



Department
of Energy &
Climate Change

Implementing the Offtaker of Last Resort

Government Response

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The original consultation and Impact Assessment can be found on DECC's website:
<https://www.gov.uk/government/consultations/supporting-independent-renewable-investment-offtaker-of-last-resort>

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Glossary

Agreement Date	The date on which the generator signs their Backstop PPA
ALF	Average Load Factor
Allocation Date	The date on which Ofgem sends the generator a Backstop PPA to sign
Backstop PPA	PPA contract offered under the OLR (BPPA)
CFD	Contract for Difference
CFD Agreement	The initial section of a CFD which details the project-specific information relating to that particular contract, such as the eligible generator's name and the location of the facility
Contract for Difference	The combination of the Standard Terms and a CFD Agreement, which when signed by the CFD counterparty and an eligible generator comprise a legally binding contract
CFD counterparty	The counterparty for CFDs, which will be the Low Carbon Contracts Company Limited
Commencement Date	Means the later of the generator's Preferred Commencement Date (as specified in Schedule One of their project information) and the date falling five (5) days after the Agreement Date.
Eligible Generator	Any electricity generator eligible for the OLR
EMR	Electricity Market Reform
EOI	Expression of Interest
Generator	Any legal entity which might apply for a CFD
GSP	Grid Supply Point
IC	Investment Contract
IRGs	Independent Renewable Generators
IRR	Internal Rate of Return
KPI	Key Performance Indicator
KYC	Know Your Client/Counterparty
LCCC	Low Carbon Contract Company Limited
LEC	Levy Exemption Certificate
LOC	Letter of Credit
MRP	Market Reference Price
MW	Mega Watt
Offtaker	Licensed supplier party to a PPA or Backstop PPA (BPPA) with a generator
Ofgem	Office of Gas and Electricity markets, the Authority
OLR	Offtaker of Last Resort
OLR Notice	The notice sent to all licensed suppliers, informing that one or more BPPAs are to be subject to an OLR auction
OLR Year	A period of 12 months commencing on 1 April and ending on the next 31 March
PI	Project Information
PNG	Private Network Generator
PPA	Power Purchase Agreement

REGO	Renewable Energy Guarantees of Origin
RO	Renewables Obligation
SBP	System Buy Price
SCADA	Supervisory Control and Data Acquisition
SOC	A signed 'Statement of Confirmation' (SOC) from a director of the electricity generator confirming that the PI is complete, true and accurate, and a declaration that the provision of the statement commits the generator to entering into the OLR
ssFiT	Small Scale Feed in Tariff
SSP	System Sell Price
System Operator	The operator of the national electricity transmission system in Great Britain, which will act as the Delivery Body for the CFD regime
T&Cs	Terms and Conditions
£/MWh	Pound per Megawatt hour

Chapter 1: Introduction

Consultation Overview

- 1.1 On the 27th June 2014, the Government published the second Offtaker of Last Resort (OLR) consultation, '*Implementing the Offtaker of Last Resort*', seeking views on the detailed OLR policy design to implement the scheme. Draft versions of the Backstop Power Purchase Agreement (BPPA), the Power Purchase Agreement Scheme Regulations ("the Regulations") and modifications to electricity supply licence conditions ("the licence modifications") were published for comment, along with the Government's response to the February consultation, '*Supporting Independent Renewable Investment: Offtaker of Last Resort*', and an updated Impact Assessment.
- 1.2 The consultation closed on 24th July 2014. We received responses from 22 organisations representing different sectors of the energy industry including generators, suppliers and trade associations. A full list of respondents is included at Annex A.
- 1.3 Consultation responses mostly supported the Government's intent to introduce the OLR. Support was shown for the detailed implementation options set out in the consultation with respondents raising few concerns on the implementation approach.

Analysis of Consultation Responses

- 1.4 The chapters of this document detail the Government's response to the issues raised by respondents. For every consultation question set out in the June 2014 consultation, we have set out the question in this document along with a summary of the issues raised from the responses, clarifying the issues and details of any post-consultation decisions taken.
- 1.5 All responses received as part of the June 2014 consultation have been considered in developing final policy positions and we have sought to ensure stakeholder concerns have been addressed in the final design where this has been appropriate.

Next Steps

- 1.6 The Regulations will be laid in conjunction with the publication of this Government response. The licence modifications will be laid when Parliament returns after Recess and an indicative version has been published on the OLR webpage. It is our intention (subject to the Parliamentary procedure) that the Regulations will begin to come into force in time for the first CFD auction on 14th October 2014 and the licence modifications¹ in November 2014.

¹ Further to section 64(2) of the Energy Act 2013 a draft of the licence modifications must be laid before Parliament and if within the 40 day period no resolution is made by either House not to approve the draft, the Secretary of State may make the modifications in the form of the draft.

Chapter 2: Application

Consultation Question

- 1. Do you agree with the way in which a generator will apply for a Backstop PPA? Please provide evidence if you believe the approach outlined will not work.**

Introduction

- 2.1 In our June consultation we presented the process for generators applying for a BPPA:
- CFD-holding renewable generators can start the application process by submitting their Expression of Interest (EOI) to Ofgem.
 - The generator then submits to Ofgem its Project Information (PI) and Statement of Confirmation (SOC) confirming their intent to enter a BPPA, whereby Ofgem will make a mechanistic assessment of the generator's eligibility.

Summary of responses

- 2.2 In general, consultation responses supported the application process for a BPPA. This section summarises the issues raised and explains the Government's post-consultation position.

Project information (PI)

- 2.3 A number of suppliers requested that generators provide additional information, including historical output and metering details, when submitting their PI in order to assist offtakers in pricing efficient OLR bids. Provisions set out in the licence modifications describe the information that generators need to provide, with the full detail in Schedule 1 of the BPPA Contract. This full list contains the metering details and historical output data.

Threshold for splitting generator capacity across multiple Backstop PPAs

- 2.4 Suppliers requested the threshold for splitting generator capacity be reduced from 150MW to 100MW or lower. The Government's rationale for the original 150MW threshold was that the capacity that a generator sought to enter into the OLR should be divided across BPPAs to the nearest 100MW; 150MW was the threshold at which rounding to the nearest 100MW would result in two BPPAs rather than one.
- 2.5 Respondents suggested there could be some benefit to reducing this threshold, primarily through reducing the burden on suppliers from the largest BPPAs, and allowing more competition between suppliers who might be able to absorb a lower capacity. We agree that there are some benefits to reducing the threshold and as such are reducing it to 100MW.
- 2.6 The process for calculating the number of BPPAs applying to each site is set out in Regulations and will be determined through the following formula, with the answer rounded to the nearest integer:

$$= \frac{C}{100} \times \frac{3}{2}$$

Where “C” is the total capacity in megawatts in respect of which the electricity generator intends to enter into a BPPA (Reg4).

- 2.7 Table 1 illustrates the number of BPPAs that would apply using this approach at different project capacities such that no BPPA would exceed 100MW.

Table 1

OLR Capacity (MW)	June Consultation proposal		Final position	
	BPPAs	Capacity per BPPA (MW)	BPPAs	Capacity per BPPA (MW)
80	1	80	1	80
100	1	100	2	50
130	1	130	2	65
150	2	75	2	75
300	3	100	5	60
500	5	100	8	62.5

Applying for the OLR for a proportion of total capacity

- 2.8 We are keen to allow flexibility for generators to opt a portion of their output into the OLR if the generator cannot secure a commercial PPA for their entire output. This is likely to be a more significant issue for larger generators, where only a limited number of larger off-takers may be able to handle the volume of generation. By allowing them to opt in some of their output, we would be supporting the commercial PPA market and giving the generator the ability to make a decision that may make more financial sense.
- 2.9 The process for dividing the electrical output would involve a statistical reallocation to ensure that the appropriate amount of electricity generated is credited to the appropriate off-taker account for the purposes of Settlement – this is done through the use of a Meter Volume Reallocation Notification (MVRN). This is a process that any licensed generator would be able to use, although licence-exempt generators are unlikely to be able to. As the majority of sub-100MW generators would not be able to put in place a MVRN, we have drafted the contract and licence conditions in such a way that it avoids the risk that these generators could apply for just a portion of their output, but would subsequently be unable to effect the reallocation. As such, this option is only open to any generator above 100MW, who will be able to opt in a minimum of 50% of their total capacity. This minimum is set to ensure that larger generators cannot repeatedly opt in just a small proportion of their capacity to the mechanism, which would have associated costs for suppliers and Ofgem from the increased administrative burden.

OLR availability

- 2.10 In order to allow generators to account for the OLR when negotiating their finance arrangements for the first CFD projects, we have committed to having the regulations made before the first CFD allocation round. However some respondents suggested that having the regulations and BPPA terms published would not be sufficient, and requested that generators should be able to apply for BPPAs earlier than April 2016 in order to give more comfort to the industry.
- 2.11 As made clear in our consultation, our Advisory Group agreed that April 2016 was an appropriate latest possible date for availability of BPPAs. This was due to the expectation that few projects would have reached financial close and completed construction before this date, and even in this case would almost certainly have a PPA or be able to obtain one at better value than the BPPA. However, the group noted that it could be possible to bring this forward if the OLR could be implemented more quickly by Ofgem.
- 2.12 After discussions with Ofgem, we can now confirm that the OLR will be open to applications from October 2015. However, before generators can apply for a BPPA, Ofgem will need to engage with stakeholders to develop OLR guidance and their internal business processes. Making BPPAs available before October 2015 would therefore not provide time for Ofgem, or industry, to get systems in place to manage the mechanism adequately and robustly.

Chapter 3: Allocation

Consultation Questions

- | | |
|-----------|--|
| 2. | Do you agree with the way in which Backstop PPAs are allocated? Please provide evidence if you believe the approach outlined will not work. |
|-----------|--|

Introduction

3.1 The June consultation detailed the process Ofgem will follow to allocate BPPAs:

- To begin the OLR auction process, Ofgem will circulate the OLR Notice to suppliers, including the generator's PI, and a copy or copies of the BPPA.
- The payment period of a BPPA will commence a maximum of 26 working days² after the initial expression of interest, unless generators prefer a later start date.

Summary of Responses

3.2 In general, consultation responses supported the proposed BPPA allocation process. This section will clarify aspects of policy where consultation respondents queried the OLR allocation process, including the auction, and will explain the Government's post-consultation position.

Allocation timeline

3.3 Most respondents thought the timeline was workable and of a suitable length. However, some suppliers were keen for an increase in the time allocated to bidding and reallocation of meters. Conversely, some generators wanted a shorter timeline so they could access a BPPA more quickly. Separately, there was a suggestion to remove the requirement for Ofgem to circulate a notice of the expression of interest (EOI) due to a fear that this could cause confusion to suppliers.

3.4 After consideration of these responses, we feel the allocation timeline as proposed strikes the appropriate balance between generator and supplier requirements. Further, the circulation of the EOI notice gives suppliers an important warning that a generator requires a BPPA and allows an opportunity for suppliers to offer the generator a commercial PPA on better terms.

OLR Auction Process

Negative bids

3.5 A number of suppliers queried whether negative management fees could be bid into an OLR auction. We can confirm that this is the case – the definition of management fee

² The maximum 26 working day timeline is dependent on the period not being extended; for example by incomplete or incorrect information being provided by a generator, or if Ofgem do not receive information from a generator in a timely manner

given in the licence modifications makes it clear that offtakers can place negative bids³. However, we would not expect this to occur since the offtaker could instead offer the generator better terms in a commercial PPA and not have to pay a levelisation fee to its competitors.

- 3.6 Some respondents suggested that, in the event that a supplier bid a negative management fee, the fee should be paid to the generator rather than being levelised as a payment to all licensed suppliers. We do not accept that this is an appropriate approach for the OLR, since it would effectively turn a scheme of last-resort into a clearing house for PPAs, something that is best left to market participants to deliver. Generators would see no benefit in terms of raising project finance, since lenders would only have confidence over the worst-case BPPA discount.

Reserve bids

- 3.7 Multiple respondents questioned the length of time that bids can be accepted, requesting that this period be shortened. Allowing bids to be accepted beyond the proposed commencement date is important to provide generators with the assurance that if an offtaker is unable to fulfil the contract, a reserve offtaker is available. After reconsidering the allocation timetable, we are convinced that this assurance can be retained whilst reducing the time bids can be accepted from a month to ten working days beyond the commencement date. As set out in the Regulations, generators can request a Reserve Bid up to five working days after the commencement of their BPPA⁴. Therefore, ten working days provides generators with reassurance that if any issues arise that could prevent the initial offtaker being able to fulfil their obligations under the contract⁵, then bids from reserve bidders will be capable of acceptance. In order to ensure bids are capable of acceptance in the highly unlikely event that exceptional circumstances delay the allocation timeline, we have amended the date from which bids are capable of acceptance from the proposed commencement date to the actual commencement date.
- 3.8 Some suppliers disagreed with the provisions that allow voluntary offtakers to opt out from acting as reserve bidders. This position was intended to help attract competition to the auctions by removing a barrier to participation from small offtakers that may not have the capacity to absorb multiple BPPAs – if a rapid change in the market led to significant numbers of generators applying for a BPPA, then having a previous bid still being capable of acceptance could prevent a small supplier participating in a subsequent auction. We continue to believe that this strikes the right balance, particularly since the reduction in the length of time in which the bid is capable of being accepted reduces the burden of acting as a reserve bidder.

³ The definition of the management fee in the Licence Conditions states '*Management Fee...means, in respect of any BPPA, the fee which the licensee will charge for entering into and managing that BPPA, which fee shall be expressed as an amount (whether negative or positive) for each MWh of electricity purchased under that BPPA.*'

⁴ Since suppliers return a signed copy of the Backstop PPA with their OLR Bid, there is no option for them not to enter a BPPA once the generator receives the contract.

⁵ Issues that could include, for example, failure to provide credit requirements; or not being capable of taking delivery of the generator's power.

Metering

- 3.9 Concern was raised regarding the five day meter reallocation process with some respondents stating that five days is insufficient for reallocation to take place. If transmission connected, BMU transfer currently takes place in less than five days. If connected to the distribution network, Elexon are confident that their amendments to the BSC, which works with the CFD, mean that five days is sufficient to complete meter reallocation.
- 3.10 To ensure metering arrangements do not delay contract allocation, we have set out in the licence modifications a requirement that mandatory offtakers commence registration in each Grid Supply Point (GSP) in which they operate within twenty-days of Ofgem informing them that they are mandatory OLR offtakers for the following OLR Year.

Contract Commencement

- 3.11 Respondents requested clarity regarding the time it should take between contract agreement and commencement. Suppliers were concerned that a delay in the contract commencement increases offtaker trading risk.
- 3.12 To reduce this risk, the time between the allocation and agreement date has been reduced from five to three working days, as detailed in Clause 2.3 of the BPPA Contract. Generators who do not enter into the contract within this time face the penalty of losing their eligibility for future BPPAs.

Collateral Requirements

- 3.13 In our June consultation we set the collateral requirements intended to cover the generator for the amount they would receive from the offtaker for their electrical output at 87 days. This amount was calculated as a worst case scenario and was intended to cover the maximum period between the previous paid invoice and an insolvency event (40 days), the termination notice period (10 days) and the period until a new BPPA can be put in place (37 days).
- 3.14 Some consultation responses called for this time period to be shortened as it is costly for offtakers and could discourage smaller suppliers from participating in the OLR. Based on responses and having tested a shorter time period with lenders, we have reduced the requirements to 72 days. The 10 day termination time has been removed as insolvency allows for immediate termination of the contract. Lenders agreed that the 40 day worst-case scenario for noticing an unpaid invoice is extreme and that 35 days cover would suffice, particularly since the generator could have submitted an EOI, reducing the BPPA application period by five working days. In total, this reduces collateral requirements from 87 days to 72 days.
- 3.15 Shortening the collateral requirement reduces costs for suppliers participating in the OLR, encouraging wider participation and competition.

Mandatory Offtaker Threshold

- 3.16 The June consultation set out our proposal for the OLR threshold for obligating mandatory offtakers would be set at six per cent of GB electricity supply. Some smaller suppliers

suggested the threshold should be higher to prevent the obligation falling upon suppliers whose market share is approaching the OLR threshold being obligated to participate in the OLR scheme.

- 3.17 In response to consultation concerns, the threshold has been rechecked against the most recent supplier market share data provided to Ofgem for the purposes of the Renewables Obligation and Feed-in Tariff. We can conclude that six per cent remains the appropriate threshold for identifying mandatory OLR offtakers since it is unlikely that more than the largest six suppliers will be obligated for the first few years of the OLR. Setting the threshold at six per cent assures lenders that mandatory offtakers will be robust throughout the duration of a generator's CFD, being able to withstand changes to the makeup of the electricity market. Setting the threshold at this level also ensures that smaller suppliers will not be obligated unless their market share increases.
- 3.18 Some respondents felt that changes to a supplier's market share would not be reflected quickly enough due to the data used to set the threshold being for the year preceding the OLR obligation notification. However, we consider the likelihood of a rapid change in supply volumes to be small. In addition, we do not view the OLR to be an excessive burden on mandatory offtakers as the likelihood of it being used is small and offtaker bids into the OLR auction are not capped.
- 3.19 Offtakers will be notified of their obligation on or before 1st September in the immediately preceding OLR year which runs from April-March (Reg12).
- 3.20 However, as the OLR will not have come into force by 1st September 2014, Ofgem will not be able to notify mandatory offtakers by this date for the 2015/2016 year in the same way. Therefore provisions have been made in the Regulations for later notification on or before the 1st April 2015, in time for October 2015 (the earliest time from which mandatory offtakers might receive an OLR Notice from Ofgem in respect of a BPPA) (Reg12(2)(a)).

Tie break determination

- 3.21 Some suppliers questioned our proposal that the winner of a tied auction would be the bid received first by Ofgem. Alternative suggestions were provided such as random allocation, allocating the contract to the offtaker with the largest market share, and allowing extra time to assess a tie.
- 3.22 Having considered the consultation responses we feel that Ofgem identifying the winning bid as the first bid received is suitable for the expected volumes going through the OLR at the outset of the scheme. Ofgem will record the time of submission electronically and will provide further information on this determination in guidance. Ofgem has the discretion to amend the process by which the winning bid is identified to ensure that the system is appropriate for the number of bids submitted into the OLR auction.

Chapter 4: The Backstop PPA

Consultation Questions

3.	Do you agree that the terms of the BPPA Contract are workable and that they provide adequately for differences between: <ul style="list-style-type: none">• intermittent and baseload technology types;• facilities of different sizes; and• facilities connected to the distribution or transmission network?
4.	Do you agree that the balance of the risks and rewards within the BPPA are appropriate for the generators and the offtakers?
5.	Do you agree that the BPPA Contract provides generators with a route-to-market that their lenders should deem bankable for project finance?

Introduction

- 4.1 Our June consultation set out an overview of the main terms of the BPPA and was accompanied by a draft BPPA. The draft contract follows typical commercial PPA structures and practices as far as possible.
- 4.2 The Secretary of State will issue the standard terms which are to be included in each BPPA to be entered into under the OLR scheme. The Secretary of State can make amendments to the standard terms for future CFD holders and in limited circumstances for existing CFD holders, if he is satisfied that the amendment is necessary to take account of a new market structure, trading arrangement or industry code. The effect of all the amendments is to maintain so far as possible the balance of risk and reward between the parties to the BPPA.

Summary of Responses

- 4.3 This section will clarify aspects of policy where consultation respondents queried elements of the OLR BPPA.

Length of contract

- 4.4 Several potential offtakers commented that it was not appropriate to give the generator the option to terminate the contract after the first 6 months. Our reason for including the 6 month break clause is to allow generators to re-enter the commercial PPA market as soon as possible to contribute to liquidity in the PPA market; while restricting participation in a BPPA to not less than 6 months in order that it remained a last resort and so that suppliers were not pricing the risk of very early exit into their bids.
- 4.5 However, there were particular concerns expressed about providing this option to baseload generators due to the way that offtakers trade baseload power season ahead. This means that an offtaker may have sold the power from a Baseload PPA in a way to seek to match the Baseload CFD Market Reference Price (MRP), which would involve

selling output up to 12 months in advance. If there is uncertainty around the length of the contract and insufficient notice, this would expose the offtaker to trading losses and/or imbalance risks. This additional risk would be priced into an offtaker's bid for the management fee and is likely to thereby increase costs to consumers.

- 4.6 We have therefore decided that the 6 month break clause should not be available to baseload generators, meaning that once they enter into a BPPA it would be for twelve months (unless they came to a bilateral arrangement with the offtaker to terminate early). We do not consider that there is a similar risk in the way that intermittent power would be traded and therefore have decided to retain the 6 month break clause only for intermittent generators.

Forecasts

- 4.7 For similar reasons as outlined above, we have made changes to the forecasts that baseload generators provide to their offtaker under the BPPA. To allow offtakers to trade baseload generation in a way that minimises the offtaker's price risk, baseload generators will need to provide forecasts of generation as well as availability for the duration of the contract. In addition to this, baseload generators must provide as much notice as possible of any planned maintenance, and maintenance notified less than season ahead shall not be considered to be planned maintenance. Although this is not binding, as the generator is still able to notify unplanned maintenance without penalty subject to using 'reasonable endeavours' and informing the offtaker within a 'reasonable timeframe', it will provide offtakers with more accurate information of the expected output of the generator enabling them to trade the output more effectively.

Penalties

- 4.8 We received several consultation responses to the effect that the penalties for failing to provide adequate notice of outages or failure to provide the necessary data were not cost reflective and could result in significant over- or under-compensation. Our aim was to detail what the penalties would be in absolute terms to help quantify the risks that the generator faces if they fail to perform these actions. However, we accept that they do not accurately reflect the actual costs that an offtaker may face and are likely to be an over-estimate. We will therefore change the way that these penalties are calculated away from a pre-set amount per event, to a difference between the market price and the cash-out prices:
- i. For times when there is under-generation (i.e. un-notified forced outage or, following a data failure, when the offtaker has made a reasonable estimate of output which has turned out to be an overestimate, penalty shall be (System Buy Price (SBP) – BPPA Reference Price).
 - ii. For times when there is over-generation (i.e. un-notified return to generation following an outage or, following a data failure, when the offtaker has made a reasonable estimate of output which has turned out to be an underestimate, the penalty shall be (BPPA Reference Price – System Sell Price (SSP)).

- iii. To be truly cost reflective this will cover the time for which the failure applies rather than automatically covering 24 hours. This would retain an incentive for the generator to rectify the situation as soon as possible.
- 4.9 This exposes the generator to cash-out uncertainty which could affect the bankability of the project and undermine the mechanism. We therefore propose that this risk be managed by capping the exposure for each event. This cap would be calculated in a similar way to the penalty as previously described in the June consultation – i.e. as a function of the project’s capacity; the average MRP in the 12 months prior to the calculation date; and an assumed maximum of 24 hours for trading losses. Considering that this provides a one-way protection that will tend to reduce the penalty for the majority of incidents, it seems less appropriate to include the Average Load Factor (ALF) in the calculation of the cap. This will increase the chances that the true cost of the failure can be recouped if generation is higher than the ALF (e.g. when wind strength is greater than average).
- 4.10 To provide additional reassurance to lenders and to prevent offtakers being put at a significant disadvantage as a result of the cap per event, there could still be an aggregate cap applied over the term of the contract. Again this could be calculated in a similar way to the approach set out previously – as a function of the generator’s capacity and a multiplier (again it would be inappropriate to include the ALF). To prevent offtakers from being put at a significant disadvantage as a result of the cap per event, the aggregate cap will be set at a level that should provide the offtaker with the opportunity to terminate the contract if there were more than two instances where the actual costs per event is greater than the cap per event. It should be noted that if the penalty per event is lower than the cap per event, then more failures would be allowed before breaching the cap.

Financial crime risk

- 4.11 Several offtakers expressed concerns that the OLR mechanism could put them in a position where they were obliged to offer contracts to companies that did not pass their usual checks for compliance with appropriate financial laws or international sanctions. Similar concerns were expressed around reputational risk.
- 4.12 The BPPA already contains a general undertaking that each party will comply with ‘Applicable Law’, which would cover financial crime and international sanctions. Any breach of this warranty could trigger immediate termination of the BPPA. However, in response to specific concerns from respondents we have included in the BPPA additional wording around financial crime warranting that the generator has policies in place to prevent bribery and corruption and that neither it nor any employee is subject to an investigation by a Competent Authority (including the Financial Conduct Authority).⁶ There

⁶ Competent Authority means:

- (a) any national, federal, regional, state, local, European Union or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;
- (b) any private body to the extent it carries out one or more public functions; or
- (c) any other body which has jurisdiction in respect of the Facility, the project, one or both of the Parties, this Agreement and/or the subject matter of this Agreement,

are also measures in place to reduce the likelihood of an offtaker needing to terminate a contract due to breach of this warranty.

- i. All generators will undergo thorough checks by the CFD counterparty as part of the process of being awarded a CFD. Although this cannot be a substitute for an offtaker conducting their own checks, it will significantly reduce the chances that a generator applying for the OLR would not comply with appropriate financial laws or international sanctions.
- ii. We have included significant additional information requirements in the Project Information Schedule to the BPPA, which will be sent to all potential offtakers as part of the PI. This information will assist offtakers in assessing any risk associated with bidding for the BPPA.
- iii. When applying for the OLR, generators will need to make an explicit statement that they are able to comply with all parts of the BPPA and by association that they comply with all applicable laws.
- iv. The statement also contains a commitment to respond within a reasonable timeframe to any reasonable requests for additional information that a potential offtaker may make.

Renewables Benefits

4.13 Several responses commented that it does not seem appropriate for all renewables benefits to be transferred to the offtaker for no additional payment. However, as mentioned in the June consultation document, no value was attributed to renewables benefits in the financial modelling and the discount should be considered in this light. In addition due to the uncertain future value of renewables benefits, most banks would not lend against revenue from renewables benefits beyond a few years. Conversely, offtakers would be able to take a view of the value of renewables benefits over the term of a BPPA and would factor this into their bids, reducing costs to the consumer. Therefore including a value would not help the gearing of the project and would represent upside to equity at the expense of the consumer. To further support this position we have added a clause to ensure that generators are obliged to maintain accreditation for all renewables benefits.

Negative revenue protection

4.14 Potential offtakers commented that the proposed negative revenue protection mechanism does not work for baseload generators. As their power is traded ahead, and the season average is used to set the baseload MRP, the offtaker will not know in advance if the baseload MRP is below the price trigger. Allied with the fact that we do not expect there to be any realistic chance of the baseload MRP being negative, we do not think that this is a protection that baseload generators need. We have therefore moved the relevant section to the Schedule to the BPPA that applies to intermittent technologies.

4.15 We were also alerted to potential trading difficulties if different generators enter different values for the negative price trigger. It was proposed that the negative price trigger should be set administratively by DECC and generators would simply have the option to switch it on, but not determine the price. We do not think this would be appropriate as it would involve DECC taking commercial decisions which could expose Government to risks if the price trigger was set too low for one generator and it lost money as a result. However, we understand the concern about trading complexity and consider that this could be reduced if generators congregated around similar price points. We will therefore specify that the negative price trigger be expressed in £5 increments, which will help with this, and is consistent with the strike price being set in £5 increments.

Form of Direct Agreement, Parent Company Guarantee and Letter of Credit

4.16 We received a number of consultation responses on the Direct Agreement, Parent Company Guarantee and Letter of Credit. The BPPA itself states that these documents must be 'substantially in the form of' the versions attached in the Schedules. This is intended to provide a degree of flexibility to ensure that although the terms of these documents are set out in advance, there is also the opportunity for offtakers to make small changes necessary to satisfy their credit committees' requirements. Cumulatively, these changes must not make a material change to the balance of the document. The comments that were received were considered to fall within the bounds of 'substantially in the form of' and therefore we do not consider it to be necessary to make significant changes to the template documents.

Private Network Generators

4.17 The OLR scheme will be available to any Private Network Generator with a valid CFD that can fulfil the obligations as set out in the BPPA. Specifically they must be able to export their power to an offtaker via a grid connected export meter, and they must be able to maximise the electricity supplied to the export meter for whatever proportion of their capacity that they put through the OLR. This is intended to prevent the OLR being used as an offtake arrangement for unconsumed electricity above the level of demand from their primary onsite customer. This approach provides a similar level of assurance as the OLR provides for other generators, in that if they lose their contract with their primary customer they can rely on the OLR. To ensure that they can transparently demonstrate that they are complying with the obligation to maximise export, Private Network Generators will need to provide the offtaker with generation data, which can be compared with their metered data.

Chapter 5: Offtaker Payment

Consultation Questions

- | | |
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| 6. | Do you agree with the way in which the levelisation and mutualisation processes are set out? Please provide evidence if you believe the approach outlined will not work. |
|-----------|---|

Introduction

- 5.1 In the June consultation document we set out our proposals for Offtaker Payment, levelising offtakers' management fees across all licensed suppliers according to market share. We set out our intention that the levelisation process would be aligned with the small-scale Feed in Tariff (ssFIT).
- 5.2 We also set out that we had introduced mutualisation provisions to protect the offtaker against shortfalls in payments from the levelisation account in the event of supplier insolvency.

Summary of Responses

- 5.3 In general, consultation responses supported the OLR levelisation and mutualisation proposals. This section summarises the issues raised and explains the Government's post-consultation position.

Levelisation

- 5.4 Some suppliers and generators asked for the OLR timings to be amended with support divided between those supporting and those disagreeing with the alignment of OLR levelisation and ssFIT levelisation timelines. We remain of the view that the alignment of these processes will reduce administration costs on suppliers and Ofgem and are therefore not minded to amend the current policy.
- 5.5 Consultation responses from suppliers expressed concern regarding the cost of running the levelisation. Respondents felt that a sudden increase in the demand for BPPAs would mean a corresponding increase in OLR levelisation costs which could be passed onto the consumer.
- 5.6 To reduce OLR levelisation costs, we will ensure through the Regulations, that periodic and annual levelisation are not carried out when there are no OLR costs to be levelised (i.e. the levelisation sum is zero) (Reg18).

Chapter 6: OLR Review and Management

Consultation Questions

7.	In which ‘exceptional circumstances’ will it be crucial for Ofgem to administer the application and allocation of BPPAs within their deadlines?
8.	Do you agree with the way in which the OLR will be reviewed and managed? Please provide evidence if you believe the approach outlined will not work.

Introduction

- 6.1 In the review and management chapter of the consultation, we set out our proposals for the OLR scheme to be reviewed annually with a more thorough assessment of the scheme in 2019 at the end of the EMR delivery plan. We set out Secretary of State, Ofgem and DECC functions required to complete these reviews.
- 6.2 We also introduced the exceptional circumstances provisions in the Regulations, to suspend Ofgem’s statutory deadlines in specific defined circumstances.

Summary of Responses

- 6.3 This section summarises the issues raised and explains the Government’s post-consultation position on OLR review and management options.

OLR Review

- 6.4 As set out in the June consultation, DECC has committed to the OLR being available for eligible generators who sign a CFD through to 2019 regardless of when these generators commission. The consultation also proposed a detailed review to consider the availability of the OLR for generators who sign their CFDs beyond March 2019.
- 6.5 Stakeholders broadly agreed with the proposed OLR management and review provisions. Some respondents suggested that the OLR should remain in place for generators signing a CFD beyond 2019 without such a review, in order to provide assurance to the market. However, we consider that a detailed review of the OLR is essential to evaluate the effectiveness of the policy and to review Ofgem’s role in the administration of the mechanism. The OLR addresses specific route-to-market issues and the comprehensive evaluation will take evolving market conditions into account, ensuring that the OLR remains the correct mechanism to resolve these issues.

Vintage BPPA Terms

- 6.6 Concern was expressed relating to Secretary of State powers to change vintage BPPA terms, with calls for guidance on the process for amending these terms. Generators also requested that any Secretary of State amendments to vintage BPPA terms are agreed with generators.

6.7 The Government has committed to grandfathering BPPA terms at the start of a generator's CFD, with the accompanying assurance that Secretary of State amendments to vintage BPPA terms will only take place in a very limited set of circumstances as outlined in (Reg3). For any changes to be made, the Secretary of State would need to be satisfied that they were necessary in order to take account of a new market structure, trading arrangement or industry code; and the effect of all the amendments would be to maintain the balance of risk and reward as between the parties to the BPPA (Reg3(4)(b)).

Exceptional circumstances

6.8 The draft regulations accompanying the June consultation document made provision for Ofgem to extend statutory deadlines in certain exceptional circumstances. We set out in the consultation document that we intended to specify a list of circumstances under which Ofgem would not be able to miss their deadlines. We envisaged these would cover changes to the electricity market that led to a large number of generators requesting BPPAs such as a major change in the market's structure or supplier insolvency. There was general agreement with and support for the approach taken and with most stakeholders welcoming the inclusion of a list of exceptional circumstances in the Regulations under which Ofgem would still be required to meet their statutory deadlines.

6.9 However, some suppliers and generators felt that Ofgem should not be allowed to miss deadlines even in exceptional circumstances. An event which could be defined as an exceptional circumstance would likely occur at a time of system stress and should have been foreseen by both Ofgem and industry, and resultant requests for BPPAs should be expected.

6.10 Some suppliers expressed concern that, in the event of exceptional circumstances, Ofgem would seek to reduce the 10 working days that offtakers have to assess PI and submit bids. They stressed that this ten day period should remain in place, regardless of the circumstances.

6.11 Since June, we have worked with Ofgem to clarify how the exceptional circumstances provision would operate (Reg13). The agreed solution is as follows:

- i. In the event of exceptional circumstances beyond their reasonable control, Ofgem must inform participants as to any change in their deadlines and process applications as soon as reasonably practicable.
- ii. However, if the exceptional circumstances pertain to a change in the electricity market, Ofgem must still meet their statutory deadlines for the first twenty generators who submit their Statement of Confirmation on any working day.

6.12 We believe this strikes the right balance: Ofgem must meet their deadlines unless there are exceptional circumstances. If these are electricity-related, they must continue to meet the deadlines for twenty applicants per day. Since we do not expect anywhere near this volume of BPPA applicants, stakeholders should have full confidence that Ofgem will meet the deadlines set out in Regulations regardless of the circumstances.

OLR Amendments

- 6.13 Some consultation respondents were concerned changes could be made to the OLR scheme by the Secretary of State without consultation and that insufficient notice of changes would be provided.
- 6.14 Review provisions have been set out in the Regulations for amendments to the policy to be made by the Secretary of State. Amendments to the OLR threshold and changes to Regulations or licence modifications will be subject to consultation.

OLR Guidance

- 6.15 Some respondents queried whether additional information would be provided on OLR procedures and processes. Provisions have been made in (Reg30) for Ofgem to produce procedural OLR guidance. The guidance will cover aspects of the Regulations pertaining to Ofgem's requirements to effectively deliver the OLR. Ofgem intend to publish guidance in advance of October 2015, with the publication preceded by full stakeholder engagement.

Annex A - List of respondents

Banks Group

Centrica

Ecotricity

EDF

EDP Renewables

Energy UK

EON

GDF Suez

Haven Power

Infinis

IREGG

Ofgem

REA

RES

RUK

RWE

Scottish Renewables

Scottish Power

Smartest Energy

SSE

STA

Velocita

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