

Annex 1
FMS Procedures

- (1) All generators must agree Full FMS Procedures prior to the Start Date. Generators who believe they may comply with the relevant exemption criteria and therefore be exempted from having to comply with full FMS procedures may agree FMS Procedures that will include both full sampling procedures (which will be used where the generator is not in compliance with the relevant exemption provisions) and "light touch" (FMS Exempted Procedures) which will be used for so long as the generator is in compliance with the relevant exemption provisions. If the Generator ceases to comply with the FMS Exempted Procedures then it has to immediately comply with the full FMS Procedures.*
- (2) The CfD Counterparty will have a termination right if the Parties do not agree FMS Procedures before the Long Stop Date. This is not provided for in this Annex but is addressed by way of the Further CPs which require the FMS Procedures to have been agreed.*

1. DEFINITIONS

“Agreed Fuelling Parameters” means the fuelling requirements applicable to the Facility Generation Technology, as set out in the [●];

“Ancillary Activities” means any and all activities which are ancillary to the generation of electricity at the Facility [*(including for the purpose of cleaning of other fuels from the Facility’s combustion system prior to using Fossil Fuel or Waste to heat the combustion system to its normal temperature, the heating of the Facility’s combustion system to its normal operating temperature or the maintenance of that temperature, the ignition of fuels of low or variable calorific value, emission control, standby generation or the testing of standby generation, corrosion control or fouling reduction)*];

“Applicable FMS Procedures” means: (i) the Full FMS Procedures; or (ii) the FMS Exempted Procedures, as determined in accordance with this Annex 1 (*FMS Procedures*) to be applicable to the Generator (and the Facility) from time to time;

[**“Biomass”** means material, other than Fossil Fuel or peat, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi, algae or bacteria, *[and includes such material contained in Waste]*];

“FMS Data” means all data, information, measurements, readings, reports and calculations delivered and required to be delivered to the CfD Counterparty pursuant to the FMS Procedures;

“FMS Exempted Generator” means the Generator at any time when it (and the Facility) is deemed pursuant to the operation of this Annex 1 (*FMS Procedures*) to meet the FMS Exemption Criteria;

“FMS Exempted Procedures” means such of the FMS Procedures as are identified therein to apply to the Generator (and the Facility) if and for so long as it is a FMS Exempted Generator, being FMS Procedures which shall be limited to those necessary to verify whether the Facility is complying with the FMS Exemption Criteria;

“FMS Exemption Criteria” means:

- (A) the Facility does not use any Fuel with Variable Renewable Content;
- (B) no Fossil Fuel is used at the Facility to generate electricity or for any Ancillary Purpose; and
- (C) the Generator is not required to report against or comply with any [*sustainability criteria*] with respect to any fuel used at the Facility to generate electricity or for any Ancillary Purpose;

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“FMS Procedures” means the fuel measurement and sampling procedures to be documented and agreed between the CfD Counterparty and the Generator pursuant to paragraph 2 (*Agreement of FMS Procedures*) for the purposes of, amongst other things, enabling the CfD Counterparty to calculate the Renewable Qualifying Multiplier in accordance with Condition [*] and Annex [*] (*RQM Calculation Methodology*), as such procedures may be varied from time to time by agreement between the Generator and the CfD Counterparty;

“FMS Report” means the report to be supplied to the CfD Counterparty pursuant to the FMS Procedures and containing all data required by the CfD Counterparty to calculate the Renewable Qualifying Multiplier in accordance with Condition [*] and Annex [*] (*RQM Calculation Methodology*);

“FMS Termination Event” has the meaning given to that term in paragraph [*];

“Fossil Fuel” means coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum or petrol products;

“Fuel with Variable Renewable Content” means fuels composed wholly or partially of renewable material whose Energy Content can vary over time, as defined in the EA 2013 Regulations;

“Full FMS Procedures” means all FMS Procedures except the FMS Exempted Procedures;

“Qualifying Waste” means any [*unprocessed, municipal mixed Waste*] which the CfD Counterparty in its sole discretion deems to meet the Waste Qualification Criteria;

“Relevant Waste Proportion” shall be 0.5 or such other amount (expressed as a decimal) calculated as being the Relevant Waste Proportion in accordance with this Annex 1 (*FMS Procedures*);

“Relevant Waste Proportion Variation Notice” has the meaning given to that term in paragraph 4.3;

“Third Party FMS Contractor” means any third party engaged in respect of or otherwise involved with the carrying out or implementation of the FMS Procedures, including the operator or owner of any laboratory or provider of any testing equipment;

“Waste” has the meaning given to that term in the 2008 Waste Framework Directive 2008/98/EC; and

“Waste Qualification Criteria” means:

- (A) any Waste which is or is derived from Fossil Fuel, as a proportion of the total amount of Waste, is not (and is reasonably [*unlikely*] to) exceed the Relevant Waste Proportion; and

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(B) the relevant Waste is *[unprocessed]*.

2. AGREEMENT OF FMS PROCEDURES

- 2.1 As soon as reasonably practicable following the Agreement Date, the Generator shall give a notice to the CfD Counterparty outlining the FMS Procedures which it proposes be adopted for the purposes of the Contract for Difference.
- 2.2 The Generator may, if it considers that the Facility will or is reasonably likely to comply with the FMS Exemption Criteria (either with effect from the Start Date or otherwise during the Term), require that the FMS Procedures include FMS Exempted Procedures.

[Drafting Note: To include provisions equivalent to the CP satisfaction mechanism, to permit the CfD Counterparty to respond to proposal. Generator's proposals shall be required to be backed up with Directors' Certificate. The CfD Counterparty will have the right to request any additional information to assess the suitability of the proposed procedures and agreement as to the content of the FMS procedures is at CfD Counterparty discretion.]

It is currently anticipated that the FMS Procedures shall include audit and spot-check rights and will include provisions regarding the information which needs to be provided in relation to the output of the FMS Procedures.]

3. GENERATOR'S FMS OBLIGATIONS

Conduct of FMS Procedures

- 3.1 The Generator shall, with effect on and from the Start Date carry out and implement the Applicable FMS Procedures (or, subject to paragraph 3.2, procure the carrying out and implementation of the Applicable FMS Procedures).
- 3.2 Condition [*]¹ shall apply to the Generator's obligations to carry out and implement the Applicable FMS Procedures, except that:
- (A) the Generator may only effect a Transfer pursuant to such Condition with respect to the carrying out or implementation of any or all of the Applicable FMS Procedures with the prior consent of the CfD Counterparty; and
 - (B) if the Generator effects a Transfer pursuant to paragraph (A), it shall ensure that the terms upon which the Third Party FMS Contractor is engaged require it to deliver copies of all FMS Data (including the FMS Report) to the Generator and the CfD Counterparty at the same time.

¹ This will cross-refer to the Condition which permits the Generator to sub-contract its obligations.

Information obligations²

3.3 The Generator shall, with effect on and from the Start Date:

- (A) provide the CfD Counterparty with all Information requested by the CfD Counterparty relating to the Generator's compliance or non-compliance with this Annex [*] (*FMS Procedures*), the Generator's (and the Facility's) compliance or non-compliance with the FMS Exemption Criteria or otherwise in connection with the carrying out or implementation of the FMS Procedures or the calculation of the Renewable Qualifying Multiplier in accordance with Condition [*] and Annex [*] (*RQM Calculation Methodology*), such Information to be provided promptly, and no later than [10] Business Days after the Information is requested;
- (B) submit such Information to the CfD Counterparty as is required pursuant to the Applicable FMS Procedures in connection with the carrying out and implementation of the Applicable FMS Procedures (including the FMS Report) on a monthly basis and, in relation to each RQM Calculation Month, no later than the end of the second calendar month after such RQM Calculation Month;
- (C) *[submit such data to the CfD Counterparty as it is required to submit to any relevant body for the purposes of reporting against or meeting sustainability criteria]; and*
- (D) *[inform the CfD Counterparty as soon as reasonably practicable if it becomes aware that the Third Party FMS Contractor has failed to comply with any of its obligations in relation to the FMS Procedures.]*

3.4 The Generator shall ensure that all FMS Data submitted by it to the CfD Counterparty pursuant to the FMS Procedures is accurate, complete and not misleading.

3.5 If the Generator ceases to comply with the FMS Exemption Criteria it shall immediately inform the CfD Counterparty of the same.

Access rights

3.6 The Generator shall allow the CfD Counterparty access to the Facility *[and any plant, machinery, processing or storage facility associated with the Facility]* within *[24 hours]* of notification from the CfD Counterparty for such auditing as the CfD Counterparty is entitled to carry out pursuant to the FMS Procedures. ***[Drafting Note: It is currently anticipated that this will be as extensive as the metering undertakings and will***

² The scope of information obligations is currently under review.

allow the CfD Counterparty to nominate third parties to attend the Facility on its behalf.]

4. DEEMED RENEWABLE QUALIFYING MULTIPLIER³

FMS Exempted Generator

- 4.1 The Renewable Qualifying Multiplier shall, in relation to each RQM Calculation Month in respect of which the FMS Data evidences that the Generator is an FMS Exempted Generator, be one (1).

Utilisation of Qualifying Waste

- 4.2 Subject to paragraph 4.5, any Qualifying Waste used by the Facility shall be deemed to have a Renewable Qualifying Multiplier of the Relevant Waste Proportion.
- 4.3 The CfD Counterparty may give notice to the Generator (a “**Relevant Waste Proportion Variation Notice**”) which shall:
- (A) be substantially in form set out in Part [●] of Annex 1 (*FMS Procedures*);
 - (B) specify a revised Relevant Waste Proportion; and
 - (C) specify the date, such date to be not less than 30 Business Days following the receipt (or deemed receipt) of the Relevant Waste Proportion Variation Notice, from which the revised Relevant Waste Proportion shall be effective (the “**RWPV Effective Date**”).
- 4.4 On receipt of a Relevant Waste Proportion Variation Notice, the Generator may either:
- (A) notify the CfD Counterparty that it consents to the revised Relevant Waste Proportion applying with effect from the RWPV Effective Date; or
 - (B) notify the CfD Counterparty that it does not consent to the revised Relevant Waste Proportion applying with effect from the RWPV Effective Date, in which case all Waste used by the Facility shall be subject to the FMS Procedures with effect from the RWPV Effective Date.
- 4.5 The CfD Counterparty may at any time, on not less than [●] Business Days’ notice, elect to disapply paragraph 4.2, and require the Waste used at a Facility to be subject to the FMS Procedures.

³ The scope and details of deeming provisions is subject to further review.

5. CHANGES IN [FUELLING [ARRANGEMENTS]/[PARAMETERS]]

- 5.1 If the CfD Counterparty determines that the Generator or the Facility (as relevant) is not satisfying the FMS Exemption Criteria at any time during which the Generator is relying upon the satisfaction of the FMS Exemption Criteria to carry out and implement the FMS Exemption Procedures rather than the Full FMS Procedures the CfD Counterparty shall deliver a notice to the Generator (a “**Non-FMS Compliance Notice**”). A Non-FMS Compliance Notice shall:
- (A) be in the form set out in Part [●] of [●];
 - (B) contain a statement that the Generator is not complying with the FMS Exemption Criteria;
 - (C) set out the basis on which the Generator is not complying with the FMS Exemption Criteria; and
 - (D) specify the date from which the CfD Counterparty has determined that the Generator has ceased to comply with the FMS Exemption Criteria (the “**Non-FMS Compliance Date**”).
- 5.2 The Generator may not challenge the validity of any Non-FMS Compliance Notice and shall, on receipt of a Non-FMS Compliance Notice, comply with the Full FMS Procedures with effect from [the RQM Calculation Month in which such Non-FMS Compliance Notice was received (or deemed to have been received)].
- 5.3 If paragraph 5.1 applies then the CfD Counterparty shall not be required to pay any Net Payable Amounts which would otherwise be payable by the CfD Counterparty to the Generator in relation to any Billing Periods falling in the period from the Non-FMS Compliance Date until the date on which it determines that the Generator is complying with the Full FMS Procedures.

6. SUSTAINABILITY CRITERIA

[The approach to sustainability criteria is still being considered]

7. BREACHES OF FUELLING PARAMETERS

[Drafting Note: It is currently anticipated that where there is a breach of fuelling parameters by a generator and the Market Reference Price is below the Strike Price, there will be a staggered penalty applied to the Renewable Qualifying Multiplier on a three strikes basis. This “step down” mechanism is intended to cater for the possibility of accidental / minor fuelling breaches by Generators. The first breach in a rolling twelve month period would incur a 0.9 multiplier to that months RQM, the second in a rolling twelve month would incur a 0.8 multiplier to that Renewable Qualifying Multiplier and the third and each subsequent in a rolling twelve month during which the breach persisted would result in the Renewable Qualifying Multiplier being deemed to be zero. In the event that the EMR Expert Group papers are not a statement of Government policy or policy intent

Market Reference Price is above the Strike Price, there will be no “step down” mechanism and the Renewable Qualifying Multiplier will be deemed to be 1 until the breach is remedied or the Market Reference Price falls below the Strike Price]

8. NON-MATERIAL BREACHES OF FMS PROCEDURES

8.1 If the Generator *[non-materially]* breaches the FMS Procedures, the CfD Counterparty shall:

- (A) *[notify the Generator of the breach]*; and
- (B) *[if the breach is remediable]*, specify what the CfD Counterparty *[reasonably]* requires the Generator to do in order to remedy the breach.

8.2 If:

- (A) the Generator *[non-materially]* breaches the FMS Procedures three times in any twelve calendar month period; and
- (B) the aggregate Net Payable Amounts during the month in which the third such breach occurred was a positive number,

then the Metered Output for each Settlement Unit falling within such calendar month, and any subsequent calendar month during the relevant twelve calendar month period in which:

- (C) any breach is continuing and *[unremedied]*; and
- (D) the aggregate Net Payable Amounts is a positive number,

shall be zero (0).

9. MATERIAL BREACHES OF THE FMS PROCEDURES

9.1 The CfD Counterparty shall promptly notify the Generator if it is aware of a breach of the FMS Procedures and considers such breach to be material.

9.2 If the CfD Counterparty *[considers that any breach by the Generator of the FMS Procedures is a material breach]*, then an FMS Termination Event shall be deemed to have occurred.

[Drafting Note: The concept of materiality in this context is still being considered but it is currently anticipated that a breach which prevented or distorted the calculation of the Renewable Qualifying Multiplier or a breach of the obligation to grant access would be material. A material breach would also lead to a deeming of the Renewable Qualifying Multiplier as zero]