot Start shall be the sum of the periods referred to in paragraphs 4.4(C)(i) and 4.4(C)(v).
- 4.6 The Generator shall ensure during each Start Up (Shutdown) Test that:
- (A) the Pre-Start Up (Shutdown) Test Conditions have been fulfilled;
  - (B) all plant and/or equipment which is required to be in a ready-to-start condition for turbine start up shall be in a no-fault condition, operational and/or in automatic mode;
  - (C) working fluid levels and pressures in drums, hotwells and other vessels are within the limits specified in the operation and maintenance manuals and/or not in an alarmed condition; and
  - (D) the turbine sealing working fluid (as applicable) is on and condenser vacuum (as applicable) is within the range required for turbine start-up as specified in the operation and maintenance manuals.
5. **ANNUAL NDC TEST**
- Each Annual NDC Test shall be conducted as a Full Load Test in accordance with paragraph 3 (*Full Load Test*) of this Annex 2 (*Testing Requirements*) except the Facility's Plant Net Efficiency shall not be determined.
6. **CO<sub>2</sub> CAPTURE RATE TEST**
- 6.1 The purpose of each CO<sub>2</sub> Capture Rate Test shall be for the Generator to determine the Facility's Test Achieved CO<sub>2</sub> Capture Rate.

- 6.2 The Generator shall ensure that each CO<sub>2</sub> Capture Rate Test is carried out in accordance with the Test Performance Standards.

**CO<sub>2</sub> Capture Rate Test Run Period**

- 6.3 Each CO<sub>2</sub> Capture Rate Test shall consist of one (1) Test Run Period consisting of an eight (8) hour continuous period.

**Facility Mode of Operation**

- 6.4 Each CO<sub>2</sub> Capture Rate Test shall not commence until the Facility:
- (A) has satisfied the required stabilisation criteria for steady state operation in accordance with the Test Performance Standards; and
  - (B) is in the same condition as the condition upon which the Net Dependable Capacity Estimate, the Plant Net Efficiency Estimate and the CO<sub>2</sub> Capture Rate Estimate were determined and the Facility Heat and Material Balance Diagram was calculated.
- 6.5 The Generator shall use reasonable endeavours to conduct each CO<sub>2</sub> Capture Rate Test at the Reference Site Conditions, and as a minimum shall ensure that:
- (A) the Facility is operated at full load which can be maintained on a continual basis with normal scheduled plant maintenance intervals (excluding any peak firing operation);
  - (B) any power augmentation which cannot be maintained in operation on a continuous basis, or which has a detrimental impact on plant net efficiency and normal economic operation, is switched off (including GT inlet cooling, and supplementary firing);
  - (C) the Facility is operated in a normal mode which is representative of long term operating configuration with all equipment operating as designed and within specification and alarm limits consistent with good power generation industry practice;
  - (D) no normally operating systems are taken out of service including jumpered or suppressed alarms unless specifically allowed in the Performance Test Procedure; and
  - (E) the auxiliary power consumers in operation during each Full Load Test include all electrical consumers normally used to operate the equipment.

**CO<sub>2</sub> Capture Rate Test Report**

- 6.6 The Generator shall, as soon as reasonably practicable after the completion of a CO<sub>2</sub> Capture Rate Test, submit a test report of such CO<sub>2</sub> Capture Rate Test to the DPA Counterparty (a "**CO<sub>2</sub> Capture Rate Test Report**"). A CO<sub>2</sub> Capture Rate Test Report shall include, but shall not be limited to, the following:
- (A) a description of the Facility;
  - (B) the Test Report Minimum Technical Requirements; and
  - (C) evidence (including any test review reports) from the Generator's engineer and (if applicable) the Lender's engineer:
    - (i) of the results of the CO<sub>2</sub> Capture Rate Test;
    - (ii) that the CO<sub>2</sub> Capture Rate Test Report complies with the Test Report Minimum Technical Requirements; and

- (iii) that the Generator has conducted the relevant Test in accordance with the Approved Test Procedure.

**7. T&S COMMISSIONING DELAY EVENT OR T&S OUTAGE EVENT**

7.1 If, at any time during a Test Run Period:

- (A) a T&S Commissioning Delay Event; or
- (B) a T&S Outage Event,

is occurring, the Generator shall ensure that any captured CO<sub>2</sub> vented to atmosphere during the applicable Test Run Period complies with the Delivery CO<sub>2</sub> Quality Standards prior to venting.



**Part B**  
**Reference Site Conditions**

1. **Reference Site Conditions**

The following are the "**Reference Site Conditions**" for the purposes of the DPA which apply to each Test:

Ambient conditions:

- dry bulb temperature 9°C
- relative humidity 80%
- ambient pressure 1.013 bara
- wind speed 1m above cooling tower / ACC structure 7 m/s
- direct cooling water temperature 11°C

Fuel composition:

- nitrogen (N<sub>2</sub>) 2.6 mol%
- carbon dioxide (CO<sub>2</sub>) 1.4 mol%
- methane (CH<sub>4</sub>) 88.7 mol%
- ethane (C<sub>2</sub>H<sub>6</sub>) 5.2 mol%
- propane (C<sub>3</sub>H<sub>8</sub>) 1.493 mol%
- iso-butane (iC<sub>4</sub>H<sub>10</sub>) 0.18 mol%
- n-butane (nC<sub>4</sub>H<sub>10</sub>) 0.26 mol%
- neo-pentane 0.007 mol%
- iso-pentane (iC<sub>5</sub>H<sub>12</sub>) 0.06 mol%
- n-pentane (nC<sub>5</sub>H<sub>12</sub>) 0.05 mol%
- n-hexane (C<sub>6</sub>H<sub>14</sub>) 0.05 mol%
- heptane (C<sub>7</sub>H<sub>16</sub>) 0 mol%
- octane and above (C<sub>8</sub>H<sub>18</sub>, C<sub>9</sub>H<sub>20</sub>, etc.) 0 mol%
- hydrogen sulfide (H<sub>2</sub>S) 0 mol%
- total 100 mol%
- net calorific value (as per ISO-6976:2016 @ 15°C combustion temp and 15°C meter temp) 45.887 MJ/kg
- gross calorific value (as per ISO-6976:2016 @ 15°C combustion temp and 15°C meter temp) 50.830 MJ/kg

- Grid frequency: 50 Hz
- Power factor at generator terminals, lagging: 0.85
- Natural gas supply temperature at site boundary: 15°C
- Natural gas supply pressure at site boundary: TBC for site location
- GT inlet air cooling (Evap Cooling / Fogging / High Fogging) OFF
- Supplementary firing OFF

**Part C**  
**Required Correction Curves**

1. **Required Correction Curves**

The following are the "**Required Correction Curves**" for the purposes of the DPA:

Net dependable capacity

- (A) net dependable capacity vs ambient temperature;
- (B) net dependable capacity vs ambient pressure;
- (C) net dependable capacity vs relative humidity;
- (D) net dependable capacity vs direct cooling water temperature (if applicable);
- (E) net dependable capacity vs wind speed (if applicable);
- (F) net dependable capacity vs generator frequency;
- (G) net dependable capacity vs generator power factor;
- (H) net dependable capacity vs fuel composition / net calorific value;
- (I) net dependable capacity vs fuel supply temperature;
- (J) net dependable capacity vs fuel supply pressure;
- (K) net dependable capacity vs CO<sub>2</sub> capture rate;

***Plant net efficiency***

- (L) plant net efficiency vs ambient temperature;
- (M) plant net efficiency vs ambient pressure;
- (N) plant net efficiency vs relative humidity;
- (O) plant net efficiency vs direct cooling water temperature (if applicable);
- (P) plant net efficiency vs wind speed (if applicable);
- (Q) plant net efficiency vs generator frequency;
- (R) plant net efficiency vs generator power factor;
- (S) plant net efficiency vs fuel composition / net calorific value;
- (T) plant net efficiency vs fuel supply temperature;
- (U) plant net efficiency vs fuel supply pressure; and
- (V) plant net efficiency vs CO<sub>2</sub> capture rate.

**Annex 3**  
**Calculation of Default Termination Payment**

**1. DEFAULT TERMINATION PAYMENT**

1.1 In the event that the DPA Counterparty exercises its right to terminate the DPA under Condition 35.27 (*Default termination*), the "**Default Termination Payment**" shall be:

- (A) subject to any adjustment that is required pursuant to Condition 36.11 (*Consequences of default termination*); and
- (B) calculated in accordance with the following formula:

$$\text{Default Termination Payment} = NDCE \times TFR$$

where:

*NDCE* = Net Dependable Capacity Estimate (*MW*)

*TFR* = Termination Fee Rate equal to £35,000 (£/*MW*)

1.2 For the avoidance of doubt, where the DPA Counterparty exercises its right to terminate the DPA under Condition 35.27 (*Default termination*) on the basis that more than one (1) ground for termination has arisen, the Generator shall not be liable to pay more than one Default Termination Payment to the DPA Counterparty.

## Annex 4 Change Control Procedure

### 1. INTERPRETATION: ANNEX 4

#### *Interpretation*

- 1.1 In this Annex 4 (*Change Control Procedure*), any reference to an "amendment" (or grammatical variation thereof or any analogous term) in respect of any Proposed Amendment shall be deemed to include any change, replacement, deletion or supplement to or of any provision of:
- (A) the DPA;
  - (B) CCUS Programme DPAs (other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply); or
  - (C) CCUS Programme DPAs of a particular category (other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply).

### 2. CHANGE CONTROL PROCEDURE

#### *Amendment Notifications*

- 2.1 The DPA Counterparty may at any time give a notice to the Generator proposing an amendment to the DPA (an "**Amendment Notification**"). Each Amendment Notification shall:
- (A) set out the proposed amendment(s) (the "**Proposed Amendment**");
  - (B) specify the date on which the Proposed Amendment is proposed to become effective (the "**Proposed Amendment Effective Date**");
  - (C) state whether the DPA Counterparty considers the Proposed Amendment to be a Material Amendment or a Technical Amendment;
  - (D) if the DPA Counterparty considers the Proposed Amendment to be a Technical Amendment, state whether the Proposed Amendment is a General Amendment;
  - (E) if the Proposed Amendment is a General Amendment, state whether it applies to all CCUS Programme DPAs or only to those of a specified category or categories (in each case, other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply) and, if the latter, set out those categories; and
  - (F) contain such Supporting Information as the DPA Counterparty considers necessary to enable the Generator to evaluate the Proposed Amendment.

#### *Material Amendments: process*

- 2.2 If an Amendment Notification specifies that the Proposed Amendment is a Material Amendment, the Generator shall, no later than twenty (20) Business Days after the Amendment Notification has been received, either:
- (A) confirm by notice in writing to the DPA Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
  - (B) specify, by notice in writing to the DPA Counterparty (a "**Material Amendment Response Notification**"), any objections which the Generator has to:

- (i) the Proposed Amendment, any such notification to include details of:
    - (a) any proposal by the Generator to address the matters identified in the Amendment Notification by means of an alternative amendment; and
    - (b) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
  - (ii) the Proposed Amendment Effective Date.
- 2.3 Any Material Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to evaluate the matters covered in such notification.
- 2.4 No later than ten (10) Business Days after receipt by the DPA Counterparty of a Material Amendment Response Notification, the Parties shall meet and negotiate in good faith to agree:
- (A) whether to effect the Proposed Amendment;
  - (B) the date on which the Proposed Amendment shall become effective (which need not be the Proposed Amendment Effective Date); and
  - (C) if effected:
    - (i) the terms of the Proposed Amendment; and
    - (ii) what, if any, consequential amendments need to be made to the DPA.

***Material Amendments: implementation***

- 2.5 A Material Amendment shall not become effective unless and until documented in writing and signed by each Party (a "**Material Amendment Agreement**"). Any Material Amendment Agreement shall:
- (A) set out the amendment which is to be effected;
  - (B) state the effective date of the amendment; and
  - (C) detail any consequential amendments to be made (whether or not identified in the Amendment Notification).

***Technical Amendments (bilateral Proposed Amendments): process***

- 2.6 If an Amendment Notification:
- (A) specifies that the Proposed Amendment is a Technical Amendment; and
  - (B) does not specify that it is a General Amendment, the Generator shall, no later than twenty (20) Business Days after receipt of the Amendment Notification (the "**Technical Amendment Response Period**"), either:
    - (i) confirm by notice in writing to the DPA Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
    - (ii) specify, by notice in writing to the DPA Counterparty (a "**Technical Amendment Response Notification**"), any objections which the Generator has to:

- (a) the classification of the Proposed Amendment as a Technical Amendment (including reasonable details of the Generator's reasons for such objections) (a "**Classification Objection**");
- (b) the Proposed Amendment, any such notification to include details of:
  - (1) any proposal by the Generator to address the matters identified in the Amendment Notification by means of an alternative amendment; and
  - (2) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
- (c) the Proposed Amendment Effective Date.

2.7 Any Technical Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to evaluate the matters covered in such notification.

2.8 If the Generator:

- (A) does not give the DPA Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, the Proposed Amendment shall be binding on the Parties with effect from the Proposed Amendment Effective Date; or
- (B) gives the DPA Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, then the following provisions shall apply:
  - (i) if the Technical Amendment Response Notification included a Classification Objection, then:
    - (a) the Technical Amendment Response Notification shall constitute a Dispute Notice and the resulting Dispute shall be subject to the Dispute Resolution Procedure; and
    - (b) if, pursuant to the Dispute Resolution Procedure, either of the Parties agrees (whether by means of a Senior Representatives Settlement or otherwise) that the Proposed Amendment is a Material Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Material Amendment, then the Proposed Amendment shall not become effective between the Parties unless and until a Material Amendment Agreement is entered into; and
  - (ii) if either:
    - (a) the Technical Amendment Response Notification did not include a Classification Objection; or
    - (b) (pursuant to the Dispute Resolution Procedure) the Parties agree (whether by means of a Senior Representatives Settlement or otherwise) that the Proposed Amendment is a Technical Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Technical Amendment,

then:

- (1) the DPA Counterparty shall consider the objections of the Generator set out in the Technical Amendment Response Notification and may make such amendments to the Proposed Amendment as it deems appropriate having regard to such objections; and
- (2) the Proposed Amendment (as amended if the DPA Counterparty elects to so amend pursuant to paragraph 2.8(B)(ii)(b)(1)) shall become binding on the Parties with effect from the Proposed Amendment Effective Date.

***Technical Amendments (General Amendments): process***

2.9 If an Amendment Notification specifies that the Proposed Amendment is a Technical Amendment and is a General Amendment, then paragraphs 2.6 to 2.8 shall be applied, with the necessary modifications, on the following basis:

- (A) the confirmation provided for in paragraph 2.6(B)(i) shall be deemed to have been given by the Generator, and the Proposed Amendment shall (subject to paragraph 2.9(C)) be binding on the Generator with effect from the Proposed Amendment Effective Date, unless seventy-five per cent. (75%) or more in number of all CCP Affected Parties give a Technical Amendment Response Notification to the DPA Counterparty within the Technical Amendment Response Period;
- (B) if seventy-five per cent. (75%) or more in number of the CCP Affected Parties deliver a Technical Amendment Response Notification within the Technical Amendment Response Period then the procedure provided for in paragraph 2.8(B) shall be applied; and
- (C) if the Generator gives a Technical Amendment Response Notification within the Technical Amendment Response Period which includes a Classification Objection, then the Proposed Amendment shall become binding on the Generator only in accordance with the provisions of paragraph 2.8(B).

***Technical Amendments: implementation***

2.10 Where any Technical Amendment is to take effect in accordance with this Change Control Procedure, the Generator shall, if requested by the DPA Counterparty, promptly sign an agreement (a "**Technical Amendment Agreement**") which:

- (A) sets out the amendment which is to be effected;
- (B) states the effective date of the amendment; and
- (C) details any consequential amendments to be made (whether or not identified in the Amendment Notification),

in each case as agreed, determined or resolved in accordance with the relevant provisions of paragraphs 2.6 to 2.9 (inclusive).

2.11 Any failure or refusal by the Generator to sign a Technical Amendment Agreement shall not operate so as to prevent the relevant Technical Amendment being binding on the Parties with effect from the relevant Proposed Amendment Effective Date in accordance with the provisions of paragraph 2.8(B)(ii) or 2.9(A) (as appropriate).

**Miscellaneous**

- 2.12 The categorisation of any Proposed Amendment as a Technical Amendment (irrespective of whether it is a General Amendment) or a Material Amendment shall not operate so as to prevent the provisions of Condition 43 (*Consolidation of Connected Disputes*) applying to any Dispute arising in respect of that Proposed Amendment.
- 2.13 The Parties agree and acknowledge that any Proposed Amendment which the DPA Counterparty has made in order to identify a replacement carbon support price to reflect the representative Tax on CO<sub>2</sub> emissions produced by the Facility including by reference to the consumption of fuel gas in circumstances where the Carbon Support Price has been or is proposed to be novated or replaced, shall be categorised as a Material Amendment where such amendment would (taking into account, in the case of a Proposed Amendment providing for more than one (1) amendment, the net aggregate effect of all the Proposed Amendments contained within the relevant Amendment Notification) have an adverse effect on: (i) the revenues and/or costs of the Generator which are not fully compensated; or (ii) the overall balance of risks, benefits and liabilities of the Generator, in each case pursuant to the DPA.



**Annex 5  
Form of Direct Agreement**

**LOW CARBON CONTRACTS COMPANY LTD**

as DPA Counterparty and

**[●]**

as [Lender(s)]/[Security Trustee]<sup>52</sup> and

**[●]**

as Generator

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**DIRECT AGREEMENT**

in relation to a DPA for [insert details of generating asset]

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**THIS DIRECT AGREEMENT** (this "**Deed**") is dated [●] and made as a deed

**BETWEEN:**

- (1) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated under the laws of England and Wales whose registered office is 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711 (the "**DPA Counterparty**");
- (2) *[[insert name of the lender(s)]* a company incorporated under the laws of [●] whose registered office is [●] and whose company number is [●] [the "**Lender(s)**"]; */[in its capacity as [agent and] security trustee for and on behalf of the Finance Parties (the "**Security Trustee**")]; and]*
- (3) *[insert name of the generator]*, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Generator**")<sup>53</sup>.

**BACKGROUND**

- (A) The DPA Counterparty has entered into the Contract with the Generator.
- (B) It is a condition precedent to the availability of funding under the Facilities Agreement that the Parties enter into this Deed.
- (C) The Parties intend this document to take effect as a deed.

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**<sup>54</sup>

In this Deed, unless otherwise defined herein or the context requires otherwise:

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

- (A) contractually obliged to exercise rights under the relevant Direct Agreement in accordance with the instructions of one (1) or more Lenders (or a security trustee on its or their behalf); or
- (B) party to an agreement regarding the exercise of rights under such Direct Agreement with a person falling within paragraph (A) above;

**"Affiliate"** means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);

**"Appointed Representative"** means the Representative identified in the Step-In Notice;

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

<sup>53</sup> Note to draft: Parties to conform to underlying funding arrangements.

<sup>54</sup> Note to draft: Definitions to conform to underlying funding arrangements

**"Contract"** means the dispatchable power agreement dated [●] and made between the DPA Counterparty and the Generator in relation to the Facility;

**"Contract Default"** has the meaning given to **"Default"** in the Contract;

**"Control"** means, in relation to an entity (the "controlled entity"), the ability of another entity (the "controlling entity") to:

- (A) exercise the majority of the voting rights in that entity; or
- (B) having become a direct or indirect shareholder, control the majority of the voting rights in that entity, either alone or pursuant to an agreement with other direct or indirect shareholders; or
- (C) having become a direct or indirect shareholder, appoint or remove a majority of the board of directors in that entity, or
- (D) having become a direct or indirect shareholder, exercise dominant influence or control over that entity.

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

**"DPA Counterparty Enforcement Action"** means:

- (A) the termination or revocation of the Contract by the DPA Counterparty (including the giving of any notice under or pursuant to Condition 35.1 (*Pre-Start Date termination*), 35.5 (*Termination for Prolonged Force Majeure*), 35.27 (*Default termination*), 35.29 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*) or 35.30 (*Termination for failing to satisfy the T&S Connection Confirmation Requirement*) of the Contract by the DPA Counterparty to the Generator terminating the Contract, but excluding the giving of any notice under or pursuant to Conditions 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.31 (*Qualifying Change in Law termination*), or 35.33 (*QCIL Compensation termination*) of the Contract by the DPA Counterparty to the Generator terminating the Contract and the subsequent termination of the Contract under that Condition);<sup>55</sup>
- (B) the suspension or withholding (as applicable) by the DPA Counterparty of payments under or pursuant to Conditions 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), 7.13 (*Suspension of Payments (Annual NDC Test Access Right breach)*) Condition 20.2 (*Failure to comply with compliance of technology undertaking*), 21.13 (*Failure to comply with Metering Schematic Obligation*), 21.19 (*Failure to provide Metering Access Right*), 21.24 (*Failure to comply with SCADA Systems Obligations*), 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*) or 23.14 (*Failure to provide Declaration Access Right*), 35.16 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*), or 3.48 (*Failure to comply with T&S Connection Confirmation Requirement: Suspension*) of the Contract; or
- (C) the commencement by the DPA Counterparty of any proceedings for, or the petitioning by the DPA Counterparty for, the winding-up, administration, dissolution or liquidation of the Generator (or the equivalent procedure under the law of the jurisdiction in which the Generator is incorporated, domiciled or resident or carries on business or has assets);

55

Note to Reader: This definition is subject to the development of the T&S Prolonged Unavailability Event termination provisions.

**"DPA Counterparty Enforcement Notice"** means a notice given by the DPA Counterparty to the [Lender(s)]/[Security Trustee] specifying the DPA Counterparty Enforcement Action which the DPA Counterparty intends to take and, in reasonable detail, the grounds for such intended action;

**"DPA Documents"** has the meaning given to that term in the Contract;

**"DPA Settlement Required Information"** has the meaning given to that term in the Contract;

**"DPA Settlement Services Provider"** has the meaning given to that term in the Contract;

**"Event of Default"** means any event or circumstance the occurrence of which is treated as an event of default under the Facilities Agreement;

**"Facilities Agreement"** means the facilities agreement dated [[●]]/[on or around the date of this Deed]] between, amongst others, [the lenders named therein,] the [Lender(s)]/[Security Trustee], [the Facility Agent] and the Generator<sup>56</sup>;

**"Facility"** has the meaning given to that term in the Contract;

**"Facility Agent"** means the Facility Agent appointed under the Facilities Agreement<sup>57</sup>;

**"Finance Documents"** means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement<sup>58</sup>;

**"Finance Parties"** means the parties with the benefit of security under the Security Documents and **"Finance Party"** means any of them<sup>59</sup>;

**"Finance Party Discharge Date"** means the date on which all of the Finance Party Obligations have been fully and irrevocably paid or discharged and no further Finance Party Obligations are capable of becoming outstanding;

**"Finance Party Obligations"** means any obligations owed to the Finance Parties in connection with the Finance Documents;

**"Generator's Proceeds Account"** means the account held by the Generator at [●] with the account number [●] and sort code [●] or such other account and bank as the Generator and the [Lender(s)]/[Security Trustee] may notify to the DPA Counterparty from time to time;

**"Lender"** means any bank or financial institution (excluding any direct or indirect shareholder of the Generator) which provides debt financing or refinancing in relation to the Facility.

**"Non-Qualification Event"** [means the Security Trustee ceasing, in respect of the rights afforded to it under this Deed, to act only on behalf of any person who is:

- (A) [a] Lender(s) having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract) and in whose favour the Generator has assigned its rights under the Contract and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract; or
- (B) an Affected Person having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under

<sup>56</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>57</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>58</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>59</sup> Note to draft: Definition to conform to underlying funding arrangements

the Contract) and in whose favour the Generator has assigned its rights under the Contract and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract;

PROVIDED that there shall not be a Non-Qualification Event where a person who previously satisfied sub-paragraph (A) above has become a direct or indirect shareholder solely as a result of the creation or enforcement of a security interest held by them (a "**Security Shareholder**") and who otherwise continues to satisfy sub-paragraph (A) above, unless such Security Shareholder (whether directly or indirectly) has exercised Control over the Generator for a period of twenty (20) Business Days or more prior to the time of any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice or, having the right, ability or power to do so, fails to prevent any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice.]<sup>60</sup> /

[means the Lender(s) ceasing, in respect of the rights afforded to [it]/[them] under this Deed, to be [a person who is/persons who are]:

- (A) Lender(s) having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract) and in whose favour the Generator has assigned its rights under the Contract and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract,

PROVIDED that there shall not be a Non-Qualification Event where [a person/ the persons] who previously satisfied sub-paragraph (A) above [has/have] become [a] direct or indirect shareholder(s) solely as a result of the creation or enforcement of a security interest held by them (a "**Security Shareholder**") but who otherwise continues to satisfy sub-paragraph (A) above, unless such Security Shareholder (whether directly or indirectly) has exercised Control over the Generator for a period of twenty (20) Business Days or more prior to the time of any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice or, having the right, ability or power to do so, fails to prevent any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice.]<sup>61</sup>

**"Novation Agreement"** means a novation agreement entered into pursuant to Clause 9.3 (*Substitution Procedure*) between the DPA Counterparty, the Generator and the Substitute substantially in the form set out in Appendix 2 (*Form of Novation Agreement*);

**"Novation Date"** has the meaning given to that term in Clause 9.3(B) (*Substitution Procedure*);

**"Novation Notice"** means a notice given by the [Lender]/[Security Trustee] to the DPA Counterparty pursuant to Clause 9.1 (*Proposed Substitution*) specifying:

- (A) the identity of the proposed Substitute; and
- (B) the Proposed Novation Date;

**"NQE Termination Trigger Date"** means (as applicable) the date specified in the notice issued to the [Lender(s)]/[Security Trustee] pursuant to Clause 3.4(D)(i) (unless the [Lender(s)]/[Security Trustee] has remedied the failure or non-compliance prior to such date) or the date of a notice delivered to the DPA Counterparty pursuant to Clause 10.3;

<sup>60</sup> Retain wording in square brackets if there is a Security Trustee.

<sup>61</sup> Retain wording in square brackets if there is a Lender but no Security Trustee.

**"Party"** means a party to this Deed;

**"Proposed Novation Date"** means the date proposed by the [Lender(s)]/[Security Trustee] in a Novation Notice for the novation to a Substitute of the Generator's rights and obligations under the Contract;

**"Proposed Step-In Date"** means the date proposed by the [Lender(s)]/[Security Trustee] in a Step-In Notice upon which the Appointed Representative shall give a Step-In Undertaking as contemplated by Clause 6.2 (*Step-In Undertaking*);

**"Representative"** means:

- (A) the [Facility Agent], [the Security Trustee] and any Finance Party and/or any of their Affiliates;
- (B) an administrator, administrative receiver, receiver, receiver and manager or any other insolvency official of the Generator and/or any or all of its assets appointed in connection with the Finance Documents;
- (C) a person directly or indirectly owned or Controlled by [the Facility Agent], [the Security Trustee] and/or the Finance Parties or any of them; or
- (D) any other person approved by the DPA Counterparty;

**"Security Documents"** means any documents creating or evidencing any existing or future security interest granted by the Generator to the [Lender(s)]/[Security Trustee] to secure the payment and discharge of any or all Finance Party Obligations;

**"Security Shareholder"** has the meaning given to that term in the definition "Non-Qualification Event";

**"Step-In Date"** means the date on which the Appointed Representative gives a Step-In Undertaking to the DPA Counterparty as contemplated by Clause 6.2 (*Step-In Undertaking*);

**"Step-In Decision Period"** means a period commencing on the date of receipt by the [Lender(s)]/[Security Trustee] from the DPA Counterparty of any DPA Counterparty Enforcement Notice and ending on the first to occur of the Step-In Date, the Novation Date and the date falling one hundred and twenty (120) days after the commencement of the Step-In Decision Period;

**"Step-In Notice"** has the meaning given to that term in Clause 6.1 (*Step-In Notice*);

**"Step-In Period"** means the period from the Step-In Date to and including the first to occur of:

- (A) the expiry of the notice period in any notice given under Clause 8 (*Step-Out*);
- (B) the Novation Date;
- (C) the Finance Party Discharge Date; and
- (D) the date of any termination or revocation of the Contract by the DPA Counterparty in accordance with this Deed and the Contract;

**"Step-In Undertaking"** means an undertaking substantially in the form set out in Appendix 1 (*Form of Step-In Undertaking*) given by the Appointed Representative;

**"Step-Out Date"** means the date upon which a Step-In Period ends;

**"Step-Out Notice"** has the meaning given to that term in Clause 8(A) (*Step-Out*);

**"Substitute"** means a person nominated by the [Lender(s)]/[Security Trustee] pursuant to Clause 9.1 (*Proposed Substitution*) or Clause 9.2 (*Objection to Substitute*), as the case may be, as the transferee of the Generator's rights and obligations under the Contract; and

**"Supplier Obligation Regulations"** has the meaning given to that term in the Contract; and

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

## 1.2 Interpretation

(A) Unless a contrary indication appears, any reference in this Deed to:

- (i) the **"DPA Counterparty"**, [the **"Facility Agent"**],[ the **"Security Trustee"**], the **"Generator"**, [any **"Lender"**, ][any **"Finance Party"**] or any **"Appointed Representative"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- (ii) an agreement includes a deed and instrument;
- (iii) an agreement is a reference to it as amended, supplemented, restated, novated or replaced from time to time;
- (iv) a provision of law is a reference to that provision as amended, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it;
- (v) any **"obligation"** of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and **"due"**, **"owing"** and **"payable"** shall be similarly construed);
- (vi) a **"Clause"**, **"paragraph"** or **"Appendix"** is a reference to a clause or paragraph of, or an appendix to, this Deed;
- (vii) a **"person"** includes any individual, firm, company, corporation, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
- (viii) time is a reference to time in London, England; and
- (ix) words in the singular shall be interpreted as including the plural, and *vice versa*.

(B) The words **"include"** and **"including"** shall be construed without limitation to the generality of the preceding words.

(C) Headings are for ease of reference only.

## 2. CONSENT TO SECURITY AND PAYMENT INSTRUCTIONS

### 2.1 Consent to Security

(A) The Generator hereby gives notice to the DPA Counterparty that, under or pursuant to the Security Documents, the Generator has assigned or charged by way of security to the [Lender(s)]/[Security Trustee] its rights, title and interest in and to the Contract.



- (B) The DPA Counterparty acknowledges receipt of notice of, and consents to, the grant of the security interests referred to in paragraph (A) above.
- (C) The DPA Counterparty acknowledges that neither the [Lender(s)]/[Security Trustee] nor any Finance Party shall have any obligations or liabilities to the DPA Counterparty (whether in place of the Generator or otherwise) in respect of the Contract as a result of any security interest created under the Security Documents except to the extent that the [Lender(s)]/[Security Trustee] or such Finance Party incur[(s)] such obligations or liabilities pursuant to Clause 6 (*Step-In*), Clause 7 (*Step-In Period*), Clause 8 (*Step-Out*) or Clause 9 (*Novation*).

## 2.2 No other Security Interests

The DPA Counterparty confirms that, as at the date of this Deed, it has not received notice of any other security interest granted over the Generator's rights, title and interest in and to the Contract. The DPA Counterparty agrees to notify the [Lender(s)]/[Security Trustee] as soon as reasonably practicable if it receives any such notice.

## 2.3 Payment of Monies

- (A) Each of the Generator and the [Lender(s)]/[Security Trustee] irrevocably authorises and instructs the DPA Counterparty, and the DPA Counterparty agrees, to pay the full amount of each sum which it is obliged at any time to pay to the Generator under or in respect of the Contract (whether before or after termination of the Contract) to the Generator's Proceeds Account or [, following the occurrence of an Event of Default and at any time thereafter,] to such other account in the United Kingdom that the [Lender(s)]/[Security Trustee] may direct in writing to the DPA Counterparty on not less than ten (10) Business Days' notice.
- (B) Each payment made in accordance with paragraph (A) above shall constitute a good discharge *pro tanto* of the obligation of the DPA Counterparty to make the relevant payment to the Generator.
- (C) The authority and instructions set out in paragraph (A) above shall not be revoked or varied by the Generator without the prior written consent of the [Lender(s)]/[Security Trustee], copied to the DPA Counterparty.

## 2.4 Contract

The Parties agree and acknowledge that the exercise of the rights of the [Lender(s)]/[Security Trustee] or the Appointed Representative, as the case may be (a) under the Contract during the Step-in Period; and (b) in connection with the security interests granted by the Generator shall not amend, waive or suspend the provisions of the Contract and the rights of the DPA Counterparty under the Contract, except as expressly set out under this Deed and any Step-In Undertaking.

## 2.5 Statement as to Event of Default conclusive

The DPA Counterparty may treat any statement or notice from the [Lender(s)]/[Security Trustee or the lenders under the Facility Agreement] that an Event of Default has occurred as conclusive evidence of the occurrence of the Event of Default.

### 3. NOTIFICATION BY DPA COUNTERPARTY

#### 3.1 Notification of Default

- (A) The DPA Counterparty shall, as soon as reasonably practicable, send to the [Lender(s)]/[Security Trustee] a copy of any notice of default under the Contract served by the DPA Counterparty on the Generator.
- (B) The DPA Counterparty shall have no obligation to notify the [Lender(s)]/[Security Trustee] of a default under the Contract where the DPA Counterparty has not served a notice of default on the Generator.

#### 3.2 Cure Right

The [Lender(s)]/[Security Trustee] may, at any time outside a Step-In Period, take or procure the taking of any action on behalf of the Generator in circumstances where:

- (A) the Generator's failure to take such action would be a breach of the Contract or would be or could reasonably be expected to contribute towards the occurrence of a Contract Default; or
- (B) the Generator has breached the Contract or a Contract Default has arisen,

and any such action will be deemed to have been taken by the Generator for the purposes of the Contract and any breach or Contract Default will be cured, remedied or will not arise (as appropriate) if such breach or Contract Default would have been cured or remedied or would not have arisen (as appropriate) if the Generator had taken such action itself.

#### 3.3 DPA Counterparty Enforcement Action

Subject to Clause 7.2 (*DPA Counterparty Enforcement Action during a Step-In Period*), the DPA Counterparty shall not take any DPA Counterparty Enforcement Action without first giving a DPA Counterparty Enforcement Notice to the [Lender(s)]/[Security Trustee].

#### 3.4 Non-Qualification Event

- (A) The [Lender(s)]/[Security Trustee] shall by the fifteenth (15th) Business Day after delivery to the [Lender(s)]/[Security Trustee] of:
  - (i) any DPA Counterparty Enforcement Notice; or
  - (ii) any notice from the DPA Counterparty requesting that the [Lender(s)]/[Security Trustee] evidence that a Non-Qualification Event has not taken place,
    - (a **"Qualification Demonstration Deadline"**), evidence to the satisfaction of the DPA Counterparty (acting reasonably) that a Non-Qualification Event has not taken place.
- (B) For the purposes of Clause 3.4(A) unless otherwise agreed by the DPA Counterparty, the evidence provided shall be:
  - (i) a clear letter to the DPA Counterparty from the external legal advisors to the [Lender(s)]/[Security Trustee] (the **"NQE Confirmation"**):

- (a) setting out the corporate details of the [Lender(s)]/[Security Trustee] [and all persons for whom the Security Trustee acts in respect of the rights afforded to it under this Deed]<sup>62</sup>;
  - (b) [confirming that the Security Trustee acts only, in respect of the rights afforded to it under this Deed, on behalf of the person(s) referred to in paragraphs (A) or (B) of the definition of Non-Qualification Event;]<sup>63</sup>
  - (c) [if the Security Trustee acts on behalf of any person who is a direct or indirect shareholder of the Generator, explaining the basis upon which such person falls within (as applicable) paragraph (B) of the definition of Non-Qualification Event and]<sup>64</sup> confirming whether [such person]<sup>65</sup>/[the Lender]<sup>66</sup> is a Security Shareholder and, if so, when they became a Security Shareholder;
  - (d) confirming that the external legal advisors are not aware of a Non-Qualification Event having occurred; and
  - (e) explaining any changes to the Finance Parties, the Finance Documents, the Security Documents[,]/[and/or] the underlying financial arrangements relating or relevant to this Deed [and/or the persons on behalf of whom the Security Trustee is exercising the rights afforded by this Deed]<sup>67</sup> since the last letter provided under this Clause 3.4(B) (or, if no letter has been provided, the date of this Deed) and confirming that: (i) insofar as it is aware having made due and careful enquiry of the [Lender(s)]/[Security Trustee], the Finance Documents and Security Documents are up to date, true, complete and accurate; and (ii) the contents of the NQE Confirmation are a true and accurate reflection of the relevant contents of the Finance Documents and the Security Documents; and
- (ii) a clear letter to the DPA Counterparty from the [Lender(s)]/[Security Trustee] ("**Further NQE Confirmation**") (signed by a duly authorised senior representative and/or in-house legal advisor) certifying that [insofar as it is aware having made all due and careful enquiry]<sup>68</sup>:
- (a) a Non-Qualification Event has not occurred;
  - (b) [if the Security Trustee acts on behalf of any person who is a direct or indirect shareholder of the Generator, whether such person falls within (as applicable) paragraph (B) of the definition of Non-Qualification Event and]<sup>69</sup> whether [such person]<sup>70</sup>/[the Lender]<sup>71</sup> is a Security Shareholder;
  - (c) if a breach, non-compliance or failure has occurred which is or may be the subject of a DPA Counterparty Enforcement Notice, such breach, non-compliance or failure did not occur more than twenty (20) Business Days after the [Lender(s)]/[Security Trustee] became a Security Shareholder who has enforced its Security Documents and Controls the

<sup>62</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>63</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>64</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>65</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>66</sup> Words in square brackets to be retained in the case of a Lender and no Security Trustee.

<sup>67</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>68</sup> Words in square brackets to be retained only if there is a Security Trustee.

<sup>69</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>70</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>71</sup> Words in square brackets to be retained if there is a Lender and no Security Trustee.

Generator. In this case, the [Lender(s)]/[Security Trustee] shall also provide an explanation of the situation and information or evidence to support its certification and explanation;

- (d) the Finance Documents and Security Documents are up-to-date, true and complete; and constitute a true, complete, comprehensive and accurate record of the financial arrangements between the parties to them and are not misleading; and
  - (e) the [Lender(s)]/[Security Trustee] has provided all the Finance Documents and Security Documents to its external legal advisor for the purpose of such external legal advisor providing the NQE Confirmation; and
- (iii) if requested by the DPA Counterparty, up-to-date, complete and accurate copies of the relevant Finance Documents and Security Documents.
- (C) Without limitation of Clause 3.4(B), the DPA Counterparty may, within ten (10) Business Days of receipt of the NQE Confirmation, Further NQE Confirmation and/or the documentation referred to in Clause 3.4(B)(iii), request clarification of the contents of the NQE Confirmation, Further NQE Confirmation and/or documentation referred to in Clause 3.4(B)(iii). If the [Lender(s)]/[Security Trustee] receives such a request, it shall provide the requested clarification to the DPA Counterparty within ten (10) Business Days of receipt of the request.
- (D) Where the [Lender(s)]/[Security Trustee]:
- (i) fails to comply with Clauses 3.4(A), 3.4(B) and/or 3.4(C) and/or if the Finance Documents and/or Security Documents provided under Clause 3.4(C) do not support and/or are inconsistent with or contradict the NQE Confirmation or Further NQE Confirmation,

the DPA Counterparty may give a notice to the [Lender(s)]/[Security Trustee] that this Deed shall terminate on the date specified in such notice (such date being no earlier than the date falling ten (10) Business Days after the date of such notice), and this Deed shall so terminate pursuant to Clause 10.1 unless, in the case of Clause 3.4(D)(i), in the intervening period the [Lender(s)]/[Security Trustee] has remedied (as applicable) its failure or non-compliance with Clause 3.4(A), 3.4(B) and/or Clause 3.4(C) and/or the failure of the Finance Documents and/or the Security Documents to support or be consistent with the NQE Confirmation, Further NQE Confirmation and/or any contradiction between the Finance Documents and/or Security Documents and the NQE Confirmation and/or Further NQE Confirmation.

- (E) Where the [Lender(s)]/[Security Trustee] complies with Clause 3.4(A) by the Qualification Demonstration Deadline, the DPA Counterparty shall provide confirmation of such compliance to the [Lender(s)]/[Security Trustee] as soon as reasonably practicable thereafter.

### 3.5 No Waiver

The provisions of this Clause 3 shall not constitute any waiver as against the Generator of the grounds for the intended exercise of the DPA Counterparty's rights to take any DPA Counterparty Enforcement Action or any of its other rights regarding such DPA Counterparty Enforcement Action and the giving of a DPA Counterparty Enforcement Notice shall not release the Generator from its obligations or liabilities under the Contract.

#### 4. NOTIFICATION BY THE [LENDER(S)]/[SECURITY TRUSTEE]

##### 4.1 Notice of Event of Default

The [Lender(s)]/[Security Trustee] shall, as soon as reasonably practicable, send to the DPA Counterparty a copy of any notice of an Event of Default served by or on behalf of the [Lender(s)]/[Security Trustee or the lenders under the Facility Agreement] on the Generator.

##### 4.2 Notices from the [Lender(s)]/[Security Trustee]

After receiving notification of an Event of Default from the [Lender(s)]/[Security Trustee], the DPA Counterparty shall accept as validly given by the Generator any notices or demands pursuant to and in accordance with the Contract given or made by the [Lender(s)]/[Security Trustee] or Appointed Representative, as the case may be, provided, in each case, such notice or demand would have been validly given had it been given by the Generator itself. The Generator consents to the giving of such notices or demands and acknowledges and agrees that the service of such notices or demands by the [Lender(s)]/[Security Trustee] or Appointed Representative, as the case may be, shall not affect the rights and remedies of the DPA Counterparty under the Contract.

#### 5. STEP-IN DECISION PERIOD

##### 5.1 Suspension of Rights and Remedial Action

During a Step-In Decision Period the DPA Counterparty shall not take any DPA Counterparty Enforcement Action (other than any DPA Counterparty Enforcement Action taken pursuant to Clause 5.3 (*Revival of Remedies*) in relation to any prior Step-In Decision Period).

##### 5.2 Statement of Amounts Due

- (A) As soon as reasonably practicable, and in any event within thirty (30) days, after the commencement of a Step-In Decision Period, the DPA Counterparty shall give the [Lender(s)]/[Security Trustee] a statement of any amounts owed by the Generator to the DPA Counterparty and any outstanding performance obligations of the Generator under the Contract of which the DPA Counterparty is aware as at the date of the DPA Counterparty Enforcement Notice.
- (B) For the avoidance of doubt, a failure by the DPA Counterparty to include in any such statement an amount owed or a performance obligation outstanding under the Contract shall not limit in any way the obligations or liabilities of the Generator under the Contract or the obligations or liabilities of the [Lender(s)]/[Security Trustee] or any Appointed Representative or Substitute under or pursuant to this Deed.

##### 5.3 Revival of Remedies

If a DPA Counterparty Enforcement Notice has been given and:

- (A) neither the Step-In Date nor the Novation Date has occurred before expiry of the Step-In Decision Period; or
- (B) the Step-In Date has occurred before expiry of the Step-In Decision Period but a Step-Out Date has subsequently occurred without there being a Novation Date,

the DPA Counterparty shall be entitled to take DPA Counterparty Enforcement Action without serving a further DPA Counterparty Enforcement Notice if the default, event or circumstance in respect of which the DPA Counterparty gave the DPA Counterparty Enforcement Notice is

subsisting or has not been remedied or cured (whether by the Generator, [Lender(s)]/[Security Trustee] or any other person).

## 6. **STEP-IN**

### 6.1 **Step-In Notice**

- (A) At any time during a Step-In Decision Period, the [Lender(s)]/[Security Trustee] may give notice to the DPA Counterparty (a "**Step-In Notice**") specifying:
- (i) the Appointed Representative who will give a Step-In Undertaking to the DPA Counterparty; and
  - (ii) the Proposed Step-In Date (which shall be a date no earlier than five (5) Business Days after the date of the Step-In Notice).
- (B) The Proposed Step-In Date must fall on or prior to the expiry of the Step-In Decision Period.
- (C) The [Lender(s)]/[Security Trustee] may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the DPA Counterparty, provided that the relevant Step-In Decision Period shall be deemed to have expired on delivery of such notice to the DPA Counterparty.

### 6.2 **Step-In Undertaking**

Unless otherwise agreed by the DPA Counterparty in its sole and absolute discretion, the [Lender(s)]/[Security Trustee] shall procure that the Appointed Representative gives a Step-In Undertaking to the DPA Counterparty on the Proposed Step-In Date.

## 7. **STEP-IN PERIOD**

### 7.1 **Step-In Period**

During the Step-In Period:

- (A) the DPA Counterparty shall deal only with the Appointed Representative and not the Generator and the DPA Counterparty shall have no liability to the Generator for compliance with the instructions of the Appointed Representative or the [Lender(s)]/[Security Trustee] in priority to those of the Generator;
- (B) the DPA Counterparty agrees that payment by the Appointed Representative to the DPA Counterparty of any sums due under the Contract, or performance by the Appointed Representative of any other of the Generator's obligations under the Contract, shall comprise good discharge *pro tanto* of the Generator's payment and other obligations under the Contract; and
- (C) the DPA Counterparty shall owe its obligations under the Contract to the Generator and the Appointed Representative jointly but performance by the DPA Counterparty in favour of the Appointed Representative alone shall be a good discharge *pro tanto* of its obligations under the Contract.

### 7.2 **DPA Counterparty Enforcement Action during a Step-In Period**

- (A) During the Step-In Period, the DPA Counterparty shall be entitled to take DPA Counterparty Enforcement Action if:

- (i) the Appointed Representative breaches the terms of the Step-In Undertaking; and
  - (ii) such breach would, save for the terms of Clause 5.1 (*Suspension of Rights and Remedial Action*), entitle the DPA Counterparty to take the relevant DPA Counterparty Enforcement Action under or in connection with the Contract.
- (B) The provisions of Clause 3.3 (*DPA Counterparty Enforcement Action*) shall not apply to any DPA Counterparty Enforcement Action taken pursuant to this Clause 7.2.

## 8. **STEP-OUT**

- (A) The Appointed Representative or the [Lender(s)]/[Security Trustee] shall give the DPA Counterparty at least ten (10) Business Days' prior written notice of the date on which the Appointed Representative will step out (a "**Step-Out Notice**").
- (B) Upon the Step-Out Date (howsoever occurring):
- (i) all of the Appointed Representative's obligations and liabilities to the DPA Counterparty under the Step-In Undertaking will be cancelled, other than those for which the Appointed Representative is liable under the Step-In Undertaking and which arose or accrued prior to the Step-Out Date;
  - (ii) all of the Appointed Representative's rights against the DPA Counterparty under the Step-In Undertaking will be cancelled, other than those which arose or accrued prior to the Step-Out Date; and
  - (iii) without prejudice to sub-paragraph (i) above, the Appointed Representative will be released from all obligations and liabilities to the DPA Counterparty under the Contract and this Deed.
- (C) The Generator shall continue to be bound by the terms of the Contract notwithstanding the occurrence of the Step-Out Date and the DPA Counterparty shall continue to be entitled to exercise and enforce all of its rights and remedies under the Contract as against the Generator.

## 9. **NOVATION**

### 9.1 **Proposed Substitution**

- (A) Subject to paragraph (B) below, at any time:
- (i) during a Step-In Decision Period or a Step-In Period; or
  - (ii) during which an Event of Default is subsisting (and the DPA Counterparty may treat as conclusive evidence that an Event of Default is subsisting any notice served by the [Lender(s)]/[Security Trustee] pursuant to this paragraph (A)),
- the [Lender(s)]/[Security Trustee] may give a Novation Notice to the DPA Counterparty.
- (B) The [Lender(s)]/[Security Trustee] shall give the DPA Counterparty not less than fifteen (15) Business Days' prior notice of the Proposed Novation Date.

### 9.2 **Objection to Substitute**

The DPA Counterparty may only object to a proposed Substitute if the entry into a Novation Agreement or the Contract with the proposed Substitute would be unenforceable or illegal and

the DPA Counterparty gives notice of its objection to the [Lender(s)]/[Security Trustee] within ten (10) Business Days of receipt by the DPA Counterparty of the Novation Notice, in which case the [Lender(s)]/[Security Trustee] may propose an alternative Substitute.

### 9.3 Substitution Procedure

- (A) On the Proposed Novation Date or such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) the DPA Counterparty and the Generator shall each enter into a Novation Agreement with the Substitute.
- (B) The novation of the Generator's rights and obligations under the Contract pursuant to a Novation Agreement shall be effective from the date (the "**Novation Date**") which is the latest of the Proposed Novation Date, such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) and the date upon which each of the following conditions is satisfied, namely:
  - (i) the DPA Counterparty having received, in form and content satisfactory to the DPA Counterparty (acting reasonably):
    - (a) a certified copy of the constitutional documents and certificate of incorporation and any certificate of incorporation on change of name of the Substitute; and
    - (b) evidence of compliance by the Substitute with "know your customer" or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by the Novation Agreement, the Contract and the other DPA Documents;
  - (ii) the DPA Counterparty having received a legal opinion addressed to the DPA Counterparty, in form and content reasonably satisfactory to the DPA Counterparty, from the legal advisers to the Substitute confirming that the Substitute:
    - (a) is duly formed and validly existing under the laws of the jurisdiction of its formation; and
    - (b) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Contract and the other DPA Documents;
  - (iii) the DPA Counterparty having received written confirmation from the DPA Settlement Services Provider that:
    - (a) it has received the DPA Settlement Required Information which is required from the Substitute prior to the Proposed Novation Date or such later date, as the case may be; and
    - (b) the Substitute has in place the systems and processes which are necessary for the continued provision of the DPA Settlement Required Information;
  - (iv) the Substitute being or having become the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility; and



- (v) any collateral required to be in place in accordance with the Schedule (*Gain Share*) having been provided by or on behalf of the Substitute.
- (C) The DPA Counterparty shall notify the [Lender(s)]/[Security Trustee] and the Substitute of the Novation Date as soon as reasonably practicable after it has occurred.
- (D) At the [Lender(s)]/[Security Trustee]'s cost, the DPA Counterparty shall, subject to and in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract, enter into a direct agreement with the [Lender(s)]/[Security Trustee] (or such other representative of the lenders lending to such Substitute) and the Substitute on substantially the same terms as this Deed and effective from the Novation Date.

## 10. DURATION

10.1 This Deed shall commence on the date hereof and shall continue in full force and effect until the first to occur of:

- (A) the Finance Party Discharge Date;
- (B) expiry of the term of the Contract;
- (C) the termination or revocation of the Contract (in accordance with the Contract and this Deed); and
- (D) the NQE Termination Trigger Date,

in each case without prejudice to any accrued rights and obligations arising pursuant to this Deed existing at the date of termination.

10.2 The [Lender(s)]/[Security Trustee] shall promptly notify the DPA Counterparty of the occurrence of the Finance Party Discharge Date.

10.3 The [Lender(s)]/[Security Trustee] shall promptly notify the DPA Counterparty upon becoming aware of the occurrence of a Non-Qualification Event.

10.4 The [Lender(s)]/[Security Trustee] shall not exercise any rights under this Deed after becoming aware that a Non-Qualification Event is in operation as at the date when the right to exercise such rights would otherwise have arisen.

## 11. CHANGES TO PARTIES

### 11.1 Benefit of Deed

This Deed shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or some of a Party's rights and obligations under this Deed.

### 11.2 Assignment

Save as provided in Clause 9 (*Novation*) or Clause 11.3 (*Assignment by the [Lender(s)]/[Security Trustee]*), neither the [Lender(s)]/[Security Trustee] nor the Generator may assign, transfer, novate or otherwise dispose of all or any of their respective rights, benefits or obligations under this Deed without the prior consent of the other Parties.

### 11.3 **Assignment by the [Lender(s)]/[Security Trustee]**

The [Lender(s)]/[Security Trustee] may assign or transfer [its]/[their respective] rights under this Deed to any successor [Lender(s)]/[Security Trustee] without the consent of the DPA Counterparty.

### 11.4 **Generator's Acknowledgement**

The Generator joins in this Deed to acknowledge and consent to the arrangements set out in it and agrees not knowingly to do or omit to do anything that may prevent either of the other Parties from enforcing its rights under this Deed.

## 12. **NOTICES**

### 12.1 **Communications in Writing**

Any communications to be made pursuant to or in connection with this Deed shall be made in writing and shall be effective only if they are in writing and in English. Faxes are not permitted but email is permitted.

### 12.2 **Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### (A) **DPA Counterparty**

Address: Low Carbon Contracts Company Ltd, 10 South Colonnade, London, England, E14 4PU

Attention: Head of Contract Management

#### (B) **[Lender(s)]/[Security Trustee]**

Address: [●]

Attention: [●]

#### (C) **Generator**

Address: [●]

Attention: [●]

### 12.3 **Changes to Notice Details**

A Party may change its notice details on giving notice to the other Party in accordance with this Clause 12 (*Notices*). Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three (3) Business Days after the date of delivery or deemed delivery of such notice); or
- (B) (if no date is specified in such notice or the date specified is fewer than three (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

## 12.4 Deemed Delivery

Any notice given pursuant to or in connection with this Deed shall, in the absence of evidence of earlier receipt, be deemed to have been received:

- (A) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (B) if sent by first class post within the United Kingdom, on the third (3rd) Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth (5th) Business Day after the day of posting; or
- (D) if sent by email, when sent except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification,

provided that any notice given outside Working Hours in the place to which it is addressed (or, in the case of a notice sent by email, the location of the person to whom it is addressed) shall be deemed not to have been given until the start of the next period of Working Hours in such place.

## 13. MISCELLANEOUS

### 13.1 Limited Recourse

Notwithstanding any other provision of this Deed:

- (A) the liability of the DPA Counterparty pursuant to this Deed shall not exceed the aggregate of:
  - (i) the amounts from time to time received and held by the DPA Counterparty, and allocated to this Deed, pursuant to the Supplier Obligation Regulations; and
  - (ii) any other funds of the type referred to in Condition 53.3(E) (*DPA Counterparty payment undertakings*) of the Contract from time to time received and held by the DPA Counterparty, and allocated to this Deed, whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (B) the DPA Counterparty shall not be in default pursuant to this Deed in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in paragraph (A) above which are necessary to make such payment, but if and to the extent that such payment is not made, the DPA Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

### 13.2 Amendments

This Deed may not be amended, waived, supplemented or otherwise varied unless in writing and signed by or on behalf of all of the Parties.

### 13.3 Remedies and Waivers

No failure to exercise, nor any delay in exercising, any power, right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent

any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

#### 13.4 **Partial Invalidity**

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

#### 13.5 **No Partnership**

Neither this Deed nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

#### 13.6 **Counterparts**

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

#### 13.7 **Third Party Beneficiaries**

(A) Save as provided in paragraph (B) below, this Deed is intended for the sole and exclusive benefit of the Parties.

(B) The Contracts (Rights of Third Parties) Act 1999 is expressly excluded save for:

- (i) any rights of any Appointed Representative on and after the issue of a Step-In Undertaking by that Appointed Representative; or
- (ii) any rights of any Substitute on and after any Novation Date under or in connection with Clause 9 (*Novation*),

in each case, as if they were a party to this Deed.

(C) This Deed may be varied in any way and at any time by the Parties without the consent of any third party.

#### 13.8 **Entire Agreement**

This Deed and the Contract constitute the entire agreement between the Parties with respect to the subject matter of this Deed.

#### 13.9 **Effect of this Deed**

(A) The Parties acknowledge and agree that the express or implied terms and conditions of this Deed shall, in the event of any inconsistency or conflict with the express or implied terms and conditions of the Contract, prevail over the relevant terms and conditions of the Contract.

(B) Nothing in this Deed or the arrangements contemplated hereby shall prejudice the rights of any of the Finance Parties under the Finance Documents or any Security Documents or shall be construed as obliging the [Lender(s)]/[Security Trustee] to exercise any of [its]/[their respective] rights under the Security Documents or under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

- (A) This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England.
- (B) The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed).

**IN WITNESS WHEREOF** this Deed has been duly executed and delivered as a deed on the date stated at the beginning of this Deed.

**DPA Counterparty**

**EXECUTED** and delivered as a **DEED** by )  
**LOW CARBON CONTRACTS COMPANY LTD**)  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature:.....

Print Name:.....

Address:.....

Occupation:.....

**[Lender]/[Security Trustee]**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Generator**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Appendix 1**  
**Form of Step-In Undertaking**

*[From the Appointed Representative]*

From: [Appointed Representative]

To: Low Carbon Contracts Company Ltd [insert address]

For the attention of: Head of Contract Management

Date: [insert date]

Dear Sir/Madam,

**DIRECT AGREEMENT (the "Agreement")**

1. In accordance with clause 6 (*Step-In*) of the Agreement, we undertake to you that we will:
  - (A) pay, or procure payment, to you within three (3) Business Days of the date hereof any sum that is due and payable to you by the Generator but unpaid as of the date hereof;
  - (B) pay, or procure payment, to you any sum which becomes due and payable by the Generator to you pursuant to the terms of the Contract during the Step-In Period which is not paid by the Generator on the due date;
  - (C) perform or discharge, or procure the performance or discharge of, all outstanding performance obligations of the Generator which have arisen or fallen due prior to the date hereof:
    - (i) within ten (10) Business Days of the date hereof; or
    - (ii) if the performance or discharge of any obligation is being disputed pursuant to the provisions of the Contract, within ten (10) Business Days of the same being agreed or finally determined; and
  - (D) perform or discharge, or procure the performance or discharge of, any performance obligations of the Generator under the Contract which arise during the Step-In Period,

in each case in accordance with and subject to the terms of the Contract as if we were a party to the Contract in place of the Generator.
2. This Step-In Undertaking may be terminated by the giving of a Step-Out Notice to you in accordance with clause 8 (*Step-Out*) of the Agreement and shall automatically terminate upon the Step-Out Date, save that we shall continue to be liable to you for outstanding obligations and liabilities arising prior to termination in accordance with clause 8(B) (*Step-Out*) of the Agreement.
3. All capitalised terms used in this letter shall have the meanings given them in the Agreement.
4. This Step-In Undertaking and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with it.



Yours faithfully,

.....

For and on behalf of

[Appointed Representative]

**Appendix 2**  
**Form of Novation Agreement**

**THIS NOVATION AGREEMENT is dated [●] and made as a deed BETWEEN:**

- (1) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated under the laws of England and Wales whose registered office is 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711 (the "**DPA Counterparty**");
- (2) **[insert name and details of the generator]**, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Generator**"); and
- (3) **[insert name and details of the substitute]**, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Substitute**")

(together referred to as the "**Parties**").

**BACKGROUND**

- (A) The Generator, the DPA Counterparty and the [Lender(s)]/[Security Trustee] have entered into an agreement (the "**Direct Agreement**") dated [●] pursuant to which the [Lender(s)]/[Security Trustee] [has]/[have] the right to require the rights and obligations of the Generator under the Contract to be novated to a Substitute.
- (B) The Substitute has been identified as the Substitute for the purposes of clause 9 (*Novation*) of the Direct Agreement.
- (C) This is the Novation Agreement referred to in clause 9.3 (*Substitution Procedure*) of the Direct Agreement.

**IT IS AGREED as follows:**

**1. Definitions and Interpretation**

Unless a contrary indication appears, words and expressions defined, or defined by reference, in the Direct Agreement have the same meanings in this Agreement.

**2. DPA Counterparty Release and Discharge**

With effect from the Novation Date, the DPA Counterparty releases and discharges the Generator from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the DPA Counterparty and arising out of or in respect of the Contract, save for the Generator's obligations under Condition 54 (*Confidentiality*) of the Contract.

**3. Generator Release and Discharge**

With effect from the Novation Date, the Generator releases and discharges the DPA Counterparty from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the Generator and arising out of or in respect of the Contract.

**4. Substitute Assumption of Liabilities**

The Substitute undertakes to assume all the liabilities, duties and obligations of the Generator of every description contained in the Contract, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed, and agrees to perform all the duties and to discharge all the liabilities and obligations of the Generator under the Contract and to be bound by their terms and conditions in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

**5. DPA Counterparty Agreement to Perform**

The DPA Counterparty agrees to perform all its duties and to discharge all its obligations under the Contract and to be bound by all the terms and conditions of the Contract in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

**6. Replacement of Generator by Substitute**

As from the Novation Date, reference to the Generator (by whatsoever name known) in the Contract shall be deleted and replaced by reference to the Substitute.

**7. Outstanding DPA Counterparty Claims**

The DPA Counterparty shall not take any DPA Counterparty Enforcement Action by reason of any event notified in a DPA Counterparty Enforcement Notice or any act or omission by the [Lender(s)]/[Security Trustee], any Appointed Representative and/or the Generator occurring prior to the Novation Date provided that the foregoing shall be without prejudice to the DPA Counterparty's remedies (including without limitation the right to take DPA Counterparty Enforcement Action) in respect of:

- (A) outstanding amounts properly due and payable to the DPA Counterparty on the Novation Date and which remain unpaid on the expiry of three (3) Business Days' notice from the DPA Counterparty to the Substitute that such amounts are due and payable; and
- (B) to the extent not covered by paragraph (A) above, any breach of a Step-In Undertaking or the Contract by an Appointed Representative, the Generator or the [Lender(s)]/[Security Trustee] occurring prior to the Novation Date which has not been remedied upon the expiry of ten (10) Business Days' notice from the DPA Counterparty to the Substitute that such breach has not been remedied.

**8. Continuance of the Contract**

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

**9. Further Assurance**

The Parties shall perform such further acts and execute and deliver such further documents as may be required by law or reasonably requested by each other to implement the purposes of and to perfect this Agreement.

10. **Contract (Rights of Third Parties) Act 1999**

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

11. **Variations**

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

12. **Notices**

Any notices to be served on the Substitute pursuant to the Contract shall be served in accordance with Condition 62 (*Notices*) of the Contract and to:

*[insert Substitute contact details]*

13. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

14. **Governing Law and Jurisdiction**

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

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first stated above<sup>72</sup>.

---

<sup>72</sup>

Note to draft: execution blocks to be amended as appropriate

**DPA Counterparty**

**EXECUTED** and delivered as a **DEED** by )  
**LOW CARBON CONTRACTS COMPANY LTD**)  
acting by its director/duly appointed attorney ) .....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Generator**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Substitute**

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

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Annex 6  
Gas Reference Price Review**

**Part A  
GRP Review Procedures**

**1. DEFINITIONS: ANNEX 6**

**1.1** In this Annex 6 (*Gas Reference Price Review*):

**"10-TD Gas Sample Period"** means a period of ten (10) consecutive GRP Trading Days;

**"10-TD Gas Trade Number Percentage"** means, in respect of a price source, the number of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by such price source in a 10-TD Gas Sample Period expressed as a percentage of the total number of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by all of the Calculation Gas Price Sources during such 10-TD Gas Sample Period and, where such price source conducts or reports Gas GB Day Ahead Contracts less frequently than every GRP Trading Day, the number of Gas GB Day Ahead Contracts attributable to each GRP Trading Day shall be the number of Gas GB Day Ahead Contracts conducted or reported on each Price Source Live Day allocated equally to each GRP Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**"10-TD Gas Volume Percentage"** means, in respect of a price source, the volume (*expressed in therms*) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by such price source in a 10-TD Gas Sample Period expressed as a percentage of the volume (*expressed in therms*) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by all of the Calculation Gas Price Sources during such 10-TD Gas Sample Period and, where such price source conducts or reports Gas GB Day Ahead Contracts less frequently than every GRP Trading Day, the volume of Gas GB Day Ahead Contracts attributable to each GRP Trading Day shall be the volume of Gas GB Day Ahead Contracts conducted or reported on each Price Source Live Day allocated equally to each GRP Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**"Calculation Gas Price Source"** means a price source which is determined pursuant to a GRP Principles Review to have met the GRP Quality Criteria;

**"Gas GB Day Ahead Contract"** means a contract relating to the delivery of a firm volume of gas between 0:00 and 04:59 of a specified VP Settlement Unit entered into in the preceding GRP Trading Day, or the delivery of a firm volume of gas between 5:00 and 23:59 of the same VP Settlement Unit entered into on the same GRP Trading Day as such VP Settlement Unit (whether physically or cash settled);

**"Gas GB Day Ahead Price"** means the price (*expressed in pence/therm*) for a Gas GB Day Ahead Contract as reflected in a Gas GB Day Ahead Index or Gas GB Day Ahead Indices (as the context requires);

**"Gas GB Day Ahead Index"** means an index of Gas GB Day Ahead Prices or another source of Gas GB Day Ahead Prices and **"Gas GB Day Ahead Indices"** shall be construed accordingly;

**"Gas Price Sources"** means the Gas GB Day Ahead Indices to be used in the calculation of the Gas Reference Price, being the Initial GRP Index or such other replacement or supplementary Gas GB Day Ahead Indices which are required to be so used as a result of the

operation of the provisions of Part B (*GRP Review Procedures*), and **"Gas Price Source"** shall be construed accordingly;

**"Gas Reference Price"** has the meaning given to that term in Condition 10.4 (*Gas Price calculation*);

**"GRP Dispute"** means a Dispute in relation to the outcome of a GRP Principles Review;

**"GRP Dispute Generator"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Notice"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 2.10 (*GRP Dispute Threshold Criterion*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Validity Notice"** has the meaning given to that term in paragraph 2.3 (*Validity of GRP Dispute Notices*) of Part B (*GRP Review Procedures*);

**"GRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 2.7 (*GRP Expert Appointment Threshold*) of Part B (*GRP Review Procedures*);

**"GRP Inclusion Criteria"** in respect of a price source, means that:

- (A) the 10-TD Gas Trade Number Percentage in respect of such price source in each 10-TD Gas Sample Period during the GRP Review Calculation Period is at least five per cent. (5%);
- (B) the 10-TD Gas Volume Percentage in respect of such price source in each 10-TD Gas Sample Period during the GRP Review Calculation Period is at least five per cent. (5%);
- (C) such price source has at all times during the GRP Review Calculation Period, no fewer than ten (10) market participants which, it is evidenced to the DPA Counterparty:
  - (i) are each party to one (1) or more Gas GB Day Ahead Contracts and for each of such market participants at least one reported trade of a Gas GB Day Ahead Contract is used to derive the Gas GB Day Ahead Price; and
  - (ii) comply with one (1) or more of the following criteria:
    - (a) for price sources that are based on brokered trades, the market participants are listed in a maintained list of counterparties which have been approved by one (1) or more brokers to trade the products relevant to such price sources;
    - (b) for price sources that are based on a commodity exchange, the market participants have established arrangements with that exchange for the provision of initial and variation margins;
    - (c) for price sources where trades are enacted through a software platform, the market participants have established links with the platform;
    - (d) for price sources that provide pricing information on a subscription basis, the market participants have a subscription to that price source; or (where none of the above can be evidenced); and



- (e) the market participants have incurred a material cost to trade using the price source; and
- (D) such price source reports prices of Gas GB Day Ahead Contracts at least once per VP Settlement Unit during the GRP Review Calculation Period,

and **"GRP Inclusion Criterion"** shall be construed accordingly;

**"GRP Mechanism Amendment"** has the meaning given to that term in paragraph 1.6 (*Purpose of Gas Price Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles"** means the prioritisation of the GRP Principles provided for in paragraph 1 (*GRP Principles*) of Part C (*GRP Principles*);

**"GRP Principles Prioritisation"** means the prioritisation of the GRP Principles provided for in paragraph 2 (*Prioritisation of GRP Principles*) of Part C (*GRP Principles*);

**"GRP Principles Request Criterion"** has the meaning given to that term in paragraph 1.3 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Principles Request Notice"** has the meaning given to that term in paragraph 1.2 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1.5 (*Validity of GRP Principles Request Notices*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1.12(B) (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Notice"** has the meaning given to that term in paragraph 1.8 (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1.12 (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Proposals"** has the meaning given to that term in paragraph 1.8(A) (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1.8(B) (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1.9 (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Trigger"** has the meaning given to that term in paragraph 1.1 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Quality Criteria"** in respect of a price source, means the DPA Counterparty having determined that, as at the GRP Principles Review Response Deadline:

- (A) the underlying data used to compile or prepare such price source:

- (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
- (i) is appropriately documented;
  - (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and
- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and **"GRP Quality Criterion"** shall be construed accordingly;

**"GRP Review Calculation Period"** means in respect of each GRP Principles Review, the twelve (12) Month period ending on (and including) the day immediately prior to the GRP Principles Review Response Deadline;

**"GRP Trading Day"** means any day on which trading on the market from which the Gas Prices Sources are derived ordinarily takes place.

**"Initial GRP Index"** means the NBP UK Index;

**"NBP UK Index"** means the National Balancing Point (NBP) Virtual Trading Point as published on ICE Futures Europe;

**"Price Source Live Day"** means, in respect of price source, a day where Gas GB Day Ahead Contracts are conducted or reported; and

**"Proposed GRP Expert"** has the meaning given to that term in paragraph 2.3(A) (*Validity of GRP Dispute Notices*) of Part B (*GRP Review Procedures*).

**Part B**  
**GRP Review Procedures**

**1. GRP PRINCIPLES REVIEW**

***Requirement to undertake GRP Principles Reviews***

1.1 The DPA Counterparty:

- (A) shall conduct a GRP Principles Review if:
  - (i) the Gas Price Sources cease to be available to the DPA Counterparty;
  - (ii) the splitting of the Great Britain gas market has been proposed or effected by the relevant Competent Authority;
  - (iii) the volume (*expressed in therms*) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain reflected in each Gas Price Source is nil in any 10-TD Gas Sample Period;
  - (iv) the Gas Price Sources cease to be available to the DPA Counterparty on commercially reasonable terms; or
  - (v) the GRP Principles Request Criterion is met; and
- (B) may conduct a GRP Principles Review if it determines that the Gas Reference Price does not reflect the market price for the sale of gas delivered within Great Britain,

(each, a "**GRP Principles Review Trigger**").

1.2 If the Generator considers that the calculation of the Gas Reference Price does not comply with all of the GRP Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a GRP Principles Review (a "**GRP Principles Request Notice**"). A GRP Principles Request Notice:

- (A) shall specify which of the GRP Principles the Generator believes the calculation of the Gas Reference Price does not comply with;
- (B) may include proposals from the Generator with respect to the manner in which the non-compliance with the GRP Principles should be addressed (including any proposals regarding GRP Mechanism Amendments which the Generator considers should be effected); and
- (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B).

1.3 For the purposes of paragraph 1.1(A)(v), the "**GRP Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a GRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the GRP Principles Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a GRP Principles Request Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a GRP Principles Request Notice are party as a percentage of the total

volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

#### **Validity of GRP Principles Request Notices**

- 1.4 The Generator acknowledges and agrees that all GRP Principles Request Notices shall be invalid and of no effect if the GRP Principles Request Criterion is not met.
- 1.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the GRP Principles Request Criterion has been met (a "**GRP Principles Request Validity Notice**").

#### **Purpose of Gas Price Principles Review**

- 1.6 If the DPA Counterparty is required or elects to undertake a GRP Principles Review pursuant to paragraph 1.1, then the purpose of such GRP Principles Review shall be to assess the extent to which:
- (A) the calculation of the Gas Reference Price in accordance with Condition 10.4 (*Gas Price calculation*) is compliant with the GRP Principles and, if the calculation of the Gas Reference Price in accordance with Condition 10.4 (*Gas Price calculation*) is not compliant with the GRP Principles, the changes to Condition 10.4 (*Gas Price calculation*) which the DPA Counterparty considers to be necessary to ensure compliance with all of the GRP Principles; and
  - (B) any of the following would ensure compliance with all of the GRP Principles:
    - (i) an amendment or supplement to, or replacement or removal of, the Gas Price Sources;
    - (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Gas Reference Price; or
    - (iii) a change to the day-ahead methodology for calculating the Gas Reference Price, including any consequential changes to Condition 10 (*Variable Payment Calculation*) and this Annex 6 (*Gas Reference Price Review*) which are necessary to give effect to any of the foregoing,
- (each such change, or any combination of such changes, a "**GRP Mechanism Amendment**").
- 1.7 If the DPA Counterparty considers that it is not possible to effect any GRP Mechanism Amendment in a manner which will be compliant with all of the GRP Principles, the DPA Counterparty shall assess which GRP Mechanism Amendment should be effected in order to comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation.

#### **Notification of GRP Principles Review**

- 1.8 If the DPA Counterparty is required or elects to undertake a GRP Principles Review pursuant to paragraph 1.1, the DPA Counterparty shall give a notice to the Generator (a "**GRP Principles Review Notice**") and, if the DPA Counterparty has been required to undertake a GRP Principles Review pursuant to paragraph 1.1(A)(iii), the DPA Counterparty shall give the GRP Principles Review Notice no later than five (5) Business Days after such GRP Principles Review Trigger has occurred. A GRP Principles Review Notice shall:

- (A) specify the GRP Principles Review Trigger which has occurred; and
- (B) specify a deadline by which the Generator may provide a GRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the GRP Principles Review Notice is received by the Generator (the "GRP Principles Review Response Deadline").

1.9 The Generator may, as soon as reasonably practicable and not later than the GRP Principles Review Response Deadline, give a notice to the DPA Counterparty (the "**GRP Principles Review Response Notice**"). A GRP Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the GRP Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the GRP Principles Review Trigger should be addressed (including any proposals regarding GRP Mechanism Amendments which the Generator considers should be effected).

1.10 The DPA Counterparty may disregard any GRP Principles Review Response Notice received by the DPA Counterparty after the GRP Principles Review Response Deadline.

***Gas Price Sources during GRP Principles Review***

1.11 From the date on which the GRP Principles Review Notice is given, the Gas Price Sources prior to the commencement of the relevant GRP Principles Review shall remain unamended pending the outcome of a GRP Principles Review.

***Notification of outcome of GRP Principles Review***

1.12 The DPA Counterparty shall give a notice to the Generator of the outcome of a GRP Principles Review (a "**GRP Principles Review Outcome Notice**") as soon as reasonably practicable following the conclusion of a GRP Principles Review. A GRP Principles Review Outcome Notice shall:

- (A) set out the outcome of the GRP Principles Review (including the details of any GRP Mechanism Amendments which the DPA Counterparty proposes to effect) (the "**GRP Principles Review Proposals**") and, if paragraph 1.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any GRP Mechanism Amendment in a manner which complies with all of the GRP Principles; and
  - (ii) the GRP Principles which the DPA Counterparty considers will be complied with by virtue of the GRP Mechanism Amendments being effected; and
- (B) specify the date from which any GRP Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the GRP Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and
  - (ii) in the case of GRP Mechanism Amendments relating to a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii), not before such splitting of the Great Britain gas market occurs,

(the "**GRP Principles Review Implementation Date**").

**GRP Principles Review: Disputes**

- 1.13 Paragraph 2 (*GRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*GRP Principles Reviews*).
- 1.14 Subject to paragraph 2.9, the GRP Mechanism Amendments set out in the GRP Principles Review Outcome Notice shall take effect on the GRP Principles Review Implementation Date.

**2. GRP REVIEWS: DISPUTE PROCESS*****Procedure for raising a Dispute***

- 2.1 The Generator may, no later than twenty (20) Business Days after receipt of a GRP Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such GRP Principles Review (a "**GRP Dispute Notice**" and any such Generator, a "**GRP Dispute Generator**"). Each GRP Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

***Validity of GRP Dispute Notices***

- 2.2 The Generator acknowledges and agrees that all GRP Dispute Notices shall be invalid and of no effect if the GRP Dispute Threshold Criterion in respect of the relevant GRP Dispute is not met.
- 2.3 The DPA Counterparty shall notify the Generator no later than twenty (20) Business Days after the GRP Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a GRP Dispute Generator) (a "**GRP Dispute Validity Notice**"). A GRP Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the GRP Dispute (the "**Proposed GRP Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed GRP Expert to determine such GRP Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed GRP Expert from determining the GRP Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

***Permitted bases of Dispute: GRP Principles Review***

- 2.4 For the purposes of paragraph 2.1, the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any GRP Principles Review if:
- (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take account of in undertaking the GRP Principles Review (as set out in its GRP Principles Review Response Notice);
  - (B) the DPA Counterparty has proposed to effect a GRP Mechanism Amendment which was stated in the GRP Principles Review Outcome Notice to be compliant with all of the GRP Principles and the Generator considers that such GRP Mechanism Amendment contravenes one (1) or more of the GRP Principles; or

- (C) the DPA Counterparty has proposed to effect a GRP Mechanism Amendment on the basis contemplated by paragraph 1.7 and the Generator considers that either:
- (i) one (1) or more of the proposed GRP Mechanism Amendments contravenes one (1) of the GRP Principles which the DPA Counterparty considers would be complied with by virtue of such GRP Mechanism Amendment being effected; or
  - (ii) an alternative GRP Mechanism Amendment complies with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Mechanism Amendments contained within the GRP Principles Review Proposals,

and any GRP Dispute Notice which is based upon grounds other than those specified in this paragraph 2.4 shall be invalid and of no effect.

### ***Resolution of valid GRP Disputes***

2.5 If:

- (A) the GRP Dispute Threshold Criterion is met in respect of any GRP Dispute; and
- (B) the relevant GRP Dispute complies with paragraph 2.4,

then such GRP Dispute shall be finally resolved in accordance with paragraph 2.6.

2.6 If paragraph 2.5 applies to any GRP Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such GRP Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant GRP Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such GRP Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such GRP Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such GRP Dispute on the basis that:
  - (i) (if the GRP Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed GRP Expert;
  - (ii) (if the GRP Expert Appointment Threshold is not met):
    - (a) the DPA Counterparty may, within ten (10) Business Days, either:
      - (1) make an alternative proposal as to the identity of an Expert to determine the GRP Dispute, in which case paragraphs 2.3(A) and 2.6(E)(i), and this paragraph 2.6(E)(ii)(a)(1), shall apply to such proposed Expert as if that Expert were a Proposed GRP Expert; or

- (2) request the LCIA to nominate an Expert for the purposes of determining the GRP Dispute in accordance with Condition 41.4 (*Expert Determination Procedure*); and
- (b) the terms of reference of the Proposed GRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the GRP Dispute;
- (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 2.6(E)(i) or having been nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 2.6(E)(iii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);
- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
  - (b) the DPA Counterparty in consequence of, or in respect of, their appointment as the Expert to any DPA Generator (including the Generator);
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the GRP Dispute, to afford the Generator an opportunity to make submissions in respect of the GRP Dispute irrespective of whether or not the Generator is a GRP Dispute Generator;
- (vi) if the circumstances described in Condition 41.8 (*Expert Determination Procedure*) arise, paragraphs 2.3(A), 2.6(E)(i) and 2.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
- (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (i) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the GRP Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the GRP Dispute Generators; and (ii) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the GRP Dispute Generators; and



- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any GRP Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the GRP Dispute giving rise to that determination;
- (G) if the GRP Dispute falls within paragraph 2.4(A), 2.4(B) or 2.4(C)(i), the Expert shall be instructed to determine whether the GRP Mechanism Amendments contravene the GRP Principles (or such of the GRP Principles as were specified by the DPA Counterparty as being complied with by virtue of the proposed implementation of the GRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within their determination: (i) a GRP Mechanism Amendment which will comply with all of the GRP Principles; or (ii) (if the Expert considers that it is not possible to effect any GRP Mechanism Amendment in a manner which will be compliant with all of the GRP Principles) the GRP Mechanism Amendment which will comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation;
- (H) if the GRP Dispute falls within paragraph 2.4(C)(ii), the Expert shall be instructed to determine whether the GRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Mechanism Amendments contained within the GRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the GRP Mechanism Amendments which will comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation;
- (I) notwithstanding paragraphs (F) and (G), the Expert shall not be permitted to include within their determination any alternative GRP Mechanism Amendments to those contained within the GRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is a GRP Mechanism Amendment which will comply with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the GRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the GRP Principles.

### ***GRP Expert Appointment Threshold***

2.7 For the purposes of paragraphs 2.6(E)(i) and 2.6(E)(ii), the "**GRP Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed GRP Expert. For the purposes of determining whether the GRP Expert Appointment Threshold is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed GRP Expert as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed GRP Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Provisions applying pending resolution of a GRP Dispute**

2.8 If there is a valid GRP Dispute requiring resolution in accordance with the provisions of paragraphs 2.5 to 2.7 then, pending resolution of such GRP Dispute, paragraph 2.9 shall apply.

2.9 If there is a valid GRP Dispute relating to a GRP Principles Review:

- (A) the relevant GRP Principles Review Outcome Notice shall be deemed to be valid and effective and the GRP Principles Review Proposals shall apply with effect from the GRP Principles Review Implementation Date; and
- (B) if the Expert finds in favour of the Generator, the GRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made their determination.

**GRP Dispute Threshold Criterion**

2.10 For the purposes of this paragraph 2 (*GRP Reviews: Dispute Process*), the "**GRP Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a GRP Dispute Notice in respect of any given GRP Dispute prior to the date specified in paragraph 2.1. For the purposes of determining whether the GRP Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a GRP Dispute Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a GRP Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part C**  
**GRP Principles**

**1. GRP PRINCIPLES**

The following are the "**GRP Principles**":

- (A) Save in respect of a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part B, the calculation of the Gas Reference Price shall be the same for all CCUS Programme DPAs.
- (B) The calculation of the Gas Reference Price shall reflect the market price for the sale of gas within Great Britain or, in the event of a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part B, the relevant part of Great Britain.
- (C) The Gas Reference Price shall be calculated using prices in respect of contracts as far in advance of the delivery of gas pursuant to such contracts as possible, provided that, for this purpose, the Gas Reference Price calculation shall not include prices that are quoted further in advance than Gas GB Day Ahead Contracts.
- (D) The Gas Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (E) The Gas Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the gas market in Great Britain that would, absent the existence of CCUS Programme DPA, contribute to the operational behaviour of the gas market in Great Britain and the pricing thereof.
- (F) The Gas Reference Price shall be calculated using price sources which are available to the DPA Counterparty on commercially reasonable terms.
- (G) The Gas Reference Price calculation is to utilise price sources which satisfy the GRP Quality Criteria.
- (H) The Gas Reference Price calculation is to utilise price sources which satisfy the GRP Inclusion Criteria.
- (I) If a GRP Principles Review Trigger falling within paragraph 1.1(A)(ii) of Part B occurs or has occurred, the Gas Reference Price calculation shall pay regard to the physical location of the Facility and the extent to which such physical location and constraints on the delivery of gas into the market thereby imposed may have on the price for the sale of its gas delivered within Great Britain or the relevant part of Great Britain.

**2. PRIORITISATION OF GRP PRINCIPLES**

If:

- (A) the application of any combination of the GRP Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Gas Reference Price to satisfy all of the GRP Principles,

the GRP Principle first appearing in the list in paragraph 1 (*GRP Principles*) shall be afforded priority.

**Annex 7**  
**Carbon Market Reference Price Review**

1. **DEFINITIONS: ANNEX 7**

1.1 In this Annex 7 (*Carbon Market Reference Price Review*):

**"10-TD UKA Sample Period"** means a period of ten (10) consecutive CMRP Trading Days;

**"10-TD UKA Trade Number Percentage"** means, in respect of a price source, the number of UKA Futures December Contracts in respect of UK Allowances conducted on or reported by such price source in a 10-TD UKA Sample Period expressed as a percentage of the total number of UKA Futures December Contracts in respect of UK Allowances conducted on or reported by all of the Calculation CMRP Sources during such 10-TD UKA Sample Period and, where such price source conducts or reports UKA Futures December Contracts less frequently than every CMRP Trading Day, the number of UKA Futures December Contracts attributable to each CMRP Trading Day shall be the number of UKA Futures December Contracts conducted or reported on each CMRP Source Live Day allocated equally to each CMRP Trading Day from and including each CMRP Source Live Day to and excluding the next occurring CMRP Source Live Day;

**"10-TD UKA Volume Percentage"** means, in respect of a price source, the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted on or reported by such price source in a 10-TD UKA Sample Period expressed as a percentage of the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted on or reported by all of the Calculation CMRP Sources during such 10-TD UKA Sample Period and, where such price source conducts or reports UKA Futures December Contracts less frequently than every CMRP Trading Day, the number of UK Allowances traded pursuant to UKA Futures December Contracts attributable to each CMRP Trading Day shall be the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted or reported on each CMRP Source Live Day allocated equally to each CMRP Trading Day from and including each CMRP Source Live Day to and excluding the next occurring CMRP Source Live Day;

**"Calculation CMRP Source"** means a price source which is determined pursuant to a CMRP Principles Review to have met the CMRP Quality Criteria;

**"Carbon Market Reference Price"** has the meaning given to that term in Condition 10.9 (*Carbon Price calculation*);

**"CMRP Dispute"** means a Dispute in relation to the outcome of a CMRP Principles Review;

**"CMRP Dispute Generator"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Notice"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 2.10 (*CMRP Dispute Threshold Criterion*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Validity Notice"** has the meaning given to that term in paragraph 2.3 (*Validity of CMRP Dispute Notices*) of Part A (*CMRP Review Procedures*);

**"CMRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 2.7 (*CMRP Expert Appointment Threshold*) of Part A (*CMRP Review Procedures*);

**"CMRP Inclusion Criteria"** in respect of a price source, means that:

- (A) the 10-TD UKA Trade Number Percentage in respect of such price source in each 10-TD UKA Sample Period during the CMRP Review Calculation Period is at least five per cent. (5%);
- (B) the 10-TD UKA Volume Percentage in respect of such price source in each 10-TD UKA Sample Period during the CMRP Review Calculation Period is at least five per cent. (5%);
- (C) such price source has at all times during the CMRP Review Calculation Period, no fewer than ten (10) market participants which, it is evidenced to the DPA Counterparty:
  - (i) are each party to one (1) or more UKA Futures December Contract and for each of such market participants at least one reported trade of a UKA Futures December Contract is used to derive the UKA Futures December Contract Trading Price; and
  - (ii) comply with one (1) or more of the following criteria:
    - (a) for price sources that are based on brokered trades, the market participants are listed in a maintained list of counterparties which have been approved by one (1) or more brokers to trade the products relevant to such price sources;
    - (b) for price sources that are based on a commodity exchange, the market participants have established arrangements with that exchange for the provision of initial and variation margins;
    - (c) for price sources where trades are enacted through a software platform, the market participants have established links with the platform;
    - (d) for price sources that provide pricing information on a subscription basis, the market participants have a subscription to that price source; or (where none of the above can be evidenced);
    - (e) the market participants have incurred a material cost to trade using the price source; and
- (D) such price source reports prices of UKA Futures December Contracts at least once per VP Settlement Unit during the CMRP Review Calculation Period,

and **"CMRP Inclusion Criterion"** shall be construed accordingly;

**"CMRP Mechanism Amendment"** has the meaning given to that term in paragraph 1.6 (*Purpose of Carbon Price Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles"** has the meaning given to that term in paragraph 1 (*CMRP Principles*) of Part B (*CMRP Principles*);

**"CMRP Principles Prioritisation"** means the prioritisation of the CMRP Principles provided for in paragraph 2 (*Prioritisation of CMRP Principles*) of Part B (*CMRP Principles*);

**"CMRP Principles Request Criterion"** has the meaning given to that term in paragraph 1.3 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Request Notice"** has the meaning given to that term in paragraph 1.2 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1.5 (*Validity of CMRP Principles Request Notices*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1.12(B) (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Notice"** has the meaning given to that term in paragraph 1.8 (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1.12 (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Proposals"** has the meaning given to that term in paragraph 1.12(A) (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1.8(B) (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1.9 (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Trigger"** has the meaning given to that term in paragraph 1.1 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Quality Criteria"** in respect of a price source, means the DPA Counterparty having determined that, as at the CMRP Principles Review Response Deadline:

- (A) the underlying data used to compile or prepare such price source:
  - (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
  - (i) is appropriately documented;
  - (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and

- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and **"CMRP Quality Criterion"** shall be construed accordingly;

**"CMRP Review Calculation Period"** means in respect of each CMRP Principles Review, the twelve (12) Month period ending on (and including) the day immediately prior to the CMRP Principles Review Response Deadline;

**"CMRP Source Live Day"** means, in respect of a price source, a day where UKA Futures December Contracts are conducted or reported;

**"CMRP Sources"** means the UKA Futures Indices to be used in the calculation of the Carbon Market Reference Price, being the Initial CMRP Index or such other replacement or supplementary UKA Futures Indices which are required to be so used as a result of the operation of the provisions of Part A (*CMRP Review Procedures*), and **"CMRP Source"** shall be construed accordingly;

**"CMRP Trading Day"** means any day on which trading on the market from which the CMRP Sources are derived ordinarily takes place;

**"ICE Futures Europe Index"** means the UKA Futures Index reported by ICE Futures Europe;

**"Initial CMRP Index"** means the ICE Futures Europe Index;

**"Proposed CMRP Expert"** has the meaning given to that term in paragraph 2.3(A) (*Validity of CMRP Dispute Notices*) of Part A (*CMRP Review Procedures*);

**"UK Allowance"** means an allowance created under the UK Emissions Trading Scheme;

**"UK Emissions Trading Registry"** means the registry established pursuant to the UK Emissions Trading Scheme;

**"UK Emissions Trading Scheme"** means the emissions trading scheme in the UK established pursuant to The Greenhouse Gas Emissions Trading Scheme Order 2020;

**"UKA Futures December Contract"** means a December contract with the soonest contract delivery date relating to the transfer of a fixed number of UK Allowances for the relevant year (in which the Carbon Market Reference Price is calculated) between two or more accounts established under the UK Emissions Trading Registry;

**"UKA Futures December Contract Trading Price"** means the settlement price (*expressed in £/tCO<sub>2</sub>e*) for a UKA Futures December Contract as reflected in a UKA Futures Index or UKA Futures Indices (as the context requires);

**"UKA Futures December Contract Trading Volume"** means the quantity of UK Allowances (*expressed in tCO<sub>2</sub>*) traded for delivery in a VP Settlement Unit via the auction occurring on the previous CMRP Trading Day (or, in respect of the last VP Settlement Unit of any day which is also the first (1st) VP Settlement Unit of a CMRP Trading Day, occurring on such CMRP Trading Day) and conducted by the operator of the relevant CMRP Source; and

**"UKA Futures Index"** means an index of UKA Futures December Contract Trading Prices or another source of UKA Futures December Contract Trading Prices and **"UKA Futures Indices"** shall be construed accordingly.

**Part A**  
**CMRP Review Procedures**

**1. CMRP PRINCIPLES REVIEW**

***Requirement to undertake CMRP Principles Reviews***

1.1 The DPA Counterparty:

- (A) shall conduct a CMRP Principles Review if:
  - (i) the requirement for the CMRP Sources to publish a UKA Futures December Contract Trading Price is materially amended, repealed or replaced;
  - (ii) the replacement or repeal of the UK Emissions Trading Scheme has been proposed or effected by the relevant Competent Authority;
  - (iii) the number of UK Allowances traded pursuant to UKA Futures December Contracts reflected in the CMRP Sources is nil in any 10-TD Sample Period;
  - (iv) the CMRP Sources cease to be available to the DPA Counterparty on commercially reasonable terms; or
  - (v) the CMRP Principles Request Criterion is met; and
- (B) may conduct a CMRP Principles Review if it determines that the Carbon Market Reference Price does not reflect the market price for the trading of UK Allowances,

(each, a "**CMRP Principles Review Trigger**").

1.2 If the Generator considers that the calculation of the Carbon Market Reference Price does not comply with all of the CMRP Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a CMRP Principles Review (a "**CMRP Principles Request Notice**"). A CMRP Principles Request Notice:

- (A) shall specify which of the CMRP Principles the Generator believes the calculation of the Carbon Market Reference Price does not comply with;
- (B) may include proposals from the Generator with respect to the manner in which the non-compliance with the CMRP Principles should be addressed (including any proposals regarding CMRP Mechanism Amendments which the Generator considers should be effected); and
- (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B).

1.3 For the purposes of paragraph 1.1(A)(v), the "**CMRP Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CMRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the CMRP Principles Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CMRP Principles Request Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CMRP Principles Request Notice are party as a percentage of the total



volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Validity of CMRP Principles Request Notices**

- 1.4 The Generator acknowledges and agrees that all CMRP Principles Request Notices shall be invalid and of no effect if the CMRP Principles Request Criterion is not met.
- 1.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CMRP Principles Request Criterion has been met (a "**CMRP Principles Request Validity Notice**").

**Purpose of Carbon Price Principles Review**

- 1.6 If the DPA Counterparty is required or elects to undertake a CMRP Principles Review pursuant to paragraph 1.1, then the purpose of such CMRP Principles Review shall be to assess the extent to which:

(A) the calculation of the Carbon Market Reference Price in accordance with Condition 10.9 (*Carbon Price calculation*) is compliant with the CMRP Principles and, if the calculation of the Carbon Market Reference Price in accordance with Condition 10.9 (*Carbon Price calculation*) is not compliant with the CMRP Principles, the changes to Condition 10.9 (*Carbon Price calculation*) which the DPA Counterparty considers to be necessary to ensure compliance with all of the CMRP Principles; and

(B) any of the following would ensure compliance with all of the CMRP Principles:

- (i) an amendment or supplement to, or replacement or removal of, the CMRP Sources;
- (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Carbon Market Reference Price; or
- (iii) a change to the day-ahead methodology for calculating the Carbon Market Reference Price,

including any consequential changes to Condition 10.9 (*Carbon Price calculation*) and this Annex 7 (*Carbon Market Reference Price Review*) which are necessary to give effect to any of the foregoing,

(each such change, or any combination of such changes, a "**CMRP Mechanism Amendment**").

- 1.7 If the DPA Counterparty considers that it is not possible to effect any CMRP Mechanism Amendment in a manner which will be compliant with all of the CMRP Principles, the DPA Counterparty shall assess which CMRP Mechanism Amendment should be effected in order to comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation.

**Notification of CMRP Principles Review**

- 1.8 If the DPA Counterparty is required or elects to undertake a CMRP Principles Review pursuant to paragraph 1.1, the DPA Counterparty shall give a notice to the Generator (a "**CMRP Principles Review Notice**") and, if the DPA Counterparty has been required to undertake a CMRP Principles Review pursuant to paragraph 1.1(A)(iii), the DPA Counterparty shall give

the CMRP Principles Review Notice no later than five (5) Business Days after such CMRP Principles Review Trigger has occurred. A CMRP Principles Review Notice shall:

- (A) specify the CMRP Principles Review Trigger which has occurred; and
- (B) specify a deadline by which the Generator may provide a CMRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the CMRP Principles Review Notice is received by the Generator (the "**CMRP Principles Review Response Deadline**").

1.9 The Generator may, as soon as reasonably practicable and not later than the CMRP Principles Review Response Deadline, give a notice to the DPA Counterparty (the "**CMRP Principles Review Response Notice**"). A CMRP Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the CMRP Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the CMRP Principles Review Trigger should be addressed (including any proposals regarding CMRP Mechanism Amendments which the Generator considers should be effected).

1.10 The DPA Counterparty may disregard any CMRP Principles Review Response Notice received by the DPA Counterparty after the CMRP Principles Review Response Deadline.

***CMRP Sources during CMRP Principles Review***

1.11 From the date on which the CMRP Principles Review Notice is given, the CMRP Sources prior to the commencement of the relevant CMRP Principles Review shall remain unamended pending the outcome of a CMRP Principles Review.

***Notification of outcome of CMRP Principles Review***

1.12 The DPA Counterparty shall give a notice to the Generator of the outcome of a CMRP Principles Review (a "**CMRP Principles Review Outcome Notice**") as soon as reasonably practicable following the conclusion of a CMRP Principles Review. A CMRP Principles Review Outcome Notice shall:

- (A) set out the outcome of the CMRP Principles Review (including the details of any CMRP Mechanism Amendments which the DPA Counterparty proposes to effect) (the "**CMRP Principles Review Proposals**") and, if paragraph 1.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any CMRP Mechanism Amendment in a manner which complies with all of the CMRP Principles; and
  - (ii) the CMRP Principles which the DPA Counterparty considers will be complied with by virtue of the CMRP Mechanism Amendments being effected; and
- (B) specify the date from which any CMRP Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the CMRP Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and

- (ii) in the case of CMRP Mechanism Amendments relating to a CMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii), not before such replacement or repeal of the UK Emissions Trading Scheme occurs,

(the "**CMRP Principles Review Implementation Date**").

**CMRP Principles Review: Disputes**

- 1.13 Paragraph 2 (*CMRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*CMRP Principles Review*).
- 1.14 Subject to paragraph 2.9, the CMRP Mechanism Amendments set out in the CMRP Principles Review Outcome Notice shall take effect on the CMRP Principles Review Implementation Date.

**2. CMRP REVIEWS: DISPUTE PROCESS**

**Procedure for raising a Dispute**

- 2.1 The Generator may, no later than twenty (20) Business Days after receipt of a CMRP Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such CMRP Principles Review (a "**CMRP Dispute Notice**" and any such Generator, a "**CMRP Dispute Generator**"). Each CMRP Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

**Validity of CMRP Dispute Notices**

- 2.2 The Generator acknowledges and agrees that all CMRP Dispute Notices shall be invalid and of no effect if the CMRP Dispute Threshold Criterion in respect of the relevant CMRP Dispute is not met.
- 2.3 The DPA Counterparty shall notify the Generator no later than twenty (20) Business Days after the CMRP Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a CMRP Dispute Generator) (a "**CMRP Dispute Validity Notice**"). A CMRP Dispute Validity Notice shall:
  - (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the CMRP Dispute (the "**Proposed CMRP Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed CMRP Expert to determine such CMRP Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed CMRP Expert from determining the CMRP Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

**Permitted bases of Dispute: CMRP Principles Review**

- 2.4 For the purposes of paragraph 2.1, the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any CMRP Principles Review if:
  - (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take

account of in undertaking the CMRP Principles Review (as set out in its CMRP Principles Review Response Notice);

- (B) the DPA Counterparty has proposed to effect a CMRP Mechanism Amendment which was stated in the CMRP Principles Review Outcome Notice to be compliant with all of the CMRP Principles and the Generator considers that such CMRP Mechanism Amendment contravenes one (1) or more of the CMRP Principles; or
- (C) the DPA Counterparty has proposed to effect a CMRP Mechanism Amendment on the basis contemplated by paragraph 1.7 and the Generator considers that either:
  - (i) one (1) or more of the proposed CMRP Mechanism Amendments contravenes one (1) of the CMRP Principles which the DPA Counterparty considers would be complied with by virtue of such CMRP Mechanism Amendment being effected; or
  - (ii) an alternative CMRP Mechanism Amendment complies with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Mechanism Amendments contained within the CMRP Principles Review Proposals,

and any CMRP Dispute Notice which is based upon grounds other than those specified in this paragraph 2.4 shall be invalid and of no effect.

***Resolution of valid CMRP Disputes***

2.5 If:

- (A) the CMRP Dispute Threshold Criterion is met in respect of any CMRP Dispute; and
- (B) the relevant CMRP Dispute complies with paragraph 2.4,

then such CMRP Dispute shall be finally resolved in accordance with paragraph 2.6.

2.6 If paragraph 2.5 applies to any CMRP Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such CMRP Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant CMRP Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such CMRP Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such CMRP Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such CMRP Dispute on the basis that:
  - (i) (if the CMRP Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed CMRP Expert;

- (ii) (if the CMRP Expert Appointment Threshold is not met):
  - (a) the DPA Counterparty may, within ten (10) Business Days, either:
    - (1) make an alternative proposal as to the identity of an Expert to determine the CMRP Dispute, in which case paragraphs 2.3(A) and 2.6(E)(i), and this paragraph 2.6(E)(ii)(a)(1), shall apply to such proposed Expert as if that Expert were a Proposed CMRP Expert; or
    - (2) request the LCIA to nominate an Expert for the purposes of determining the CMRP Dispute in accordance with Condition 41.4 (*Expert Determination Procedure*); and
  - (b) the terms of reference of the Proposed CMRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the CMRP Dispute;
- (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 2.6(E)(i) or having been nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 2.6(E)(iii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);
- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
  - (b) the DPA Counterparty in consequence of, or in respect of, their appointment as the Expert to any DPA Generator (including the Generator);
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the CMRP Dispute, to afford the Generator an opportunity to make submissions in respect of the CMRP Dispute irrespective of whether or not the Generator is a CMRP Dispute Generator;
- (vi) if the circumstances described in Condition 41.8 (*Expert Determination Procedure*) arise, paragraphs 2.3(A), 2.6(E)(i) and 2.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;

- (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (i) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the CMRP Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the CMRP Dispute Generators; and (ii) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the CMRP Dispute Generators; and
- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs;
- (F) the Generator acknowledges and agrees that the determination of the Expert in any CMRP Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the CMRP Dispute giving rise to that determination;
- (G) if the CMRP Dispute falls within paragraph 2.4(A), 2.4(B) or 2.4(C)(i), the Expert shall be instructed to determine whether the CMRP Mechanism Amendments contravene the CMRP Principles (or such of the CMRP Principles as were specified by the DPA Counterparty as being complied with by virtue of the proposed implementation of the CMRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within their determination: (i) a CMRP Mechanism Amendment which will comply with all of the CMRP Principles; or (ii) (if the Expert considers that it is not possible to effect any CMRP Mechanism Amendment in a manner which will be compliant with all of the CMRP Principles) the CMRP Mechanism Amendment which will comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation;
- (H) if the CMRP Dispute falls within paragraph 2.4(C)(ii), the Expert shall be instructed to determine whether the CMRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Mechanism Amendments contained within the CMRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the CMRP Mechanism Amendments which will comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation; and
- (I) notwithstanding paragraphs (F) and (G), the Expert shall not be permitted to include within their determination any alternative CMRP Mechanism Amendments to those contained within the CMRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is a CMRP Mechanism Amendment which will comply with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the CMRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the CMRP Principles.

### **CMRP Expert Appointment Threshold**

- 2.7 For the purposes of paragraphs 2.6(E)(i) and 2.6(E)(ii), the "**CMRP Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed CMRP Expert. For the purposes of determining whether the CMRP Expert Appointment Threshold is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed CMRP Expert as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed CMRP Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

***Provisions applying pending resolution of a CMRP Dispute***

- 2.8 If there is a valid CMRP Dispute requiring resolution in accordance with the provisions of paragraphs 2.5 to 2.7 then, pending resolution of such CMRP Dispute, paragraph 2.9 shall apply.
- 2.9 If there is a valid CMRP Dispute relating to a CMRP Principles Review:
- (A) the relevant CMRP Principles Review Outcome Notice shall be deemed to be valid and effective and the CMRP Principles Review Proposals shall apply with effect from the CMRP Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the CMRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made their determination.

***CMRP Dispute Threshold Criterion***

- 2.10 For the purposes of this paragraph 2 (*CMRP Reviews: Dispute Process*), the "**CMRP Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CMRP Dispute Notice in respect of any given CMRP Dispute prior to the date specified in paragraph 2.1. For the purposes of determining whether the CMRP Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a CMRP Dispute Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CMRP Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part B**  
**CMRP Principles**

1. **CMRP PRINCIPLES**

The following are the "**CMRP Principles**":

- (A) Save in respect of a CMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part A (*CMRP Principles Review*) where the replacement or repeal of the UK Emissions Trading Scheme has led to the introduction of separate emissions trading, carbon pricing or similar schemes within the separate constituent countries of the United Kingdom, the calculation of the Carbon Market Reference Price shall:
  - (i) be the same for all CCUS Programme DPAs; and
  - (ii) reflect the market price for the sale of UK Allowances.
- (B) The Carbon Market Reference Price shall be calculated using prices in respect of contracts as far in advance of the sale of UK Allowances pursuant to such contracts as possible, provided that, for this purpose, the Carbon Market Reference Price calculation shall not include prices that are quoted further in advance than UKA Futures December Contracts.
- (C) The Carbon Market Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (D) The Carbon Market Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the UK Emissions Trading Scheme that would, absent the existence of CCUS Programme DPAs, contribute to the operational behaviour of participants in, and the pricing of UK Allowances under, such scheme.
- (E) The Carbon Market Reference Price shall be calculated using price sources which are available to the DPA Counterparty on commercially reasonable terms.
- (F) The Carbon Market Reference Price calculation is to utilise price sources which satisfy the CMRP Quality Criteria.
- (G) The Carbon Market Reference Price calculation is to utilise price sources which satisfy the CMRP Inclusion Criteria.

2. **PRIORITISATION OF CMRP PRINCIPLES**

If:

- (A) the application of any combination of the CMRP Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Carbon Market Reference Price to satisfy all of the CMRP Principles,

the CMRP Principle first appearing in the list in paragraph 1 (*CMRP Principles*) shall be afforded priority.



## Annex 8 Reference Plant Review

### 1. DEFINITIONS: ANNEX 8

#### 1.1 In this Annex 8 (*Reference Plant Review*):

**"Acceptable Grounds of Objection"** has the meaning given to that term in paragraph 1.6 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Base Performance Assumptions Adjustments"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant"** means any person who meets the Energy Consultant Appointment Criteria and who is appointed to conduct a Reference Plant Criteria Review in accordance with the Reference Plant Criteria Review Procedure;

**"Energy Consultant Appointment Criteria"** means a person or firm who is:

- (A) an internationally recognised, leading energy consultant experienced in advising clients in the UK electricity generation sector including in relation to the design, engineering, procurement and construction of Plants; and
- (B) not an Affiliate of either Party or any other DPA Generator;

**"Energy Consultant Appointment Threshold"** has the meaning given to that term in paragraph 1.8 (*Energy Consultant Appointment Threshold*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant Information Request"** has the meaning given to that term in paragraph 1.13 (*Energy Consultant Information Request*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant Minimum Criteria"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Generator Objection Notice"** has the meaning given to that term in paragraph 1.6 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Initial Reference Plant"** means a Plant with the Initial Base Performance Assumptions;

**"Minimum Terms of Reference Requirements"** means that the Proposed Energy Consultant is required to:

- (A) conduct a Reference Plant Criteria Review;
- (B) commence the Reference Plant Criteria Review on the Reference Plant Criteria Review Commencement Date;
- (C) produce and deliver a Reference Plant Criteria Review Report no later than 01 November (or, if such date is not a Business Day, the first (1st) Business Day thereafter), to the DPA Counterparty; and

- (D) consent to the DPA Counterparty disclosing each Reference Plant Criteria Review Report to all DPA Generators;

**"Plant"** means an unabated electricity generation from fossil gaseous and liquid fuels facility capable of generating and metering electricity;

**"Proposed Energy Consultant"** means the Energy Consultant notified by the DPA Counterparty to the Generator in accordance with paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Energy Consultant Deadline"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Energy Consultant Determination Notice"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Terms of Reference"** means the terms of reference for the Proposed Energy Consultant notified by the DPA Counterparty to the Generator in accordance with paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant"** means the Initial Reference Plant or such other replacement Plant which becomes the new Reference Plant as result of the operation of the provisions of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria"** means the Plant with the highest lower heating value (LHV) efficiency on the Great Britain electricity system at the time of each Reference Plant Criteria Review based on the Reference Plant Criteria Methodology;

**"Reference Plant Criteria Methodology"** means the following methodology that the Energy Consultant shall apply in order to determine the Reference Plant in accordance with the Reference Plant Criteria for each Reference Plant Criteria Review:

- (A) define a standard set of reference site conditions in order to determine the Reference Plant ("**Reference Plant Site Conditions**");
- (B) review Industry Documents and industry publications in order to determine the technical detail of Plants on the Great Britain electricity system, including (but not limited to):
- (i) gas turbine model;
  - (ii) plant configuration;
  - (iii) cycle design parameters; and
  - (iv) cooling system design;
- (C) review industry publications, and/or use an industry recognised thermal performance modelling software, in order to determine a Plant's expected technology design basis plant performance level for normal full load operation (including plant net efficiency) under new and clean conditions;
- (D) develop an independent thermal performance model for a Plant using industry recognised thermal performance modelling software for verification of expected plant performance level for normal full load operation at design basis conditions with

consideration of previous details identified under (B) and (C) above and appropriate technical assumptions, and subsequent off-design adjustment to the plant performance to account for operation at Reference Plant Site Conditions under new and clean conditions; and

- (E) determine the equivalent Base Performance Assumptions which correspond to a Plant's performance at Reference Plant Site Conditions under new and clean conditions as determined pursuant to limb (D);

**"Reference Plant Criteria Review"** means a review of the Reference Plant conducted by an Energy Consultant pursuant to, and within the parameters specified in, paragraph 1 (*Reference Plant Criteria Reviews*) of Part A (*Reference Plant Review Procedures*) in order to determine:

- (A) whether the Reference Plant meets the Reference Plant Criteria; and
- (B) where the Reference Plant does not meet the Reference Plant Criteria:
- (i) the identity of the replacement Reference Plant; and
- (ii) the changes required to the Base Performance Assumptions used in CCUS Programme DPAs to reflect the replacement Reference Plant;

**"Reference Plant Criteria Review Commencement Date"** means 01 August (or, if such date is not a Business Day, the first (1st) Business Day thereafter);

**"Reference Plant Criteria Review Dispute"** means a Dispute in relation to the outcome of a Reference Plant Criteria Review;

**"Reference Plant Criteria Review Dispute Notice"** has the meaning given to that term in paragraph 2.1(A) (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Implementation Date"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Outcome Notice"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Procedure"** means the rules, obligations and procedures set out in paragraph 1 (*Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Report"** means the report prepared by the Energy Consultant referred to in paragraph 1.14 (*Energy Consultant's Reference Plant Criteria Review Report*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Year"** means each calendar year during the Term in which a Reference Plant Criteria Review will be conducted, provided that:

- (A) the first calendar year in which a Reference Plant Criteria Review shall be conducted shall be the year [*to be determined*]<sup>73</sup>; and

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Note to Reader: The first Reference Plant Criteria Review Year is to be determined by BEIS.

(B) each subsequent calendar year(s) in which a Reference Plant Criteria Review(s) shall be conducted shall be determined in accordance with paragraph 1.3 (*Reference Plant Criteria Review Years*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute"** means a Reference Plant Criteria Review Dispute or a Reference Plant Principles Review Dispute;

**"Reference Plant Dispute Generator"** has the meaning given to that term in paragraph 3.1 (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Notice"** has the meaning given to that term in paragraph 3.1 (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Threshold Criterion"** has the meaning given to that term in paragraph 3.14 (*Reference Plant Dispute Threshold Criterion*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Validity Notice"** has the meaning given to that term in paragraph 3.3 (*Validity of Reference Plant Dispute Notices*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Expert Appointment Threshold"** has the meaning given to that term in paragraph 3.10 (*Reference Plant Expert Appointment Threshold*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Mechanism Amendment"** has the meaning given to that term in paragraph 2.6 (*Purpose of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles"** means the principles set out in paragraph 1 (*Reference Plant Principles*) of Part B (*Reference Plant Principles*);

**"Reference Plant Principles Prioritisation"** means the prioritisation of the Reference Plant Principles provided for in paragraph 2 (*Prioritisation of Reference Plant Principles*) of Part B (*Reference Plant Principles*);

**"Reference Plant Principles Request Criterion"** has the meaning given to that term in paragraph 2.3 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Request Notice"** has the meaning given to that term in paragraph 2.2 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Request Validity Notice"** has the meaning given to that term in paragraph 2.5 (*Validity of Reference Plant Principles Request Notices*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 2 (*Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Dispute"** means a Dispute in relation to the outcome of a Reference Plant Principles Review;

**"Reference Plant Principles Review Dispute Notice"** has the meaning given to that term in paragraph 3.1(B) (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Implementation Date"** has the meaning given to that term in paragraph 2.12(B) (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Notice"** has the meaning given to that term in paragraph 2.8 (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Outcome Notice"** has the meaning given to that term in paragraph 2.12 (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Proposals"** has the meaning given to that term in paragraph 2.12(A) (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Response Deadline"** has the meaning given to that term in paragraph 2.8(B) (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Response Notice"** has the meaning given to that term in paragraph 2.9 (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Trigger"** has the meaning given to that term in paragraph 2.1 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*); and

**"Reference Plant Review"** means a Reference Plant Criteria Review or a Reference Plant Principles Review (as the context requires) and **"Reference Plant Reviews"** shall be construed accordingly.

**Part A**  
**Reference Plant Review Procedures**

**1. REFERENCE PLANT CRITERIA REVIEWS**

***Reference Plant Criteria Review Years***

- 1.1 Subject to paragraphs 1.2, 1.3, and 1.4, the DPA Counterparty shall procure that an Energy Consultant conducts a Reference Plant Criteria Review in each Reference Plant Criteria Review Year in accordance with the provisions of this paragraph 1.
- 1.2 The DPA Counterparty shall not be required to procure that an Energy Consultant conducts a Reference Plant Criteria Review before [1 August [●]<sup>74</sup>].
- 1.3 Subject to paragraph 1.4, if a Reference Plant Criteria Review Outcome Notice specifies:
- (A) that no change should be made to the Reference Plant and the Base Performance Assumptions, the next Reference Plant Criteria Review Year shall be the year immediately following the year in which the Reference Plant Criteria Review that has been completed has been conducted; or
  - (B) that a change should be made to the Reference Plant and the Base Performance Assumptions, the DPA Counterparty shall be required to procure that an Energy Consultant conducts a Reference Plant Criteria Review five (5) years from the year in which the Reference Plant Criteria Review that has been completed has been conducted.
- 1.4 The DPA Counterparty shall not be required to conduct a Reference Plant Criteria Review pursuant to paragraph 1.1 if, as at the Reference Plant Criteria Review Commencement Date, a Reference Plant Principles Review is being conducted.

***Proposed Energy Consultant and Proposed Terms of Reference***

- 1.5 The DPA Counterparty shall notify the Generator in writing (a "**Proposed Energy Consultant Determination Notice**") of:
- (A) the identity of the Proposed Energy Consultant; and
  - (B) the Proposed Terms of Reference,
- for each Reference Plant Criteria Review no later than 01 February (or, if such date is not a Business Day, the first (1st) Business Day thereafter) in each Reference Plant Criteria Review Year (the "**Proposed Energy Consultant Deadline**"). Each Proposed Energy Consultant Determination Notice shall contain reasonable details in order to demonstrate that the Proposed Energy Consultant meets the Energy Consultant Appointment Criteria and that the Proposed Terms of Reference are materially consistent with the Minimum Terms of Reference Requirements (the "**Energy Consultant Minimum Criteria**").
- 1.6 The Generator may, no later than twenty (20) Business Days following the receipt of the Proposed Energy Consultant Determination Notice, notify the DPA Counterparty in writing that it objects to the appointment of the Proposed Energy Consultant ("**Generator Objection Notice**"), where it considers (acting reasonably) that one (1) or more of the Energy Consultant Minimum Criteria are not satisfied (the "**Acceptable Grounds of Objection**"). A Generator

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Note to Reader: The first Reference Plant Criteria Review Year is to be determined by BEIS.

Objection Notice shall include all Supporting Information in relation to the matters specified therein.

- 1.7 The Generator acknowledges and agrees that:
- (A) it may only submit a Generator Objection Notice on the basis of the Acceptable Grounds of Objection; and
  - (B) a Generator Objection Notice which objects to the appointment of the Proposed Energy Consultant on any other grounds shall be invalid and of no effect.

***Energy Consultant Appointment Threshold***

- 1.8 For the purposes of paragraphs 1.9 and 1.10, the "**Energy Consultant Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or have been deemed to have consented by not submitting a valid objection in writing within the period referred to in paragraph 1.6 above, to the Proposed Energy Consultant and the Proposed Terms of Reference. For the purposes of determining whether the Energy Consultant Appointment Threshold is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed Energy Consultant and the Proposed Terms of Reference as a percentage of the total DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed Energy Consultant and the Proposed Terms of Reference are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).
- 1.9 If the Energy Consultant Appointment Threshold is met, the Energy Consultant Minimum Criteria shall be deemed to have been satisfied and paragraph 1.12 shall apply.
- 1.10 If the Energy Consultant Appointment Threshold is not met, the DPA Counterparty shall, within twenty (20) Business Days of the expiry of the period referred to in paragraph 1.6 above, either:
- (A) make an alternative proposal in relation to the Proposed Energy Consultant and/or the Proposed Terms of Reference; or
  - (B) (1) request the LCIA to nominate an alternative Proposed Energy Consultant and/or alternative Proposed Terms of Reference; and (2) following such nomination by the LCIA, the DPA Counterparty shall make such alternative proposal to the Generator,
- following which, in either case, paragraphs 1.5 to 1.11 shall apply to such alternative proposal.
- 1.11 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Energy Consultant Appointment Threshold is met.

***Appointment of Energy Consultant***

- 1.12 Where paragraph 1.9 applies, the DPA Counterparty shall no later than sixty (60) days prior to the Reference Plant Criteria Review Commencement Date, or where there is a Dispute in relation to the appointment of the Proposed Energy Consultant as soon as reasonably practicable:

- (A) at its own cost and expense, appoint the Proposed Energy Consultant as the Energy Consultant to conduct the Reference Plant Criteria Review based on the Proposed Terms of Reference;
- (B) use reasonable endeavours to procure that:
  - (i) the Energy Consultant confirms in writing to the DPA Counterparty that:
    - (a) it is willing and available to conduct the Reference Plant Criteria Review; and
    - (b) it has no conflict of interest which prevents it from conducting the Reference Plant Criteria Review;
  - (ii) the terms of appointment and the terms of reference of the Energy Consultant include:
    - (a) an undertaking that the Energy Consultant shall not disclose any Supporting Information disclosed or delivered by: (i) the Generator to the Energy Consultant in consequence of, or in respect of, its appointment as the Energy Consultant to any other DPA Generator; and (ii) the DPA Counterparty to the Energy Consultant in consequence of, or in respect of, its appointment as the Energy Consultant to any DPA Generator other than the Generator; and
    - (b) to exempt the Energy Consultant (and any employee, agent or adviser of or to the Energy Consultant) from liability for anything done or omitted in the discharge or purported discharge of the Energy Consultant's functions, unless such act or omission is fraudulent or in bad faith;
- (C) instruct the Energy Consultant:
  - (i) to act fairly and impartially;
  - (ii) to produce and deliver the Reference Plant Criteria Review Report;
  - (iii) to use its professional judgement, discretion and experience in making its determination;
  - (iv) to reach a determination which is to be applied to all CCUS Programme DPAs; and
  - (v) to determine whether the Reference Plant meets the Reference Plant Criteria and, if not, determine the change to the Reference Plant (if any) and the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs, as the Energy Consultant considers appropriate, to reflect the change to the Reference Plant; and
- (D) provide the Energy Consultant with all Supporting Information and assistance that the Energy Consultant reasonably requires to undertake the Reference Plant Criteria Review (and if the DPA Counterparty fails to provide any such Supporting Information or assistance, the Energy Consultant shall continue to undertake the Reference Plant Criteria Review without that Supporting Information or assistance).



### ***Energy Consultant Information Request***

- 1.13 For the purposes of a Reference Plant Criteria Review, the Energy Consultant shall be entitled to request that the Parties provide such Supporting Information relating to the Reference Plant Criteria Review (an "**Energy Consultant Information Request**") as the Energy Consultant reasonably requires, and if the Energy Consultant delivers an Energy Consultant Information Request to one (1) or more Parties, the Parties shall, not later than ten (10) Business Days after receipt of the request, or such longer period as is specified by the Energy Consultant, prepare and deliver such Supporting Information to the Energy Consultant.

### ***Energy Consultant's Reference Plant Criteria Review Report***

- 1.14 Each Reference Plant Criteria Review Report shall be a document comprising at least the following:
- (A) a summary of the report's contents;
  - (B) the following statements:
    - (i) confirmation that the Energy Consultant is not an Affiliate of either Party or any other DPA Generator;
    - (ii) confirmation that the Energy Consultant has acted in the capacity of an independent professional in undertaking the Reference Plant Criteria Review and producing the Reference Plant Criteria Review Report; and
    - (iii) any reasons that the Energy Consultant wishes to give for considering that it is independent of both Parties and any other DPA Generator;
  - (C) the determination of the Energy Consultant as to whether the Reference Plant:
    - (i) meets the Reference Plant Criteria; or
    - (ii) does not meet the Reference Plant Criteria, with a summary of the reasons for the Energy Consultant having reached such conclusion, and either:
      - (a) details relating to the change(s) to the Reference Plant (if any) and the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs, as the Energy Consultant considers appropriate, to reflect change to the Reference Plant; or
      - (b) a statement that the Energy Consultant has determined that no Plant meets the Reference Plant Criteria;
  - (D) a section setting out:
    - (i) any assumptions made by the Energy Consultant in making its determination in respect of the Reference Plant Criteria Review Report;
    - (ii) the professional rules or standards which apply to the Energy Consultant;
    - (iii) the curriculum vitae of the key personnel who have prepared the Reference Plant Criteria Review Report and/or any other details of the Energy Consultant's qualifications and experience that it wishes to provide; and

- (iv) any other fact-based evidence as the Energy Consultant in its professional judgement, opinion and experience determines is relevant.

***Notification of outcome of Reference Plant Criteria Review***

- 1.15 The DPA Counterparty shall, no later than 01 December (or, if such date is not a Business Day, the first (1st) Business Day thereafter) in the relevant Reference Plant Criteria Review Year, notify the Generator of the outcome of the Reference Plant Criteria Review (a **"Reference Plant Criteria Review Outcome Notice"**). Each Reference Plant Criteria Review Outcome Notice shall:
- (A) set out whether the Reference Plant, pursuant to the Reference Plant Criteria Review and based on the Reference Plant Criteria Review Report:
    - (i) meets the Reference Plant Criteria; or
    - (ii) does not meet the Reference Plant Criteria, with a summary of the reasons for such determination having been made, and setting out either:
      - (a) subject to paragraph 1.18, the change to the Reference Plant with:
        - (1) the consequential change(s) that will be made to the Base Performance Assumptions used in CCUS Programme DPAs to reflect the change to the Reference Plant (the **"Base Performance Assumptions Adjustments"**); and
        - (2) the date on which the Base Performance Assumptions Adjustments will take effect and will be utilised to calculate the Variable Payment Rate, such date being 01 January in the year immediately following the relevant Reference Plant Criteria Review Commencement Date (a **"Reference Plant Criteria Review Implementation Date"**); or
      - (b) that the DPA Counterparty has determined that no Plant meets the Reference Plant Criteria; and
  - (B) include a copy of the relevant Reference Plant Criteria Review Report (redacted as necessary to protect Information which, in the opinion of the DPA Counterparty (acting reasonably), is commercially confidential to the DPA Counterparty or a DPA Generator).

***Implementation of outcome of Reference Plant Criteria Review***

- 1.16 Any Base Performance Assumption Adjustments shall take effect from the Reference Plant Criteria Review Implementation Date and shall be reflected in the calculation of the Variable Payment in the Variable Payment Billing Statements for each subsequent VP Billing Periods.
- 1.17 If, pursuant to a Reference Plant Criteria Review, an Energy Consultant has determined that no Plant meets the Reference Plant Criteria, the Reference Plant prior to the commencement of the relevant Reference Plant Criteria Review shall continue to apply pending the outcome of a Reference Plant Principles Review pursuant to paragraph 2 (*Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*).
- 1.18 The Base Performance Assumptions Adjustments shall only be implemented pursuant to paragraph 1.15(A)(ii)(a) if the Base Performance Assumptions as adjusted by the Base Performance Assumptions Adjustments are lower than the Base Performance Assumptions which applied prior to the Reference Plant Criteria Review.

### **Reference Plant Criteria Review: Disputes**

- 1.19 Subject to Paragraph 3.4 of Part 3 (*Reference Plant Reviews: Dispute Process*), Paragraph 3 (*Reference Plant Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*Reference Plant Criteria Reviews*).

## **2. REFERENCE PLANT PRINCIPLES REVIEWS**

### **Requirement to undertake Reference Plant Principles Reviews**

- 2.1 The DPA Counterparty shall conduct a Reference Plant Principles Review if:
- (A) the DPA Counterparty determines the Reference Plant Criteria and/or any one (1) or more of the Reference Plant Criteria Methodology are inconsistent with the Reference Plant Principles;
  - (B) an Energy Consultant determines as part of a Reference Plant Criteria Review that no Plant meets the Reference Plant Criteria;
  - (C) a material change to the Great Britain electricity market has been proposed or effected by the relevant Competent Authority; or
  - (D) the Reference Plant Principles Request Criterion is met,
- (each, a "**Reference Plant Principles Review Trigger**").
- 2.2 If the Generator considers that the Reference Plant and/or any one (1) or more of the Base Performance Assumptions are inconsistent with the Reference Plant Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a Reference Plant Principles Review (a "**Reference Plant Principles Request Notice**"). A Reference Plant Principles Request Notice:
- (A) shall specify which one (1) or more of the Reference Plant Principles the Generator believes the Reference Plant and/or any one (1) or more of the Base Performance Assumptions are inconsistent with;
  - (B) may include proposals from the Generator with respect to the manner in which the inconsistencies with the Reference Plant Principles should be addressed (including any proposals regarding Reference Plant Mechanism Amendments which the Generator considers should be effected); and
  - (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B) above.
- 2.3 For the purposes of paragraph 2.1(D), the "**Reference Plant Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a Reference Plant Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the Reference Plant Principles Request Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a Reference Plant Principles Request Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a Reference Plant Principles Request Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose,

**"volume"** shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

***Validity of Reference Plant Principles Request Notices***

- 2.4 The Generator acknowledges and agrees that all Reference Plant Principles Request Notices shall be invalid and of no effect if the Reference Plant Principles Request Criterion is not met.
- 2.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Reference Plant Principles Request Criterion has been met (a **"Reference Plant Principles Request Validity Notice"**).

***Purpose of Reference Plant Principles Review***

- 2.6 If the DPA Counterparty is required or elects to undertake a Reference Plant Principles Review pursuant to paragraph 2.1, then the purpose of such Reference Plant Principles Review shall be to assess the extent to which:
- (A) the Reference Plant Criteria and/or any one (1) or more of the Reference Plant Criteria Methodology are inconsistent with the Reference Plant Principles and, if there are any such inconsistencies, the changes to the Reference Plant Criteria and/or the Reference Plant Criteria Methodology which the DPA Counterparty considers to be necessary to ensure consistency with all of the Reference Plant Principles; and
  - (B) an amendment or supplement to, or replacement or removal of, the Reference Plant Criteria and/or one (1) or more Reference Plant Criteria Methodology would ensure consistency with all of the Reference Plant Principles,
- including any consequential changes to Condition 10 (*Variable Payment Calculation*) and this Annex 8 (*Reference Plant Reviews*) which are necessary to give effect to any of the foregoing (each such change, or any combination of such changes, a **"Reference Plant Mechanism Amendment"**).
- 2.7 If the DPA Counterparty considers that it is not possible to effect any Reference Plant Mechanism Amendment in a manner that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology will be consistent with all of the Reference Plant Principles, the DPA Counterparty shall assess which Reference Plant Mechanism Amendment(s) should be effected in order to ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation.

***Notification of Reference Plant Principles Review***

- 2.8 If the DPA Counterparty is required or elects to undertake a Reference Plant Principles Review pursuant to paragraph 2.1, the DPA Counterparty shall give a notice to the Generator (a **"Reference Plant Principles Review Notice"**). A Reference Plant Principles Review Notice shall:
- (A) specify the Reference Plant Principles Review Trigger which has occurred; and
  - (B) specify a deadline by which the Generator may provide a Reference Plant Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the Reference Plant Principles Review Notice is received by the Generator (the **"Reference Plant Principles Review Response Deadline"**).
- 2.9 The Generator may, as soon as reasonably practicable and not later than the Reference Plant Principles Review Response Deadline, give a notice to the DPA Counterparty (the **"Reference**

**Plant Principles Review Response Notice"**). A Reference Plant Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the Reference Plant Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the Reference Plant Principles Review Trigger should be addressed (including any proposals regarding Reference Plant Mechanism Amendments which the Generator considers should be effected).

2.10 The DPA Counterparty may disregard any Reference Plant Principles Review Response Notice received by the DPA Counterparty after the Reference Plant Principles Review Response Deadline.

***Reference Plant during Reference Plant Principles Review***

2.11 From the date on which the Reference Plant Principles Review Notice is given, the Reference Plant and the Base Performance Assumptions applying prior to the commencement of the relevant Reference Plant Principles Review shall remain unamended pending the outcome of a Reference Plant Principles Review.

***Notification of outcome of Reference Plant Principles Review***

2.12 The DPA Counterparty shall give a notice to the Generator of the outcome of a Reference Plant Principles Review (a "**Reference Plant Principles Review Outcome Notice**") as soon as reasonably practicable following the conclusion of a Reference Plant Principles Review. A Reference Plant Principles Review Outcome Notice shall:

- (A) set out the outcome of the Reference Plant Principles Review (including the details of any Reference Plant Mechanism Amendments which the DPA Counterparty proposes to effect) (the "**Reference Plant Principles Review Proposals**") and, if paragraph 2.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any Reference Plant Mechanism Amendment in a manner which ensures that the Reference Plant and the Base Performance Assumptions are consistent with all of the Reference Plant Principles; and
  - (ii) the Reference Plant Principles which the DPA Counterparty considers that the Reference Plant and the Base Performance Assumptions will be consistent with by virtue of the Reference Plant Mechanism Amendments being effected; and
- (B) specify the date from which any Reference Plant Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the Reference Plant Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and
  - (ii) in the case of Reference Plant Mechanism Amendments relating to a Reference Plant Principles Review Trigger pursuant to paragraph 2.1(C), not before such material change to the Great Britain electricity market occurs,

(the "**Reference Plant Principles Review Implementation Date**").

### **Reference Plant Principles Review: Disputes**

- 2.13 Subject to Paragraph 3.5 of Part 3 (*Reference Plant Reviews: Dispute Process*), Paragraph 3 (*Reference Plant Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 2 (*Reference Plant Principles Reviews*).
- 2.14 Subject to paragraph 3.13, the Reference Plant Mechanism Amendments set out in the Reference Plant Principles Review Outcome Notice shall take effect on the Reference Plant Principles Review Implementation Date.

### **3. REFERENCE PLANT REVIEWS: DISPUTE PROCESS**

#### ***Procedure for raising a Dispute***

- 3.1 The Generator may, no later than twenty (20) Business Days after receipt of:
- (A) a Reference Plant Criteria Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such Reference Plant Criteria Review (a "**Reference Plant Criteria Review Dispute Notice**"); or
  - (B) a Reference Plant Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such Reference Plant Principles Review (a "**Reference Plant Principles Review Dispute Notice**"),

(a Reference Plant Criteria Review Dispute Notice and a Reference Plant Principles Review Dispute Notice each being a "**Reference Plant Dispute Notice**" and any such Generator, a "**Reference Plant Dispute Generator**"). Each Reference Plant Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

#### ***Validity of Reference Plant Dispute Notices***

- 3.2 The Generator acknowledges and agrees that all Reference Plant Dispute Notices shall be invalid and of no effect if the Reference Plant Dispute Threshold Criterion in respect of the relevant Reference Plant Dispute is not met.
- 3.3 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Reference Plant Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a Reference Plant Dispute Generator) (a "**Reference Plant Dispute Validity Notice**"). A Reference Plant Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the Reference Plant Dispute (the "**Proposed Reference Plant Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Expert to determine such Reference Plant Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Expert from determining the Reference Plant Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 41.2 (*Expert Determination Procedure*).

**Permitted bases of Dispute: Reference Plant Criteria Review**

- 3.4 For the purposes of paragraph 3.1(A), the Generator acknowledges and agrees that:
- (A) it may only raise a Dispute with respect to the outcome of any Reference Plant Criteria Review if there is manifest error or fraud in respect of the determination made by the relevant Energy Consultant: (i) as to whether or not the Reference Plant meets the Reference Plant Criteria; and/or (ii) where the Energy Consultant determines that the Reference Plant does not meet the Reference Plant Criteria, of the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs; and
  - (B) any Reference Plant Criteria Review Dispute Notice which is based upon grounds other than those specified in this paragraph 3.4 shall be invalid and of no effect.

**Permitted bases of Dispute: Reference Plant Principles Review**

- 3.5 For the purposes of paragraph 3.1(B), the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any Reference Plant Principles Review if:
- (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take account of in undertaking the Reference Plant Principles Review (as set out in its Reference Plant Principles Review Response Notice);
  - (B) the DPA Counterparty has proposed to effect a Reference Plant Mechanism Amendment which was stated in the Reference Plant Principles Review Outcome Notice would ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology would be consistent with all of the Reference Plant Principles, in respect of which the Generator disagrees; or
  - (C) the DPA Counterparty has proposed to effect a Reference Plant Mechanism Amendment on the basis contemplated by paragraph 2.7 and the Generator considers that either:
    - (i) one (1) or more of the proposed Reference Plant Mechanism Amendments would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with one (1) of the Reference Plant Principles, which the DPA Counterparty considers the Reference Plant Criteria and/or the Reference Plant Criteria Methodology would be consistent with by virtue of such Reference Plant Mechanism Amendment being effected; or
    - (ii) an alternative Reference Plant Mechanism Amendment would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology complying with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Mechanism Amendments contained within the Reference Plant Principles Review Proposals,

and any Reference Plant Principles Review Dispute Notice which is based upon grounds other than those specified in this paragraph 3.5 shall be invalid and of no effect.

**Resolution of valid Reference Plant Disputes**

- 3.6 If:

- (A) the Reference Plant Dispute Threshold Criterion is met in respect of the relevant Reference Plant Dispute; and
- (B) the relevant Reference Plant Dispute complies with paragraph 3.4 (in respect of any Reference Plant Criteria Review Dispute Notice) or 3.5 (in respect of any Reference Plant Principles Review Dispute Notice) (as the context requires),

then such Reference Plant Dispute shall be finally resolved in accordance with paragraphs 3.7 and 3.8.

3.7 If paragraph 3.6 applies to any Reference Plant Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such Reference Plant Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant Reference Plant Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such Reference Plant Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such Reference Plant Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such Reference Plant Dispute on the basis that:
  - (i) (if the Reference Plant Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed Reference Plant Expert;
  - (ii) (if the Reference Plant Expert Appointment Threshold is not met):
    - (a) the DPA Counterparty may, within twenty (20) Business Days, either:
      - (1) make an alternative proposal as to the identity of an Expert to determine the Reference Plant Dispute, in which case paragraphs 3.3(A) and 3.7(E)(i), and this paragraph 3.7(E)(ii)(a)(1), shall apply to such proposed Expert as if they were a Proposed Reference Plant Expert; or
      - (2) request the LCIA to nominate an Expert for the purposes of determining the Reference Plant Dispute in accordance with Condition 41.4 (*Expert Determination Procedure*); and
    - (b) the terms of reference of the Proposed Reference Plant Expert (or any Expert nominated by the LCIA pursuant to paragraph 3.7(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the Reference Plant Dispute;
  - (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the



Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 3.7(E)(i) or having been nominated by the LCIA pursuant to paragraph 3.7(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 3.7(E)(ii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);

- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
    - (a) the Generator to the Expert in consequence of, or in respect of, its appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
    - (b) the DPA Counterparty in consequence of, or in respect of, its appointment as the Expert to any DPA Generator (including the Generator);
  - (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the Reference Plant Dispute, to afford the Generator an opportunity to make submissions in respect of the Reference Plant Dispute irrespective of whether or not the Generator is a Reference Plant Dispute Generator;
  - (vi) if the circumstances described in Condition 41.12, (*Expert Determination Procedure*) arise, paragraphs 3.3(A), 3.7(E)(i) and 3.7(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
  - (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (a) required to include in its determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the Reference Plant Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the Reference Plant Dispute Generators; and (b) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the Reference Plant Dispute Generators; and
  - (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any Reference Plant Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the Reference Plant Dispute giving rise to that determination.

3.8 If the Reference Plant Dispute is a Reference Plant Principles Review Dispute, the following additional provisions shall apply:

- (A) if the Reference Plant Principles Review Dispute falls within paragraph 3.5(A), 3.5(B) or 3.5(C)(i), the Expert shall be instructed to determine whether the Reference Plant Mechanism Amendments would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with the Reference Plant Principles (or such of the Reference Plant Principles that the DPA Counterparty specified the Reference Plant Criteria and/or the Reference Plant Criteria Methodology would be consistent with by virtue of the proposed implementation of the Reference Plant Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within its determination: (i) a Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with all of the Reference Plant Principles; or (ii) (if the Expert considers that this is not possible) the Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation;
- (B) if the Reference Plant Principles Review Dispute falls within paragraph 3.5(C)(ii), the Expert shall be instructed to determine whether the Reference Plant Mechanism Amendments proposed by the Generator would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being consistent with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Mechanism Amendments contained within the Reference Plant Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the Reference Plant Mechanism Amendments that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation; and
- (C) notwithstanding paragraphs 3.8(A) and 3.8(B), the Expert shall not be permitted to include within its determination any alternative Reference Plant Mechanism Amendments to those contained within the Reference Plant Principles Review Proposals unless such proposals would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with one (1) or more Reference Plant Principles and the Expert has determined that there is a Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the Reference Plant Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the Reference Plant Principles.

3.9 If the Reference Plant Dispute is a Reference Plant Criteria Review Dispute, the Expert shall be instructed to determine:

- (A) whether there is manifest error or fraud in respect of the determination made by the relevant Energy Consultant as to whether or not the Reference Plant meets the Reference Plant Criteria; and/or
- (B) where the Energy Consultant determines that the Reference Plant does not meet the Reference Plant Criteria, the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs.

**Reference Plant Expert Appointment Threshold**

- 3.10 For the purposes of paragraphs 3.7(E)(i) and 3.7(E)(ii), the "**Reference Plant Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed Reference Plant Expert. For the purposes of determining whether the Reference Plant Expert Appointment Threshold is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed Reference Plant Expert as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed Reference Plant Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Provisions applying pending resolution of a Reference Plant Dispute**

- 3.11 If there is a valid Reference Plant Dispute requiring resolution in accordance with the provisions of paragraphs 3.6 to 3.10 then, pending resolution of such Reference Plant Dispute, paragraphs 3.12 and 3.13 shall apply.
- 3.12 If there is a valid Reference Plant Dispute relating to a Reference Plant Criteria Review:
- (A) the relevant Reference Plant Criteria Review Outcome Notice shall be deemed to be valid and effective and paragraphs 1.16 and 1.17 shall be applied for the purposes of determining the Reference Plant with effect from the Reference Plant Criteria Review Implementation Date; and
  - (B) if the Expert determines that a Plant:
    - (i) meets the Reference Plant Criteria, such Plant shall be the Reference Plant with effect from the date falling three (3) Months after the date on which the Expert has made its determination; or
    - (ii) does not meet the Reference Plant Criteria, then (subject to the operation of the provisos contained in paragraph 1.17), the Reference Plant prior to the commencement of the relevant Reference Plant Criteria Review shall continue to apply pending the outcome of a Reference Plant Principles Review pursuant to paragraph 2 (*Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*).
- 3.13 If there is a valid Reference Plant Dispute relating to a Reference Plant Principles Review:
- (A) the relevant Reference Plant Principles Review Outcome Notice shall be deemed to be valid and effective and the Reference Plant Principles Review Proposals shall apply with effect from the Reference Plant Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the Reference Plant Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made its determination.

**Reference Plant Dispute Threshold Criterion**

- 3.14 For the purposes of this paragraph 3 (*Reference Plant Reviews: Dispute Process*), the **"Reference Plant Dispute Threshold Criterion"** is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a Reference Plant Dispute Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the Reference Plant Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a Reference Plant Dispute Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which have given a Reference Plant Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, **"volume"** shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part B**  
**Reference Plant Principles**

1. **REFERENCE PLANT PRINCIPLES**

The following are the "**Reference Plant Principles**":

- (A) The Reference Plant should be the same for all DPA Generators.
- (B) The Reference Plant Criteria Methodology must be able to identify the Plant with the highest lower heating value (LHV) efficiency on the Great Britain electricity system at the time of each Reference Plant Criteria Review.
- (C) The Base Performance Assumptions utilised to calculate the Variable Payment Rate should not result in consequences that are inconsistent with the decarbonisation of the Great Britain electricity system.
- (D) If a Reference Plant Principles Review Trigger falling within paragraph 2.1(C) of Part A (*Reference Plant Review Procedures*) has occurred, the Base Performance Assumptions shall take into consideration the physical location of the Facility.

2. **PRIORITISATION OF REFERENCE PLANT PRINCIPLES**

If:

- (A) the application of any combination of the Reference Plant Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Reference Plant to satisfy all of the Reference Plant Principles,

the Reference Plant Principle first appearing in the list in paragraph 1 (*Reference Plant Principles*) shall be afforded priority.

**Annex 9  
Form of Supply Chain Report**

**Part A**

**1. HOW TO COMPLETE THIS FORM**

- 1.1 Please use the text boxes in this template (Part A) and the tables in the accompanying spreadsheet (Part B) to report on the economic benefits and CCUS Programme supply chains associated with the development of the Project. The purpose of this reporting is to provide the DPA Counterparty and the Secretary of State with the key economic, technical, and commercial data around the supply chain and the value drivers that underpin it. For the avoidance of doubt, submission of each Supply Chain Report relates to the Generator's supply chain reporting obligations pursuant to Condition 25 of the DPA only.
- 1.2 Please ensure that each submission is complete and includes all required evidence and Supporting Information. At the point of publication of the Conditions, this template is indicative only and the Secretary of State reserves the right to review and amend the requirement for Generators to report on economic benefits and supply chains in relation to their Project. As such, the template may be updated with final amendments during the negotiation phase of the Track-1 Phase-2 of the CCUS Programme cluster sequencing process.

**2. MINIMUM REQUIREMENTS**

- 2.1 Each Supply Chain Report must:
- (A) be submitted by the relevant Supply Chain Report Deadline;
  - (B) be accompanied by a Directors' Certificate;
  - (C) be completed in full, ensuring fields are not left blank;
  - (D) be completed with information that is relevant to the question asked; and
  - (E) comply with the restrictions on the type of data that can be entered into the accompanying spreadsheet (Part B) and the word count limits specified for the text boxes of this form (Part A).
- 2.2 If the DPA Counterparty has issued a Supply Chain Report Response Notice which states that the relevant Supply Chain Report does not comply with the requirements set out in this Annex, the Generator will be required to pay the Supply Chain Report Fees in respect of the Generator's failure to provide the DPA Counterparty with the relevant Supply Chain Report.

**3. CONTACT AND PROJECT DETAILS**

Company name and project name		Authorised representative(s)	
Company address		Preferred contact number(s)	
Preferred email(s)		Preferred contact person	

#### 4. REPORT SUBMISSION DECLARATION

To the best of your knowledge, is the information provided in this report accurate, complete, and compliant with the requirements set out in the guidance above? Please provide details on how the information and data have been quality assured.	Yes/No (delete as appropriate)  Details:
Has the submission of this report been accompanied with a Directors' Certificate?	Yes/No (delete as appropriate)
Report milestone (1, 2, or 3) and version number. Please provide further details if this is not the first version submitted for a report milestone, including whether a non-compliance notice had been issued.	(e.g. Report 1, Version 1)
Has this report been submitted within the deadline? Please provide further details if necessary.	Yes/No (delete as appropriate)
Report Submission Date	[DD/MM/YYYY]

#### 5. DISCLOSURE OF INFORMATION

- 5.1 The DPA Counterparty will pass the Information provided in each Supply Chain Report, including information provided in supporting documents, to the Secretary of State, pursuant to Condition 54.3(L)(ii). The Secretary of State may look to publish extracts from these reports in order to share information with wider industry, to support the implementation of a CCUS Programme supply chain and to support the development of the CCUS Programme.
- 5.2 The Secretary of State may be required to disclose any information provided by Generators in accordance with the Secretary of State's legal obligations (including, but not limited to, under the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004 (EIR) ). More information on the FOIA, Data Protection Act 2018, GDPR and EIR (including information on exemptions) can be found at: <https://ico.org.uk/for-organisations/>.
- 5.3 To help the Secretary of State deal with information requests and without prejudice to the paragraph above, in the box below, please set out the reasons why you consider any specific information should not be disclosed, including (if possible) by reference to the specific exemption contained in the relevant legislation (for example, because disclosure of the information would prejudice your commercial interests under section 43 of the FOIA), explaining why this is the case. Where appropriate, please also state whether you consider your reasons for non-disclosure only apply for a particular time period.

Please detail what specific information, if any, within this report submission should not be disclosed and the reasons why. Please include (if possible)	
--	--

reference to the specific exemption contained in the relevant legislation.	
--	--

## 6. SUPPLY CHAIN SUMMARY

- 6.1 For this section and Section 5 below, it would be useful to make references to activities that have either already taken place, are ongoing or planned. Where activities have already been completed or are ongoing, Generators should provide evidence of what has taken place and progress towards delivery (*expressed as a % if relevant*), the metric used to measure the intended outcomes, and evidence of the outcome of the activity where known. Where there is reference to activities that are planned, Generators should explain how these will be implemented, including sources of funding and engagement with key stakeholders.
- 6.2 Include in your responses metrics and KPIs to measure outcomes, who is responsible, milestones, date of achieving expected outcome and how you will monitor progress in delivery of the activity and outcomes. Please specify in responses to the below sections the main risks to achieving the intended outcomes, including those arising from interdependencies and how they will be mitigated. Examples of success and lessons learnt can also be referenced.
- 6.3 It is also important to explain any deviations from the supply chain activities or plans proposed in the Project's CCUS Programme cluster sequencing phase-2 submission and progress towards making any improvements that have been suggested to [Generators following the assessment of the submission.
- 6.4 Where relevant within this Part A and Part B of the Form of Supply Chain Report and supporting documentation, please describe data sources, underlying evidence and assumptions that have been used to estimate the data, and methods for quality assuring estimates. Please specify the time periods over which data forecasts and estimates are provided, providing a breakdown between data relevant to the contract term length and data forecasts or estimates provided for time periods beyond the contract term length (if applicable).
- 6.5 Generators should provide sufficient information and evidence to support their answers within this Part A and Part B of the Form of Supply Chain Report, but should note that there is not a target length for information that should be provided for this reporting requirement. Generators should, however, not exceed the maximum word limit (which is specified for each section below and excludes information provided in Part B and supporting documentation).

### **Supply chain planning and risks (1000 words)**

- 6.6 Please complete sections 6.6 and 6.7 for the first report only. Projects should provide a concise explanation of the assessment of the supply chain, labour and skills needed to support the proposed delivery timescales for the project and any identified gaps.

This should include:

- (A) a description of the key uncertainties linked to the supply chain, the consequential uncertainty in project costs and timelines, and when the uncertainty is expected to be resolved;
- (B) a description of the key risks and challenges linked to the supply chain and potential mitigations or solutions. This could also include any key supply chain risks arising from interactions with the T&S Network or the wider cluster;
- (C) a description of the supply chain capacity and capability to support the project; and



- (D) any uncertainties, risks, or issues with the supply chain that government or industry could help to resolve.

Reference to specific related activities in the project programme would be helpful.

- 6.7 Please also confirm the project developers will and/or are following best practice in sourcing of labour and materials.

References to supporting documentation for Section 6.7	

**Supply chain engagement (750 words in Part A and Table 1 in Part B)**

- 6.8 Please complete this section for the first Supply Chain Report only, providing a concise explanation of the extent of the supply chain engagement, including which parts of the supply chain have been engaged with and where there are key contracts in place. Please include a description of:
- (A) the current view of capability and capacity and how any associated challenges are being addressed;
  - (B) agreements which have been entered into with third parties and their scope; and
  - (C) the effectiveness of engagement with the supply chain.

References to supporting documentation for Section 6.8	

## 7. **ECONOMIC BENEFITS**

7.1 Information provided in this section can help to demonstrate the contribution that the Project is making or can make to the UK economy and the UK government's levelling up agenda, in addition to the UK government's objective of supporting clean, resilient and sustainable economic growth. Information should be provided in the text boxes below and through supporting documentation, and in the accompanying spreadsheet (Part B).

### ***Number and quality of jobs (500 words in Part A and Table 2 in Part B)***

7.2 The Generator should indicate plans, initiatives, or metrics relating to the quality of jobs in relation to the Project (e.g. employee salary measured against national/local salary, financial security, social protection offered by employers, openness of employer for employees to participate in trade unions etc.).

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References to supporting documentation for Section 7.2	

***Transparency of supply chain procurement processes (750 words)***

- 7.3 Please provide information on how you are making or have made the Project procurement strategies as transparent as possible. For example, identifying and implementing supply chain opportunities, advertising them as early as possible and improving the visibility of them to suppliers, and undertaking meaningful engagement with CCUS Programme supply chain companies including SMEs. It would be useful to describe the effectiveness of early engagement with the supply chain and of transparent supply chain processes more generally. Generators should explain any challenges they have identified in implementing their procurement process and how they are working to overcome these.

References to supporting documentation for Section 7.3	

***Investment in CCUS Programme related skills (750 words in Part A and Table 3 in Part B)***

- 7.4 Please provide details on the types of initiatives to upskill/reskill employees and building capability. This can include any formal training that has (or is being) been offered and the impact of this on the NVQ level of employees and whether non-formal training is being or has been considered such as vocational courses or digital training. It would be useful to describe whether training has been (or is being) internally and/or externally led. Any collaboration with educational institutions should be mentioned.
- 7.5 Please also provide evidence that demonstrates where consortium partners have (or are) individually or collectively investing in training programmes to develop CCUS Programme related skills, for example in apprenticeships and retraining programmes. We ask that projects provide detail on time and duration of these programmes and specifically how they have (or are) supporting retraining workforces transitioning from other sectors – locally, regionally and nationally.

References to supporting documentation for Sections 7.4 and 7.5	

***Wider economic benefits (750 words in Part A and Table 4 in Part B)***

- 7.6 Noting the commitments made in the UK government's Ten Point Plan and the CCUS Programme supply chains roadmap, which set out the UK government's objective to drive local and regional growth to level up across the UK, please set out how the Project has contributed or is contributing to economic growth within the local area in line with the following strategic priorities:
- (A) synergies with other decarbonisation programmes and potential to be a 'SuperPlace' (as defined in the UK government's Ten Point Plan). This could be demonstrated through, for example, the mapping of a broader decarbonisation pathway for the region, identifying the economic benefits and opportunities of decarbonisation, as well as the development of skills required to realise these benefits;
  - (B) regeneration and community renewal: Generators should consider how the Project has contributed or is contributing to improving and widening the economic benefits associated with their development and impact on local communities. This could include but is not limited to, impacts on air quality, increased attractiveness to other businesses, local transport links or land value. Generators should provide evidence of any wider economic benefits that they deem to be relevant. Generators should reference any engagement with local communities or institutions that has taken place, or will take place, and the outcome of any such engagement; and
  - (C) equality, diversity and inclusion: Generators should demonstrate how they are continuing to ensure the diversity and inclusivity of their workforce, as well as how they are or plan to incorporate hiring practices which do not disadvantage those with protected characteristics. Generators should describe how their recruitment process removes barriers to recruitment of suitably qualified and skilled workers and provides equal and fair consideration of applicants.

References to supporting documentation for Section 7.6	

**Tables to be completed in Excel spreadsheet**

7.7 In addition to the text boxes within this Part A of the Form of Supply Chain Report, please also complete the tables in the accompanying spreadsheet (Part B), which can be found on the following page: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>. For ease, these tables are listed below.

Table 1	List of suppliers	To be completed
Table 2	Jobs	To be completed
Table 3	Skills and training	To be completed
Table 4	Wider economic benefits	To be completed

7.8 Please contact the relevant email for any enquiries relating to the content of the Supply Chain Report:

Power projects: Projects should contact the following email: [powerccus@beis.gov.uk](mailto:powerccus@beis.gov.uk)

**Part B**

*[Dispatchable Power Agreement, Form of Supply Chain Report: Part B (Spreadsheet), available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>.]*

**Annex 10**  
**Pro forma notices<sup>75</sup>**

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**Directors' Certificate**

**[Company Name]**  
**[Unique reference number: [●]]**

**(the "Company")**

**DPA – DIRECTORS' CERTIFICATE**

**To: [●] (the "DPA Counterparty")**

I, [●], being a Director of the Company, refer to the DPA entered into by the Company and the DPA Counterparty on [●] in relation to the [●] Project (the "**Agreement**"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries, the information contained in and enclosed with [**to insert description of matters being certified**] is in all material respects true, complete and accurate and not misleading, in each case by reference to the facts and circumstances then existing.

This Certificate is governed by and construed in accordance with English law.

.....  
Name: [●]  
Position: Director  
Dated: [●]

.....  
Name: [●]  
Position: Director  
Dated: [●]

**OR:**

.....  
Name: [●]  
Position: Director  
Dated: [●]

in the presence of:

.....  
Witness's name: [●]  
Occupation: [●]  
Address: [●]  
Dated: [●]

OCP Notice

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

DPA – OCP NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.7(B).
3. This is an OCP Notice.
4. We consider that the following Operational Condition Precedent has been fulfilled: [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence the fulfilment of the Operational Condition Precedent.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is in all material respects true, complete and accurate and not misleading.

Yours faithfully,

.....

For and on behalf  
of the **Generator**

**OCP Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – OCP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.9(A) / 3.9(B).
3. This is an OCP Response Notice in relation to the OCP Notice dated [●] relating to paragraph [●] of the Agreement.
4. [We consider that you have [not] fulfilled the Operational Condition Precedent to which the OCP Notice relates.]/[We consider that we have not been provided with sufficient Supporting Information to determine whether you have fulfilled the Operational Condition Precedent to which the OCP Notice relates. We require the following OCP Supporting Information: [●].]

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further OCP Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER OCP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.10(C)(ii).
3. This is a Further OCP Response Notice in relation to the OCP Notice dated [●] and the OCP Response Notice dated [●] relating to paragraph [●] of the Agreement.
4. Following our receipt of the OCP Supporting Information from you on [●], we consider that you have [not] fulfilled the Operational Condition Precedent.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**OCP Non-Compliance Notice**

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

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – OCP NON-COMPLIANCE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.11.
3. This is an OCP Non-Compliance Notice.
4. The Affected OCP is: [●].
5. [The Affected OCP [[will not]/[is not reasonably likely to] be fulfilled by the Longstop Date as a result of [●].]/[, which we previously notified to you as fulfilled pursuant to Condition 3.7(B), is no longer fulfilled.]] The reasons for this are: [●].
6. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to the content of this notice.
7. We [have taken]/[are proposing to take] the following remedial action: [●].
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Project Delay Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – PROJECT DELAY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.15.
3. This is a Project Delay Notice.
4. [We consider there is likely to be a delay to the **[design, development, construction, completion, testing and/or commissioning of the Facility]**]. The reasons for this are: [●].
5. We [have taken]/[are proposing to take] the following remedial action: [●].
6. We [enclose] /[set out] **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** the following:
  - (A) a revised Project timetable; and
  - (B) the estimated additional costs to the Project arising as a result of the delay to the Project.
7. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the delay of the **[design, development, construction, completion, testing and/or commissioning of the Facility]**.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Audit Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – AUDIT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.18.
3. This is an Audit Notice.
4. We [*intend*]/[*nominate* [●]] to exercise the Audit Right.
5. The date by which you must, in accordance with Condition 3.17, permit the exercise of the Audit Right is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Start Date Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – START DATE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Conditions 3.22 and 3.23.
3. This is a Start Date Notice.
4. We propose that the Start Date shall be: [●].
5. We **[enclose] / [will deliver to you on the Start Date]** a Directors' Certificate certifying that the matters provided for in Condition 3.26(C) are, as at the date of this notice [and on the proposed Start Date specified in this notice], true, complete and accurate in all material respects and are not misleading.

Yours faithfully,

.....  
For and on behalf of  
the **Generator**

TCDE Notice

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

DPA – TCDE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.30.
3. This is a TCDE Notice.
4. The following T&S Commissioning Delay Event has occurred: [●].
5. ***[We hereby request an extension of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window as a result of the T&S Commissioning Delay Event.][We hereby request that the DPA Counterparty temporarily waives the T&S Connection Confirmation CP as a result of the T&S Commissioning Delay Event.]***
6. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the T&S Commissioning Delay Event and to evidence that we have fulfilled the Generator T&S Connection Works.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**TCDE Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – TCDE RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.32.
3. This is a TCDE Response Notice in relation to the TCDE Notice dated [●].
4. ***[We consider that a T&S Commissioning Delay Event as specified in the TCDE Notice has [not] occurred and is [not] continuing.]/[We consider that the Generator T&S Connection Works have [not] been completed]/[We consider that we have not been provided with sufficient Supporting Information to determine whether a T&S Commissioning Delay Event has occurred and is continuing and/or the Generator has [not] fulfilled the Generator T&S Connection Works. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further TCDE Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER TCDE RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.33(C)(ii).
3. This is a Further TCDE Response Notice in relation to the TCDE Notice dated [●] and the TCDE Response Notice dated [●].
4. Following our receipt of the TCDE Supporting Information from you on [●], we consider that a T&S Commissioning Delay Event has **[not]** occurred and is **[not]** continuing and you have **[not]** fulfilled the Generator T&S Connection Works.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**TCDE Termination Notice**

**To:** [●] (the "Generator")  
[Unique reference number: [●]]

**From:** [●] (the "DPA Counterparty")  
[Address]

**Dated:** [●]

**DPA – TCDE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.30.
3. This is a TCDE Termination Notice.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**T&S Network Availability Notice**

To: **[●]** (the "DPA Counterparty")  
**[Address]/ [●]** (the "Generator")  
**[Unique reference number: [●]]**

From: **[[●]** (the "Generator")  
**[Unique reference number: [●]]/ [●]** (the "DPA Counterparty")  
**[Address]]**

Dated: **[●]**

**DPA – T&S NETWORK AVAILABILITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated **[●]** between you as the **[Generator/DPA Counterparty]** and us as the **[Generator/DPA Counterparty]** in relation to the **[●]** Project (the "Agreement"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.43.
3. This is a T&S Network Availability Notice.
4. The T&S Network Availability Date is **[●]**.
5. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Annex 1 to this notice)]** Supporting Information listed in Annex 1 to this notice which we consider to be relevant to the T&S Network Availability Date.
6. **[We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.]**

Yours faithfully,

.....  
For and on behalf of  
the **[Generator/DPA Counterparty]**

**T&S Network Availability Response Notice**

To: **[[●]] (the "DPA Counterparty")**  
**[Address]/ [●] (the "Generator")**  
**[Unique reference number: [●]]**

From: **[[●] (the "Generator")**  
**[Unique reference number: [●]]/ [●] (the "DPA Counterparty")**  
**[Address]]**

Dated: **[●]**

**DPA – T&S NETWORK AVAILABILITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the **[Generator/DPA Counterparty]** and us as the **[Generator/DPA Counterparty]** in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.44.
3. This is a T&S Network Availability Response Notice.
4. ***We consider that the T&S Network is [not] available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable [us/the Generator] to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement./[We consider that we have not been provided with sufficient Supporting Information to determine whether the T&S Network is available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable [us/the Generator] to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement. We require the following Supporting Information: [●].***
5. ***[We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.]***

Yours faithfully,

.....  
For and on behalf of  
the **[Generator/DPA Counterparty]**

**Further T&S Network Availability Response Notice**

To: **[[●]]** (the "DPA Counterparty")  
**[[Address]]/ [[●]]** (the "Generator")  
**[[Unique reference number: [●]]]**

From: **[[●]]** (the "Generator")  
**[[Unique reference number: [●]]/ [[●]]** (the "DPA Counterparty")  
**[[Address]]]**

Dated: **[[●]]**

**DPA – FURTHER T&S NETWORK AVAILABILITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated **[[●]]** between you as the [Generator/DPA Counterparty] and us as the [Generator/DPA Counterparty] in relation to the **[[●]]** Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.45(C)(ii).
3. This is a Further T&S Network Availability Response Notice.
4. We consider that the T&S Network is **[not]** available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable **[us/the Generator]** to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement.
5. ***[We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.]***

Yours faithfully,

.....

For and on behalf of  
the **[Generator/DPA Counterparty]**

### Milestone Requirement Notice

To: [●] (the "DPA Counterparty")  
 [Address]

From: [●] (the "Generator")  
 [Unique reference number: [●]]

Dated: [●]

#### DPA – MILESTONE REQUIREMENT NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.1.
3. This is a Milestone Requirement Notice.
4. ***[We enclose invoices, payment receipts and other Supporting Information with respect to the Project [which are listed in Appendix 1 to this notice] which we consider to be relevant to evidence expenditure by us and our direct shareholders of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs, being £[●].]/(We enclose information as is listed as the Project Commitments and the following Supporting Information [which are listed in Appendix 1 to this notice] which we consider to be relevant to evidence compliance or fulfilment of the Project Commitments: [●].]***
5. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
 the **Generator**

**Milestone Assessment Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.3.
3. This is a Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●].
4. ***[We consider that you have [not] complied with and fulfilled a Milestone Requirement [and the Milestone Satisfaction Date is [●]].]/[We consider that we have not been provided with sufficient Supporting Information to determine whether you have complied with and fulfilled a Milestone Requirement. We require the following Requested Milestone Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further Milestone Assessment Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.4(C)(ii).
3. This is a Further Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●] and the Milestone Assessment Response Notice dated [●].
4. Following our receipt of the Requested Milestone Supporting Information from you on [●], we consider that you have **[not]** complied with and fulfilled a Milestone Requirement [and the Milestone Satisfaction Date is [●]].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Milestone Delay Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – MILESTONE DELAY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.8.
3. This is a Milestone Delay Notice.
4. [We consider there is likely to be a delay to the fulfilment of the Milestone Requirement and the Milestone Requirement will not be met by the Milestone Delivery Date]. The reasons for this are: [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the delay of the Milestone Requirement.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

### NDCE Adjustment Notice

To: [●] (the "DPA Counterparty")  
 [Address]

From: [●] (the "Generator")  
 [Unique reference number: [●]]

Dated: [●]

### DPA – NDCE ADJUSTMENT NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 5.1.
3. This is an NDCE Adjustment Notice.
4. The Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate by: [●] MW.
5. The Revised NDCE is: [●] MW.
6. The following change to the assets comprising the Facility will result from the reduction to the Net Dependable Capacity Estimate: [●].
7. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence of the change to the assets comprising the Facility which will result from the reduction to the Net Dependable Capacity Estimate.
8. *[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] the proposed Heat and Material Balance Diagram and any Supporting Information we consider to be relevant to evidence such changes to the Initial Heat and Material Balance Diagram.]*

Yours faithfully,

.....

For and on behalf of  
 the **Generator**



**Longstop Date Capacity Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – LONGSTOP DATE CAPACITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.1.
3. This is a Longstop Date Capacity Notice.
4. The Net Dependable Capacity is [●]MW.
5. The Test Achieved CO<sub>2</sub> Capture Rate is [●].
6. The Plant Net Efficiency is [●].
7. The Start Up Times are:
  - (A) Hot start: [●]
  - (B) Warm start: [●]
  - (C) Cold start: [●]
8. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times, including details of the assets comprising the Facility at the date of this notice.
9. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

Longstop Date Capacity Response Notice

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

DPA – LONGSTOP DATE CAPACITY RESPONSE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.4.
3. This is a Longstop Date Capacity Response Notice in relation to the Longstop Date Capacity Notice dated [●].
4. ***[We [do not] agree with Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice and consider that you have [not] met the Minimum Longstop Date Commissioning Requirements.]/[We consider that we have not been provided with sufficient Supporting Information to determine [the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times]/[the assets comprising the Facility as at the date of the Longstop Date Capacity Notice]. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further Longstop Date Capacity Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER LONGSTOP DATE CAPACITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.5(B)(ii).
3. This is a Further Longstop Date Capacity Response Notice in relation to the Longstop Date Capacity Notice dated [●] and the Longstop Date Capacity Response Notice dated [●].
4. Following our receipt of the Longstop Date Capacity Supporting Information from you on [●], we consider that you have [**not**] demonstrated the Minimum Longstop Date Commissioning Requirements and we agree with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Annual NDC Test Date Adjustment Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – ANNUAL NDC TEST DATE ADJUSTMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.1(C).
3. This is an Annual NDC Test Date Adjustment Notice.
4. The Revised Notified Annual NDC Test Date is [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the reasons for the change from the Initial Notified Annual NDC Test Date to the Revised Notified Annual NDC Test Date.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Annual NDC Test Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – ANNUAL NDC TEST NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.1(D).
3. This is an Annual NDC Test Notice.
4. The net generating capacity demonstrated is [●]
5. The Annual Adjusted NDC is [●].
6. We enclose a copy of the Annual NDC Test Report.
7. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the information contained in or enclosed with this notice.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Annual NDC Test Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – ANNUAL NDC TEST RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.4.
3. This is an Annual NDC Test Response Notice in relation to the Annual NDC Test Notice dated [●].
4. ***[We [do not] agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]/[We consider that we have not been provided with sufficient Supporting Information to determine Annual Adjusted NDC]. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further Annual NDC Test Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER ANNUAL NDC TEST RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.5(C)(ii).
3. This is a Further Annual NDC Test Response Notice in relation to the Annual NDC Test Notice dated [●] and the Annual NDC Test Response Notice dated [●].
4. Following our receipt of the Annual NDC Test Supporting Information from you on [●], ***[We agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]/[We do not agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Annual NDC Test Access Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – ANNUAL NDC TEST ACCESS NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.11.
3. This is an Annual NDC Test Access Notice.
4. We [intend]/[nominate [●]] to exercise the Annual NDC Test Access Right.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Outage Relief Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – OUTAGE RELIEF NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.6.
3. This is an Outage Relief Notice.
4. We consider that a **[Generation Outage Relief Event]/[Capture Outage Relief Event]** has occurred, the relevant details of which are: [●].
5. The **[Generation Outage Relief Event]/[Capture Outage Relief Event]** has had the following impact on the **[Net Dependable Capacity, Availability Generation and/or Achieved CO<sub>2</sub> Capture Rate]**.
6. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to the foregoing.
7. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information evidencing, in reasonable detail, the steps that we **[have taken]/[and]/[propose to take]** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Outage Relief Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – OUTAGE RELIEF RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.8.
3. This is an Outage Relief Response Notice in relation to the Outage Relief Notice dated [●].
4. ***[We consider that you have [not] provided sufficient evidence in relation to [Generation Outage Relief Event]/[Capture Outage Relief Event] as specified in the Outage Relief Notice]/[ We consider that we have not been provided with sufficient Supporting Information as to whether a [Generation Outage Relief Event]/[Capture Outage Relief Event] has occurred. We require the following Outage Relief Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further Outage Relief Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER OUTAGE RELIEF RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.9(C)(ii).
3. This is a Further Outage Relief Response Notice in relation to the. Outage Relief Notice dated [●]and the Outage Relief Response Notice dated [●].
4. Following our receipt of the Outage Relief Supporting Information from you on [●], [We consider that you have [not] provided sufficient evidence in relation to **[Generation Outage Relief Event]/[Capture Outage Relief Event] as specified in the Outage Relief Notice**].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Billing Statement Dispute Notice**

To: [●]

From: [●]

Dated: [●]

**DPA – BILLING STATEMENT DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [you]/[us] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 13.4.
3. This is a Billing Statement Dispute Notice. The Billing Statement[s] to which the Dispute relates [is]/[are] [●].
4. [Our]/[The Generator's] [name]/[unique identifier] is [●].
5. The [name]/[unique identifier] of the Facility is [●].
6. The Billing Statement items to which the Dispute relates are [●].
7. The amount in dispute is [●]. The apportionment of this amount in relation to the relevant Billing Statement items is [●].
8. ***[We consider that the following Billing Statement dispute should be [consolidated with]/[joined to] this dispute: [●].]***
9. We consider the correct position is [●]. Our reasons for this are [●].
10. We intend to rely on the following Supporting Information, copies of which are enclosed: [●].
11. We enclose the following additional Information which we consider relevant in relation to the dispute: [●].

Yours faithfully,

.....

For and on behalf of

[●]

**Metering Breach Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – METERING BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.4.
3. This is a Metering Breach Notice.
4. ***[We consider that you are in breach of the following Metering Obligation: [●].]***
5. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence the breach of Metering Obligation.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Metering Breach Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – METERING BREACH RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.5(A) / 21.5(B).
3. This is a Metering Breach Response Notice in relation to the Metering Breach Notice dated [●].
4. We **[do not]** accept that there has been a breach of the Metering Obligation as specified in the Metering Breach Notice.
5. [The date from which there has been a breach of the Metering Obligation is: [●].]
6. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator Metering Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR METERING REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.7(C).
3. This is an Generator Metering Remediation Notice.
4. We successfully completed the implementation of the Metering Remediation Plan on [●].
5. We enclose the Supporting Information which we consider to be relevant and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator Metering Remediation Notice Information Request**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR METERING REMEDIATION NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.8.
3. This is a Generator Metering Remediation Notice Information Request.
4. We require the following Supporting Information in relation to the Generator Metering Remediation Notice dated [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



### Metering Schematic Obligation Notice

To: [●] (the "DPA Counterparty")  
 [Address]

From: [●] (the "Generator")  
 [Unique reference number: [●]]

Dated: [●]

#### DPA – METERING SCHEMATIC OBLIGATION NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.11(A).
3. This is a Metering Schematic Obligation Notice.
4. We have identified a Material Change to the Facility Metering Equipment: ***[insert reasons for and details of the Material Change].***
5. This Material Change occurred on ***[insert date Material Change occurred].***
6. ***[We enclose an updated version of the relevant metering schematic diagram referred to in paragraph [●] of [●] of Annex 1 of the Conditions.]***
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
 the **Generator**

**Metering Inspection Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – METERING INSPECTION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.16.
3. This is a Metering Inspection Notice.
4. [We]/[●], nominated by us in accordance with Condition 21.15, intend to exercise the Metering Access Right.
5. The date by which you must, in accordance with Condition 21.15, permit the exercise of the Metering Access Right, is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Capture Rate Breach Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CAPTURE RATE BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.2.
3. This is a Capture Rate Breach Notice.
4. ***[We consider that you have breached the Minimum CO<sub>2</sub> Capture Rate Obligation for [three (3) consecutive AP Billing Periods]/[three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods].]***
5. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of our conclusions.
6. We hereby notify you that we may serve a Default Termination Notice in accordance with Condition 35.27 on [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Capture Rate Breach Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CAPTURE RATE BREACH RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.3.
3. This is a Capture Rate Breach Response Notice.
4. ***[We intend to rectify the breach of the Minimum CO<sub>2</sub> Capture Rate Obligation by [achieving an Achieved and Declared CO<sub>2</sub> Capture Rate Average equal to or greater than eighty five per cent. (85%) for three (3) consecutive AP Billing Periods prior to the Capture Rate Breach Deadline]/[providing the DPA Counterparty with and implement a Capture Rate Breach Rectification Plan]].***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Capture Rate Breach Rectification Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CAPTURE RATE BREACH RECTIFICATION REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.5(B).
3. This is a Capture Rate Breach Rectification Review Notice.
4. ***[We approve the draft Capture Rate Breach Rectification Plan submitted to us on [●].]/[We consider that we have not been provided with sufficient Supporting Information in relation to the draft Capture Rate Breach Rectification Plan, in order to determine whether or not to approve such plan. We require the following Supporting Information: [●].]/[We require the following amendments to be made to the draft Capture Rate Breach Rectification Plan: [●].]/[We do not approve the draft Capture Rate Breach Rectification Plan for the following reasons: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator Capture Rate Breach Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR CAPTURE RATE BREACH REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.7(B).
3. This is a Generator Capture Rate Breach Remediation Notice.
4. We successfully completed the implementation of the Approved Capture Rate Breach Rectification Plan on [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence that the breach of the Minimum CO<sub>2</sub> Capture Rate Obligation has been remedied.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Amended DCR Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – AMENDED DCR NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.1(D)(ii).
3. This is an Amended DCR Notice.
4. The Amended DCR Settlement Unit occurred on: [●].
5. The Change Declared CO<sub>2</sub> Capture Rate is: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* the reasons for the change in the Declared CO<sub>2</sub> Capture Rate together with Supporting Information listed in Appendix 1 to this notice in respect of the reasons for such a change and the impact on the Declared CO<sub>2</sub> Capture Rate.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**DPA Counterparty Declaration Breach Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DPA COUNTERPARTY DECLARATION BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.3.
3. This is a DPA Counterparty Declaration Breach Notice.
4. [We consider that you are in breach of the following Declaration Obligation: [●].]
5. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the breach of the Declaration Obligation.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Generator Outage Declaration Breach Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR DECLARATION BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.4.
3. This is a Generator Declaration Breach Notice.
4. [We consider that we are in breach of the following Declaration Obligation: [●].]
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the breach of Declaration Obligation.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Declaration Inspection Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DECLARATION INSPECTION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.10.
3. This is a Declaration Inspection Notice.
4. We [*intend*]/[*nominate* [●]] to exercise the Declaration Access Right.
5. The date by which you must, in accordance with Condition 23.11, permit the exercise of the Declaration Access Right, is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**CO<sub>2</sub> Capture Rate Test Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CO<sub>2</sub> CAPTURE RATE TEST NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.13.
3. This is a CO<sub>2</sub> Capture Rate Test Notice.
4. We request that you carry out a CO<sub>2</sub> Capture Rate Test.
5. The date by which you must carry out the CO<sub>2</sub> Capture Rate Test is [●].
6. The date by which you must submit the CO<sub>2</sub> Capture Rate Test Report is [●].

Yours faithfully,

.....  
For and on behalf of  
the **DPA Counterparty**

**Supply Chain Report Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – SUPPLY CHAIN REPORT RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 25.4.
3. This is a Supply Chain Report Response Notice. [in relation to the Supply Chain Report dated [●]].
4. ***[We consider that the Supply Chain Report does [not] comply with the requirements set out in Annex [●] (Form of Supply Chain Report)/[We consider that you have failed to submit a Supply Chain Report by the Supply Chain Report Deadline.]***

Yours faithfully,

.....  
For and on behalf of  
the **DPA Counterparty**

## DPA Counterparty QCiL Notice

To: [●] (the "Generator")  
 [Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

## DPA – DPA COUNTERPARTY QCIL NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.1.
3. This is a DPA Counterparty QCiL Notice.
4. We **[enclose]/[set out]** the following reasonable details of the Qualifying Change in Law which we consider **[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]/[: [●]]**.
5. The **[QCIL Effective Date]/[Expected QCIL Effective Date] is [●]**.
6. We consider that the Change in Law **[constitutes]/[will constitute]** a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be **[a Discriminatory]/[a Specific]/[an Other]** Change in Law.
7. **[We consider that the Notified Change in Law will give rise to or result in QCiL Operating Costs]/[Savings].]**
8. **[We consider that the Notified Change in Law will give rise to or result in QCiL Capital Costs]/[Savings].]**
9. **[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●].]**
10. **[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event.]**
11. **[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event.]**

Yours faithfully,

.....

For and on behalf of  
 the **DPA Counterparty**

**Generator QCiL Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR QCIL RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "Agreement"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.2.
3. This is a Generator QCiL Response Notice in relation to the DPA Counterparty QCiL Notice dated [●].
4. *[We consider that the Notified Change in Law [constitutes]/[will constitute] a Qualifying Change in Law.]/[We do not consider that the Notified Change in Law [constitutes]/[will constitute] a Qualifying Change in Law and enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.]*
5. *[We agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the DPA Counterparty QCiL Notice.]/[We do not agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the DPA Counterparty QCiL Notice and we consider the [QCIL Effective Date]/[Expected QCIL Effective Date] to be [●].]*
6. *[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
7. *[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/ [Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
8. *[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and this estimate.]*

9. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimates of the QCiL Construction Event Costs and QCiL Construction Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimates of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
11. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the impact of the Qualifying Change in Law on the Facility's:***
- (A) ***process heat and mass balance data;***
  - (B) ***cost base data and related process consumption parameters; and***
  - (C) ***load factor and short run marginal cost.]***
12. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
13. We enclose a Directors' Certificate certifying the matters specified in Condition 26.4.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL Response Notice Information Request**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCiL RESPONSE NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.6.
3. This is a Generator QCiL Response Notice Information Request.
4. We require the following Supporting Information in relation to the [**Generator QCiL Response Notice dated [●]**]/[**Revised Generator QCiL Response Information received from you on [●]**]: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



## Generator QCiL Notice

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

## DPA – GENERATOR QCIL NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.8.
3. This is a Generator QCiL Notice.
4. We *[enclose]/[set out the following]* reasonable details of the Qualifying Change in Law which we consider *[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]/[: [●]]*.
5. The *[QCIL Effective Date]/[Expected QCIL Effective Date]* is [●].
6. We consider that the Notified Change in Law *[constitutes]/[will constitute]* a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be *[a Discriminatory]/[a Specific]/[an Other]* Change in Law. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.
7. *[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
8. *[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/ [Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
9. *[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and this estimate.]*

10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimates of the QCiL Construction Event Costs and QCiL Construction Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
11. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimates of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]. Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
12. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, listed in Appendix 1 which we consider to be relevant to evidence the impact of the Qualifying Change in Law on the Facility's:***
- (A) ***process heat and mass balance data;***
  - (B) ***cost base data and related process consumption parameters; and***
  - (C) ***load factor and short run marginal cost.]***
13. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
14. We enclose a Directors' Certificate certifying the matters specified in Condition 26.9.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL Notice Information Request**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCIL NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.11.
3. This is a Generator QCiL Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL Notice dated [●]]/[Revised Generator QCiL Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**DPA Counterparty QCiL True-Up Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DPA COUNTERPARTY QCIL TRUE-UP NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.1.
3. This is a DPA Counterparty QCiL True-Up Notice in relation to *[identify relevant Qualifying Change in Law]*.
4. We hereby require you to confirm the QCiL True-Up Information.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator QCiL True-Up Response Notice**

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

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – GENERATOR QCIL TRUE-UP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.3.
3. This is a Generator QCiL True-Up Response Notice in relation to the DPA Counterparty QCiL True-Up Notice dated [●].
4. We enclose the QCiL True-Up Information.
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the information contained in or enclosed with this notice.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL True-Up Response Notice Information Request**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCiL TRUE-UP RESPONSE NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.6.
3. This is a Generator QCiL True-Up Response Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL True-Up Response Notice dated [●]]/[Revised Generator QCiL True-Up Response Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator QCiL True-Up Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR QCIL TRUE-UP NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.8.
3. This is a Generator QCiL True-Up Notice in relation to *[identify Qualifying Change in Law]*.
4. We enclose the QCiL True-Up Information.
5. We confirm that *[we have not recovered (and are not entitled to recover) any amount pursuant to Conditions [46.6] and [46.7]/[we have recovered the amount of [●] pursuant to Conditions [46.6] and [46.7].*
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of our conclusions.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL True-Up Notice Information Request**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCIL TRUE-UP NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.11.
3. This is a Generator QCiL True-Up Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL True-Up Notice dated [●]]/[Revised Generator QCiL True-Up Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**QSE Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – QSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 30.1.
3. This is a QSE Notice.
4. We consider that a Qualifying Shutdown Event has occurred, the relevant details of which are: [●].
5. The Qualifying Shutdown Event occurred on [●].
6. Our good faith estimates of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings are [●] and [●] respectively.
7. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information evidencing, in reasonable detail, the Qualifying Shutdown Event and the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 and the Reasonable and Prudent Standard.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CIAL REQUEST NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.2.
3. This is a CiAL Request Notice.
4. We consider that a Change in Applicable Law [has been implemented, occurred or become effective]/[is expected to be implemented, occur or become effective] for the following reasons: [●].
5. The date on which the Change in Applicable Law [***was implemented, occurred or became effective was***]/[***is expected to be implemented, occur or become effective is***] [●].
6. We consider that the Change in Applicable Law [***results***]/[***will result***] in one (1) or more of the Required CiAL Amendment Objectives ceasing to be met for the following reasons: [●].
7. [***We consider that the Required CiAL Amendment(s) are [●].***]
8. We enclose [***(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)***] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Request Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.5.
3. This is a CiAL Request Validity Notice.
4. The CiAL Request Criterion has been met.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**CiAL Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.6.
3. This is a CiAL Review Notice.
4. The following CiAL Review Trigger has occurred: [●].
5. The CiAL Review Response Deadline is: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**CiAL Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CIAL REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.7.
3. This is a CiAL Review Response Notice in relation to the CiAL Review Notice dated [●].
4. We [*enclose*]/[*set out the following*] Supporting Information which we wish you to take account of in undertaking the CiAL Review: [●].
5. [*We consider that the Required CiAL Amendment(s) are [●].*]

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Review Outcome Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.9.
3. This is a CiAL Review Outcome Notice.
4. The outcome of the CiAL Review was as follows: [●]. **[The Required CiAL Amendments are as follows: [●].]**
5. **[The date from which the Required CiAL Amendments will take effect is: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**CiAL Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CIAL DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 33.1.
3. This is a CiAL Dispute Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The *[Condition]/[paragraph] [to which the Dispute relates]/[pursuant to which the Dispute arises]* is [●].
7. We consider the correct position is [●]. Our reasons for this are [●].
8. *[We consider the following [claim[s]],[dispute[s]] arising out of another CCUS Programme DPA should be consolidated with or joined to the Dispute: [●].]*
9. *[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]*
10. The *[relief]/[determination]/[remedy]/[recourse]* that we seek in relation to the Dispute is [●].
11. We **[do not]** consider the Dispute should (without a Senior Representatives Settlement being reached) be referred for *[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]*.
12. Our Senior Representative is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Dispute Validity Notice**

**To:** [●] (the "Generator")  
[Unique reference number: [●]]

**From:** [●] (the "DPA Counterparty")  
[Address]

**Dated:** [●]

**DPA – CIAL DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 33.3.
3. This is a CiAL Dispute Validity Notice in relation to the CiAL Dispute Notice dated [●].
4. The CiAL Dispute Threshold Criterion has been met.
5. We propose that the Proposed CiAL Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed CiAL Expert has the relevant expertise which qualifies the Proposed CiAL Expert to determine the relevant CiAL Dispute for the following reasons: [●].
6. We enclose an Expert Determination Notice in relation to the CiAL Dispute Notice.
7. We enclose a Consolidation Request in relation to the CiAL Dispute.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Pre-Start Date Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PRE-START DATE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.1.
3. This is a Pre-Start Date Termination Notice.
4. The Pre-Start Date Termination Date is [●].
5. **[The following Termination Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Prolonged FM Event Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROLONGED FM EVENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.5.
3. This is a Prolonged FM Event Notice.
4. The following Prolonged FM Event has occurred: [●].
5. The Prolonged FM Trigger Date is: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the Prolonged FM Event.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Prolonged FM Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROLONGED FM TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.6.
3. This is a Prolonged FM Termination Notice.
4. The Prolonged FM Termination Date is [●].
5. **[The following Prolonged FM Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Prolonged Unavailability Event Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY EVENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.8.
3. This is a T&S Prolonged Unavailability Event Notice.
4. The following T&S Prolonged Unavailability Event has occurred: [●]
5. We hereby notify you that the Generator T&S Prolonged Unavailability Response Deadline is: [●].
6. We hereby notify you that we may serve a T&S Prolonged Unavailability Termination Notice in accordance with Condition 35.22 on [●].
7. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the T&S Prolonged Unavailability Event.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Prolonged Unavailability Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.9.
3. This is a T&S Prolonged Unavailability Response Notice in relation to the T&S Prolonged Unavailability Event Notice dated [●].
4. ***[We consider that the T&S Prolonged Unavailability Event is no longer continuing. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
5. ***[We consider that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
6. ***[We intend to provide an Alternative T&S Network Solution Plan.]***
7. ***[We consider that the T&S Prolonged Unavailability Event will not be remedied by the T&S Unavailability Remediation Deadline and we cannot provide a feasible Alternative T&S Network Solution Plan for the following reasons: [●].]***
8. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
9. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**T&S Prolonged Unavailability Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.11.
3. This is T&S Prolonged Unavailability Review Notice.
4. ***[We consider that you have [not] delivered evidence, in form and content satisfactory to the DPA Counterparty, that the T&S Prolonged Unavailability Event is no longer continuing as at such date]***
5. ***[We consider that we have not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event is no longer continuing. We require the following Supporting Information: [●].]***
6. ***[We consider that you have [not] delivered sufficient evidence, that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline.]/[We consider that you cannot provide a feasible Alternative T&S Network Solution Plan.]***
7. ***[We consider that we have not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and you cannot provide a feasible Alternative T&S Network Solution Plan. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Prolonged Unavailability Further Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY FURTHER RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.12(A)(iv).
3. This is a T&S Prolonged Unavailability Further Response Notice in relation to the T&S Prolonged Unavailability Event Notice dated [●] and the T&S Prolonged Unavailability Response Notice dated [●].
4. ***[We consider that the T&S Prolonged Unavailability Event is no longer continuing. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
5. ***[We consider that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
6. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] a draft Alternative T&S Network Solution Plan together with Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
7. ***[We consider that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and we cannot provide a feasible Alternative T&S Network Solution Plan for the following reasons: [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Alternative T&S Network Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – ALTERNATIVE T&S NETWORK REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.13(B).
3. This is an Alternative T&S Network Review Notice.
4. ***[We approve the draft Alternative T&S Network Solution Plan submitted to us on [●].]/[We consider that we have not been provided with sufficient Supporting Information in relation to the draft Alternative T&S Network Solution Plan, in order to determine whether or not to approve such plan. We require the following Supporting Information: [●].]/[We require the following amendments to be made to the draft Alternative T&S Network Solution Plan: [●]]/[We do not approve the draft Alternative T&S Network Solution Plan for the following reasons: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Generator T&S Prolonged Unavailability Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR T&S PROLONGED UNAVAILABILITY REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.18(B).
3. This is a Generator T&S Prolonged Unavailability Remediation Notice.
4. We successfully completed the implementation of the Alternative T&S Network Solution Plan on [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence that the T&S Prolonged Unavailability Event has been remedied..

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**T&S Prolonged Unavailability Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.22.
3. This is a T&S Prolonged Unavailability Termination Notice.
4. The T&S Prolonged Unavailability Termination Date is [●].
5. **[The following T&S Prolonged Unavailability Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Termination Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – T&S TERMINATION RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.23.
3. This is a T&S Termination Response Notice.
4. We consider the T&S Termination Payment is: [●]
5. The principal inputs used by us to calculate such T&S Termination Payment were: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be necessary to enable you to calculate the T&S Termination Payment.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Default Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DEFAULT TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.27.
3. This is a Default Termination Notice.
4. The Default Termination Date is [●].
5. The following Termination Event has occurred: [●].

Yours faithfully,

.....  
For and on behalf of  
the **DPA Counterparty**

**Minimum Longstop Date Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – MINIMUM LONGSTOP DATE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.29.
3. This is a Minimum Longstop Date Termination Notice.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**QCIL Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – QCIL TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.31.
3. This is a QCIL Termination Notice.
4. The QCIL Termination Date is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**QCiL Compensation Termination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – QCiL COMPENSATION TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.33.
3. This is a QCiL Compensation Termination Notice.
4. The QCiL Compensation Termination Date is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Termination Payment Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S TERMINATION PAYMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 36.3(B).
3. This is a T&S Termination Payment Notice.
4. The T&S Termination Payment is [●].
5. The principal inputs used by us to calculate such T&S Termination Payment were: [●].
6. The T&S Termination Payment shall be payable *[as a lump sum]/[as staged payments]*.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Default Termination Payment Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DEFAULT TERMINATION PAYMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 36.9(B).
3. This is a Default Termination Payment Notice.
4. The Default Termination Payment is [●].
5. The principal inputs used by us to calculate such Default Termination Payment were: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

### Dispute Notice

To: [●]

From: [●]

Dated: [●]

### DPA – DISPUTE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 39.3.
3. This is a Dispute Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The Condition to which the Dispute relates is [●].
7. We consider that the correct position is [●]. Our reasons for believing this is the correct position are [●].
8. ***[We consider that the following dispute or claim relating to or arising out of another CCUS Programme DPA should be [consolidated with]/[joined to] this Dispute: [●].]***
9. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
10. The ***[relief]/[determination]/[remedy]/[recourse]*** which we seek in relation to the Dispute is [●].
11. We [do not] consider the Dispute should (without a Senior Representatives Settlement being reached) be referred for ***[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]***.
12. Our Senior Representative is [●].

Yours faithfully,

.....

For and on behalf of [●]

### Expert Determination Notice

To: [●]

From: [●]

Dated: [●]

#### DPA – EXPERT DETERMINATION NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.1.
3. This is an Expert Determination Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The relevant Condition to which the Dispute relates is [●].
7. We consider that the correct position is [●]. Our reasons for this are [●].
8. ***[We consider that the following dispute or claim relating to or arising out of another CCUS Programme DPA should be [consolidated with]/[joined to] this Dispute: [●].]***
9. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
10. The ***[relief]/[determination]/[remedy]/[recourse]*** which we seek in relation to the Dispute is [●].
11. We propose that the Expert appointed be [●].
12. We propose that the proposed Expert be appointed on the basis of the following terms of reference: [●].
13. We believe that the proposed Expert has the relevant expertise which qualifies the proposed Expert to determine the relevant Expert Dispute for the following reasons: [●]

Yours faithfully,

.....

For and on behalf of

[●]

**Expert Determination Response Notice**

To: [●]

From: [●]

Dated: [●]

**DPA – EXPERT DETERMINATION RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.3.
3. This is an Expert Determination Response Notice.
4. We ***[do not]*** accept the Expert proposed in the Expert Determination Notice dated [●]. ***[We propose [●] as an alternative Expert.]***
5. We ***[do not]*** accept the terms of reference proposed in the Expert Determination Notice dated [●]. ***[We propose the following alternative terms of reference: [●].]***

Yours faithfully,

.....

For and on behalf of

[●]

### Consolidation Request

To: *[All the parties to a Connected Dispute]*

From: [●]

Dated: [●]

### DPA – CONSOLIDATION REQUEST

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 43.2.
3. This is a Consolidation Request.
4. The subject matter of the Dispute is [●].
5. We consider that the following dispute[s] [is]/[are] Connected Dispute[s]: [●].
6. Our reasons for considering that these disputes should be consolidated with the Connected Dispute[s] are [●].
7. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
8. This notice ***[has been]/[will be]*** copied to the ***[Expert]/[Arbitrator(s)]*** determining the Connected Dispute[s] ***[at the same time this notice was given to the [addressees]]/[forthwith upon appointment of the [Expert]/[Arbitrator(s)]]***.

Yours faithfully,

.....

For and on behalf of  
[●]

**Change of Ownership Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA –CHANGE OF OWNERSHIP NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 61.12.
3. This is a Change of Ownership Notice.
4. We enclose details of the new ownership structure (legal and beneficial) that will apply following the Change of Ownership.
5. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence:***
  - (A) ***the fulfilment of the Investor Requirements; and***
  - (B) ***that the proposed Change of Ownership is [not] a Restricted Share Transfer.]***
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Change of Ownership Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CHANGE OF OWNERSHIP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 61.14.
3. This is a Change of Ownership Response Notice.
4. ***[We consider that the Investor Requirements have [not] be fulfilled following the proposed Change of Ownership.]/[We consider that you have [not] evidenced whether or not the proposed Change of Ownership is a Restricted Share Transfer.]***
5. ***[We consider that we have not been provided with sufficient Supporting Information to determine whether the Investor Requirements would be fulfilled following the proposed Change of Ownership [and]/[or] whether or not the proposed Change of Ownership is a Restricted Share Transfer. We require you to provide the following Change of Ownership Supporting Information [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Test Procedure Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA –TEST PROCEDURE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Test Procedure Notice.
4. We enclose the draft Performance Test Procedure we propose to be adopted for the purposes of the Performance Tests.
5. The Facility's pre-test uncertainty calculations for the instrumentation to be used for the performance test measurements in each Performance Test are [●].
6. The Proposed Corrections Curves are [●].
7. The Proposed Heat and Material Balance Diagram is [●].
8. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence any changes relevant to this notice.]***
9. The proposed date to carry out such Performance Test is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**



**PTP Response Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PTP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2 of Part A of Annex 2 (*Testing Requirements*).
3. This is a PTP Response Notice.
4. We **[do not]** approve the draft Performance Test Procedure proposed in the Performance Test Procedure dated [●]. **[We propose [●] as an alternative Performance Test Procedure.]**
5. We require the Generator to provide the following additional Supporting Information [●].
6. We require the following amendment[s] to the draft Performance Test Procedure [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Performance Test Date Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – PERFORMANCE TEST DATE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.1 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Performance Test Date Notice.
4. We confirm that the Performance Test Date is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Performance Test Access Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PERFORMANCE TEST ACCESS NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.3 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Performance Test Access Notice.
4. We [intend]/[nominate [●]] to exercise the Performance Test Access Right.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Amendment Notification**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – AMENDMENT NOTIFICATION**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Annex 4 (*Change Control Procedure*).
3. This is an Amendment Notification.
4. The Proposed Amendment is [●].
5. The Proposed Amendment Effective Date is [●].
6. We consider the Proposed Amendment to be a **[Material Amendment]/[Technical Amendment]**.
7. **[We consider the Proposed Amendment to be a Technical Amendment and we [do not] consider the Proposed Amendment to be a General Amendment.]/[We consider the Proposed Amendment to be a General Amendment and we [do not] consider that it applies to all CCUS Programme DPAs]/[consider that it applies only to those of [a specified category]/[specified categories], being [●]].]**
8. We enclose the following Supporting Information which we consider necessary to enable you to evaluate the Proposed Amendment: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Material Amendment Response Notification**

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

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – MATERIAL AMENDMENT RESPONSE NOTIFICATION**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2(B) of Annex 4 (*Change Control Procedure*).
3. This is a Material Amendment Response Notification.
4. We [do not] accept the Proposed Amendment proposed in the Amendment Notification dated [●]. [We propose [●] as an alternative amendment.]
5. ***[We note that the Amendment Notification has not addressed the following consequential matters: [●].]***
6. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice which we consider necessary to enable you to evaluate the matters covered in this Material Amendment Response Notification.
7. We [do not] accept the Proposed Amendment Effective Date proposed in the Amendment Notification dated [●]. ***[We propose [●] as an alternative effective date.]***

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Technical Amendment Response Notification**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – TECHNICAL AMENDMENT RESPONSE NOTIFICATION**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.6(B)(ii) of Annex 4 (*Change Control Procedure*).
3. This is a Technical Amendment Response Notification.
4. We **[do not]** accept the Proposed Amendment proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative amendment.]**
5. **[We note that the Amendment Notification has not addressed the following consequential matters: [●].]**
6. We **[do not]** accept the Proposed Amendment Effective Date proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative effective date.]**

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**GRP Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GRP PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.2 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Request Notice.
4. We believe the calculation of the Gas Reference Price does not comply with the following GRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the GRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 4 [and 5] above.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**GRP Principles Request Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.5 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Request Validity Notice.
4. The GRP Principles Request Criterion has been met.

Yours faithfully,

.....  
For and on behalf of  
the **DPA Counterparty**



**GRP Principles Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.8 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Notice.
4. The following GRP Principles Review Trigger has occurred: [●].
5. The GRP Principles Review Response Deadline is: [●].

Yours faithfully,

.....  
For and on behalf of  
the **DPA Counterparty**

**GRP Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.9 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Response Notice in relation to the GRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the GRP Principles Review: [●].
5. **[We propose that the GRP Principles Review Trigger should be addressed as follows: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**GRP Principles Review Outcome Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.12 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Outcome Notice.
4. We **[enclose a]/[set out the following]** summary of the outcome of the GRP Principles Review[:[●]]. **[The GRP Principles Review Proposals are as follows: [●].]**
5. **[We enclose a summary of the reasons for determining that it is not possible to effect any GRP Mechanism Amendment (or combination of GRP Mechanism Amendments) in a manner which complies with all of the GRP Principles. We consider that the following GRP Principles will be complied with by virtue of the GRP Mechanism Amendments being effected: [●].]**
6. The GRP Principles Review Implementation Date is: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**GRP Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GRP DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part B of Annex 6 (*Gas Reference Price*).
3. This is a GRP Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The [Condition]/[paragraph] to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. ***[We consider the following [claim(s)/dispute(s)] arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]***
8. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
9. The [*relief*]/[*determination*]/[*remedy*]/[*recourse*] which we seek in relation to the Dispute is [●].
10. We [***do not***] consider that the Dispute should (without a Senior Representatives Settlement being reached) be referred for [***determination in accordance with the Expert Determination Procedure***]/[***resolution in accordance with the Arbitration Procedure***].
11. Our Senior Representative is: [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**GRP Dispute Validity Notice**

**To:** [●] (the "Generator")  
 [Unique reference number: [●]]

**From:** [●] (the "DPA Counterparty")  
 [Address]

**Dated:** [●]

**DPA – GRP DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.3 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Dispute Validity Notice in relation to the GRP Dispute Notice dated [●].
4. The GRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed GRP Expert appointed by [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed GRP Expert has the relevant expertise which qualifies the Proposed GRP Expert to determine the relevant GRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the GRP Dispute.

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**CMRP Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CMRP PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.2 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Request Notice.
4. We believe the calculation of the Carbon Market Reference Price does not comply with the following CMRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the CMRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 5 [and 6] above.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CMRP Principles Request Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.5 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Request Validity Notice.
4. The CMRP Principles Request Criterion has been met.

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**CMRP Principles Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.8 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Notice.
4. The following CMRP Principles Review Trigger has occurred: [●].
5. The CMRP Principles Review Response Deadline is: [●].

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**



**CMRP Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.9 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Response Notice in relation to the CMRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the CMRP Principles Review: [●].
5. **[We propose that the CMRP Principles Review Trigger should be addressed as follows: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CMRP Principles Review Outcome Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.12 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Outcome Notice.
4. We **[enclose a]/[set out the following]** summary of the outcome of the CMRP Principles Review[:[●]]. **[The CMRP Principles Review Proposals are as follows: [●].]**
5. **[We enclose a summary of the reasons for determining that it is not possible to effect any CMRP Mechanism Amendment (or combination of CMRP Mechanism Amendments) in a manner which complies with all of the CMRP Principles. We consider that the following CMRP Principles will be complied with by virtue of the CMRP Mechanism Amendments being effected: [●].]**
6. The CMRP Principles Review Implementation Date is: [●].

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**CMRP Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – CMRP DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The [Condition]/[paragraph] to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. ***[We consider the following claim(s)/dispute(s) arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]***
8. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
9. The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].
10. We ***[do not]*** consider that the Dispute should (without a Senior Representatives Settlement being reached) be referred for ***[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]***.
11. Our Senior Representative is: [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CMRP Dispute Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.3 of Part A of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Dispute Validity Notice in relation to the CMRP Dispute Notice dated [●].
4. The CMRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed CMRP Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed CMRP Expert has the relevant expertise which qualifies the Proposed CMRP Expert to determine the relevant CMRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the CMRP Dispute.

Yours faithfully,

.....

For and on behalf of the **DPA  
Counterparty**

**Proposed Energy Consultant Determination Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROPOSED ENERGY CONSULTANT DETERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 1.5 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Proposed Energy Consultant Determination Notice.
4. We propose that the Proposed Energy Consultant appointed be [●].
5. We propose that [s]he be appointed on the basis of the following terms of reference: [●].
6. We believe that the Proposed Energy Consultant meets the Energy Consultant Appointment Criteria for the following reasons: [●]
7. We consider that the Proposed Terms of Reference are [materially] consistent with the Minimum Terms of Reference Requirements for the following reasons: [●]

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**Generator Objection Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – GENERATOR OBJECTION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project v (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 1.6 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Generator Objection Notice.
4. We do not accept the appointment of the Proposed Energy Consultant proposed in the Proposed Energy Consultant Determination Notice dated [●] for the following reasons: [●]
5. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Reference Plant Criteria Review Outcome Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT CRITERIA REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.15 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Criteria Review Outcome Notice.
4. ***[We [enclose a]/[set out the following] summary of the reasons for determining that the Reference Plant meets the Reference Plant Criteria.][We consider that the Reference Plant does not meet the Reference Plant Criteria for the following reasons: [●]. [The Base Performance Assumptions will be adjusted as follows: [●]. The Reference Plant Criteria Review Implementation Date is: [●]]/[We consider that no Plant meets the Reference Plant Criteria.]***
5. We enclose a copy of the Reference Plant Criteria Review Report.

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**Reference Plant Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Request Notice.
4. We believe the [Reference Plant]/[Base Performance Assumptions] do[es] not comply with the following Reference Plant Principle[s]: [●].
5. **[We propose that the non-compliance with the Reference Plant Principle[s] should be addressed as follows: [●].]**
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 5 [and 6] above.

Yours faithfully,

.....

For and on behalf of  
the **Generator**



**Reference Plant Principles Request Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.5 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Request Validity Notice.
4. The Reference Plant Principles Request Criterion has been met.

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**Reference Plant Principles Review Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.8 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Notice.
4. The following Reference Plant Principles Review Trigger has occurred: [●].
5. The Reference Plant Principles Review Response Deadline is: [●].

Yours faithfully,

.....

For and on behalf of the **DPA**  
**Counterparty**

**Reference Plant Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.9 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Response Notice in relation to the Reference Plant Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the Reference Plant Principles Review: [●].
5. ***[We propose that the Reference Plant Principles Review Trigger should be addressed as follows: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Reference Plant Principles Review Outcome Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.12 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Outcome Notice.
4. We ***[enclose a]/[set out the following]*** summary of the outcome of the Reference Plant Principles Review:[●]. ***[The Reference Plant Principles Review Proposals are as follows: [●].]***
5. ***[We enclose a summary of the reasons for determining that it is not possible to effect any Reference Plant Mechanism Amendment (or combination of Reference Plant Mechanism Amendments) in a manner which complies with all of the Reference Plant Principles. We consider that the following Reference Plant Principles will be complied with by virtue of the Reference Plant Mechanism Amendments being effected: [●].]***
6. The Reference Plant Principles Review Implementation Date is: [●].

Yours faithfully,

.....

For and on behalf of the **DPA  
Counterparty**

**Reference Plant Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

From: [●] (the "Generator")  
[Unique reference number: [●]]

Dated: [●]

**DPA – REFERENCE PLANT DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.1 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant **[Criteria Review]/[Principles Review]** Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The **[Condition]/[paragraph]** to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. **[We consider the following [claim(s)/dispute(s)] arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]**
8. **[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]**
9. The **[relief]/[determination]/[remedy]/[recourse]** which we seek in relation to the Dispute is [●].
10. We **[do not]** consider that the dispute should (without a Senior Representatives Settlement being reached) be referred for [determination in accordance with the Expert Determination Procedure]/**[resolution in accordance with the Arbitration Procedure]**.
11. Our Senior Representative is: [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Reference Plant Dispute Validity Notice**

To: [●] (the "Generator")  
[Unique reference number: [●]]

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.3 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Dispute Validity Notice in relation to the Reference Plant Dispute Notice dated [●].
4. The Reference Plant Dispute Threshold Criterion has been met.
5. We propose that the Proposed Reference Plant Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed Reference Plant Expert has the relevant expertise which qualifies the Proposed Reference Plant Expert to determine the relevant Reference Plant Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the Reference Plant Dispute.

Yours faithfully,

.....

For and on behalf of the **DPA  
Counterparty**

**Schedule  
Gain Share**

**Part A – Introduction**

**1. APPLICATION OF THIS SCHEDULE<sup>76</sup>**

***The Parties***

1.1 This Schedule (which shall include the provisions of the DPA which are referred to in Paragraph 1.4 of this Part A) shall be binding upon, and shall enure for the benefit, of:

- (A) the Original Parties;
  - (B) the Gain Share Acceding Parties; and
  - (C) the respective lawful transferees and successors of each of them,
- (each a "**Party**" and together the "**Parties**").

***Term and Survival***

1.2 This Schedule shall remain effective and binding until the date falling two (2) years after the Specified Expiry Date (the "**Gain Share Term**") provided that the expiry, lapse or termination of this Schedule shall not affect:

- (A) the provisions of this Schedule as they relate to the payment of any sums due by one Party to the other pursuant to this Schedule; and
- (B) the continued existence and validity of, and the continuing rights and obligations of, each Party under or in respect of Part A (*Introduction*), Paragraph 4 (*Gain Share: Security and Enforcement*) of Part B (*Gain Share*), Paragraphs 3 (*Payment Disruption Event*) to Paragraph 5 (*Set-off*) inclusive of Part D (*Miscellaneous*) of this Schedule.

***Gain Share Provisions***

1.3 The only provisions of the DPA which apply to, are binding on and are enforceable by the Gain Share Acceding Parties are those set out in, or which are stated to be incorporated into, this Schedule. For the avoidance of doubt, all other provisions of the DPA shall not apply to, be binding on or be enforceable by the Gain Share Acceding Parties and such parties shall have no other rights or remedies in respect of such provisions, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed.

1.4 The following provisions of the DPA shall be incorporated into this Schedule and shall apply to each Gain Share Acceding Party as if they were set out in this Schedule save that references to "Party" shall be to a Party to this Schedule, and references to "the DPA" shall be replaced by "this Schedule" and words such as "herein", "hereof", "hereunder", "hereby" and "hereto" where they appear in such provisions shall be construed accordingly:<sup>77</sup>

- (A) Part 10 (*Dispute Resolution*);
- (B) Condition 47 (*No Waiver*);

<sup>76</sup> Note to Reader: the terms set out in this Schedule remain subject to further review and amendment by BEIS.

<sup>77</sup> Note to Reader: these references and the boiler plate provisions of this Schedule are subject to further review by BEIS.

- (C) Condition 48 (*Consents*);
- (D) Condition 49 (*Entire agreement*);
- (E) Condition 52 (*Severability*);
- (F) Condition 54 (*Confidentiality*);
- (G) Condition 55 (*Announcements*);
- (H) Condition 56 (*Freedom of Information*);
- (I) Condition 60 (*No partnership*);
- (J) Condition 64 (*Further assurance*);
- (K) Condition 66 (*No variation*);
- (L) Condition 67 (*Counterparts*);
- (M) Condition 68 (*Governing law and jurisdiction*);
- (N) Condition 69 (*Agent for service of process*); and
- (O) Condition 70 (*Language*).

## 2. DEFINITIONS AND INTERPRETATION

### **Definitions**

2.1 In this Schedule (*Gain Share*):

**"Abusive"** has the meaning given to that term in Paragraph 5.1(B) (*Unconditional Investor undertakings*) of Part B (*Gain Share*) of this Schedule;

**"Acceptable Collateral"** means:

- (A) a Letter of Credit;
- (B) a Bond;
- (C) a Parent Company Guarantee; and/or
- (D) a cash amount (in pounds) transferred to the credit of a Reserve Account;

**"Accession Conditions Precedent"** means the conditions precedent set out in Appendix 1 (*Accession Conditions Precedent*) of this Schedule;

**"Accession Date"** means, in relation to any person who is not an Original Party, the date on which that person acceded to the DPA by executing a Deed of Accession;

**"Accountant's Report"** means, in respect of the Equity IRR Model, a report of factual findings from an Auditor, prepared in accordance with International Standard on Related Services (ISRS) 4400 Engagements to Perform Agreed-Upon Procedures Regarding Financial Information published by the International Auditing and Assurance Standards Board (or any replacement standard) and confirming:

- (A)



- (i) that the Project Cash Flows for the most recent Project Gain Share Calculation Period have been correctly extracted and adjusted from all relevant information including that referred to in Paragraph 5.1(D) (*Preliminary Equity IRR Report*) of Part B (*Gain Share*);
  - (ii) if the Equity IRR Model includes Sale Cash Flows, that the Sale Cash Flows have been correctly extracted and adjusted from all relevant information (including sale documentation); and
  - (iii) that any non-Generator cash flows specified in the Equity IRR Model agree back to source documentation (including investment cost documentation, investment disposal documentation or credit support costs documentation);
- (B) that the figures for the Project Cash Flows specified in the Equity IRR Model agree back to the relevant Project Cash Flow figures for the previous Project Gain Share Calculation Period and (where relevant) Sale Cash Flows associated with the relevant TopCo Tranche or TopCo Tranches which are the subject of the Relevant Sale specified in the Equity IRR Model, agree back to the Project Cash Flows attributable to each relevant TopCo Tranche;
- (C) that the calculation of the Gain Share Amounts set out in the Equity IRR Model is arithmetically accurate and has been computed in accordance with the requirements of this Schedule;
- (D) that, in the case of a Sale Gain Share calculation, the determination of the TopCo Tranches as set out in the Equity IRR Model is arithmetically accurate and has been derived in accordance with the definition thereof; and
- (E) the arithmetical accuracy of calculations set out in the Equity IRR Model;

**"Acquirer"** means, in relation to a Relevant Sale, the person(s) that acquire(s) the Economic Interests which are the subject of the Relevant Sale;

**"Affiliate Tax Arrangement(s)"** means any arrangement(s) entered into or put in place between the Generator and any member of the Generator's Investment Structure including, but not limited to, one (1) or more of the following:

- (A) a Group Relief Arrangement;
- (B) a Corporate Interest Restriction Arrangement;
- (C) a Loss Restriction Arrangement; and/or
- (D) VAT Group Re-charge Arrangement;

**"Agreed Principles"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Apportioned"** means, in relation to a TopCo and the TopCo Tranches of such TopCo, apportioned between such TopCo Tranches pro rata to the then current Economic Interests in HoldCo represented by each such TopCo Tranche and as from the date of creation of the relevant TopCo Tranche to the date such TopCo Tranche ceases to exist (which shall include where it is cancelled or combined with another TopCo Tranche following a Relevant Sale) provided that for the purposes of any definition relevant to a Sale Gain Share calculation, any amount so apportioned shall be further apportioned to the portion of the TopCo Tranche which is the subject of the Sale Gain Share calculation;

**"Associated"** means, in respect of a person, the Investor and/or TopCo with which the relevant person is associated, either by reason of being a member of the same Group as such Investor and/or TopCo, as applicable, or by being attributed to such Investor and/or TopCo, as applicable, by written notice to the DPA Counterparty in accordance with the terms of this Schedule;

**"Auditor"** means the auditors of the Generator, which shall be:

- (A) Deloitte & Touche LLP;
- (B) Ernst & Young;
- (C) KPMG;
- (D) PricewaterhouseCoopers; or
- (E) another firm of independent and internationally reputable auditors of good standing approved by the DPA Counterparty;

**"Available Cash Flow"** means, as of a Project Gain Share Calculation Date:

- (A) all cash of the Generator (including (x) cash in hand, at bank or on deposit or which is cash pooled or similar, and (y) all cash equivalents including any financial instruments or money market instruments not part of the ordinary course of trade of the Generator) on the relevant Project Gain Share Calculation Date other than any such amounts as are at that date:
    - (i) required to be retained in the Generator to satisfy its reserve requirements under:
      - (a) applicable Law, Directives or Required Authorisations; or
      - (b) the terms of:
        - (aa) the DPA Documents and/or Gain Share Transaction Documents, but in each case if the Contracting Policy is applicable to the relevant DPA Document or Gain Share Transaction Document only to the extent the terms of such document are at that date in compliance with the Contracting Policy; or
        - (bb) the Finance Documents or, to the extent entered into on arm's length, market standard terms with Third Party Lenders, any replacements thereof (including any retention obligations under such documents); or
    - (ii) considered by the directors of the Generator to be necessary to retain in the Generator taking account (without double counting) the requirements of the documents referred to in paragraphs (A)(i)(a) and (A)(i)(b) above and any directors' duties imposed by applicable Law, Directives or Required Authorisations, provided that any cash amounts retained under this paragraph (A)(i), when taken together with any amounts retained under paragraph (A)(i) above, shall not in aggregate exceed an amount that reasonable and prudent directors would consider it necessary to retain in the Generator,
- less
- (B) all cash of the Generator (including (x) cash in hand, at bank or on deposit or which is cash pooled or similar, and (y) all cash equivalents including any financial instruments

or money market instruments not part of the ordinary course of trade of the Generator) on the immediately preceding Project Gain Share Calculation Date (or, if there is no such immediately preceding Project Gain Share Calculation Date, the Agreement Date) other than any such amounts as were at that date:

- (i) required to be retained in the Generator to satisfy its reserve requirements under:
  - (a) applicable Law, Directives or Required Authorisations; or
  - (b) the terms of:
    - (cc) the DPA Documents and/or Gain Share Transaction Documents, but in each case if the Contracting Policy is applicable to the relevant DPA Document or Gain Share Transaction Document only to the extent the terms of such document were at that date in compliance with the Contracting Policy; or
    - (dd) the Finance Documents or, to the extent entered into on arm's length, market standard terms with Third Party Lenders, any replacements thereof (including any retention obligations under such documents); or
- (ii) considered by the directors of the Generator to be necessary to retain in the Generator taking account (without double counting) of the requirements of the documents referred to in paragraphs (B)(i)(a) and (B)(i)(b) above and any directors' duties imposed by applicable Law, Directives or Required Authorisations, provided that any cash amounts retained under this paragraph (B)(ii), when taken together with any amounts retained under paragraph (B)(i) above, shall not in aggregate exceed an amount that reasonable and prudent directors would at that date have considered it necessary to retain in the Generator,

plus

- (C) the amount or cash equivalent amount of any Distributions made by the Generator in the period:
  - (i) commencing on the day after the Project Gain Share Calculation Date referred to in paragraph (B) above (or, if there is no such immediately preceding Project Gain Share Calculation Date, commencing on the Agreement Date); and
  - (ii) ending on (and including) the Project Gain Share Calculation Date referred to in paragraph (A) above,

provided that the Available Cash Flow shall not be less than zero (0)<sup>78</sup>;

**"Avoidance Event"** means, subject to paragraph (C) below, any contract, arrangement, scheme, transaction or series of transactions which (when taken together) and whether real, virtual, hybrid or synthetic, entered into or facilitated or participated in, directly or indirectly, by any of the Generator, HoldCo, the TopCos, the Investors or any Tracked Person, or any organising, structuring or restructuring by any such person of its capital or debt or business or affairs (or the conducting of the same) or the undertaking by any such person of any act or the making by any such person of any omission, in any such case which is designed to or a main purpose of which is to:

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<sup>78</sup>

Note to Reader: this definition will need to be reviewed in light of the Generator's proposed tax arrangements.

- (A)
- (i) evade, avoid, circumvent, frustrate or reduce in whole or in part the payment to or receipt by the DPA Counterparty of amounts which might otherwise be payable to the DPA Counterparty under Paragraph 2 (*Gain Share: Project Gain Share Provisions*) of Part B (*Gain Share*) or Paragraph 3 (*Gain Share: Sale Gain Share Provisions*) of Part B (*Gain Share*);
  - (ii) remove, extract or leak value from any such person so as to reduce in whole or in part the payment to or receipt by the DPA Counterparty of amounts which might otherwise be payable to the DPA Counterparty under Paragraph 2 (*Gain Share: Project Gain Share Provisions*) of Part B (*Gain Share*) or Paragraph 3 (*Gain Share: Sale Gain Share Provisions*) of Part B (*Gain Share*);
  - (iii) satisfy the Threshold Test and avoid a transferee of Economic Interests in HoldCo being a Tracked Person; or
  - (iv) avoid a sale of Economic Interests being a Relevant Sale;
- (B) provided that they satisfy the criteria set out in paragraph (A) above, Avoidance Events may be or involve (without limitation):
- (i) any reorganisation of the direct or indirect shareholding structure in, of, or relating to, any member of the HoldCo Group or the Project;
  - (ii) any issue, raising or grant of any Economic Interest at less than fair market value;
  - (iii) any issue, raising or grant of any Economic Interest other than for the purpose of funding the Project (and, for this purpose, funding the Project shall not include any voluntary cash collateralisation);
  - (iv) any securitisation of cash or cash flows or moneys standing to the credit of any bank account, in any such case of, from or relating to any member of the HoldCo Group or the Project;
  - (v) any borrowing using as collateral cash or moneys standing to the credit of any bank account of, from or relating to any member of the HoldCo Group or the Project;
  - (vi) any borrowing of Economic Interests relating to any member of the HoldCo Group from any holder of such Economic Interests, whether or not for consideration; or
  - (vii) the entry into any Affiliate Tax Arrangement(s), to the extent that such arrangement(s) involve the provision (or the absence of any provision) of consideration in an amount that is less favourable to the Generator than the consideration that would have been paid or given between third parties dealing at arm's length (including circumstances where no consideration is provided) (assuming for these purposes that the Affiliate Tax Arrangements in question are arrangements to which third parties were capable of being party);
- (C) The following shall not constitute Avoidance Events:
- (i) the entry into a Related Party Transaction for goods or services which complies with the Agreed Principles under and as defined in the Contracting Policy;

- (ii) the entry into any transaction with any person to dispose of an Economic Interest in HoldCo for fair market value and which is subject to the equity sales gain share mechanism in Paragraph 3 (*Gain Share: Sale Gain Share Provisions*);
- (iii) without prejudice to Paragraph (B)(ii) above, Paragraph 5.1(D) (*Unconditional Investor undertakings*) of Part B (*Gain Share*) and Paragraph 14 (*Group Structure*) of Appendix 2 of the Gain Share Rules, the corporate restructuring within any Investor Group or the transfer of shares within such group of companies where the Ultimate Investor in respect of such Investor Group or, where there is no Ultimate Investor, the ultimate holding company in respect of such Investor Group remains the same; or
- (iv) to the extent entered into on arm's length terms, complying with any third party financing made available other than by a member of the Shareholder Group to the Generator or to HoldCo for on-lending to the Generator for the purposes of the Project, unless, in each case, it is demonstrated that the relevant event does in fact satisfy the criteria set out in paragraph (A) above;

**"Bond"** means a bond issued by a Qualifying Bond Provider substantially in the form set out in Appendix 10 to this Schedule;

**"Bond Events"** has the meaning given to that term in Paragraph 4.5(C)(iv) (*Letter of Credit Events, Bond Events and Guarantee Events*) of Part B (*Gain Share*);

**"Collateral Amount"** means an amount equal to the Default Termination Payment as calculated in accordance with paragraph 1.1 of Annex 3 (*Calculation of Default Termination Payment*);

**"Collateral Correction Notice"** has the meaning given to that term in Paragraph 4.4(A) (*Altering Collateral*) of Part B (*Gain Share*);

**"Contracting Policy"** means the contracting policy set out at Appendix 6 (*Contracting Policy*) of this Schedule, as the same may be amended as agreed in writing between the DPA Counterparty and the Generator;

**"Contracting Policy Failure"** means any failure to perform or comply with the Contracting Policy;

**"Control"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Corporate Interest Restriction Arrangement"** means any arrangement where the allocation within the Generator's Investment Structure of any restriction arising under Part 10 of, or Schedule 7A to, the Taxation (International and Other Provisions) Act 2010 is such that the Generator is allocated a restriction in excess of that which would have arisen on a standalone basis;

**"Cost"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Daily Discount Amount"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Deed of Accession"** means a deed substantially in the form set out in Appendix 7 (*Form of Deed of Accession*) of this Schedule executed by all Parties or in such other form as the DPA Counterparty may from time to time agree in writing, acting reasonably;

**"Deemed Available Cash Flow"** means, in respect of the relevant Project Gain Share Calculation Period:

- (A) a sum equal to the amount of Available Cash Flow agreed between the DPA Counterparty and the Generator or, failing agreement, determined by an Expert in accordance with the Expert Determination Procedure as the additional amount that would have arisen but for a failure by any of the relevant Investor, TopCo, HoldCo or the Generator or any Tracked Person to perform or comply with one or more of the Gain Share Rules, in each case as applicable to it, where such failure has been agreed between the DPA Counterparty and the Generator or determined by an Expert in accordance with the Expert Determination Procedure; and
- (B) the amount agreed between the DPA Counterparty and HoldCo or, failing agreement, determined by an Expert in accordance with the Expert Determination Procedure as being a Related Party Discount Amount,

but, in any such case, for the purpose of calculating the Project Cash Flow or the Sale Cash Flow, before deducting any Gain Share Amount payable and not yet paid as a result of such Deemed Available Cash Flow;

**"Deficient Collateral Amount"** has the meaning given to that term in Paragraph 4.4(A)(ii) (*Altering Collateral*) of Part B (*Gain Share*);

**"Discount Amount"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Discounting"** means converting a currency amount that:

- (A) is forecast to be incurred, paid or accrued after a particular date; or
- (B) has been incurred, paid or accrued prior to a particular date,

into Present Value terms as at that particular date and **"Discounted"** shall be construed accordingly;

**"Dispute"** means any dispute or claim in any way relating to or arising out of this Schedule, whether contractual or non-contractual (and including any dispute or claim regarding: (i) its existence, negotiation, validity or enforceability; (ii) the performance or non-performance of a Party's obligations pursuant to it; or (iii) breach or termination of any of them);

**"Distribution"** means, in relation to any person, any payment, repayment, redemption (by way of set-off, counterclaim or otherwise) or other distribution or the like of any money or other asset in each case to a direct or indirect shareholder in, or a direct or indirect member of, such person, whether in cash or in kind and whether pursuant to the terms of an agreement or by way of gift or otherwise; and

- (A) includes payment of any dividend or return of capital to or for the benefit of, or any share repurchase from, any such shareholder or member or the making of any payment of interest, principal, costs, fees or expenses in respect of any debt (whether or not subordinated) owed to any such shareholder or member, but
- (B) excludes any payment due under a Related Party Transaction unless that Related Party Transaction is an Economic Interest,

and **"Distribute"** and **"Distributed"** shall be construed accordingly;

**"Divestment Proceeds"** means, in relation to any Relevant Sale:

- (A) all consideration (whether cash or non-cash and pro-rated as necessary by reference to the Valuation Percentage) paid or payable by or on behalf of the Acquirer to the seller under and in respect of such Relevant Sale or, if greater, the amount which would have been paid or payable but for a failure by any of the relevant Investor, TopCo, HoldCo or the Generator or any Tracked Person to perform or comply with one or more of the Gain Share Rules or the Contracting Policy, in each case as applicable to it (where such failure has been agreed between the DPA Counterparty and the Generator or determined by an Expert in accordance with the Expert Determination Procedure),

less

- (B) any reasonable third party professional services fees reasonably and necessarily incurred by the seller exclusively for the purposes of such Relevant Sale, pro-rated as necessary by reference to the Valuation Percentage,

and for the purposes of comparing against the Equity IRR Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale;

**"DPA Counterparty Designated Account"** means the bank account designated by the DPA Counterparty to receive payments under and in accordance with Part B (*Gain Share*);

**"Draft Equity IRR Model Information Request"** has the meaning given to that term in Paragraph 6.2(F) (*Revision of the Equity IRR Model*) of Part B (*Gain Share*) of this Schedule;

**"Draft Revised Equity IRR Model"** has the meaning given to that term in Paragraph 6.2(C) (*Revision of the Equity IRR Model*) of Part B (*Gain Share*) of this Schedule;

**"Economic Interest"** means, in relation to any person:

- (A) shares or other securities, direct or indirect interests in shares or other securities, (including, in each case, convertible securities and warrants and options in respect of shares or securities) of the relevant person or other equity, partnership or other ownership interests, direct or indirect, in the relevant person;
- (B) loans, loan capital or other debt interests (whether or not subordinated) made, directly or indirectly, to, or held in, such person by a direct or indirect shareholder in, or a direct or indirect member of, such person (each, a **"Shareholder Interest"**) or any loans, loan capital or other debt interests (whether or not subordinated) made to, or held in, such person which were originally Shareholder Interests; and/or
- (C) any other economic interest, direct or indirect, in such person the purpose of which is to distribute or return, or which has the effect of distributing or returning, value from such person to a direct or indirect shareholder in, or a direct or indirect member of, such person (each, an **"Other Economic Interest"**) or any other economic interest, direct or indirect, in such person which was originally an Other Economic Interest, excluding any such interest which arises solely by reason of being a counterparty under:
- (i) an agreement for the provision of goods or services to such person or the Generator entered into by such person in compliance with the Contracting Policy for the purposes of the Project;
- (ii) any guarantee, indemnity, performance bond, letter of credit or letter of support in respect of the obligations of the Generator entered into by such person in compliance with the Contracting Policy for the purposes of the Project;

- (iii) any hedging arrangement in respect of interest rates, foreign exchange or power sales entered into by such person in compliance with the Contracting Policy for the purposes of the Project; or
- (iv) any financing or refinancing arrangements (other than any hedging arrangements) entered into by such person,

in each case which does not fall within paragraph (A) or (B) above,

provided that an Economic Interest shall not include an interest arising under, and solely and exclusively by reason of:

- (i) [specified cash pooling arrangements];
- (ii) any cash pooling or similar arrangement (in any currency or currencies) operated for the benefit of an Investor Group which has been approved in writing in advance by the DPA Counterparty, acting reasonably,

and in any such case to which the Generator or HoldCo is a party, but only to the extent that such cash pooling or similar arrangement:

- (a) has been disclosed in writing in advance to the DPA Counterparty;
- (b) provides for the regular sweep of cash balances between the centralising account and the Generator or HoldCo, as applicable;
- (c) remunerates cash pooling transactions or similar arrangements, as applicable, at arm's length prices;
- (d) provides that amounts which are pooled or which are the subject of similar arrangements, as applicable, shall be repayable on demand;
- (e) does not constitute, and is not capable of being reasonably construed as, an arranged financing facility;
- (f) permits a maximum aggregate debit balance by the Generator or HoldCo, as applicable, thereunder of [one hundred million pounds (£100,000,000)], as indexed on each anniversary of the Agreement Date by reference to the Reference CPI (or the equivalent in any other currency or currencies);
- (g) is operated in the shared interests of the parties to it;
- (h) does not create or give rise to any joint and several liability or any guarantee or other surety obligation or security on the part of the Generator or HoldCo, as applicable, in favour of any other person; and
- (i) does not prevent the Generator or HoldCo, as applicable, from providing assurance to third parties that it retains control over its own funds;

**"Equity IRR"** means the IRR calculated in relation to a Project Gain Share Calculation Period and:

- (A) for this purpose, ACF (as defined in the definition of "Project Cash Flow" in this Schedule) shall be recognised on the date that an amount equal to the Available Cash Flow could have been Distributed by the Generator, being for the purpose of this calculation the date falling one hundred (100) Business Days after the Project Gain



Share Calculation Date for the purposes of the Equity IRR Report in respect of the Project Gain Share Calculation Period ending on such Project Gain Share Calculation Date, corrected for subsequent Project Gain Share Calculation Periods (the **"Subsequent ACF Correction"**) to the date falling five (5) Business Days after the date that such Equity IRR Report is agreed or determined;

- (B) for the purposes of comparing against the Equity IRR Threshold, calculated using the Project Cash Flows in relation to such Project Gain Share Calculation Period, which thereby presents a Nominal IRR; and
- (C) for the purposes of calculating any Sale Gain Share Amount, calculated on a TopCo Tranche by TopCo Tranche basis;

**"Equity IRR Model"** means the financial computer model in respect of the Project used to calculate Gain Share Amounts and corresponding to the description and requirements set out in Paragraph 6.1 (*Description of the Equity IRR Model*) of Part B (*Gain Share*), as amended, revised or replaced from time to time in accordance with this Schedule;

**"Equity IRR Report"** has the meaning given to that term in Paragraph 2.3 (*Equity IRR Report*) of Part B (*Gain Share*) of this Schedule;

**"Equity IRR Threshold"** has the meaning given to that term in the Agreement;

**"Facilities Agreement"** has the meaning given to that term in the Agreement;

**"Facility Agent"** means the Facility Agent appointed under the Facilities Agreement<sup>79</sup>;

**"Finance Documents"** means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement<sup>80</sup>;

**"Financial Indebtedness"** means (without double counting) any indebtedness for or in respect of:

- (A) moneys borrowed;
- (B) any amount raised by acceptance under any acceptance credit facility;
- (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (D) the amount of any liability in respect of any agreement which would, in accordance with IFRS, be treated as a finance or capital lease;
- (E) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (F) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of borrowing which is of a type not referred to in any other paragraph of this definition;
- (G) any hedging or derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);

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<sup>79</sup>

Note to draft: Definition to conform to underlying funding arrangements

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Note to draft: Definition to conform to underlying funding arrangements

- (H) shares which are expressed to be redeemable or are otherwise classified as borrowings under IFRS;
- (I) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (J) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; or
- (K) the amount of any liability in respect of any guarantee or indemnity or similar assurance for any of the items referred to in paragraphs (A) to (J) (inclusive) above;

**"Further Sale IRR Information Request"** has the meaning given to that term in Paragraph 3.3(D) (*Preliminary Sale IRR Report*) of Part B (*Gain Share*) of this Schedule;

**"Gain Share"** means a Project Gain Share or a Sale Gain Share, as applicable;

**"Gain Share Acceding Parties"** means any person who agrees to become bound by the terms of the DPA by executing a Deed of Accession and **"Gain Share Acceding Party"** means any one of them;

**"Gain Share Amount"** means a Project Gain Share Amount or a Sale Gain Share Amount, as applicable;

**"Gain Share Rules"** means the provisions set out at Appendix 2 (*Gain Share Rules*) of this Schedule;

**"Gain Share Schedule"** means this Schedule (*Gain Share*) to the DPA;

**"Gain Share Term"** has the meaning given to that term in Paragraph 1.2 (*Application of this Schedule*) of Part B (*Gain Share*) of this Schedule;

**"Gain Share Transaction Documents"** means:

- (A) this Schedule [●];
- (B) the Deed of Accession; and
- (C) any Parent Company Guarantee;

**"Generator's Investment Structure"** means:

- (A) the Generator's subsidiaries, subsidiary undertakings and associated undertakings;
- (B) any of the Generator's holding company, TopCo and Investor(s);
- (C) all other subsidiaries, subsidiary undertakings and associated undertakings of any such holding company, TopCo and Investor(s) from time to time; and
- (D) if the Generator is a company owned by a consortium or becomes a company owned by a consortium at any point after the date of this Agreement, any member of the consortium (and for these purposes "company owned by a consortium" and "member of the/a consortium" have the meanings given in section 153 of the Corporation Tax Act 2010);

**"Group Relief Arrangement"** means any arrangement under Part 5 or Part 5A of the Corporation Tax Act 2010 for the surrender by the Generator to any member of the Generator's Investment Structure of any Tax loss, relief, deficit, expense, allowance and/or credit;

**"Guarantee Events"** has the meaning given to that term in Paragraph 4.5(B) (*Letter of Credit Events, Bond Events and Guarantee Events*) of Part B (*Gain Share*) of this Schedule;

**"Guarantor"** means a holding company of the Generator who is a Qualifying Guarantor who enters into a Parent Company Guarantee pursuant to the provisions of this Schedule;

**"HoldCo"** has the meaning given to that term in the Agreement;

**"HoldCo Group"** means each of HoldCo and the Generator;

**"IFRS"** means the body of pronouncements issued or adopted by the International Accounting Standards Board ("**IASB**") including International Financial Reporting Standards and associated interpretations issued by the IASB and International Accounting Standards and associated interpretations adopted by the IASB;

**"Inappropriate Cost"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Insolvency Event"** means the Qualifying Issuer, the Guarantor and/or the Qualifying Bond Provider:

- (A) is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger) or becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (B) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); or
- (C) is subject to any event with respect to it which, pursuant to the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Paragraph (A) or (B) of this definition;

**"Investment Cost"** means, in relation to any Relevant Sale, the aggregate of:

- (A) all consideration (whether cash or non-cash and pro-rated as necessary by reference to the Valuation Percentage) paid or payable by or on behalf of the Acquirer to the seller under and in respect of such Relevant Sale or, if greater, the amount which would have been paid or payable but for a failure by any of the relevant Investor, TopCo, HoldCo or the Generator or any Tracked Person to perform or comply with, one or more of the Gain Share Rules or the Contracting Policy, in each case as applicable to it (where such failure has been agreed between the DPA Counterparty and HoldCo or determined by an Expert in accordance with the Expert Determination Procedure); and
- (B) any reasonable third party professional services fees reasonably and necessarily incurred by the Acquirer exclusively for the purposes of such Relevant Sale, pro-rated as necessary by reference to the Valuation Percentage, and for the purposes of comparing against the Equity IRR Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale;

**"Investment Structure Chart"** means the group structure chart set out at Appendix 4 (*Investment Structure Chart*) of this Schedule;

**"Investor"** means:

- (A) an Original Investor; and
- (B) any person which has become a Party as an Investor in accordance with Paragraph 1 (*Changes to the Parties*),

in each case which has not ceased to be a Party as an Investor in accordance with that Paragraph;

**"Investor Group"** means, in respect of an Investor, that Investor and its Group;

**"IRR"** means the internal rate of return calculated as the annual discount rate which, when applied to a series of cash flows, produces a net present value equal to zero;

**"Issuing Entity"** has the meaning given to that term in Paragraph 1.5 (*Issues of new Economic Interests below TopCos*) of Part D (*Miscellaneous*) of this Schedule;

**"Lead Investor"** has the meaning given to that term in the Agreement;<sup>81</sup>

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

**"Letter of Credit Details Notice"** has the meaning given to that term in Paragraph 4.3(A)(ii) (*Transfers and custody of collateral*) of Part B (*Gain Share*) of this Schedule;

**"Letter of Credit Events"** has the meaning given to that term in Paragraph 4.5(B) (*Letter of Credit Events, Bond Events and Guarantee Events*) of Part B (*Gain Share*) of this Schedule;

**"Loss Restriction Arrangement"** means any arrangement where the allocation within the Generator's Investment Structure of any deductions allowance arising under Part 7ZA of the Corporation Tax Act 2010 is such that the Generator is allocated a deductions allowance which is less favourable than that which would have been available to the Generator on a standalone basis;

**"Mixed Company"** means a company in respect of which the Valuation Percentage is less than [60% (sixty per cent.)] at the date of the DPA (or, if the relevant company accedes to the DPA after that date, the date upon which it accedes to the DPA) and in respect of which there is no agreement or announced intention to take any step which would result in the Valuation Percentage in respect of that company exceeding [60% (sixty per cent.)];

**"Money of the Year"** means a currency amount in a particular year and expressed in the price base of that particular year;

**"Nominal Value"** means a currency amount expressed in Money of the Year for the year in which the amount was incurred or saved or forecast to be incurred or saved, and **"Nominal"** and **"Nominal Terms"** shall be construed accordingly;

**"Original Investor"** has the meaning given to that term in the Agreement;

**"Original TopCo"** has the meaning given to that term in the Agreement;

**"Original Party"** means the persons named as Parties to the Agreement on the date on which it was originally executed;

**"Parent Company Guarantee"** means the guarantee to be provided by the Guarantor in favour of the DPA Counterparty substantially in the form set out in Appendix 8 (*Form of Parent Company Guarantee*) of this Schedule;

**"Parent Company Guarantee Details Notice"** has the meaning given to that term in Paragraph 4.3(A)(ii) (*Transfers and custody of collateral*) of Part B (*Gain Share*) of this Schedule;

**"PDE Affected Party"** has the meaning given to that term in Paragraph 3.1 (*Relief due to Payment Disruption Event*) of this Schedule;

**"PDE Obligations"** has the meaning given to that term in Paragraph 3.1 (*Relief due to Payment Disruption Event*) of this Schedule;

**"Performance Bond Details Notice"** has the meaning given to that term in Paragraph 4.3(A)(ii) (*Transfers and custody of collateral*) of Part B (*Gain Share*) of this Schedule;

**"Posted Collateral"** means the aggregate amount of all Acceptable Collateral transferred or delivered by or on behalf of the Generator in accordance with this Schedule from time to time to the extent that the same has not been: (i) returned to the Generator by or on behalf of the DPA Counterparty pursuant to the provisions of Paragraph 4.7 of Part B (*Gain Share*); or (ii) subject to a Posted Collateral Demand;

**"Posted Collateral Demand"** has the meaning given to that term in Paragraph 4.6 (*Making a Posted Collateral Demand*) of Part B (*Gain Share*) of this Schedule;

**"Preliminary Equity IRR Report"** means a written report satisfying the requirements of Paragraph 2.1(C) (*Preliminary Equity IRR Report*) of Part B (*Gain Share*), which expression shall include each element of, and each computation contained or referred to in, such report and all Supporting Information referred to in Paragraphs 2.1(C) and 2.1(D) (*Preliminary Equity IRR Report*) of Part B (*Gain Share*) of this Schedule;

**"Preliminary Sale IRR Report"** means a written report satisfying the requirements of Paragraph 3.3(A) (*Preliminary Sale IRR Report*) of Part B (*Gain Share*), which expression shall include each element of, and each computation contained or referred to in, such report and all Supporting Information referred to in Paragraph 3.3(A) (*Preliminary Sale IRR Report*) of Part B (*Gain Share*) of this Schedule;

**["Present Value"** means the value, as of any particular date, "**t**", of a currency amount or any other amount, "**AMT**", that is forecast to be incurred, paid or accrued on any other date (that is, relative to that particular date "**t**"), "**T**" (with "**t-T**" expressed in years or fractions thereof), which shall be calculated in accordance with the following formula and using:

- (A) the Post Tax Real Discount Rate, expressed as an annual effective discount rate, if the amount being Discounted is expressed in Real Terms; or
- (B) a Nominal Discount Rate, expressed as an annual effective discount rate, if the amount being Discounted is expressed in Nominal Terms,

(both "**r**"),

$$\text{Present Value} = \frac{AMT}{(1+r)^{t-T}}$$

any such discounting to be calculated from day to day on the basis of the actual number of days elapsed and a year of three hundred and sixty-five (365) days, and "**Present Valued**" shall be construed accordingly;]

**["Project Cash Flow"]** means, in relation to any TopCo and each TopCo Tranche relating to such TopCo, the cash flow in respect of each Project Gain Share Calculation Period, calculated in accordance with the following formula:

$$PCF = ACF + PACF - E - IC - PGSA$$

where:

*PCF* is the Project Cash Flow (*expressed in pounds (£)*);-

*ACF* is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such TopCo Tranche and calculated as at the relevant Project Gain Share Calculation Date;

*PACF* is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such TopCo Tranche as at each previous Project Gain Share Calculation Date;

*E* [is the aggregate Apportioned (at the time of payment in the case of paragraph (i) below) to such TopCo Tranche of:

- (i) (a) the amount of equity injections made by such TopCo into HoldCo on or after the date of incorporation of the Generator on [●] in;
- (b) the principal amount of all shareholder loans made by such TopCo to HoldCo; and
- (c) the amount paid by such TopCo in respect of any other Economic Interest in HoldCo,

(other than any Investment Cost), in each case to the extent that the same amount is in fact contributed to the Generator for the purposes of funding Project costs (and not, for the avoidance of doubt, funding Distributions) and without double counting, and calculated as at the date of the relevant payment or advance, as applicable;

- (ii) a fixed credit support cost for procuring Acceptable Collateral pursuant to this Schedule [●] equal to an annual rate of [● per cent.] ([●]%) per annum accruing on a daily basis; and

- (iii) [●];<sup>82</sup>

*IC* is the Investment Cost (if any) attributed to such TopCo Tranche as at the date such TopCo Tranche was created following a Relevant Sale, Apportioned where a portion of such TopCo Tranche is the subject of a Sale Gain Share calculation, and calculated as at the date of completion of the Relevant Sale; and

*PGSA* is the Project Gain Share Amount under Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) of Part B (*Gain Share*) already paid by HoldCo, Apportioned to such TopCo Tranche and calculated as at the date of such payment];

**"Project Gain Share"** means the determination of a Project Gain Share Amount in accordance with this Schedule;

**"Project Gain Share Amount"** means the amount paid or payable, as the case may be, to the DPA Counterparty as a result of the operation of Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) of Part B (*Gain Share*) of this Schedule;

**"Project Gain Share Calculation Date"** means:

- (A) the (i) fifth (5th) anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window; (ii) tenth (10th) anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window; and (iii) the Specified Expiry Date, and "First Project Gain Share Calculation Date", "Second Project Gain Share Calculation Date" and "Third Project Gain Share Calculation Date" shall be construed accordingly<sup>83</sup>; and/or
- (B) such other date or dates in those years as the DPA Counterparty may (acting reasonably) agree in writing with the Generator;

**"Project Gain Share Calculation Period"** has the meaning given to that term in the Agreement;

**"Project Gain Share Due Date"** means, in respect of any Project Gain Share Calculation Period:

- (A) unless Paragraph (B) or Paragraph (C) of this definition applies, the date falling ten (10) Business Days after the date of agreement or determination of the Equity IRR Report for the relevant Project Gain Share Calculation Period or, if Paragraph 2.1(B) (Preliminary Equity IRR Report) of Part B (*Gain Share*) applies, ten (10) Business Days after the date of the independent expert's opinion; or
- (B) if the DPA Counterparty elects to receive any Project Gain Share Amount by way of a Series of Payments, the relevant due dates for payment as determined by the DPA Counterparty and notified to the Generator in accordance with Paragraph 2.4(C) of Part B (*Gain Share*); or
- (C) such other date as the DPA Counterparty and the Responsible TopCo may agree in writing;

**"Project Gain Share Payment Deadline"** has the meaning given to that term in Paragraph 4.8(A) (*Enforcement Mechanism for Project Gain Share Provisions*) of Part B (*Gain Share*) of this Schedule;

**"Protective Provisions"** means the provisions set out at Appendix 5 (*Protective Provisions*) of this Schedule;

**"Qualifying Bond Provider"** means:

- (A) a bank or financial institution having a minimum short-term rating of A-1 with Standard and Poor's, P-1 with Moody's or F1 with Fitch; or
- (B) such other bank or financial institution, having such lower minimum rating as the DPA Counterparty may consent to or specify from time to time;

**"Qualifying Economic Interest"** means an Economic Interest in one (1) or more persons:

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<sup>83</sup> Note to Reader: definition of Project Gain Share Calculation Date shall apply to any DPA which has a Term of fifteen (15) years.

- (A) which directly or indirectly have an Economic Interest or Economic Interests in HoldCo or the Generator; and
- (B) in respect of which the Valuation Percentage of all such Economic Interests is no less than sixty per cent. (60%),

and, without prejudice to the generality of the foregoing, any directly held Economic Interest in the Generator, HoldCo or a TopCo shall be a Qualifying Economic Interest, and provided always that:

- (C) Economic Interests in a publicly listed person which have been offered to the market and which are publicly traded on a recognised UK securities exchange; and
- (D) Economic Interests held directly or indirectly by a person who directly or indirectly participates in, but does not have day-to-day control over the management of, any collective or pooled investment scheme, but only to the extent that such holding arises as a result of such person's direct or indirect participation in the collective or pooled investment scheme,

shall not constitute Qualifying Economic Interests and, for the purpose of this definition, **"collective or pooled investment scheme"** means an arrangement:

- (E) with respect to property of any description (but including Economic Interests in HoldCo), the purpose of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
- (F) which has the following characteristics:
  - (i) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
  - (ii) the property is managed as a whole by or on behalf of the operator of the scheme who shall be a professional fund manager contracted on arm's length terms and provided that the Economic Interests in HoldCo which are pooled and managed by such professional fund manager do not constitute a material part of such manager's business; and
- (G) which is operated by way of business;

**"Qualifying Guarantor"** has the meaning given to that term in the Agreement;

**"Qualifying Issuer"** means:

- (A) a bank or financial institution having a minimum short-term rating of A-1 with Standard and Poor's, P-1 with Moody's or F1 with Fitch; or
- (B) such other bank or financial institution, having such lower minimum rating as the DPA Counterparty may consent to or specify from time to time;

**"Real"** means a currency amount that has been adjusted from a Nominal Value to remove the effects of inflation, thus expressed in prices at any one particular day, being the Real Reference Date. For the avoidance of doubt, this is irrespective of the date at which the amount was incurred or saved, or forecast to be incurred or saved and **"Real Terms"** shall be construed accordingly;



**"Real Project Cash Flow"** means the Project Cash Flow deflated to Base Year terms by multiplying the cash flow on any given day by the Base Year CPI and dividing by the value of the CPI for the month in which the cash flow was received or paid (or if that latter CPI is not available, the Reference CPI) and in each case, for the avoidance of doubt, taking into account any rebasing of the relevant index;

**"Real Reference Date"** means the date in whose prices a Real currency amount is expressed, irrespective of the date or year in which the amount was incurred or saved, or forecast to be incurred or saved;

**"Related Party Discount Amount"** means, in respect of a Related Party Transaction, the sum (*expressed in pounds (£)*) of any Discount Amount (as determined by an Auditor in accordance with the Contracting Policy);

**"Related Party Transaction"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Relevant Sale"** means, unless otherwise agreed in writing by the DPA Counterparty:

- (A) a sale, assignment, novation, transfer or other disposal of;
- (B) the enforcement of any pledge, charge, mortgage, lien or other security interest or encumbrance on or over;
- (C) creating any trust or conferring any interest in, over or in respect of;
- (D) any agreement, arrangement or understanding in respect of votes or the right to receive dividends in respect of;
- (E) the renunciation or assignment of any right to subscribe or receive share(s) or any legal or beneficial interest in share(s) in respect of;
- (F) any agreement or arrangement to do, or having substantially the same effect as, any of the above in respect of; or
- (G) transmission by operation of law of,

any Qualifying Economic Interest which occurs before the end of the Sale Gain Share Period, and shall include any deemed Relevant Sale pursuant to Paragraph 4.10(B)(i) of Part B (*Gain Share*);

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

**"Responsible Investor"** means, as applicable, in relation to a Relevant Sale:

- (A) the Investor through which a person holds; or
- (B) the Investor that holds;
- (C) the Investor of the TopCo that holds,

the relevant Qualifying Economic Interest which is the subject of the Relevant Sale, provided that, if no Responsible Investor can be identified with respect to the Qualifying Economic Interest which is the subject of the Relevant Sale:

- (i) the Investor with whom the relevant Qualifying Economic Interest was last identified shall be the "Responsible Investor" for the purposes of this Schedule; or
- (ii) if no such Investor can be identified, the "Responsible Investor" for the purposes of this Schedule shall be that Investor that the DPA Counterparty considers, acting reasonably and on the basis of information available to it, to satisfy paragraph (A), (B) or (C) above;

**"Responsible TopCo"** means, as applicable, in relation to a Relevant Sale:

- (A) the TopCo through which a person holds; or
- (B) the TopCo that holds,

the Qualifying Economic Interest which is the subject of the Relevant Sale, provided that, if no Responsible TopCo can be identified with respect to the Qualifying Economic Interest which is the subject of the Relevant Sale:

- (i) the TopCo with whom the relevant Qualifying Economic Interest was last identified shall be the "Responsible TopCo" for the purposes of this Schedule; or
- (ii) if no such TopCo can be identified, the "Responsible TopCo" for the purposes of this Schedule shall be that TopCo that the DPA Counterparty considers, acting reasonably and on the basis of information available to it, to satisfy paragraph (A) or (B) above;

**"Sale Cash Flow"** means, in relation to any TopCo and each TopCo Tranche relating to such TopCo or any portion thereof which is subject to a Sale Gain Share calculation, the cash flow in respect of each Sale IRR Calculation Period, calculated in accordance with the following formula:

$$SCF = ACF + PACF + DP - E - IC - PGSA$$

where:

*SCF* is the Sale Cash Flow (*expressed in pounds (£)*);

*ACF* is the aggregate of the amounts of Available Cash Flow and Deemed Available Cash Flow, Apportioned to such TopCo Tranche or portion thereof and calculated as at the Project Gain Share Calculation Date immediately preceding the date of completion of the Relevant Sale;

*PACF* is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such TopCo Tranche as at each previous Project Gain Share Calculation Date;

*DP* is the Divestment Proceeds attributed to such TopCo Tranche or portion thereof pro rata to the TopCo Tranches which are the subject of the Relevant Sale;

*E* is the aggregate Apportioned (at the time of payment in the case of paragraph (a) below) to such TopCo Tranche or portion thereof of:

- (i) (a) the amount of equity injections made by such TopCo into HoldCo on or after the date of incorporation of the Generator on [date]; and

- (b) the principal amount of all shareholder loans made by such TopCo to HoldCo; and
- (c) the amount paid by such Investor in respect of any other Economic Interest in HoldCo,

(other than any Investment Cost), in each case to the extent that the same amount is in fact contributed to the Generator for the purposes of funding Project costs (and not, for the avoidance of doubt, funding Distributions) and without double counting, and calculated as at the date of the relevant payment or advance, as applicable;

- (ii) a fixed credit support cost equal to an annual rate of [● per cent. (●%)] per annum accruing on a daily basis for procuring Acceptable Collateral pursuant to this Schedule [●]; and
- (iii) [●]<sup>84</sup>;

*IC* is the Investment Cost [(if any)] attributed to such TopCo Tranche as at the date such TopCo Tranche was created following a Relevant Sale, Apportioned where a portion of such TopCo Tranche is the subject of a Sale Gain Share calculation and calculated as at the date of completion of the Relevant Sale; and

*PGSA* is the Project Gain Share Amount under Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) of Part B (*Gain Share*) already paid by HoldCo and Apportioned to such TopCo Tranche;

**"Sale Gain Share"** means the determination of a Sale Gain Share Amount in accordance with this Schedule;

**"Sale Gain Share Amount"** means the amount paid or payable, as the case may be, to the DPA Counterparty as a result of the operation of Paragraph 3.6 (*Sale Gain Share with the DPA Counterparty*) of Part B (*Gain Share*) as such amount may be increased pursuant to Paragraph 3.3(A) (*Preliminary Sale IRR Report*) of Part B (*Gain Share*);

**"Sale Gain Share Due Date"** means, in respect of any Sale IRR Calculation Period:

- (A) the date falling ten (10) Business Days after the date of agreement or determination of the Sale IRR Report for the relevant Sale IRR Calculation Period; or
- (B) if Paragraph 3.3(B) (*Preliminary Sale IRR Report*) of Part B (*Gain Share*) applies, ten (10) Business Days after the date of the independent expert's opinion; or
- (C) such other date as the DPA Counterparty and the Responsible TopCo may agree in writing;

**"Sale Gain Share Payment Deadline"** has the meaning given to that term in Paragraph 4.9(A) (*Enforcement Mechanism for Sale Gain Share Provisions*) of Part B (*Gain Share*) of this Schedule;

**"Sale Gain Share Period"** means the period from the date of the DPA until the later of:

- (A) the date falling [five (5)] years] after the Start Date; and

- (B) the date on which the aggregate Economic Interest of the Investor Group which is undertaking, or is subject to, the relevant transaction listed in any of paragraphs (A) to (G) of the definition of "Relevant Sale" falls below sixty per cent. (60%) of the aggregate Economic Interest held by that Investor Group on the date of the DPA (or, if later, the date on which the relevant Investor acceded to this DPA);

**"Sale IRR"** means the IRR calculated for each TopCo Tranche, or portion thereof which is subject to a Sale Gain Share calculation, comprising the Qualifying Economic Interests which are the subject of a Relevant Sale (in this definition, the **"Relevant TopCo Tranche"**) in relation to the Sale IRR Calculation Period for such Relevant Sale and calculated using the Sale Cash Flows attributable to the Relevant TopCo Tranche(s) in relation to such Sale IRR Calculation Period, which thereby presents a Nominal IRR;

**"Sale IRR Calculation Period"** has the meaning given to that term in the Agreement;<sup>85</sup>

**"Sale IRR Report"** has the meaning given to that term in Paragraph 3.3 (*Sale IRR Report*) of Part B (*Gain Share*) of this Schedule;

**"Secured Sums"** means each amount agreed or determined as due to the DPA Counterparty under Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) of Part B (*Gain Share*) of this Schedule;

**"Security Interest"** means any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;

**"Security Trustee"** has the meaning given to that term in Annex 5 (*Form of Direct Agreement*);

**"Selling Shareholder"** means, in relation to a Relevant Sale, the seller of the relevant Qualifying Economic Interest which is the subject of the Relevant Sale and, in respect of rights, obligations and liabilities of a Selling Shareholder under this Schedule, only to the extent that such seller is party to this Schedule;

**"Series of Payments"** means, in respect of any amount payable by a Party, a series of payments which is commercially equivalent to such amount had it been paid as a lump sum on the due date therefor, taking into account the payment plan and the risk associated with the payments being made;

**"Shareholder Group"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Single Purpose Company"** means that the Generator's business is limited to:

- (A) the Project;
- (B) [other];
- (C) activities associated with any or all of the foregoing or reasonably incidental or preparatory thereto, including under any Gain Share Transaction Documents or Finance Documents to which it is a party<sup>86</sup>;

<sup>85</sup> Note to Reader: the Sale IRR Calculation Period shall commence on the date on which the first investment was made into the Project.

<sup>86</sup> Note to Reader: the requirement for investors to hold their interests in the Generator through single purpose entities is subject to further review.

**"Subject Entity"** has the meaning given to that term in Paragraph 1(B) of Appendix 3 (*Valuation Procedure*) of this Schedule;

**"Subsequent ACF Correction"** has the meaning given to that term in paragraph (A) of the definition of **"Equity IRR"** in this Schedule;

**"Termination Compensation Amount"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Third Party Lender"** means any commercial lender which is not a Government Entity;

**"Third Party Transaction"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Threshold Excess Sale Proceeds"** means, in respect of a Relevant Sale, an amount (*expressed in pounds (£)*) equal to:

- (A) the Divestment Proceeds (Apportioned as necessary) in respect of such Relevant Sale, less
- (B) the Divestment Proceeds (Apportioned as necessary) which would have needed to have been realised in respect of such Relevant Sale for the result of those proceeds to be that the Sale IRR would have been equal to the Equity IRR Threshold,

provided that the Threshold Excess Sale Proceeds shall not be less than zero;

**"Threshold Test"** means, in respect of any transfer or issue of Economic Interest(s) in HoldCo (other than a transfer of Qualifying Economic Interest(s) or a transfer or issue to a member of an Investor Group) whether actual or (in the case of paragraph (C) or (D) of the definition of "Tracked Person") notional, if the product of:

- (A) the proportion which the Economic Interests in HoldCo which are the subject of, or form part of, the transfer or issue bears to the total Economic Interests in HoldCo of all TopCos, expressed as a decimal; and
- (B) the value of the Generator, expressed in pounds, where such value shall be assessed:
  - (i) in the period from (and including) the Agreement Date to (but excluding) the Start Date, on the basis of the book value of HoldCo's Economic Interests in the Generator; and
  - (ii) thereafter, on the basis of the fair market value of HoldCo's Economic Interests in the Generator,

is less than an amount equal to three point five per cent. (3.5%) of the book value of HoldCo's Economic Interests in the Generator, as determined in the event of a Dispute by an Expert in accordance with the Expert Determination Procedure (and the Threshold Test shall be considered to be satisfied if such condition is met), and for the purposes of this definition, any reference to the book value of HoldCo's Economic Interests in the Generator shall be determined as at the date of the transfer or issue by reference to the management accounts of HoldCo produced at or updated to the date of the relevant transfer or issue, and such management accounts shall include the relevant information as to book value and be prepared in accordance with generally accepted accounting principles, as determined in the event of a Dispute by an Expert in accordance with the Expert Determination Procedure;

**"TopCo"** means:

- (A) an Original TopCo; and
- (B) any person which has become a Party as a Topco in accordance with Paragraph 1 (*Changes to the Parties*),

in each case which has not ceased to be a Party as a TopCo in accordance with that Clause;

**"TopCo Group"** means, in relation to any person, the TopCo through which that person's Economic Interests in HoldCo are held or, as applicable, the TopCo which holds such Economic Interests in HoldCo and any member of the HoldCo Group;

**"TopCo Tranche"** means, in relation to each TopCo, a tranche of Economic Interests in HoldCo determined and attributed to the relevant TopCo in accordance with the following rules:

- (A) at the Agreement Date, a TopCo's aggregate Economic Interests in HoldCo shall constitute a single TopCo Tranche and any Economic Interests in HoldCo acquired thereafter (other than pursuant to a Relevant Sale) and relating to such TopCo shall accrete to the Topco Tranche to which those Economic Interests most closely relate;
- (B) at the date a new party becomes a TopCo other than by way of Relevant Sale, the aggregate Economic Interests in HoldCo of such TopCo shall constitute a single TopCo Tranche;
- (C) if there is a Relevant Sale by such TopCo or any person who holds a Qualifying Economic Interest through that TopCo, the TopCo Tranche(s) relating to such TopCo which, at that time, together comprise such TopCo's aggregate Economic Interests in HoldCo shall be re-tranched, revised or cancelled as follows:
  - (i) the Sale Gain Share calculation shall be carried out in relation to that portion of each TopCo Tranche which is subject to the Relevant Sale where, for each such TopCo Tranche, such portion is equal to the ratio (*expressed as a percentage (%)*) of the Economic Interests in HoldCo that are the subject of the Relevant Sale, divided by the aggregate Economic Interests in HoldCo of the TopCo Tranches to which the Economic Interests that are the subject of the Relevant Sale relate;
  - (ii) if the percentage share under sub-paragraph (i) above is less than one hundred per cent. (100%), each existing TopCo Tranche (relating to such TopCo) to which the Economic Interests that are the subject of the Relevant Sale relate shall be divided into two parts such that:
    - (a) one part, representing the Economic Interests in HoldCo which are referable to the Relevant Sale, shall be subject to the Sale Gain Share calculation referred to in sub-paragraph (i) above and, following that Sale Gain Share calculation, shall be cancelled; and
    - (b) the other part shall remain as a TopCo Tranche relating to such TopCo but shall reference the reduced Economic Interests in HoldCo, being those which are not subject to the Sale Gain Share calculation referred to in sub-paragraph (i) above;
  - (iii) a new TopCo Tranche with Economic Interests in HoldCo equal to the Economic Interests in HoldCo which were referable to the Relevant Sale shall be created in relation to the TopCo which is the Acquirer (or, where the Acquirer is not the TopCo, the TopCo through which the relevant Economic Interest is held) of those latter Economic Interests and, for the avoidance of doubt, such new

TopCo Tranche shall be in addition to and separate from any other then existing TopCo Tranche(s) relating to such TopCo; and

- (iv) any TopCo Tranche(s) of the relevant TopCo which is (or are) not the subject of a Sale Gain Share calculation pursuant to sub-paragraphs (iii) and (iv) above shall continue to exist unamended; and
- (D) for the avoidance of doubt, the Economic Interests in HoldCo represented in aggregate by all TopCo Tranches shall always be equal to the aggregate of the actual Economic Interests in HoldCo of all TopCos;

**"Tracked Person"** means, in respect of each Investor and TopCo:

- (A) each person who holds an Economic Interest in HoldCo through such person at the Agreement Date;
- (B) each person in that person's Shareholder Group, and any member of the TopCo Group who holds an Economic Interest in HoldCo;
- (C) each Transferee and each other person in that Transferee's Group who, by virtue of the transfer of Economic Interests in HoldCo, holds an Economic Interest in HoldCo which if that Economic Interest, together with any other Economic Interests in HoldCo held by such person as at the time of transfer, were to be transferred by such person would not satisfy the Threshold Test; and
- (D) each person to whom Economic Interests in HoldCo are issued which, if those Economic Interests, together with any other Economic Interests in HoldCo held by such person as at the time of issue, were to be transferred by such person, would not satisfy the Threshold Test, and each other person in such person's Group who, by virtue of such issue of Economic Interests, holds an Economic Interest in HoldCo which if that Economic Interest, together with any other Economic Interests in HoldCo held by such person as at the time of issue, were to be transferred by such person would not satisfy the Threshold Test,

and shall include any deemed Tracked Person pursuant to Paragraph 4.10(B)(ii) of Part B (*Gain Share*);

**"Transaction"** has the meaning given to that term in Appendix 6 (*Contracting Policy*) of this Schedule;

**"Transfer"** has the meaning given to that term in Paragraph 1.1 (*Restrictions on Transfers*) of Part D (*Miscellaneous*) of this Schedule;

**"Transferee"** means, in respect of each Investor, and each TopCo, each person to whom Economic Interests in HoldCo originally held by or through that Investor or TopCo or any other person referred to in the definition of **"Tracked Person"** (other than the Transferee itself) are transferred or further transferred, provided that:

- (A) if the Threshold Test is applicable to such Transferee, a person shall not be a "Transferee" for the purposes of this Schedule if the Economic Interests in HoldCo transferred to such person satisfy the Threshold Test; and
- (B) for the avoidance of doubt, if that person becomes an Investor or is or becomes Associated with another Investor, in each case in accordance with this Schedule, such person shall be deemed to be a Transferee for the purposes of the definition of **"Tracked Person"** with respect to such other Investor;

**"Transferee Investor"** means, as appropriate, the person which acquires Economic Interests in HoldCo through a Transferee TopCo or from an Investor or through an issue of Economic Interests in HoldCo, in each case, in accordance with Paragraph 1 (*Changes to the Parties*) and which will become an Investor upon execution of a Deed of Accession;

**"Transferee TopCo"** means, as appropriate, the person which acquires Economic Interests in HoldCo from a TopCo or through an issue of Economic Interests in HoldCo, in each case, in accordance with Paragraph 1 (*Changes to the Parties*) and which will become a TopCo upon execution of a Deed of Accession;

**"Transferor TopCo"** means the TopCo which transfers Economic Interests in HoldCo in accordance with Paragraph 1 (*Changes to the Parties*);

**"UK Insolvency Regulation"** has the meaning given to that term in paragraph 5 of Appendix 3 (*Valuation Procedure*) of this Schedule;

**"Ultimate Investor"** means any person who has Control (as defined in Appendix 6 (*Contracting Policy*) of this Schedule) of an Investor [or who holds a direct or indirect interest in 30% (thirty per cent.) or more of the equity share capital (or other economic interests) of an Investor];

**"Ultimate Investor Group"** means each Ultimate Investor and their respective subsidiaries and holding companies;

**"Valuation Percentage"** has the meaning given to that term in paragraph 3(A) of Appendix 3 (*Valuation Procedure*) of this Schedule;

**"Valuer"** means any person appointed pursuant to paragraph 1 (*Appointment of Valuer*) of Appendix 3 (*Valuation Procedure*) of this Schedule; and

**"VAT Group Re-charge Arrangement"** means any arrangement where: (i) the Generator is appointed as the representative member of a VAT group containing the Generator and one or more other members of the Generator's Investment Structure; and (ii) no provisions are put in place pursuant to which the Generator is entitled to recover from the other members of that VAT group any amounts in respect of VAT for which the Generator has accounted (in its capacity as representative member) and which are attributable to supplies, acquisitions, exports or imports made or received by those other members of the VAT group.

### ***Interpretation***

- 2.2 Subject to Paragraph 2.3 of this Schedule, unless a contrary indication appears, terms defined in Condition 1.1 (*Definitions*) have the same meaning in this Schedule.
- 2.3 Where a term is defined in both Paragraph 2.1 of this Schedule and in Condition 1.1 (*Definitions*), the definition in Paragraph 2.1 of this Schedule shall apply instead of the definition in the Condition 1.1 (*Definitions*).
- 2.4 The principles of interpretation and construction set out in Conditions 1.3 to 1.14 shall have effect as if set out in this Schedule.
- 2.5 This Schedule forms part of the DPA and shall have the same force and effect as if expressly set out in the body of the DPA, and any reference to the Schedule shall include the Appendices.

### ***Person through which a Qualifying Economic Interest is held***

- 2.6 Any reference in this Schedule to a person through which a Qualifying Economic Interest which is the subject of a Relevant Sale is held shall be construed as a reference to the person through



which the Economic Interest in HoldCo is held to which the relevant Qualifying Economic Interest which is the subject of the Relevant Sale relates.

## Part B – Gain Share

### 1. GAIN SHARE: GENERAL

#### **Introduction**

1.1 Each of the Generator, HoldCo, the TopCos and the Investors intends that the DPA Counterparty shall be entitled to receive sums under this Part B calculated by reference to:

- (A) the Available Cash Flow and Deemed Available Cash Flow; and
- (B) the proceeds of the sale of Qualifying Economic Interests (on a TopCo Tranche by TopCo Tranche basis),

in each case as and when the Equity IRR Threshold is reached.

#### **Gain Share: No double counting of cash**

1.2 In the event of a Relevant Sale, there shall be no double counting for the purposes of any Sale Gain Share of cash in, or cash which has been deemed to be in, the Generator in respect of which a Project Gain Share Amount has previously been calculated, and in the event of a subsequent Project Gain Share calculation there shall be no double counting for that purpose of cash or deemed cash in respect of which a Sale Gain Share has previously been calculated.

### 2. GAIN SHARE: PROJECT GAIN SHARE PROVISIONS

#### **Preliminary Equity IRR Report**

2.1

- (A) No later than [forty (40)] Business Days after each Project Gain Share Calculation Date, the Generator shall provide the DPA Counterparty with a written report in respect of the Project Gain Share Calculation Period ending immediately prior to the relevant Project Gain Share Calculation Date, satisfying the requirements of Paragraph 2.1(C).
- (B) If the report referred to in Paragraph 2.1(A) is not provided in respect of any Project Gain Share Calculation Period on or by the date referred to in that Paragraph:
  - (i) the DPA Counterparty may obtain at the Generator's cost and expense an opinion from an independent expert as to the Equity IRR (which opinion shall be final and binding on the Parties in the absence of fraud or manifest error) for the Project Gain Share Calculation Period that would otherwise have been covered by the relevant Preliminary Equity IRR Report and that opinion shall be treated as the Equity IRR Report for the relevant Project Gain Share Calculation Period and used in the determination of the amounts payable to the DPA Counterparty under Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*);
  - (ii) no Preliminary Equity IRR Report or separate or further Equity IRR Report shall be required for this purpose;
  - (iii) the Generator shall provide the independent expert with such information and assistance as the independent expert may reasonably request for the purposes referred to in Paragraph 2.1(B)(i);
  - (iv) the DPA Counterparty shall provide a copy of any independent expert's final opinion obtained by it pursuant to Paragraph 2.1(B)(i) to the Generator as soon as reasonably practicable; and

- (v) the DPA Counterparty may suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator under the DPA in any period during which the Generator is in breach of the obligation set out in Paragraph 2.1(A).
- (C) Each Preliminary Equity IRR Report shall:
- (i) be prepared at the cost and expense of the Generator;
  - (ii) be prepared using the most up-to-date data available to the Generator at the time of its preparation;
  - (iii) be substantially in the form and with the content set out at Appendix 9 (*Form of Preliminary Equity IRR Report*) of this Schedule and be accompanied by the Information referred to in Paragraph 2.1(D);
  - (iv) set out in reasonable detail the Available Cash Flow in respect of the relevant Project Gain Share Calculation Period;
  - (v) give reasons in reasonable detail for the retention of any amounts retained by the Generator as referred to in Paragraph (A)(ii) of the definition of "Available Cash Flow" in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of this Schedule together with reasonable details of the amounts so retained and the calculation thereof;
  - (vi) contain confirmation that there has been no failure to perform or comply with one or more of the Gain Share Rules or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any resultant Deemed Available Cash Flow;
  - (vii) contain confirmation that there has been no failure to perform or comply with the Contracting Policy or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any resultant Related Party Discount Amount;
  - (viii) set out, in reasonable detail, all Project Cash Flows and Real Project Cash Flows in respect of the relevant Project Gain Share Calculation Period including the dates on which each such cash flow was received or paid, or is forecast to be received or paid;
  - (ix) set out, in reasonable detail, the calculation of the Equity IRR for the Project Gain Share Calculation Period ending immediately prior to the relevant Project Gain Share Calculation Date (taking into account, among other things, the information referred to in Paragraph 2.1(C)(viii)) as at the Project Gain Share Calculation Date relating to that Project Gain Share Calculation Period;
  - (x) specify whether, and the extent to which, the Equity IRR as at such Project Gain Share Calculation Date exceeds the Equity IRR Threshold;
  - (xi) contain full details of the administrative costs and expenses of the Generator incurred since the immediately preceding Project Gain Share Calculation Date and of the administrative costs and expenses that it forecasts it will incur, in each case in respect of this Schedule (*Gain Share*); and
  - (xii) contain full details of any Distribution which has been made, and any proposed Distribution which is to be made, by the Generator to HoldCo and by HoldCo to

each TopCo and the Project Gain Share Amount to be paid to the DPA Counterparty consequent upon the Project Cash Flows in relation to the relevant Project Gain Share Calculation Period, including the amount and calculation thereof, and the Generator's estimate of the Project Gain Share Due Date.

- (D) Each Preliminary Equity IRR Report shall be accompanied by:
- (i) a Directors' Certificate from the directors of the Generator in relation to the Information contained in, or enclosed with, the Preliminary Equity IRR Report;
  - (ii) the Equity IRR Model which shall include details of the cash flows from the Generator (including the Available Cash Flow) and the calculation of the amount available for distribution by the Generator and the Project Gain Share Amount (if any);
  - (iii) copies of:
    - (a) the then latest audited accounts of the Generator covering at least three-fifths (3/5th) of the five (5) year period immediately prior to the last day of the relevant Project Gain Share Calculation Period;
    - (b) the then latest management accounts of the Generator covering the balance of the relevant Project Gain Share Calculation Period which is not covered by the latest audited accounts provided pursuant to Paragraph 2.1(D)(iii)(a) above;
    - (c) a reconciliation statement against each of the latest audited accounts and the latest management accounts of the Generator; and
    - (d) any other Supporting Information, in reasonable detail, which the Generator considers to be relevant to the matters which are the subject of the Preliminary Equity IRR Report, for the relevant Project Gain Share Calculation Period;
  - (iv) a certificate from the Auditors addressed to the DPA Counterparty confirming the statements made in the Preliminary Equity IRR Report, certifying the audited accounts and management accounts provided pursuant to Paragraphs 2.1(D)(iii)(a) and 2.1(D)(iii)(b) above, and certifying the Available Cash Flow, Deemed Available Cash Flow [and Equity IRR] in respect of such Project Gain Share Calculation Period together with computations in reasonable detail in support; and
  - (v) an update of the Equity IRR Report(s) for earlier Project Gain Share Calculation Period(s) correcting the Equity IRR calculation thereunder solely for the dates in accordance with the Subsequent ACF Correction.
- (E) The DPA Counterparty may, by notice to the Generator during the thirty (30) Business Day period after receipt of the Preliminary Equity IRR Report, request the Generator to provide to the DPA Counterparty such Supporting Information in relation to the Preliminary Equity IRR Report (a "**Further Equity IRR Information Request**") as the DPA Counterparty reasonably requires.
- (F) If the DPA Counterparty gives a Further Equity IRR Information Request to the Generator, the Generator shall within thirty (30) Business Days of such request, or such longer period, if any, as is agreed between the DPA Counterparty and the Generator (each acting reasonably), prepare and deliver such further Supporting Information to

the DPA Counterparty, together with a Directors' Certificate and a certificate from the Auditors in relation to the Supporting Information provided in response to such Further Equity IRR Information Request.

- (G) The DPA Counterparty shall, within ninety (90) Business Days after receipt of the Preliminary Equity IRR Report or, if it has given a Further Equity IRR Information Request to the Generator, within ninety (90) Business Days after receipt of the further Supporting Information requested in the relevant Further Equity IRR Information Request, notify the Generator whether or not it approves the matters which are the subject of the Preliminary Equity IRR Report and, where the DPA Counterparty does not approve the matters which are the subject of the Preliminary Equity IRR Report, it shall give the Generator reasons in support.
- (H) If the DPA Counterparty does not notify the Generator whether or not it approves the matters which are the subject of a Preliminary Equity IRR Report within the ninety (90) Business Day period referred to in Paragraph 2.1(G), that Preliminary Equity IRR Report shall be deemed not to be agreed.

### ***Disputes in relation to a Preliminary Equity IRR Report***

#### 2.2

- (A) If the Generator and the DPA Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of a Preliminary Equity IRR Report or related matters (including Supporting Information), either the Generator or the DPA Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure.
- (B) Until the Generator and the DPA Counterparty agree the matters which are the subject of a Preliminary Equity IRR Report or a Dispute in respect of it has been determined by an Expert in accordance with the Expert Determination Procedure, there shall be no Equity IRR Report in respect of the relevant Project Gain Share Calculation Date.

### ***Equity IRR Report***

#### 2.3

Upon:

- (A) the DPA Counterparty notifying the Generator that it approves the matters which are the subject of a Preliminary Equity IRR Report;
- (B) the DPA Counterparty and the Generator agreeing the matters which are the subject of a Preliminary Equity IRR Report (and any amendments to that Preliminary Equity IRR Report being made in accordance with that agreement); or
- (C) any Dispute (other than merely as to whether the Generator has submitted all the information required for a Preliminary Equity IRR Report) with respect to the matters which are the subject of a Preliminary Equity IRR Report being resolved or determined as provided in Paragraph 2.2 (*Disputes in relation to a Preliminary Equity IRR Report*) (and any amendments to the Preliminary Equity IRR Report being made in accordance with that resolution or determination),

the Preliminary Equity IRR Report (once delivered and as amended, if applicable) shall become the "**Equity IRR Report**" in respect of the relevant Project Gain Share Calculation Date. Without prejudice to the foregoing, each of the Generator and the DPA Counterparty

acknowledges and agrees that it is its intention, and (subject and without prejudice to the Expert Determination Procedure) each such person shall use its reasonable endeavours to ensure, that there shall be an Equity IRR Report in respect of a Project Gain Share Calculation Period before the date which is eighteen (18) months after the relevant Project Gain Share Calculation Date.

### ***Project Gain Share with the DPA Counterparty***

#### **2.4**

- (A) Where the Equity IRR (set out in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Paragraph 2.1(B) (*Preliminary Equity IRR Report*)) is or falls below the Equity IRR Threshold, no Project Gain Share Amount shall be payable.
- (B) Where the Equity IRR (set out in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Paragraph 2.1(B) (*Preliminary Equity IRR Report*)) exceeds the Equity IRR Threshold, the Generator shall pay to the DPA Counterparty a Project Gain Share Amount in an amount equivalent to thirty per cent. (30%) of the Available Cash Flow (including any Deemed Available Cash Flow) in excess of the Equity IRR Threshold, in all cases in accordance with Paragraph 2.4(C) and by the Project Gain Share Due Date.
- (C) Where Paragraph 2.4(B) applies, the DPA Counterparty shall elect by notice to, and after consultation with, the Generator:
  - (i) to receive any Project Gain Share Amount referred to in Paragraph 2.4(B), by way of a Series of Payments and/or a single lump sum payment made to the credit of the DPA Counterparty Designated Account; and
  - (ii) the relevant Project Gain Share Due Date(s) by which the Generator shall make such payment(s).
- (D) The Project Gain Share Amount shall be Discounted to Present Value as at the Project Gain Share Calculation Date using the Post-Tax Real Discount Rate.<sup>87</sup>
- (E) If the DPA Counterparty considers that payment of a Project Gain Share Amount due to the DPA Counterparty under this Paragraph 2.4 has not been made to the DPA Counterparty by the Project Gain Share Due Date:
  - (i) the DPA Counterparty shall notify the Generator within [one hundred and eighty (180)] Business Days after the relevant Project Gain Share Due Date; and
  - (ii) if the Generator agrees, or if an Expert determines in accordance with the Expert Determination Procedure, that there has been a failure to make payment of a Project Gain Share Amount, the Generator shall make that payment to the credit of the DPA Counterparty Designated Account (together with Default Interest thereon from the Project Gain Share Due Date to the actual date of payment).

### **3. GAIN SHARE: SALE GAIN SHARE PROVISIONS**

#### ***Calculation of Economic Interests following a Relevant Sale***

- 3.1 Subject to Paragraph 3.2(A), any calculation under this Schedule of the Economic Interests of any person in HoldCo following a Relevant Sale, or any calculation of the apportionment

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<sup>87</sup> Note to Reader: the Post-Tax Real Discount Rate is to be set on a project by project basis.

between, or of a portion or proportion of, or of the attribution of any amount to, a TopCo Tranche following a Relevant Sale, shall be made by reference to the direct or indirect shareholding of such person in HoldCo represented by such TopCo Tranche to which the Economic Interests in HoldCo referred to above relate.

3.2 Where:

- (A) Economic Interests in a person forming part of a TopCo Tranche are the subject of a Relevant Sale and are of different types; and
- (B) each such type of Economic Interests is not held in the same proportion as the same type of Economic Interests held by each other holder of Economic Interests in that person which also form part of the same TopCo Tranche,

then such calculation shall be made by reference to the par value of the shares and the principal amount of shareholder loans plus any accrued, unpaid interest (or nearest equivalent in the case of other Economic Interests) directly or indirectly held in or (as applicable) made to HoldCo by such person.

***Preliminary Sale IRR Report***

3.3

- (A) No later than twenty (20) Business Days after completion of a Relevant Sale, the Responsible TopCo and (if party to this DPA) the Acquirer shall, and shall be jointly and severally liable to, calculate the Sale IRR(s) and provide the DPA Counterparty with a written report setting out:
  - (i) reasonable details of the Relevant Sale, including details of the seller, the Acquirer, the Qualifying Economic Interest which is the subject of the Relevant Sale, details of any new Tracked Person(s) as a result of the Relevant Sale, details of the relevant Investor and TopCo with which the Acquirer is or is to be Associated, the date of the Relevant Sale agreement, the date of completion of the Relevant Sale and the consideration received or receivable or potentially receivable;
  - (ii) if, as a result of the Relevant Sale, there is any change in the Economic Interests held by an Investor (including any Economic Interests held by any member of the Investor's Group and any of its Associated persons), reasonable details of the division of Economic Interests between such Investor (or any such member or Associated person) and the Acquirer;
  - (iii) the Sale IRR(s) and reasonable details of the calculation thereof;
  - (iv) any calculations and other Supporting Information, in reasonable detail, which the Responsible TopCo or the Acquirer considers to be relevant to the Preliminary Sale IRR Report; and
  - (v) confirmation that there has been no failure by the Responsible TopCo, the seller or any member of the TopCo Group of the Responsible TopCo, to comply with one or more of the Gain Share Rules or the Contracting Policy, in each case as applicable to it, or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any resultant change in the Divestment Proceeds or Investment Cost. For the avoidance of doubt, the DPA Counterparty shall be entitled to increase the Sale Gain Share Amount by any amount by which it has been reduced as a result of:

- (a) any failure to comply with the Gain Share Rules or the Contracting Policy; and/or
  - (b) any Avoidance Event or Abusive arrangement.
- (B) If the Responsible TopCo or the Acquirer does not provide the report referred to in Paragraph 3.3(A) within the period referred to in Paragraph 3.3(A):
  - (i) the DPA Counterparty may obtain at the cost and expense of the Responsible TopCo or (if party to this DPA) the Acquirer an opinion from an independent expert as to the Sale IRR(s) (which opinion shall be final and binding on the Parties in the absence of fraud or manifest error) and that opinion shall be treated as the Sale IRR Report and used in the determination of the amounts payable to the DPA Counterparty under Paragraph 3.6 (*Sale Gain Share with the DPA Counterparty*);
  - (ii) no Preliminary Sale IRR Report or separate or further Sale IRR Report shall be required for this purpose;
  - (iii) the Responsible TopCo and the Acquirer shall provide the Expert with such information and assistance as it may reasonably request for the purposes referred to in Paragraph 3.3(B)(i); and
  - (iv) the DPA Counterparty shall provide a copy of any independent expert's final opinion obtained by it pursuant to Paragraph 3.3(B)(i) to the Responsible TopCo and the Acquirer as soon as reasonably practicable.
- (C) The Preliminary Sale IRR Report shall be accompanied by:
  - (i) a Directors' Certificate from the directors of the Responsible TopCo and (if party to this DPA) the Acquirer in relation to the information contained in, or enclosed with, the Preliminary Sale IRR Report; and
  - (ii) a certificate from the Auditors addressed to the DPA Counterparty confirming the statements made in the Preliminary Sale IRR Report and certifying [the calculation of the Sale IRR] together with computations in reasonable detail in support.
- (D) The DPA Counterparty may, by notice to the Responsible TopCo during the thirty (30) Business Day period after receipt of the Preliminary Sale IRR Report, request the Responsible TopCo and (if party to this DPA) the Acquirer to provide to the DPA Counterparty such Supporting Information in relation to the Preliminary Sale IRR Report (a "**Further Sale IRR Information Request**") as the DPA Counterparty reasonably requires.
- (E) If the DPA Counterparty gives a Further Sale IRR Information Request to the Responsible TopCo, the Responsible TopCo and (if party to this DPA) the Acquirer shall within thirty (30) Business Days of such request, or such longer period, if any, as is agreed between the DPA Counterparty and the Responsible TopCo (each acting reasonably), prepare and deliver such further Supporting Information to the DPA Counterparty, together with a Directors' Certificate and a certificate from the Auditors in relation to the Supporting Information provided in response to such Further Sale IRR Information Request.
- (F) The DPA Counterparty shall, within thirty (30) Business Days after receipt of the Preliminary Sale IRR Report or, if it has given a Further Sale IRR Information Request



to the Responsible TopCo, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further Sale IRR Information Request, notify the Responsible TopCo whether or not it approves the matters which are the subject of the Preliminary Sale IRR Report and, where the DPA Counterparty does not approve the matters which are the subject of the Preliminary Sale IRR Report, it shall give the Responsible TopCo reasons in support.

- (G) If the DPA Counterparty does not notify the Responsible TopCo whether or not it approves the matters which are the subject of the Preliminary Sale IRR Report within the relevant thirty (30) Business Day period referred to in Paragraph 3.3(F), the Preliminary Sale IRR Report shall be deemed not to be agreed.

***Disputes in relation to a Preliminary Sale IRR Report***

3.4

- (A) If the Responsible TopCo and the DPA Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of a Preliminary Sale IRR Report or related matters (including Supporting Information), either the Responsible TopCo or the DPA Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure.
- (B) Until the Responsible TopCo and the DPA Counterparty agree the matters which are the subject of a Preliminary Sale IRR Report or the Dispute in respect of it has been determined by an Expert in accordance with the Expert Determination Procedure, there shall be no Sale IRR Report.

***Sale IRR Report***

3.5

Upon:

- (A) the DPA Counterparty notifying the Responsible TopCo that it approves the matters which are the subject of a Preliminary Sale IRR Report;
- (B) the DPA Counterparty and the Responsible TopCo agreeing the matters which are the subject of a Preliminary Sale IRR Report (and any amendments to that Preliminary Sale IRR Report being made in accordance with that agreement); or
- (C) any Dispute (other than merely as to whether the Responsible TopCo or the Acquirer has submitted all the information required for a Preliminary Sale IRR Report) with respect to the matters which are the subject of a Preliminary Sale IRR Report being resolved or determined as provided in Paragraph 3.2 (*Disputes in relation to a Preliminary Sale IRR Report*) (and any amendments to the Preliminary Sale IRR Report being made in accordance with that resolution or determination),

the Preliminary Sale IRR Report (once delivered and as amended, if applicable) shall become the "**Sale IRR Report**" in respect of the Relevant Sale.

***Sale Gain Share with the DPA Counterparty***

3.6

- (A) Where the Sale IRR(s) (set out in the Sale IRR Report or in the report of the independent expert pursuant to Paragraph 3.3(B) (*Preliminary Sale IRR Report*)) exceeds the Equity IRR Threshold, the Responsible TopCo and (if party to this DPA)

the Selling Shareholder, the Acquirer and the Acquirer's TopCo shall be jointly and severally liable in respect of each relevant TopCo Tranche (or portion thereof, as applicable), to pay to the credit of the DPA Counterparty Designated Account a Sale Gain Share Amount equivalent to thirty per cent. (30%) of the Threshold Excess Sale Proceeds, in all cases by the Sale Gain Share Due Date.

- (B) Where Paragraph 3.6(A) applies, the DPA Counterparty shall elect by notice to, and after consultation with, the Generator:
- (i) to receive any Sale Gain Share Amount referred to in Paragraph 3.6(A), by way of a Series of Payments and/or a single lump sum payment made to the credit of the DPA Counterparty Designated Account; and
  - (ii) the relevant Sale Gain Share Due Date(s) by which the Generator shall make such payment(s).
- (C) The Sale Gain Share Amount shall be Discounted to Present Value as at the Sale Gain Share Calculation Date using the Post-Tax Real Discount Rate.<sup>88</sup>
- (D) If any further consideration in respect of a Relevant Sale is received (which for these purposes shall include any further Distributions, or amounts in respect thereof, in respect of the Economic Interests which are the subject of the Relevant Sale and received by the Selling Shareholder as part of the consideration for the Relevant Sale), the Responsible TopCo and (if party to this DPA) the Selling Shareholder, the Acquirer and the Acquirer's TopCo shall be jointly and severally liable on each occasion after receipt of any such consideration to:
- (i) recalculate the Sale IRR(s) set out in the Sale IRR Report or report of the independent expert pursuant to Paragraph 3.3(B) (*Preliminary Sale IRR Report*) to include such further consideration (as of the date of receipt of such further consideration but otherwise on the same basis as the original calculation); and
  - (ii) provide written details of the calculation to the DPA Counterparty,
- no later than ten (10) Business Days after such receipt.
- (E) The provisions of Paragraph 3.6(A) shall apply mutatis mutandis in respect of such recalculated Sale IRR(s), and if as a result, and after deducting payments previously made thereunder, an amount or additional amount becomes payable pursuant thereto, the Responsible TopCo and (if party to this DPA) the Selling Shareholder, the Acquirer and the Acquirer's TopCo shall pay, and shall be jointly and severally liable to pay, the same to the credit of the DPA Counterparty Designated Account no later than ten (10) Business Days after the provision of the details referred to in Paragraph 3.6(D) above. For the avoidance of doubt, no payment or repayment shall be due or payable by the DPA Counterparty under or pursuant to this Paragraph 3.6(E).
- (F) If the DPA Counterparty considers that any of the Responsible TopCo, the Selling Shareholder, the Acquirer or the Acquirer's TopCo has not paid a Sale Gain Share Amount due from it under this Paragraph 3 into the DPA Counterparty Designated Account by the Sale Gain Share Due Date or the date provided for under Paragraph 3.6(C), as applicable, then:

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Note to Reader: the Discount Rate is to be set on a project by project basis.

- (i) the DPA Counterparty shall notify the Responsible TopCo within one hundred and eighty (180) Business Days after the DPA Counterparty first becomes aware of the failure to make such payment; and
- (ii) if the Responsible TopCo agrees that there has been a failure to make payment, or if an Expert so determines in accordance with the Expert Determination Procedure, then the Responsible TopCo and (if party to this DPA), the Selling Shareholder, the Acquirer and the Acquirer's TopCo shall forthwith make that payment to the credit of the DPA Counterparty Designated Account (together with Default Interest thereon from the due date for payment to the actual date of payment).

#### 4. GAIN SHARE: SECURITY AND ENFORCEMENT

##### **Security**

- 4.1 The Generator shall, no later than the twelfth (12th) anniversary of the first to occur of the Start Date and the last day of the Target Commissioning Window<sup>89</sup>, transfer or deliver, or procure the transfer or delivery of, Acceptable Collateral to the DPA Counterparty in an aggregate amount equal to the Collateral Amount as security for the Secured Sums.

##### **Provision of Collateral**

- 4.2 All transfers or deliveries of any Acceptable Collateral pursuant to Paragraph 4.1 shall be made by or on behalf of the Generator and shall be given:
- (A) in the case of cash, by transfer in accordance with the instructions made by or on behalf of the DPA Counterparty, to the credit of the Reserve Account;
  - (B) in the case of a Letter of Credit, by a Qualifying Issuer issuing a Letter of Credit to the DPA Counterparty or its designee. Such transfer shall be deemed effective upon receipt by the DPA Counterparty or its designee from the Qualifying Issuer of the duly executed and issued Letter of Credit;
  - (C) in the case of a Parent Company Guarantee, by the Guarantor duly executing a Parent Company Guarantee in favour of the DPA Counterparty or its designee. Such transfer shall be deemed effective upon receipt by the DPA Counterparty or its designee from the Guarantor of the duly executed and delivered Parent Company Guarantee; and
  - (D) in the case of a Bond, by a Qualifying Bond Provider issuing a Bond to the DPA Counterparty or its designee. Such transfer shall be deemed effective upon receipt by the DPA Counterparty or its designee from the Qualifying Bond Provider of the duly executed and issued Bond.

##### **Transfers and custody of collateral**

#### 4.3

- (A) The Generator shall procure that any Acceptable Collateral (or any renewal or replacement thereof) provided pursuant to Paragraph 4.1:
  - (i) shall be valid at least until the earlier of:

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<sup>89</sup> Note to Reader: this deadline for the provision of Acceptable Collateral applies to any DPA with a fifteen (15) year Term.

- (a) the date which falls two (2) years after the Specified Expiry Date; and
  - (b) the date on which the Secured Sums have been fully paid by the Generator to the DPA Counterparty in accordance with Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*);
- (ii) shall be accompanied by a notice from the Generator (a "**Letter of Credit Details Notice**", "**Parent Company Guarantee Details Notice**" and a "**Performance Bond Details Notice**", respectively). A Letter of Credit Details Notice, Parent Company Guarantee Details Notice and Performance Bond Details Notice shall specify:
- (a) the identity and credit rating of the Qualifying Issuer, Guarantor or the Qualifying Bond Provider issuing the Letter of Credit, Parent Company Guarantee or the Performance Bond, respectively;
  - (b) the contact details for the Qualifying Issuer, Guarantor or the Qualifying Bond Provider (or their respective representatives or relationship managers); and
  - (c) without prejudice to Paragraphs 4.1 and 4.3(A)(i), the period of time during which the Letter of Credit, Parent Company Guarantee or Bond will remain in effect and (in respect of a Letter of Credit or Bond) the amount of credit to be provided which shall be no less than the Collateral Amount.
- (B) At least ten (10) Business Days prior to the date of expiry or cancellation of a Letter of Credit, Parent Company Guarantee or Bond, as the case may be, the Generator shall renew or procure the renewal of such Letter of Credit, Parent Company Guarantee or Bond by transferring or delivering, or by procuring the transfer or delivery of, Acceptable Collateral in the amount of and in substitution and to be effective no later than the date of expiry or cancellation of the current Letter of Credit, Parent Company Guarantee or Bond provided that Acceptable Collateral is still required, pursuant to the provisions of this Paragraph 4, after the date of expiry or cancellation of the current Letter of Credit, Parent Company Guarantee or Bond.

#### ***Altering collateral***

#### 4.4

- (A) If, at any time, the Posted Collateral is not or ceases to be Acceptable Collateral and/or the Posted Collateral is less than the Collateral Amount, the DPA Counterparty may give a notice to the Generator (a "**Collateral Correction Notice**"). A Collateral Correction Notice shall specify:
- (i) the Posted Collateral which is not or has ceased to be Acceptable Collateral and the reason that prevents such collateral from constituting Acceptable Collateral; and/or
  - (ii) the amount by which the Posted Collateral is less than the Collateral Amount (a "**Deficient Collateral Amount**").
- (B) No later than five (5) Business Days after receipt of a Collateral Correction Notice, the Generator shall transfer or deliver, or procure the transfer or delivery of, Acceptable Collateral in an amount more than or equal to the Deficient Collateral Amount.

- (C) The Generator may, from time to time, and on giving the DPA Counterparty not less than ten (10) Business Days' notice, substitute any of the Posted Collateral with other Acceptable Collateral which shall not in any event be less than the Collateral Amount in aggregate.

**Letter of Credit Events, Bond Events and Guarantee Events**

4.5

- (A) If, at any time:
- (i) an Insolvency Event occurs in relation to a Qualifying Issuer;
  - (ii) a Letter of Credit ceases to be in full force and effect or a Qualifying Issuer's obligations under a Letter of Credit are or become wholly or partly invalid or unenforceable or a Qualifying Issuer fails to comply promptly with any of its obligations pursuant to a Letter of Credit;
  - (iii) a Letter of Credit will expire; or
  - (iv) a Qualifying Issuer of a Letter of Credit ceases to be a Qualifying Issuer,
- (together, "**Letter of Credit Events**"), the Generator shall:
- (a) where a Letter of Credit Event set out in Paragraph 4.5(A)(i), (ii) or (iv) occurs, give notice to the DPA Counterparty and procure the replacement of such Letter of Credit with Acceptable Collateral no later than ten (10) Business Days after the date on which the relevant Letter of Credit Event occurs; or
  - (b) where a Letter of Credit will expire, extend the term of the then current Letter of Credit (or replace it with another Letter of Credit) [in each case with a validity period of not less than twelve (12) months,] no later than ten (10) Business Days prior to the expiry of the then current Letter of Credit.
- (B) If, at any time:
- (i) an Insolvency Event occurs in relation to the Guarantor;
  - (ii) the Parent Company Guarantee ceases to be in full force and effect or the Guarantor's obligations under the Parent Company Guarantee are or become wholly or partly invalid or unenforceable or the Guarantor fails to comply promptly with any of its obligations pursuant to the Parent Company Guarantee; or
  - (iii) the Guarantor ceases to be a Qualifying Guarantor,
- (together, "**Guarantee Events**"), the Generator shall give notice to the DPA Counterparty and procure the replacement of such Parent Company Guarantee with Acceptable Collateral no later than ten (10) Business Days after the date on which the relevant Guarantee Event occurs.
- (C) If, at any time:
- (i) an Insolvency Event occurs in relation to a Qualifying Bond Provider;

- (ii) a Bond ceases to be in full force and effect or the Qualifying Bond Provider's obligations under the Bond are or become wholly or partly invalid or unenforceable or the Qualifying Bond Provider fails to comply promptly with any of its obligations pursuant to the Bond;
  - (iii) a Bond will expire; or
  - (iv) a Qualifying Bond Provider ceases to be a Qualifying Bond Provider,
- (together, "**Bond Events**"), the Generator shall:
- (a) where a Bond Event set out in Paragraph 4.5(C)(i), (ii) or (iv) occurs, give notice to the DPA Counterparty and procure the replacement of such Bond with Acceptable Collateral no later than ten (10) Business Days after the date on which the relevant Bond Event occurs; or
  - (b) where a Bond will expire, extend the term of the then current Bond (or replace it with another Bond) [in each case with a validity period of not less than twelve (12) months], no later than ten (10) Business Days prior to the expiry of the then current Bond.
- (D) If the Generator fails to procure replacement Acceptable Collateral in accordance with Paragraph 4.5(A), 4.5(B) or 4.5(C), the DPA Counterparty may demand payment pursuant to the Letter of Credit, Parent Company Guarantee and/or Bond respectively and shall hold any cash paid pursuant to the Letter of Credit, Parent Company Guarantee and/or Bond in a Reserve Account until such time as the Posted Collateral is substituted in accordance with this Paragraph 4.5.

#### ***Making a Posted Collateral Demand***

#### 4.6

- (A) The DPA Counterparty may make a demand under a Letter of Credit, Parent Company Guarantee and/or Bond procured by the Generator, or draw down on any cash amount in a Reserve Account (a "**Posted Collateral Demand**") in the following circumstances:
  - (i) the Generator fails to pay the relevant Project Gain Share Amount by the Project Gain Share Payment Deadline; or
  - (ii) the Generator fails to renew or extend, or procure the renewal or extension of, a Letter of Credit, a Parent Company Guarantee or a Bond in accordance with Paragraph 4.5 by the transfer or delivery of substitute Acceptable Collateral.
- (B) If a Posted Collateral Demand has been made, the Generator shall transfer or deliver, or procure the transfer or delivery of, further Acceptable Collateral in an amount no less than the Collateral Amount no later than two (2) Business Days after such demand.
- (C) Where the Generator fails to renew or extend, or procure the renewal or extension of, a Letter of Credit, Parent Company Guarantee or a Bond in accordance with Paragraph 4.5 by the transfer or delivery of substitute Acceptable Collateral:
  - (i) the DPA Counterparty shall have the right, but not the obligation, to set off the Collateral Amount against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator under the DPA. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled; and

- (ii) the [TopCos] shall [jointly and severally] ensure that no Distributions are thereafter made by the Generator, HoldCo, or any of the TopCos for so long as the Generator fails to renew or extend, or procure the renewal or extension of, a Letter of Credit, Parent Company Guarantee or a Bond in accordance with Paragraph 4.5 by the transfer or delivery of substitute Acceptable Collateral.

***Return of collateral***

4.7

- (A) If the Generator has transferred or delivered, or procured the transfer or delivery of, Acceptable Collateral to the DPA Counterparty pursuant to the foregoing provisions in this Paragraph 4, and the Collateral Amount has been fully replaced or substituted with other Acceptable Collateral in accordance with this Paragraph 4, then, subject to Paragraph 4.6, the DPA Counterparty shall transfer the Posted Collateral back to the Generator no later than five (5) Business Days after the date on which the Generator replaces Acceptable Collateral in accordance with this Paragraph 4.
- (B) The DPA Counterparty shall transfer back the Posted Collateral:
  - (i) in the case of cash (together with any interest which has accrued on such cash held in a Reserve Account), by transfer in accordance with the instructions made by or on behalf of the Generator, to the credit of one (1) or more bank accounts in the United Kingdom specified by the Generator; and
  - (ii) in the case of a Letter of Credit, Parent Company Guarantee or Bond, as the case may be, by surrendering, or procuring the surrender of, the relevant Letter of Credit, Parent Company Guarantee or Bond.
- (C) Without prejudice to Paragraph 4.6, the DPA Counterparty shall return any Posted Collateral transferred or delivered by or on behalf of the Generator no later than five (5) Business Days after the date on which the Parties agree, or it is determined pursuant to the Expert Determination Procedure under this Schedule, that all payment obligations under this Schedule have been fully discharged.

***Enforcement Mechanism for Project Gain Share Provisions***

4.8

- Where the DPA Counterparty and the Generator agree or it is determined that a payment due to the DPA Counterparty pursuant to Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) has not been made by the Project Gain Share Due Date:
- (A) [the TopCos] shall be [jointly and severally liable] to pay the outstanding amount to the DPA Counterparty no later than five (5) Business Days after such agreement or determination (the "**Project Gain Share Payment Deadline**"); and
  - (B) if payment of the outstanding amount is not made by the Project Gain Share Payment Deadline then, at the DPA Counterparty's election:
    - (i) the DPA Counterparty may suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator under the DPA in any period during which the Generator is in breach of such payment obligation;
    - (ii) the [TopCos] shall [jointly and severally] ensure that no Distributions are thereafter made by the Generator, HoldCo, or any of the TopCos for so long as such payment is outstanding;

- (iii) the DPA Counterparty shall be entitled to draw on all of the Acceptable Collateral given by the Generator to recover the relevant Secured Sums pursuant to Paragraph 4.6; and/or
- (iv) the DPA Counterparty shall have the right, but not the obligation, to set off the relevant Project Gain Share Amount against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator under the DPA. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled.

***Enforcement Mechanism for Sale Gain Share Provisions***

- 4.9 Where the DPA Counterparty and the Responsible TopCo agree or it is determined that a payment due to the DPA Counterparty pursuant to Paragraph 3.6 (*Sale Gain Share with the DPA Counterparty*) has not been made by the Sale Gain Share Due Date or the date provided for under Paragraph 3.6(B) (*Sale Gain Share with the DPA Counterparty*), as applicable:
- (A) the Responsible TopCo(s) or (if party to this DPA) the Selling Shareholder, the Acquirer or the Acquirer's TopCo shall pay, or procure the payment of, the outstanding amount due to the DPA Counterparty no later than five (5) Business Days after such agreement or determination (the "**Sale Gain Share Payment Deadline**"); and
  - (B) if payment of the outstanding amount is not made by the Sale Gain Share Payment Deadline then, at the DPA Counterparty's election:
    - (i) the DPA Counterparty may suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator under the DPA in any period during which the Generator is in breach of such payment obligation;
    - (ii) the [TopCos] shall [jointly and severally] ensure that no Distributions are thereafter made by the Generator, HoldCo or any of the TopCos for so long as such payment is outstanding; and/or
    - (iii) the DPA Counterparty shall have the right, but not the obligation, to set off the relevant Sale Gain Share Amount against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator under the DPA. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled.

***Remedies in respect of failure to comply with Gain Share Rules and Protective Provisions***

- 4.10 The DPA Counterparty's rights and remedies in respect of a failure by a Party to comply with the Gain Share Rules and/or the Protective Provisions, in each case as applicable to it, shall be limited to:
- (A) such failure being taken into consideration for the purposes of the definitions in Paragraph 2.1 (*Definitions*) of Part A (*Introduction*) of "**Deemed Available Cash Flow**", "**Divestment Proceeds**", and "**Investment Cost**", as appropriate, and the rights and remedies which arise in connection therewith as set out in Paragraphs 2 (*Gain Share: Project Gain Share Provisions*), 3 (*Gain Share: Sale Gain Share Provisions*) and 4 (*Gain Share: Security and Enforcement*);
  - (B) where such failure to comply is agreed or determined to take the form of an act or omission which is designed to or a main purpose of which is to:



- (i) avoid the application of Paragraph 3 (*Gain Share: Sale Gain Share Provisions*) to a disposal of Economic Interests being a Relevant Sale, deeming such disposal to be a Relevant Sale (and, for the avoidance of doubt, for this purpose, a Relevant Sale shall include a deemed Relevant Sale); or
  - (ii) avoid a transferee of Economic Interests in HoldCo being a Tracked Person, deeming such transferee to be a Tracked Person (and, for the avoidance of doubt, for this purpose, a Tracked Person shall include a deemed Tracked Person); and
- (C) equitable rights and remedies (including specific performance and injunctive relief),
- and the DPA Counterparty shall have no other rights or remedies in respect of any such failure to comply.

***Remedies in respect of failure to comply with the Gain Share provisions***

- 4.11 The DPA Counterparty's rights and remedies in respect of a failure to make a payment due to the DPA Counterparty pursuant to Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*) by the Project Gain Share Payment Due Date or due to the DPA Counterparty pursuant to Paragraph 3.6 (*Sale Gain Share with the DPA Counterparty*) by the Sale Gain Share Payment Due Date shall be limited to:
- (A) in the case of Paragraph 2.4 (*Project Gain Share with the DPA Counterparty*), the rights and remedies set out in Paragraphs 4.6 (*Making a Posted Collateral Demand*) and 4.8 (*Enforcement Mechanism for Project Gain Share Provisions*), together with equitable rights and remedies (including specific performance and injunctive relief); and
  - (B) in the case of Paragraph 3.4 (*Sale Gain Share with the DPA Counterparty*), the rights and remedies set out in Paragraph 4.9 (*Enforcement Mechanism for Sale Gain Share Provisions*), together with equitable rights and remedies (including specific performance and injunctive relief),

and the DPA Counterparty shall have no other rights or remedies in respect of any such failure.

***Remedies in respect of failure to comply with the Contracting Policy***

- 4.12 The DPA Counterparty's rights and remedies in respect of a failure by a Party to comply with the Contracting Policy (which shall include a failure of a Party to comply with Paragraph 2 (*Contracting Policy*) but which shall not include a failure by an Investor to comply with Paragraph 5.1(C) (*Unconditional Investor undertakings*)) shall be limited to:
- (A) the agreement or determination of any Related Party Discount Amount for the purposes of the agreement or determination of any Gain Share Amount;
  - (B) the express rights and remedies of the DPA Counterparty set out in this Schedule arising out of the agreement or determination of any Related Party Discount Amounts and/or Discount Amounts and/or Daily Discount Amounts, as referred to in paragraph (A) above; and
  - (C) equitable rights and remedies (including specific performance and injunctive relief),

and the DPA Counterparty shall have no other rights or remedies in respect of any such failure to comply.

***Remedies in respect of security and enforcement***

- 4.13 The DPA Counterparty's rights and remedies pursuant to this Paragraph 4 are cumulative and not exclusive of any rights or remedies provided by law.

5. **GAIN SHARE: UNDERTAKINGS**

***Unconditional Investor undertakings***

- 5.1 Each Investor undertakes to the DPA Counterparty as follows:

(A) **Avoidance Events**

Without prejudice to any claim of the DPA Counterparty to a Gain Share Amount or additional Gain Share Amount attributable to any Avoidance Event or its consequences, it shall procure that none of the TopCos through which the Investor and/or its Associated persons hold an Economic Interest in HoldCo or any of its or their respective Tracked Persons enter into or facilitate or participate, whether directly or indirectly, in any Avoidance Event and, promptly on becoming aware of any Avoidance Event, it shall inform the DPA Counterparty and provide it with full details thereof in writing;

(B) **Abusive arrangements**

Without prejudice to any claim of the DPA Counterparty to a Gain Share Amount or additional Gain Share Amount attributable to any Abusive arrangement or its consequences, it shall procure that none of the TopCos through which the Investor and/or its Associated persons hold an Economic Interest in HoldCo or any of its or their respective Tracked Persons enter into or facilitate or participate, whether directly or indirectly, in any Abusive arrangements and, promptly on becoming aware of any Abusive arrangements, it shall inform the DPA Counterparty and provide it with full details thereof in writing. An arrangement is "**Abusive**" if it is an arrangement the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the gain share provisions set out in Part B (*Gain Share*) (including the determination of the Gain Share Amounts due to the DPA Counterparty) having regard to all the circumstances including:

- (i) whether the substantive results of the arrangements are consistent with any principles on which those gain share provisions are based (whether express or implied);
- (ii) whether the means of achieving those results involves one or more contrived or abnormal steps; and
- (iii) whether the arrangements are intended to exploit any shortcomings in those provisions.

(C) **Contracting Policy**

It shall comply, and shall procure compliance by each member of the HoldCo Group and each of the TopCos through which the Investor and/or its Associated persons hold an Economic Interest in HoldCo, with the Contracting Policy;

(D) **Group structure**

It shall comply, and shall procure compliance by the TopCo through which it and/or its Associated persons hold an Economic Interest in HoldCo, with the structure set out in the Investment Structure Chart;

(E) **Accession and transfers**

It shall comply, and shall procure that:

- (i) the TopCo through which it and/or its Associated persons hold an Economic Interest in HoldCo; and
- (ii) each of its or their respective Tracked Persons,

complies with the procedure set out in Paragraph 1 (*Changes to the Parties*) to the extent that such procedures apply to the relevant person(s); and

(F) **Stapling**

It shall not, and it shall procure that:

- (i) the TopCo through which it and/or its Associated persons hold an Economic Interest in HoldCo; and
- (ii) any of its or their respective Tracked Persons,

shall not effect or seek to effect a sale or transfer in respect of its Economic Interests in HoldCo unless a pro rata amount of all such Economic Interests is comprised within the sale or transfer. For this purpose:

- (a) shares or other securities or other equity, partnership or ownership interests shall be taken at their par value;
- (b) loans, loan capital and other debt instruments shall be taken at their principal amount plus accrued, unpaid interest; and
- (c) other Economic Interests shall be taken at the nearest equivalent to that in paragraphs (A) and (B) above.

**Conditional Investor undertakings**

5.2 Each Investor undertakes to the DPA Counterparty as follows for so long as it, or its Ultimate Investor, as the case may be, has, and/or any of its Tracked Persons and/or Associated persons have, an Economic Interest in HoldCo:

- (A) **Information:** it shall promptly provide the DPA Counterparty with reasonable details on the transfer of any Economic Interest in HoldCo by it or any of its Tracked Persons, including details of the seller, the Transferee, the Economic Interest transferred, the relevant Investor and TopCo with which the Transferee is or is to be Associated, any new Tracked Person(s) as a result of the transfer, the date of the agreement to transfer, the date of completion of the transfer and the consideration received, receivable or potentially receivable and, if applicable, details of the division of Economic Interests in HoldCo between it and the Transferee; and
- (B) **Audit:** it shall procure the timely provision to the DPA Counterparty of the Auditors' certificate referred to in Paragraph 2.1(D)(iv) (*Preliminary Equity IRR Report*) and shall provide the Auditors (or shall procure that the Auditors are provided) with all Information necessary for the purposes of their issuing the certificate with the required confirmations and certifications.

**Related Party Transactions**

5.3 Each Investor irrevocably, permanently and unconditionally waives in full (and each Investor shall procure that each member of its Group and each of its Tracked Persons which is a

counterparty to any member of the HoldCo Group with respect to a Related Party Transaction, irrevocably, permanently and unconditionally waives in full) any and all of its rights, powers, interests or claims in respect of the relevant Related Party Transaction if and to the extent that it is agreed or determined pursuant to the Contracting Policy that such Related Party Transaction fails to comply with the Agreed Principles.

## 6. EQUITY IRR MODEL

### *Description of the Equity IRR Model*

6.1 The Equity IRR Model shall:

- (A) set out (including for each TopCo Tranche which, in turn, it shall identify), as applicable:
  - (i) the Investment Cost;
  - (ii) the Divestment Proceeds;
  - (iii) the costs of procuring Acceptable Collateral pursuant to this Schedule<sup>90</sup>;
  - (iv) the Available Cash Flow and the Deemed Available Cash Flow;
  - (v) the Project Cash Flow;
  - (vi) the Equity IRR;
  - (vii) any Project Gain Share;
  - (viii) the Sale Cash Flow;
  - (ix) the Sale IRR;
  - (x) any Sale Gain Share; and
  - (xi) full details of any Distribution which has been made, and any proposed Distribution which is to be made, to HoldCo and by HoldCo to each TopCo.
- (B) be based on the management accounts of the Generator, each prepared in accordance with generally accepted accounting principles, and shall reconcile to such principles;
- (C) show how the Generator (notionally) distributes the Available Cash Flow and how HoldCo (notionally) distributes the Available Cash Flow to each TopCo Tranche;
- (D) store and identify any previous cash flows (including with respect to each TopCo Tranche) from any previous Equity IRR Model;
- (E) calculate the costs of procuring Acceptable Collateral pursuant to this Schedule (*Gain Share*);
- (F) carry out Nominal calculations for the purposes of the Equity IRR Threshold;
- (G) calculate and set out the Distribution required to achieve the Equity IRR Threshold (including for each TopCo Tranche) in the next succeeding Project Gain Share Calculation Period; and

<sup>90</sup>

Note to Reader: the cost of any additional collateral to be completed on a project-specific basis.

- (H) reconcile figures to the latest then available audited financial statements of the Generator.

### **Revision of the Equity IRR Model**

#### 6.2

- (A) The Generator shall submit a revised draft of the Equity IRR Model to the DPA Counterparty:
  - (i) no later than 31 March in each year of the Term; and
  - (ii) if necessary to correct any issues of compatibility of the Equity IRR Model with supporting hardware or software (including the relevant operating programme) or to ensure that the Equity IRR Model remains compliant with this Schedule.
- (B) The Equity IRR Model shall not be revised save as set out in this Paragraph 6 or as otherwise expressly provided for in this Schedule.
- (C) Wherever it is required that the Equity IRR Model be revised by the Generator pursuant to Paragraph 6.2(A), the Generator shall prepare a revised draft of the Equity IRR Model (a "**Draft Revised Equity IRR Model**") and provide a copy of the same to the DPA Counterparty, together with a covering paper identifying all of the assumptions, values, line items or rows which have been modified or any other changes that have been made and setting out the Generator's reasons for doing so, in each case in reasonable detail.
- (D) Any Draft Revised Equity IRR Model shall:
  - (i) be prepared at the cost and expense of the Generator (failing which, at the joint and several cost and expense of the TopCos);
  - (ii) be, to the extent reasonably possible, in substantially the same form as the Equity IRR Model applicable immediately prior to the relevant revision;
  - (iii) be compatible with supporting hardware and software (including the operating programme on which the Equity IRR Model is based);
  - (iv) correct any errors identified in any previous version of the Equity IRR Model;
  - (v) be compliant with this Schedule and its requirements;
  - (vi) be prepared using the most up-to-date data available to the Generator at the time of preparation of such Draft Revised Equity IRR Model; and
  - (vii) in the case of each revision required under Paragraph 6.2(A), be accompanied by an Accountant's Report addressed to the DPA Counterparty, in form and content reasonably satisfactory to the DPA Counterparty.
- (E) Each Draft Revised Equity IRR Model shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Draft Revised Equity IRR Model.
- (F) The DPA Counterparty may, by notice to the Generator on one occasion within [sixty (60)] Business Days, or such other period, if any, as is agreed in writing between the DPA Counterparty and the Generator (each acting reasonably), after receipt of a Draft Revised Equity IRR Model, request the Generator to provide the DPA Counterparty such Supporting Information in relation to that Draft Revised Equity IRR Model (a "**Draft**

**Equity IRR Model Information Request")** as the DPA Counterparty reasonably requires.

- (G) If the DPA Counterparty gives a Draft Equity IRR Model Information Request to the Generator, the Generator shall, within [sixty (60)] Business Days, or such other period, if any, as is agreed in writing between the DPA Counterparty and the Generator (each acting reasonably), after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty, together with a Directors' Certificate in relation to the Supporting Information provided in response to such Draft Equity IRR Model Information Request.
- (H) The DPA Counterparty may after receipt of a Draft Revised Equity IRR Model or, if it has given a Draft Equity IRR Model Information Request to the Generator, after receipt of the further Supporting Information requested in the relevant Draft Equity IRR Model Information Request, notify the Generator that it does not agree with the matters which are the subject of the Draft Revised Equity IRR Model and may give the Generator reasons in support.
- (I) Without prejudice to Paragraph 6.2(K), if the DPA Counterparty notifies the Generator that it does not agree with the matters which are the subject of a Draft Revised Equity IRR Model or related matters including Supporting Information, the Generator may submit an amended Draft Revised Equity IRR Model to the DPA Counterparty.
- (J) Without prejudice to the provisions of Paragraph 2.2 (*Disputes in relation to a Preliminary Equity IRR Report*) and Paragraph 3.2 (*Disputes in relation to a Preliminary Sale IRR Report*), the Draft Revised Equity IRR Model (once delivered and as amended, pursuant to Paragraph 6.2(I) if applicable) shall become the **"Equity IRR Model"** for the purposes of this Schedule.
- (K) Nothing in this Paragraph 6.2 (*Revision of the Equity IRR Model*) shall require the DPA Counterparty to specify that the DPA Counterparty approves the matters which are the subject of the Preliminary Equity IRR Report.

### ***Custody of the Equity IRR Model***

#### 6.3

- (A) Whenever the Equity IRR Model is revised pursuant to this Paragraph 6, the Generator shall, as soon as reasonably practicable:
  - (i) arrange for the revised Equity IRR Model to be recorded electronically; and
  - (ii) deliver an electronic copy and a copy on an electronic storage device formatted ready for printing (in the case of a copy on an electronic storage device, to be delivered only in respect of the revision required under Paragraph 6.2(A)(i) (*Revision of the Equity IRR Model*)) of the revised Equity IRR Model to the DPA Counterparty.
- (B) Each of the Generator and the DPA Counterparty shall retain a copy of the Equity IRR Model, as revised from time to time. In the event of any discrepancy between the Equity IRR Model that is held by the DPA Counterparty and the copy held by the Generator, the copy held by the DPA Counterparty (in its original form as delivered to the DPA Counterparty) shall, in the absence of manifest error, prevail.
- (C) Each Party shall have the right to inspect and audit the Equity IRR Model at their own cost at all reasonable times.

- (D) Save as expressly provided in this Schedule, the costs of custody arrangements with the DPA Counterparty shall be met by the Generator.

***Conflict involving the Equity IRR Model***

6.4

- (A) In the event of any discrepancy between the Equity IRR Model and any provision of this Schedule, the provisions of this Schedule shall prevail.
- (B) Any changes to the Equity IRR Model not effected in accordance with this Schedule shall be of no effect for the purposes of this Schedule.

## Part C – Representations, Warranties and Undertakings

### 1. REPRESENTATIONS AND WARRANTIES

Each of HoldCo, the TopCos, the Investors and the Ultimate Investors represents and warrants (for itself) to the DPA Counterparty that, as at the Agreement Date (or, where relevant, the Accession Date), the following are true, accurate and not misleading:

(A) **Status:**

It:

- (i) is a limited liability company, duly incorporated and validly existing under the laws of England (or, in the case of the Ultimate Investors and the Investors it is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation); and
- (ii) has the power to own its assets and carry on its business as contemplated by the Gain Share Transaction Documents to which it is a party.

(B) **Power and authority:**

It has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Gain Share Transaction Documents to which it is a party and the transactions contemplated by the Gain Share Transaction Documents to which it is a party.

(C) **Enforceability:**

The obligations expressed to be assumed by it pursuant to the Gain Share Transaction Documents to which it is a party are legal, valid, binding and enforceable subject only to the Legal Reservations.

(D) **Non-conflict with other obligations:**

The entry into, delivery and performance by it of, and the transactions contemplated by the Gain Share Transaction Documents to which it is a party do not conflict with:

- (i) its constitutional documents;
- (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
- (iii) any 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 Gain Share Transaction Documents to which it is a party, 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 on its payment obligations under this Schedule.

(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 another Party pursuant to the Gain Share Transaction Documents to which it is a party.

2. **CONTRACTING POLICY**

Each of the Generator, HoldCo and the TopCos undertakes to the DPA Counterparty to comply with the Contracting Policy, in each case to the extent applicable to it, it being acknowledged that the DPA Counterparty's rights and remedies in respect of any failure by any such Party to comply with the Contracting Policy are as referred to in Paragraph 4.12 (*Remedies in respect of failure to comply with the Contracting Policy*).

## Part D – Miscellaneous

### 1. CHANGES TO THE PARTIES

#### **Restrictions on Transfers**

1.1 Save as expressly permitted by this Paragraph 1 or (in respect of the Generator) Condition 61.6 (*Permitted assignment by the Generator*) of the DPA or (in respect of the DPA Counterparty) Conditions 61.2 to 61.4 of the DPA, no Party may:

- (A) assign to any person all or any of its rights or benefits under this Schedule; or
- (B) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under this Schedule; or
- (C) transfer (whether by way of novation, subcontract, delegation or otherwise) to any person or enter into an arrangement whereby any person is to perform any or all of its obligations under this Schedule,

("Transfer") without the prior written consent of the other Parties.

#### **General Principle**

1.2 The Parties acknowledge and agree that:

- (A) shareholdings as between an Investor and/or the TopCo through which the Investor and/or its Associated persons hold an Economic Interest in HoldCo, and the Generator shall be arranged and maintained in accordance with the Investment Structure Chart, and Economic Interests in HoldCo must be held by or through a TopCo;
- (B) a Tracked Person must at all times either be a member of the same Group as, or otherwise have attributed to it, an Investor and a TopCo; and
- (C) transfers and issues of Economic Interests in HoldCo shall be structured and effected so as to comply with the requirements of this Paragraph 1.

#### **Sale of Economic Interests in HoldCo by a TopCo**

1.3

- (A) Notwithstanding Paragraph 1.1 (*Restrictions on Transfers*) but subject to Paragraphs 5.1(F) (*Unconditional Investor undertakings*) and 1.2 (*General Principle*) and paragraph 11 (*Stapling*) of Appendix 2 (*Gain Share Rules*) of this Schedule, a TopCo may transfer all or part of its Economic Interests in HoldCo provided that prior to, and as a condition of, such transfer the Transferor TopCo and the Investor which hold (and/or whose Associated persons hold) their Economic Interests in HoldCo through the Transferor TopCo shall jointly and severally procure that:
  - (i) if not already a Party as a TopCo, the Transferee TopCo shall execute and deliver a Deed of Accession and become a Party as a TopCo;
  - (ii) if a new Investor is to be introduced with respect to, and at the same time as, the Transferee TopCo, the Transferee Investor shall [be a Mixed Company and shall] execute and deliver a Deed of Accession and become a Party as an Investor;

- (iii) if not already Associated with an Investor, the Transferee TopCo shall become Associated with an Investor, provided that if Paragraph 1.3(A)(ii) applies, the Transferee TopCo shall be Associated with such Transferee Investor and notice shall be given to the DPA Counterparty accordingly;
- (iv) the DPA Counterparty shall receive (in form and substance satisfactory to it, acting reasonably) all of the documents and other evidence listed in Appendix 1 (*Accession Conditions Precedent*) of this Schedule in relation to the Transferee TopCo and any Transferee Investor.

(B) Following:

- (i) completion of the transfer of all or part of the TopCo's Economic Interests in HoldCo;
- (ii) the satisfaction of all the conditions referred to in Paragraph 1.3(A); and
- (iii) the satisfaction or discharge in full of all obligations and liabilities of:
  - (a) the Transferor TopCo;
  - (b) if Paragraph 1.3(A)(ii) applies, the Investor referred to in paragraph (b) below (including in its capacity as a Responsible Investor);

in each case, outstanding under or pursuant to the Gain Share Transaction Documents as at the date of such completion in respect of the Economic Interests in HoldCo so transferred, the DPA Counterparty shall provide a release of:

- (a) the Transferor TopCo; and
- (b) if Paragraph 1.3(A)(ii) applies and the Investor Associated with the Transferor TopCo no longer has an Economic Interest in HoldCo, such Investor,

in each case from all its (or, as the case may be, their respective) obligations in respect of the Economic Interests in HoldCo so transferred.

***Sale of Economic Interests in or above a TopCo***

1.4

- (A) Notwithstanding Paragraph 1.1 (*Restrictions on Transfers*) but subject to Paragraphs 5.1(F) (*Unconditional Investor undertakings*) and 1.2 (*General Principle*), a holder of Economic Interests in HoldCo (other than those persons who satisfy the Threshold Test or any person to which Paragraph 1.3 (*Sale of Economic Interests in HoldCo by a TopCo*) applies) may transfer all or part of its Economic Interests in HoldCo provided that prior to and as a condition of such transfer the Investor and TopCo through which such person holds its (and/or its Associated persons hold their) Economic Interests in HoldCo shall jointly and severally procure that:
  - (i) if a new Investor is to be introduced with respect to, and at the same time as, the transferee, the Transferee Investor shall [be a Mixed Company and shall] execute and deliver a Deed of Accession and become a Party as an Investor;
  - (ii) if not already Associated with:

- (a) an Investor, the transferee shall become Associated with an Investor provided that, if Paragraph 1.4(A)(i) applies, the transferee shall be Associated with such Transferee Investor; and
  - (b) a TopCo, the transferee shall be Associated with a TopCo,  
and notice shall be given to the DPA Counterparty accordingly; and
  - (iii) the DPA Counterparty shall receive (in form and substance satisfactory to it) all of the documents and other evidence listed in Appendix 1 (*Accession Conditions Precedent*) of this Schedule in relation to the Transferee Investor.
- (B) If Paragraph 1.4(A)(i) applies, following:
- (i) completion of the transfer of all or part of the transferor's Economic Interests in HoldCo;
  - (ii) the satisfaction of all the conditions referred to in Paragraph 1.4(A); and
  - (iii) the satisfaction or discharge in full of all obligations and liabilities of the Investor Associated with the transferor outstanding under or pursuant to the Gain Share Transaction Documents as at the date of such completion in respect of the Economic Interests in HoldCo so transferred,

the DPA Counterparty shall provide a release of such Investor from all its obligations in respect of the Economic Interests in HoldCo so transferred and which are now held by the Transferee Investor and/or persons Associated with the Transferee Investor.

***Issues of new Economic Interests below TopCos***

- 1.5 Subject to Paragraph 1.2 (*General Principle*), either of HoldCo or a TopCo (each, an "**Issuing Entity**") may issue new Economic Interests provided that prior to, and as a condition of, any such issue the Issuing Entity, the TopCo (if it is not the Issuing Entity) and Investor which hold their (and/or whose Associated persons hold their) Economic Interests in or through such Issuing Entity shall jointly and severally procure that:
- (A) if a new TopCo is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee TopCo shall [be a Mixed Company and shall] execute and deliver a Deed of Accession and become a Party as a TopCo;
  - (B) if a new Investor is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor shall execute and deliver a Deed of Accession and become a Party as an Investor;
  - (C) if not already Associated with an Investor, the Transferee TopCo shall become Associated with an Investor, provided that if Paragraph 1.5(B) applies, the Transferee TopCo shall be Associated with such Transferee Investor and the DPA Counterparty shall be notified accordingly; and
  - (D) the DPA Counterparty shall receive (in form and substance satisfactory to it, acting reasonably) all of the documents and other evidence listed in Appendix 1 (*Accession Conditions Precedent*) of this Schedule in relation to any Transferee TopCo and Transferee Investor.

### **Issues of new Economic Interests in or above TopCos**

- 1.6 Subject to Paragraph 1.2 (*General Principle*), any TopCo and any direct or indirect shareholder in a TopCo (other than those persons who satisfy the Threshold Test) may issue new Economic Interests provided that prior to and as a condition of any such issue the TopCo and Investor through which such shareholder holds its (and/or whose Associated persons hold their) Economic Interests shall jointly and severally procure that:
- (A) if a new Investor is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor shall [be a Mixed Company and shall] execute and deliver a Deed of Accession and become a Party as an Investor;
  - (B) if not already Associated with an Investor and a TopCo, the person(s) to whom such new Economic Interests are issued shall become Associated with an Investor and a TopCo, provided that if Paragraph 1.6(A) applies, the person(s) to whom such new Economic Interests are issued shall be Associated with such Transferee Investor and the DPA Counterparty shall be notified accordingly; and
  - (C) the DPA Counterparty shall receive (in form and substance satisfactory to it, acting reasonably) all of the documents and other evidence listed in Appendix 1 (*Accession Conditions Precedent*) of this Schedule in relation to any Transferee Investor.

### **2. ACCESSION COSTS**

- (A) Each Party shall bear all costs and expenses incurred by it in connection with the accession by any Party to this DPA, including all costs and expenses incurred in connection with the negotiation, preparation, execution, performance and carrying into effect of, and compliance with the terms of the Deed of Accession and this DPA.
- (B) Paragraph 2(A) is subject to any provision of any Gain Share Transaction Document to which that person is a Party which expressly provides for any Party to bear the costs and expenses of any other Party (or to pay or reimburse or indemnify any other Party in respect of such costs and expenses) in respect of which such costs and expenses shall comprise all out-of-pocket costs and expenses (including all legal and other advisory and consultants' fees) properly incurred by that Party in relation to the relevant matter.

### **3. PAYMENT DISRUPTION EVENT**

#### ***Relief due to Payment Disruption Event***

- 3.1 Subject to Paragraph 3.2 (*Conditions to Payment Disruption Event relief*), a Party affected by a Payment Disruption Event (a "**PDE Affected Party**") shall be relieved from liability, and deemed not to be in breach of this Schedule, for:
- (A) any failure to pay (or delay in paying) to any other Party any sum due and payable pursuant to this Schedule (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise); and
  - (B) (in the case of the Generator) any failure to transfer, deliver, extend, renew or replace (or procure the replacement of) Acceptable Collateral in accordance with this Schedule, or any delay in doing so,
- (such obligations "**PDE Obligations**") in each case if and to the extent that such failure is directly attributable to the occurrence and continuance of such Payment Disruption Event.

**Conditions to Payment Disruption Event relief**

- 3.2 The PDE Affected Party's relief from liability pursuant to Paragraph 3.1 (*Relief due to Payment Disruption Event*) is subject to and conditional upon:
- (A) the PDE Affected Party giving notice promptly to the other Parties of the nature and extent of the Payment Disruption Event causing its failure or delay in performance; and
  - (B) the PDE Affected Party using reasonable endeavours:
    - (i) to mitigate the effects of the Payment Disruption Event;
    - (ii) to carry out and perform its obligations under this Schedule in any way that is reasonably practicable; and
    - (iii) to pay the sum due and payable immediately upon cessation of the Payment Disruption Event.

**4. NOTICES**

**Form of Notices**

- 4.1 Any notice to be given pursuant to or in connection with this Schedule or any other Gain Share Transaction Document, shall be effective only if it is in writing and is in English. For the purposes of this Schedule, faxes are not permitted and, unless otherwise expressly stated, website publication is not permitted, but email and submission to the DPA Counterparty's electronic portal are permitted.

**Notice Details**

- 4.2 The address and (where such communication is expressly permitted by email) email address, and the department or officer (if any) for whose attention the notice is to be made, of each Party for any notice to be given under or in relation to this Schedule is:
- (A) set out in the relevant Deed of Accession, in the case of each Gain Share Acceding Party; and
  - (B) set out in Condition 62 of the DPA, in the case of the Generator and the DPA Counterparty.

**General provisions as to Notices**

- 4.3 Condition 62 of the DPA shall apply as if set out in full in this Schedule.

**5. SET-OFF**

The DPA Counterparty may set off any matured obligation due by the Generator, HoldCo, a TopCo, (including in its capacity as a Responsible TopCo) or an Investor to the DPA Counterparty pursuant to the DPA against any matured obligation owed by the DPA Counterparty to such person (but not any other of those persons).

**Appendix 1**  
**Accession Conditions Precedent**

1. Delivery to the DPA Counterparty by each of (as applicable) the Transferee TopCo, the and/or the Transferee Investor of the following:
  - (A) a copy of its constitutional documents, its certificate of incorporation and any certificate of incorporation on change of name;
  - (B) a copy of a resolution of its board or, if applicable, a committee of its board of directors:
    - (i) approving the terms of, and the transactions contemplated by the Gain Share Transaction Documents and any Deed of Accession to which it is a party and resolving that it execute, deliver and perform those documents;
    - (ii) authorising a specified person or persons to execute the Gain Share Transaction Documents and any Deed of Accession to which it is a party; and
    - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Gain Share Transaction Documents and any Deed of Accession to which it is a party;
  - (C) if applicable, a copy of a resolution of its board of directors establishing the committee referred to in paragraph (B) above;
  - (D) a specimen of the signature of each person authorised by the resolution referred to in paragraph (B) above in relation to the Gain Share Transaction Documents and any Deed of Accession to which it is a party;
  - (E) a legal opinion addressed to the DPA Counterparty from its legal advisers confirming that such person:
    - (i) is duly formed and validly existing under the laws of its jurisdiction of incorporation; and
    - (ii) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of the Gain Share Transaction Documents and any Deed of Accession to which it is a party;
  - (F) a group structure chart in compliance with the Investment Structure Chart; and
  - (G) a Directors' Certificate for each Transferee TopCo, and/or Transferee Investor certifying that each copy document relating to it specified in this Appendix 1 is a correct, complete and true copy of the original and that the original is in full force and effect and has not been amended or superseded, in each case as at a date no earlier than the date of the Deed of Accession of such person,

in each case in form and content satisfactory to the DPA Counterparty, acting reasonably.
2. If applicable, Deed(s) of Accession executed by each of the relevant parties.
3. If applicable, delivery to the DPA Counterparty by the TopCo or, as the case may be, the Transferee TopCo of Acceptable Collateral.
4. In respect of a Transferee Investor, a Directors' Certificate setting out the division of Economic Interests between the existing Investor(s) and the Transferee Investor(s).

5. A Directors' Certificate for each Transferee TopCo and/or Transferee Investor (as applicable) addressed to each of the DPA Counterparty certifying that, as at the date of the relevant Deed of Accession, the representations and warranties set out in Paragraph 1 of Part C (*Representations and Warranties*) are true, accurate and not misleading with respect to it.
6. A copy of any other document, opinion or assurance which the DPA Counterparty considers to be necessary or desirable (if it has notified the relevant Parties accordingly) in connection with the entry into and performance of the transactions contemplated by any of the Gain Share Transaction Documents or for the validity and enforceability of any of the Gain Share Transaction Documents.



**Appendix 2**  
**Gain Share Rules<sup>91</sup>**

The following constitute the Gain Share Rules:

**1. AVOIDANCE EVENT**

The Generator, HoldCo, the TopCos, the Investors and any Tracked Persons shall not undertake an Avoidance Event or enter into any Abusive arrangements.

**2. SINGLE PURPOSE**

- (A) The Generator shall be a Single Purpose Company.
- (B) HoldCo shall be solely an investment holding company which takes decisions in respect of the investments it holds and performs its obligations and responsibilities under the Gain Share Transaction Documents and the Finance Documents to which it is a party.
- (C) HoldCo shall hold shares only in the Generator.
- (D) HoldCo shall not dispose of any shares in the Generator.
- (E) Each TopCo shall be solely an investment holding company holding shares only in HoldCo and performing its obligations and responsibilities under the Gain Share Transaction Documents and the Finance Documents to which it is a party.

**3. BUSINESS AND LIABILITIES**

- (A) HoldCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraphs 2(B) and 2(C) above.
- (B) Each TopCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraph 2(E) above.

**4. STATUS**

Each of the Generator, HoldCo and each TopCo shall maintain its respective status as a [private] limited liability company incorporated under the laws of England.

**5. CENTRE OF MAIN INTERESTS**

For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) as it has effect in the law of the United Kingdom (the "**UK Insolvency Regulation**") each of the Generator, HoldCo and each TopCo shall ensure that its respective centre of main interests (as that term is used in Article 3(1) of the UK Insolvency Regulation) is situated in [England] and it has no "establishment" (as that term is used in Article 2(10) of the UK Insolvency Regulation) in any other jurisdiction.

**6. TAX RESIDENCY**

Each of the Generator, HoldCo and each TopCo shall not cease to be resident for tax purposes in England or establish or maintain any place of business or permanent establishment outside [England].

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<sup>91</sup> Note to Reader: these rules remain subject to further review by BEIS.

**7. NO LOANS OR CREDIT**

Each of the Generator, HoldCo and each TopCo shall not be a creditor in respect of any Financial Indebtedness incurred by any person (other than (i) in the ordinary course of trading; (ii) any Financial Indebtedness under and in accordance with a Finance Document for the purposes of the Project; and (iii) Financial Indebtedness for the purposes of the Project advanced to an entity in which the Generator, HoldCo or each TopCo (as applicable) has a direct or indirect shareholding).

**8. NO GUARANTEES OR INDEMNITIES**

Each of the Generator, HoldCo and each TopCo shall not incur or grant or allow to remain outstanding any guarantee or indemnity in respect of any obligation or liability of any person (other than (i) a guarantee or indemnity the provision of which is reasonably required in relation to the Project; and (ii) any guarantee or indemnity provided under, and in accordance with, a Finance Document for the purposes of the Project).

**9. NEGATIVE PLEDGE**

Each of the Generator, HoldCo and each TopCo shall not create or permit to subsist any Security Interest on, over or affecting the whole or any part of its respective undertakings or assets as security for the Financial Indebtedness of any other person (other than (i) a Security Interest granted by such person reasonably required in relation to the Project; and (ii) any Security Interest provided under, and in accordance with, a Finance Document for the purposes of the Project).

**10. NO GRANT OF ECONOMIC INTERESTS**

Each of the Generator, HoldCo and each TopCo shall not issue, raise or grant any Economic Interests except as necessary for the funding of Project costs.

**11. STAPLING**

No TopCo shall, and each TopCo shall procure that none of its Tracked Persons shall, effect or seek to effect a sale or transfer in respect of its Economic Interests in HoldCo unless a pro rata amount of all such Economic Interests is comprised within such sale or transfer, and for this purpose:

- (A) shares or other securities or other equity, partnership or other ownership interests shall be taken at their par value;
- (B) loans, loan capital and other debt instruments shall be taken at their principal amount plus accrued, unpaid interest; and
- (C) other Economic Interests shall be taken at the nearest equivalent to that in paragraph (A) or (B) above.

**12. FUNDING**

All Economic Interests issued, raised or granted for the funding of Project costs shall be routed through the following corporate structure, namely between (i) a TopCo and HoldCo; and (ii) HoldCo and the Generator.

**13. COMPLIANCE WITH LAWS AND DIRECTIVES**

Each of the Generator, HoldCo and each TopCo shall comply with all Laws and Directives to which it is a party or may be subject or by which it is bound [if failure to do so would have or

would reasonably be expected to have a material adverse effect on its ability to perform or comply with its obligations under Paragraphs 2 (*Gain Share: Project Gain Share Provisions*), 3 (*Gain Share: Sale Gain Share Provisions*) and 4 (*Gain Share: Security and Enforcement*) or any of them].

14. **GROUP STRUCTURE**

Each of the Generator, HoldCo and each TopCo shall conform to the Investment Structure Chart.

### Appendix 3 Valuation Procedure

#### 1. APPOINTMENT OF VALUER

- (A) Unless otherwise agreed in writing by the DPA Counterparty (including, for example, where it is agreed that the relevant Economic Interest is not a Qualifying Economic Interest), for the purposes of determining whether an Economic Interest in any person is a Qualifying Economic Interest, the Responsible Investor shall, as soon as reasonably practicable following completion of a potential Relevant Sale, notify the DPA Counterparty of the person the Responsible Investor proposes shall be a Valuer to undertake the valuation in accordance with this Appendix 3.
- (B) The DPA Counterparty may object to the person proposed by the Responsible Investor pursuant to paragraph 1(A) above on the basis that the proposed Valuer is:
- (i) not a bank or accounting firm of good repute with demonstrable expertise in the valuation of businesses such as that of the person which is the subject of the potential sale of Economic Interests (in this Appendix 3, the "**Subject Entity**"), the relevant Investor Group or the Generator;
  - (ii) not regulated by an appropriate regulator in the UK; or
  - (iii) not sufficiently independent of the Subject Entity and the relevant Investor Group, for reasons such as:
    - (a) the Selling Shareholder, the Subject Entity, the relevant Investor or a member of the relevant Investor Group exercises control over, or is controlled by, that entity;
    - (b) it acts as the auditor of the Selling Shareholder, the Subject Entity or the relevant Investor; or
    - (c) the Selling Shareholder, the Subject Entity, the relevant Investor or a member of the relevant Investor Group has an existing business relationship with that entity which is likely to affect the entity's ability to exercise independent judgment.
- (C) If the DPA Counterparty, in accordance with paragraph 1(B) above, objects to the person proposed by the Responsible Investor pursuant to paragraph 1(A) above within fifteen (15) Business Days of the notice referred to in paragraph 1(A) above, either the Responsible Investor or the DPA Counterparty may request that the President from time to time of the Institute of Chartered Accountants in England and Wales appoints the Valuer, having regard to the criteria set out in paragraph 1(B) above, and such appointment shall be binding on the parties to the valuation.
- (D) The Responsible Investor shall request that the Valuer:
- (i) determines the Valuation Percentage within forty (40) Business Days (or such other period, if any, as the Responsible Investor and the DPA Counterparty may agree in writing) after its appointment in accordance with this Appendix 3;
  - (ii) makes its assessment as at the date of the relevant sale of Economic Interests in HoldCo; and

- (iii) notifies that Responsible Investor and the DPA Counterparty in writing of its final reasoned determination (which shall include an explanation of the rationale for the selected valuation metric and of the underlying assumptions used).

## 2. INFORMATION

- (A) The relevant Investor shall procure that the Valuer is given all reasonable access to such of the accounting records, business plans, budgets and other information of or relating to the Selling Shareholder and the Subject Entity as are relevant to the Valuer's determination of the Valuation Percentage in accordance with this Appendix 3.
- (B) The relevant Investor shall procure that the Selling Shareholder and the Subject Entity shall promptly provide all reasonable assistance required by the Valuer in order to make its determination.

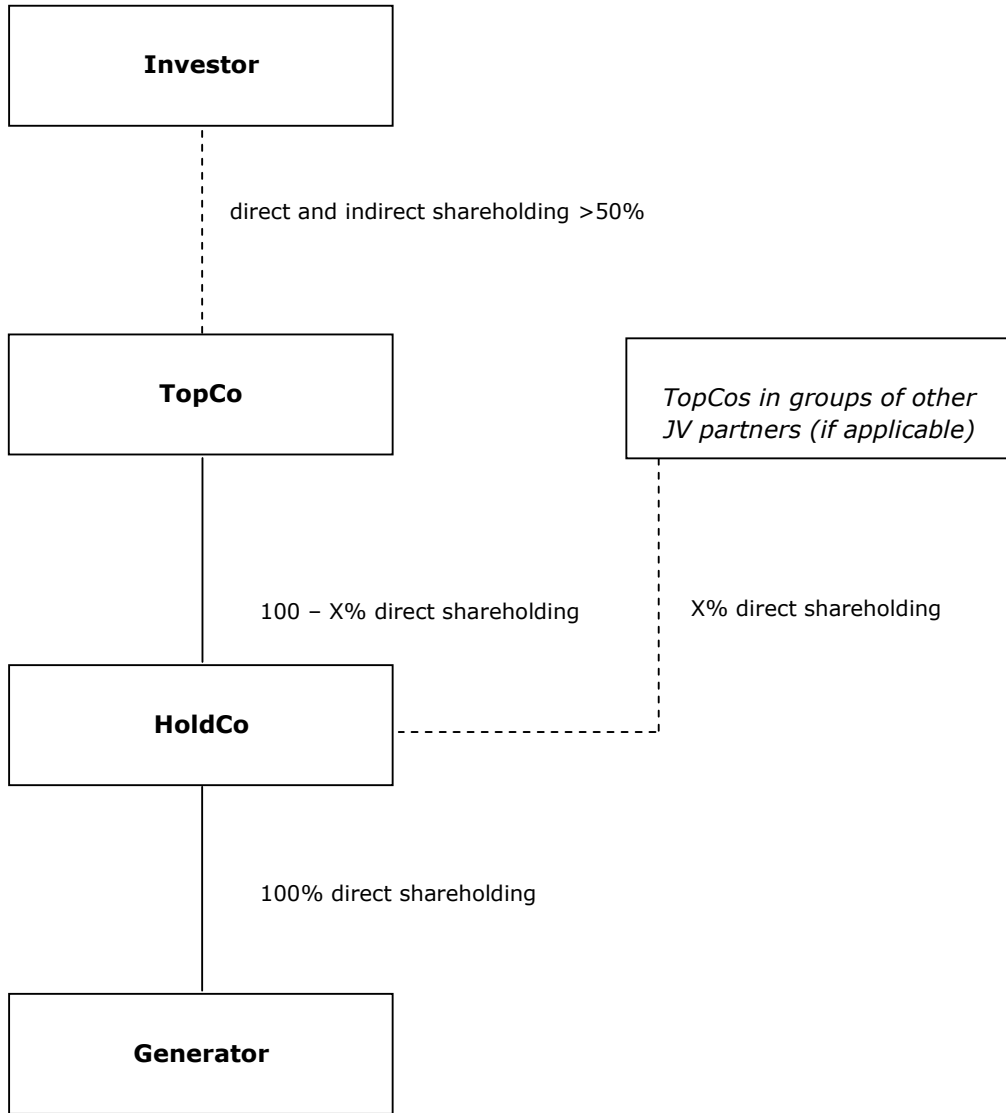
## 3. VALUATION PERCENTAGE

- (A) The "**Valuation Percentage**" means the percentage of the value of the Subject Entity that is derived from the business of the Generator calculated in accordance with this paragraph 3 or as otherwise agreed in writing between the DPA Counterparty and the Responsible Investor.
- (B) The Valuer shall determine the Valuation Percentage as:
  - (i) the fair market value of the Subject Entity derived from the business of the Generator divided by
  - (ii) the fair market value of the Subject Entity,as determined in accordance with generally accepted valuation principles and procedures for businesses of a similar size and in a similar business sector to that of the person which is the subject of the Relevant Sale.
- (C) The determination of the Valuation Percentage by the Valuer shall be a single percentage figure, and not a range, quoted as a percentage.

## 4. ACTING AS EXPERT

The Valuer shall act as expert and not as arbitrator and shall act within the scope of its appointment, and otherwise exercise its discretion as it sees fit, and its determination shall be final and binding on the parties (in the absence of fraud or manifest error).

**Appendix 4**  
**Investment Structure Chart<sup>92</sup>**



<sup>92</sup>

Note to Reader: this Appendix remains subject to modification to reflect the Investor's financing structure. Consequential amendments to other parts of the Gain Share Schedule may also be required.

## Appendix 5 Protective Provisions

The Protective Provisions are that:

1. **Single purpose<sup>93</sup>:**
  - (A) the Generator shall be a Single Purpose Company;
  - (B) HoldCo shall be solely an investment holding company which takes decisions in respect of the investments it holds and performs its obligations and responsibilities under the Gain Share Transaction Documents to which it is a party;
  - (C) HoldCo shall hold shares only in the Generator; and
  - (D) HoldCo shall not dispose of any shares in the Generator;
2. **Business and liabilities:** HoldCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraphs 1(B) and 1(C) above;
3. **Corporate structure (HoldCo):** HoldCo shall be the sole legal and beneficial owner of the entire share capital in the Generator;
4. **Corporate structure (Generator):** the Generator shall not be a shareholder in, or member of, any body corporate;
5. **Status:** each of the Generator and HoldCo shall maintain its status as a private limited liability company incorporated under the laws of England;
6. **Centre of main interests:** for the purposes of the UK Insolvency Regulation, the centre of main interests (as that term is used in Article 3(1) of the UK Insolvency Regulation) of each of the Generator and HoldCo shall be situated in England and it has no "establishment" (as that term is used in Article 2(10) of the UK Insolvency Regulation) in any other jurisdiction;
7. **No guarantees or indemnities:** [each of HoldCo and] the Generator shall not incur or grant or allow to remain outstanding any guarantee or indemnity in respect of any obligation or liability of any person (other than (i) a guarantee or indemnity the provision of which is reasonably required in relation to the Project; and (ii) any guarantee or indemnity provided under, and in accordance with, a Finance Document for the purposes of the Project);
8. **Negative pledge:** [each of HoldCo and] the Generator shall not create or permit to subsist any Security Interest on, over or affecting the whole or any part of its undertaking or assets as security for the Financial Indebtedness of any other person (other than (i) a Security Interest granted by such person reasonably required in relation to the Project; and (ii) any Security Interest provided under, and in accordance with, a Finance Document for the purposes of the Project);
9. **Compliance with Laws and Directives:** the Generator shall comply with all Laws and Directives to which it is a party or may be subject or by which it is bound [if failure to do so would have or would reasonably be expected to have a Material Adverse Effect];
10. **Shares:** each of the Generator, HoldCo and TopCo shall ensure that its shares are fully paid.

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<sup>93</sup> Note to Reader: the requirement for investors to hold their interests in the Generator through single purpose entities is subject to further review.

## **Appendix 6 Contracting Policy**

### **1. INTRODUCTION**

The provisions of this Contracting Policy are without prejudice and are subject to the terms of the DPA.

### **2. DEFINITIONS**

Unless a contrary intention appears, in this Contracting Policy:

**"Agreed Principles"** means:

- (A) in relation to any Related Party Transaction, that:
  - (i) the Related Party Transaction:
    - (a) will not be structured or operated in a manner that is designed, or a main purpose of which is, to leak value from the Generator to a Shareholder Group or any member thereof; and
    - (b) will not leak value from the Generator to a Shareholder Group or any member thereof;
  - (ii) the Related Party Transaction:
    - (a) and its terms are considered by the Generator, acting in accordance with the Reasonable and Prudent Standard, to be required for the Project and in the best interests of the Generator in connection with the Project; and
    - (b) is charged for at Cost, and these factors are formally minuted by the directors of the Generator accordingly;
  - (iii) either:
    - (a) the terms of the Related Party Transaction are documented in all material respects at an appropriate level of detail for an intra-group contract of the relevant size and cover all material terms that a contract with a third party supplier would include, except for terms relating to liability and dispute resolution, and provided that the pricing and other commercial terms of the Related Party Transaction will be appropriate for an intra-group arrangement charged for at Cost; or
    - (b) the terms of the Related Party Transaction are not materially less favourable to the Generator (either individually or in the aggregate) than those which would be negotiated and agreed between parties acting at arm's length and having regard, where appropriate, to contract terms negotiated and agreed in the [low carbon electricity generation] industry in the United Kingdom, North America and/or EU Member States;
  - (iv) without prejudice to the generality of paragraph (A)(iii) of this definition, the terms of the Related Party Transaction shall permit the Generator to terminate such Related Party Transaction for convenience on reasonable notice and the consequences for such termination shall be limited to the costs reasonably incurred by the counterparty to such Related Party Transaction to the effective date of termination of the Related Party Transaction and the costs reasonably



incurred by such counterparty to the Related Party Transaction in demobilising following the effective date of termination of the Related Party Transaction, in each case, for the avoidance of doubt, excluding any amounts in respect of loss of profits, loss of opportunity, indirect loss or consequential loss of or incurred or suffered by the counterparty to such Related Party Transaction (the **"Termination Compensation Amount"**); and

- (B) in relation to any Third Party Transaction, that:
- (i) the terms of the Third Party Transaction are not materially less favourable to the Generator (either individually or in the aggregate) than those which would be negotiated and agreed between parties acting at arm's length and having regard, where appropriate, to contract terms negotiated and agreed in the [low carbon electricity generation] industry in the United Kingdom, North America and/or EU Member States;
  - (ii) the terms of the Third Party Transaction do not lack a main business or commercial purpose and do not involve contrived, abnormal, arbitrary or commercially unnecessary steps;
  - (iii) without limitation to the generality of paragraph (B)(ii) of this definition, the terms of the Third Party Transaction shall permit the Generator to terminate such Third Party Transaction for convenience on reasonable notice and the consequences for such termination shall be limited to the costs reasonably incurred by the counterparty to such Third Party Transaction to the effective date of termination of the Third Party Transaction and the costs reasonably incurred by such counterparty to the Third Party Transaction in demobilising following the effective date of termination of the Third Party Transaction, in each case, for the avoidance of doubt, excluding any amounts in respect of loss of profits, loss of opportunity, indirect loss or consequential loss of or incurred or suffered by the counterparty to such Third Party.

**"Control"** means:

- (A) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of that person as are able to cast the majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists, the provisions of section 1159 of, and schedule 6 to, the Companies Act 2006 (as amended) shall apply); and/or
- (B) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise) to direct the voting in respect of more than 50 per cent. (50%) of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters,

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

**"Cost"** means costs and expenditure directly and reasonably incurred by the counterparty to a Related Party Transaction which is not a member of the HoldCo Group with respect to the relevant Related Party Transaction together with:

- (A) a contribution to the reasonable overhead of the relevant counterparty to the extent that the same is properly attributable to such Related Party Transaction; and
- (B) if required by such counterparty, a reasonable margin in relation to such Related Party Transaction to compensate for the transaction structure, capital employed and the risks and liabilities that the counterparty is required to accept under such Related Party Transaction,

but in each case shall not include any Inappropriate Cost;

**"Discount Amount"** has the meaning given to that term in paragraph 3.3(C)(ii) (*Audit*) of this Appendix 6 (*Contracting Policy*);

**"Inappropriate Cost"** means costs which are inappropriate and/or not justifiable as being in the best interests of the Project and shall include, without limitation:

- (A) costs which are in excess of the arm's length or market value of the applicable consideration provided by the counterparty which is not a member of the HoldCo Group, including (but not limited to) disproportionate fees or costs;
- (B) costs incurred pursuant to wasteful, unnecessary or extravagant outlays (including entertainment and hospitality);
- (C) extraordinary compensation payments (but not, for the avoidance of doubt, bonuses paid in the ordinary course of employment);
- (D) political subscriptions and donations;
- (E) break costs which exceed actual termination costs;
- (F) costs associated with termination periods which exceed actual termination costs and/or;
- (G) special, punitive or multiple damages;

**"Related Party Transaction"** means any agreement or arrangement entered into between (i) any member of the HoldCo Group; and (ii) any member of any Shareholder Group (and whether or not including other persons to that agreement or arrangement);

**"Services Expert"** means an expert appointed under paragraph 3.2 (*Determination*) of this Appendix 6 (*Contracting Policy*);

**"Shareholder Groups"** means each Investor Group and each Ultimate Investor Group and **"Shareholder Group"** shall mean any or a particular one of them as the context requires or permits;

**"Third Party Transaction"** means any agreement or arrangement entered into by any member of the HoldCo Group which is not a Related Party Transaction; and

**"Transaction"** means any Related Party Transaction and/or any Third Party Transaction.

### 3. TRANSACTIONS

#### *Transactions*

##### 3.1

- (A) Prior to submitting any Preliminary Equity IRR Report or Sale Equity IRR Report, the Generator shall review each of the Transactions entered into, or having effect, during the relevant Project Gain Share Calculation Period (in the case of a Preliminary Equity IRR Report) or prior to the relevant Transfer (in the case of a Sale Equity IRR Report) and shall consider whether the Agreed Principles have applied in relation to all Transactions throughout their term or whether the Transaction does not comply with the Agreed Principles.
- (B) If at any time the Agreed Principles have not been applied in respect of any Transaction, appropriate adjustments shall be made to the IRR calculations in the relevant IRR Report, as required by Paragraph 3 or Paragraph 4 (as applicable).
- (C) The Generator shall, within a reasonable period of a request by the DPA Counterparty, provide to the DPA Counterparty copies of any Transactions (or, if already provided, as amended since the last time provided).
- (D) For the purposes of this Contracting Policy, the Generator shall make available to the DPA Counterparty copies of any Transactions by uploading the relevant information to a virtual data room or equivalent storage facility which the Generator shall, at its own cost and expense, establish, maintain and administer in accordance with the Reasonable and Prudent Standard throughout the period for which this Contracting Policy applies and to which throughout such period the DPA Counterparty and its Representatives shall have unrestricted access (and for this purpose, and without prejudice to the generality of the foregoing, the Generator shall promptly provide users with any required user ID, passwords and other log-in details). Upon reasonable request of the DPA Counterparty and at the Generator's own cost and expense, the Generator shall allow the DPA Counterparty's external professional advisers (acting on a legally privileged basis and/or with a duty of confidentiality to the Generator, to the Generator's reasonable satisfaction) to inspect hard copies of the information and documents referred to in this paragraph 3.1(D) at the Generator's offices or other location chosen by the Generator (acting reasonably).
- (E) If the Generator has made or shall make available to the DPA Counterparty any information or document whether through a virtual data room or equivalent storage facility or otherwise howsoever, the act of making that information or document available (whether for the purposes of due diligence, the cost discovery and verification process or otherwise) shall neither be construed as an agreement, acceptance or approval by the DPA Counterparty of such information or document or of its terms or of any liabilities, costs or expenses disclosed thereby nor as prohibiting or restricting the right of the DPA Counterparty to make further enquiry as to, or to challenge, the same.
- (F) It is acknowledged that any task order or work order (or equivalent) which is issued pursuant to a Transaction which is in the form of a framework agreement will not constitute an amendment to the relevant Transaction.

**Determination**

## 3.2

- (A) Subject to paragraph (B) below, if the DPA Counterparty does not consider, acting reasonably, that the Agreed Principles have been applied in relation to a Transaction or the Transaction does not comply with the Agreed Principles, it shall be entitled to request, by written notice to the Generator, that a Services Expert be appointed to review the terms of the Transaction to determine whether the Agreed Principles have been applied in relation thereto or the Transaction does not comply with the Agreed Principles.
- (B) The Services Expert shall be an independent expert appointed by agreement between the Generator and the DPA Counterparty or, failing agreement as to such appointment within ten (10) Business Days of receipt by the Generator of a notice referred to in paragraph (A) above, within a further ten (10) Business Days of such receipt (or such longer period, if any, as the Generator and the DPA Counterparty may agree) by the President for the time being of the Law Society of England and Wales on the application of either the Generator or the DPA Counterparty, and the Services Expert's terms of appointment shall oblige the Services Expert to keep confidential the terms of the relevant Transaction and any further information provided.
- (C) Within twenty (20) Business Days of its appointment (or such longer period, if any, as the Generator and the DPA Counterparty may agree), the Services Expert shall state in writing whether, in its opinion, the Agreed Principles have been and/or are being applied in relation to the Transaction specified in the notice given pursuant to paragraph (A) above and whether the Transaction complies with the Agreed Principles. If the Services Expert determines that the Agreed Principles have not been and/or are not being applied in relation to the Transaction and/or the Transaction does not comply with the Agreed Principles in any respect, the Services Expert shall also state in writing the nature and extent of such non-compliance.
- (D) In so stating its opinion the Services Expert shall be deemed to act as an expert and not as an arbitrator and, save in the case of fraud or manifest error, its determination shall be final and binding on all concerned.
- (E) The Generator shall provide to the Services Expert sufficiently detailed information to enable the Services Expert to understand the application (or otherwise) of the Agreed Principles to the relevant Transaction. The Services Expert shall be entitled, acting reasonably having regard to its terms of reference, to appoint other professional advisers (including, but without limitation, accountants) in order to assist with the review of the relevant Transaction.
- (F) The terms of reference of the Services Expert shall provide that the Services Expert (and any professional adviser appointed by the Services Expert) shall enter into such confidentiality arrangements as the Generator (acting reasonably) may require and shall otherwise be on such terms (if any) as agreed between the Generator and the DPA Counterparty.
- (G) If the Services Expert states that the Agreed Principles have not been and/or are not being applied in relation to the Transaction specified in the notice given pursuant to paragraph (A) above and/or that the Transaction does not comply with the Agreed Principles [(or, in the case of paragraph (A)(iii)(a) of the definition of "Agreed Principles", does not comply with the Agreed Principles other than in any immaterial respect), the DPA Counterparty shall have a right to request an audit in accordance with paragraph 3.3 (*Audit*)].

- (H) If the Services Expert determines that:
- (i) the Agreed Principles have not been and/or are not being applied in relation to the reviewed Transaction and/or that the reviewed Transaction does not comply with the Agreed Principles, the Generator shall bear the costs of the Services Expert (including the costs of any professional adviser appointed by the Services Expert) and, if required by the DPA Counterparty pursuant to paragraph (G) above, the Auditor; and
  - (ii) the Agreed Principles have been and are being applied in relation to the reviewed Transaction and that the reviewed Transaction complies with the Agreed Principles, the DPA Counterparty shall bear the costs of the Services Expert (including the costs of any professional adviser appointed by the Services Expert).

### 3.3 **Audit**

- (A) In accordance with a determination by the Services Expert under paragraph 3.2(G) (*Determination*), the DPA Counterparty may by notice to the Generator require that a Transaction is audited in accordance with this paragraph 3.3. An Auditor shall be appointed by agreement between the Generator and the DPA Counterparty within ten (10) Business Days of receipt by the Generator of such notice or, failing agreement, within a further ten (10) Business Days of such receipt (or such longer period, if any, as the Generator and the DPA Counterparty may agree) by the President for the time being of the Institute of Chartered Accountants in England and Wales on the application of either the Generator or the DPA Counterparty.
- (B) The Generator shall provide to the Auditor sufficiently detailed information to enable the Auditor to:
- (i) understand the application (or otherwise) of the Agreed Principles to the relevant Transaction;
  - (ii) understand the charging basis underlying the cost of the relevant Transaction; and
  - (iii) give its opinion and prepare and deliver its report referred to in paragraph 3.3(C).
- (C) The terms of reference of the Auditor shall provide that the Auditor shall:
- (i) enter into such confidentiality arrangements as the Generator (acting reasonably) may require;
  - (ii) give its opinion as to the amount of money (if any) which would put the Generator into the position that it would have been in if the Agreed Principles had been applied in relation to the relevant Transaction and such Transaction had at all times complied with the Agreed Principles (the "**Discount Amount**"); and
  - (iii) report in writing accordingly to the Generator and the DPA Counterparty,
- and shall otherwise be on such terms (if any) as agreed between the Generator and the DPA Counterparty.

**Miscellaneous**

## 3.4

- (A) No Services Expert or Auditor appointed pursuant to paragraph 3.2 (*Determination*) or paragraph 3.3 (*Audit*) shall have the power to require disclosure of documents or information other than as provided for in this Appendix 6 (*Contracting Policy*) and each Services Expert or Auditor shall provide written reasons in support of any determination or opinion pursuant to this paragraph 3.
- (B) The DPA Counterparty shall not be entitled pursuant to this Appendix 6 (*Contracting Policy*) to access any documents or information, or working papers of, any Services Expert or Auditor appointed pursuant to paragraph 3.2 (*Determination*) or paragraph 3.3 (*Audit*).

**Appendix 7**  
**Form of Deed of Accession**

To: [Each party to the DPA]

From: [Company]

Dated: [●]

Dear Sirs,

Agreement dated [●] between [●] as DPA Counterparty and the Generator named therein (the "**DPA**")

1. We refer to the DPA. This is a Deed of Accession. Terms defined in the DPA have the same meaning in this Deed of Accession unless given a different meaning in this Deed of Accession.
2. With effect on and from the date of this Deed of Accession (the "**Accession Date**"), [Company] agrees to become [a TopCo] / [an Investor] and to be bound by the terms of the Gain Share Schedule of the DPA as [a TopCo] / [an Investor] and undertakes to each other Party that it will, with effect from the Accession Date, assume, perform and comply with each of the obligations of [a TopCo] / [an Investor] under the Gain Share Schedule as if it had been a party to the DPA and bound by the Gain Share Schedule in that capacity at its date of execution.
3. [Company] represents and warrants on the Accession Date to the DPA Counterparty in the terms set out in Paragraph 1 of Part C (*Representations and Warranties*) of the Gain Share Schedule.
4. [Company's] administrative details for the purposes of the DPA are as follows:  
 Address:  
 Attention:  
 Email:  
 [Agent for Service]: [insert details if the Company is not UK incorporated]
5. [Company] acknowledges that it has received a copy of the DPA together with all other information which it requires in connection with the DPA.
6. This Deed of Accession and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.
7. This Deed of Accession 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.
8. Whilst the Company agrees to become [a TopCo] / [an Investor] and to be bound by the terms of the Gain Share Schedule of the DPA as [a TopCo] / [an Investor], the only terms of the DPA which are enforceable by, or apply to, the Company are those set out in the Gain Share Schedule.

This Deed of Accession is entered into by deed.

[Company]

EXECUTED and delivered as a )  
DEED by [●] LIMITED )  
acting by its [director] / [duly )  
appointed attorney] )

.....  
[Director] / [Attorney]

in the presence of: .....

Witness's signature: .....

Name (print): .....

Address: .....

Occupation: .....

[Each Party to the DPA]

EXECUTED and delivered as a )  
DEED by [●] LIMITED )  
acting by its [director] / [duly )  
appointed attorney] )

.....  
[Director] / [Attorney]

in the presence of: .....

Witness's signature: .....

Name (print): .....

Address: .....

Occupation: .....



**Appendix 8**  
**Form of Parent Company Guarantee**

THIS GUARANTEE is made on [●] 202[●]

**BETWEEN:**

- (1) [●] LIMITED whose registered office is at [●] (the "Guarantor"); and
- (2) LOW CARBON CONTRACTS COMPANY LTD 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711 (the "DPA Counterparty").

**THE PARTIES AGREE AS FOLLOWS:**

**1. INTERPRETATION**

1.1 In this deed:

"Obligations" has the meaning given to it in clause 2.1(A) (*Guarantee and Indemnity*);

1.2 In this deed, unless a contrary indication appears:

- (A) a reference to any person is, where relevant, deemed to be a reference to or to include, as appropriate, that person's successors and permitted assignees or transferees;
- (B) a reference to (or any specified provision of) any agreement, deed or other document is to be construed as a reference to that agreement, deed or other document (or that provision) as it may be from time to time, amended, varied, supplemented, restated or novated;
- (C) the headings in this deed are inserted for convenience only and are to be ignored in construing it;
- (D) words importing the plural shall include the singular and vice versa; and
- (E) words and expressions defined in the DPA shall bear the same meanings when used in this deed.

**2. GUARANTEE AND INDEMNITY**

2.1 The Guarantor irrevocably and unconditionally:

- (A) guarantees to the DPA Counterparty the punctual performance by the Generator of its obligations under Paragraph 2.4 of the Gain Share Schedule (the "**Obligations**");
- (B) undertakes that whenever the Generator does not pay any amount comprised in the Obligations when due, the Guarantor will immediately on demand pay that amount as if it were the principal obligor; and
- (C) agrees with the DPA Counterparty that if, for any reason (including unenforceability or illegality of any of the Obligations), any amount claimed hereunder is not recoverable on the basis of a guarantee, it will, as an independent and primary obligation, indemnify the DPA Counterparty on demand against any cost, loss or liability it incurs as a result of the Generator not paying any amount which would, but for such reason, have been payable by it on the date when it would have been due. The amount payable by the Guarantor under this indemnity will not exceed the amount it would have had to pay hereunder if the amount claimed had been recoverable on the basis of a guarantee.

2.2 The Guarantor will pay interest to the DPA Counterparty on all amounts due from it under this deed from the date the DPA Counterparty demands payment from the Guarantor until payment of such amounts (both before and after any judgment) [at *specify rate*] on the basis that such interest shall be compounded monthly].

### 3. CONTINUING GUARANTEE

3.1 The obligations of the Guarantor under this deed:

(A) are a continuing guarantee and will extend to the ultimate balance of the Obligations regardless of any intermediate payment or discharge in whole or part;

(B) are to be in addition to and are not in any way prejudiced by and shall not merge with any other guarantee or security which the DPA Counterparty may now or in the future hold.

3.2 If, notwithstanding clause 3.1 above the obligations of the Guarantor under this deed cease to be continuing obligations, the Guarantor will remain liable in relation to all Obligations as at the date of discontinuation (whether demanded or not) and whether or not the Generator is then in default in relation to the Obligations.

### 4. DPA COUNTERPARTY PROTECTIONS

4.1 The obligations of the Guarantor under this deed shall not be affected by an act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of those obligations (and whether or not known to the Guarantor or the DPA Counterparty) including:

(A) any time, consent or waiver given to, or composition made with, the Generator or any other person;

(B) any amendment to or replacement of, the DPA or any other agreement, instrument or security (however fundamental);

(C) the taking, variation, compromise, renewal, release of or refusal or neglect to perfect or enforce any rights, remedies or securities against the Generator or any other person;

(D) any incapacity, lack of power, authority or legal personality of or dissolution or change in the members or status of the Generator or any other person; or

(E) any purported obligation of the Generator or any other person to the DPA Counterparty (or any security for that obligation) becoming wholly or in part void, invalid, illegal or unenforceable for any reason;

(F) any insolvency or similar proceedings.

4.2 The Guarantor waives any right it may have of first requiring the DPA Counterparty to proceed against or enforce any rights or security or claim payment from any person before claiming from it under this deed.

### 5. NO COMPETITION

Until all the Obligations have been irrevocably paid and discharged in full and unless the DPA Counterparty otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under Paragraph 2.4 of the Gain Share Schedule or by reason of any amount being payable, or liability arising under this deed:

(A) to be indemnified by the Generator;

- (B) to claim any contribution from any other guarantor of the Obligations;
- (C) to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the DPA Counterparty under the DPA or of any other guarantee or security taken pursuant to, or in connection with, the DPA;
- (D) to bring legal or other proceedings for an order requiring the Generator to make any payment, or perform any obligation, in respect of which the Guarantor has given a guarantee, undertaking or indemnity under this deed;
- (E) to exercise any right of set-off against the Generator; and/or
- (F) to claim or prove as a creditor of the Generator in competition with the DPA Counterparty.

If the Guarantor receives any benefit, payment or distribution in relation to such rights it shall hold that benefit, payment or distribution (to the extent necessary to enable all amounts which may be or become payable to the DPA Counterparty by the Generator under or in connection with Paragraph 2.4 of the Gain Share Schedule to be repaid in full) on trust for the DPA Counterparty and shall promptly pay or transfer the same to the DPA Counterparty or as the DPA Counterparty may direct.

## 6. PAYMENTS

6.1 All payments to be made by the Guarantor under this deed are to be made to the DPA Counterparty:

- (A) in immediately available cleared funds in the same currency in which the sums comprised in the Obligations are agreed to be paid in the Gain Share Schedule to the account the DPA Counterparty specifies for this purpose; and
- (B) in full without set-off or counterclaim and not subject to any condition and free and clear of and without deduction or withholding for or on account of any taxes or any other purpose. If any deduction or withholding from any payment is required by law then the Guarantor will promptly pay to the DPA Counterparty an additional amount being the amount required to procure that the aggregate net amount received by the DPA Counterparty will equal the full amount which would have been received by it had no deduction or withholding been made.

6.2 Until all Obligations have been irrevocably satisfied in full, the DPA Counterparty may place and keep any money received or recovered from the Guarantor in relation to the Obligations in a suspense account. Amounts deposited in such account shall accrue interest at the DPA Counterparty's usual rate for deposits of a similar nature from time to time and interest accrued shall be credited to that account.

## 7. CUMULATIVE POWERS AND AVOIDANCE OF PAYMENTS

7.1 The powers which this deed confers on the DPA Counterparty are cumulative, without prejudice to its powers under the general law, and may be exercised as often as the DPA Counterparty thinks appropriate.

7.2 Any settlement or discharge between the DPA Counterparty and the Generator and/or the Guarantor shall be conditional upon no security or payment to the DPA Counterparty by the Generator or the Guarantor or any other person being avoided or set aside or ordered to be refunded or reduced by virtue of any provision or enactment relating to insolvency and accordingly (but without limiting the DPA Counterparty's other rights under this deed) the DPA

Counterparty shall be entitled to recover from the Guarantor the value which the DPA Counterparty has placed upon such security or the amount of any such payment as if such settlement or discharge had not occurred.

## 8. SET-OFF

- 8.1 The DPA Counterparty may at any time after it has made a demand on the Guarantor under this deed (without notice to the Guarantor) set-off any other obligations (whether or not then due for performance) owed by the DPA Counterparty to the Guarantor in or towards satisfaction of the Obligations (and any other amounts due under this deed).
- 8.2 If the relevant obligation or liability is unliquidated or unascertained the DPA Counterparty may set-off the amount it estimates (in good faith) will be the final amount of such obligation or liability once it becomes liquidated or ascertained.

## 9. MISCELLANEOUS

- 9.1 The Guarantor will pay to the DPA Counterparty on demand the amount of all costs and expenses (including legal fees and any taxes thereon) incurred by the DPA Counterparty in connection with the negotiation, execution or enforcement of this deed.
- 9.2 No failure or delay by the DPA Counterparty in exercising any right under this deed shall operate as a waiver of that right nor shall any single or partial exercise of any right preclude any other or further exercise of that or any other right.
- 9.3 If any provision of this deed is or becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way.
- 9.4 The DPA Counterparty may at any time assign or otherwise transfer all or any part of its rights under this deed.
- 9.5 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this deed and no person other than the parties to this deed or any permitted assignee of the DPA Counterparty shall have any rights under it, nor shall it be enforceable by virtue of that Act by any person other than the parties to it.
- 9.6 This deed may be executed in counterpart and both counterparts taken together shall be deemed to constitute one and the same deed.
- 9.7 Any notice, demand or other communication to be served under this deed must be in writing and must be made by letter or by facsimile transmission to the party to be served at its address or facsimile number shown on the signature page of this deed.

## 10. GOVERNING LAW AND SUBMISSION TO JURISDICTION

- (A) This deed and any dispute, controversy, proceedings or claims of whatever nature arising out of or in any way relating to this deed or its formation (including any non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- (B) The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute regarding the existence, validity or termination of this deed) (a "**Dispute**").
- (C) The parties to this deed agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no party will argue to the contrary.

10.2 [Without prejudice to any other permitted mode of service, the Guarantor agrees that service of any claim form, notice or other document for the purpose of any proceedings in such courts shall be duly served upon it if delivered or sent by special delivery post to [●] (marked for the attention of [●]) or such other address in England or Wales as the Guarantor may notify from time to time to the DPA Counterparty.]

IN WITNESS whereof the Parties have executed and delivered this Guarantee as a deed on the date first above written.

**The Guarantor**

Executed as a deed by )  
[●] acting by [*insert name of director*]: )  
)  
)

Signature of director .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

**DPA Counterparty**

Executed as a deed by )  
**LOW CARBON CONTRACTS COMPANY** )  
**LTD** acting by [*insert name of director*]: )  
)

Signature of director .....

Signature of witness .....

Name of witness .....

Address of witness .....

.....

.....

Occupation of witness .....

**Appendix 9**  
**Form of Preliminary Equity IRR Report**

To: [●] (the "DPA Counterparty")

[Address]

From: [●] ("The Generator")

[Address]

Dated: [●]

**DPA GAIN SHARE SCHEDULE – PRELIMINARY EQUITY IRR REPORT**

Dear Sirs,

1. We refer to the Gain Share Schedule of the DPA relating to [Project] dated [●] between, among others, you as the DPA Counterparty and us as the Generator (the "**Schedule**"). Terms and expressions defined in or incorporated into the Schedule have the same meaning when used in this report.
2. This is the Preliminary Equity IRR Report relating to the Project Gain Share Calculation Period (the "**Subject Project Gain Share Calculation Period**") ending on the Project Gain Share Calculation Date falling on [●] (the "**Subject Project Gain Share Calculation Date**").
3. We refer to Paragraph 2.1(C) (*Preliminary Equity IRR Report*) of the Schedule.
4. The Available Cash Flow in respect of the Subject Project Gain Share Calculation Period is [●]. [This amount has been calculated as follows [●] / [Details of the calculation of this amount are set out in Annex [●] to this report].
5. [Details as of the Subject Project Gain Share Calculation Date of the amount[s] retained by the Generator referred to in paragraph (A)(i) of the definition of "Available Cash Flow" and the calculation thereof are set out [below] / [in Annex [●] to this report]. The reasons for the making of such retentions are as follows [●].]
6. We hereby confirm that there has been no failure to perform or comply with any of the Gain Share Rules of the Schedule [other than [●]]<sup>94</sup>. This failure has given rise to Deemed Available Cash Flow of [●]. Details of the calculation of the Deemed Available Cash Flow are set out [below] / [in Annex [●] to this report].]
7. We hereby confirm that there has been no failure to perform or comply with the Contracting Policy [other than [●]]<sup>95</sup>. The Related Party Discount Amount is [●]. Details of the calculation of the Related Party Discount Amount are set out [below] / [in Annex [●] to this report].]
8. Details of all Project Cash Flows and Real Project Cash Flows for the Subject Project Gain Share Calculation Period (including dates of receipt or payment and forecast dates of receipt or payment) are set out in Annex [●] to this report.
9. Annex [●] to this report sets out the Equity IRR (and its calculation) as at the Subject Project Gain Share Calculation Date in respect of the Subject Project Gain Share Calculation Period

<sup>94</sup> Note to Reader: full details of the failure and its consequences to be provided.

<sup>95</sup> Note to Reader: full details of the failure and its consequences to be provided.

(taking into account the information referred to in paragraph 8 above) and confirms whether, and the extent to which, each such Equity IRR is less than, equal to, or exceeds the Equity IRR Threshold.

10. Set out in Annex [●] to this report are details of the administrative costs and expenses of the Generator incurred since the Project Gain Share Calculation Date immediately preceding the Subject Project Gain Share Calculation Date and those administrative costs and expenses that the Generator forecasts that it will incur.
11. [We set out [below] / [in Annex [●] to this report] details of the Distributions we propose to make to HoldCo and details of the Distributions HoldCo proposes to make to each of the TopCos and (where relevant) the Project Gain Share Amount to be paid to the DPA Counterparty consequent upon the Project Cash Flows in relation to the Subject Project Gain Share Calculation Period (including the amount and calculation thereof). The Generator's estimate of the Project Gain Share Due Date is [●].]<sup>96</sup>
12. Accompanying this report are copies of the documents referred to in Paragraphs 2.1(D)(i), 2.1(D)(ii), 2.1(D)(iii)[, 2.1(D)(iv)] [and 2.1(D)(v)]<sup>97</sup> (*Preliminary Equity IRR Report*) of the Schedule.

Yours faithfully,]

.....  
Duly authorised for and on behalf of  
[●] (the Generator)

---

<sup>96</sup> Note to Reader: to be deleted as appropriate to show that there is no plausible circumstance as referred to in Paragraph 2.1(D)(iii) (*Preliminary Equity IRR Report*).

<sup>97</sup> Note to Reader: to be deleted as appropriate.

**[ANNEXES TO THE PRELIMINARY EQUITY IRR REPORT]**





- 6. This Bond shall be returned to us immediately after the later to occur of:
  - (A) the Expiration Date; and
  - (B) the final resolution of all demands under this Bond.
  
- 7. This Bond shall not be abrogated or affected by any other bond, guarantee or indemnity which you may hold in connection with the Contract or by any extensions of time granted under the Contract or other indulgence, waiver or forbearance under the Contract or this Bond or by any variations or alterations to the Contract made, conceded, given or agreed with or without our knowledge or consent.
  
- 8. Our obligation to make payment under this Bond shall not be affected by any act, omission, matter or thing (including, without limitation, the amalgamation, reconstruction, liquidation, receivership, administration, administrative receivership or dissolution of the Principal) which but for this paragraph might operate to release or otherwise exonerate us from our obligations hereunder in whole or in part, including, without limitation, (and whether or not known to us or to you):
  - (A) the taking, variation, compromise, renewal or release of or release or neglect to perfect or enforce any rights, remedies or securities (including, without limitation, any bond, guarantee or security) against the Principal or any other person; and
  - (B) any legal limitation disability or incapacity relating to the Principal or any other person.
  
- 9. If at any time one or more of the provisions of this Bond is or becomes illegal, invalid or otherwise unenforceable in any respect, such provision or provisions will be ineffective to the extent only of such illegality or unenforceability and such illegality, invalidity or unenforceability will not invalidate any other provision of this Bond.
  
- 10. This Bond and the benefit conferred to it may be assigned by the Beneficiary without our consent, to any party at any time and references to the Beneficiary shall include its assignees. This Bond and the benefit conferred by it may not be assigned by us. The Beneficiary shall give written notice to us within 14 days of any assignment pursuant to this clause.
  
- 11. This Bond (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this Bond) shall be governed by and construed according to the laws of England.
  
- 12. The parties submit to the exclusive jurisdiction of the courts of England as regards any claim or matter arising in relation to this Bond.

Signed as a deed by )  
 )  
 duly authorised for and on behalf of )  
 [Qualifying Bond Provider] )

In the presence of:

Signature of witness: .....

Name of witness: .....

Address of witness: .....

Occupation of witness: .....