

# Extracts of the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014/2014 As Amended

## and incorporating proposed changes to come into force 1<sup>st</sup> April 2016

### 2.— Interpretation

(1) In these Regulations—

“*absolute value*”, in relation to an amount, means the magnitude of that amount without regard to whether that amount is positive or negative;

“*the Act*” means the Energy Act 2013;

“*the Balancing and Settlement Code*” means the code for the governance of electricity balancing and settlement in Great Britain which is maintained in accordance with the conditions of transmission licences granted under section 6(1)(b) of the Electricity Act 1989 as it was in force on 1st April 2014;

“*BSC volume allocation run*” means any one of the following—

(a) an Initial Volume Allocation Run,

(b) an Interim Information Volume Allocation Run,

(c) a Reconciliation Volume Allocation Run (including a Final Reconciliation Volume Allocation Run or a Post-Final Volume Allocation Run);

“*the BSCCo*” means ELEXON Limited (or any successor to that company acting in the capacity of the BSCCo within the meaning given in the Balancing and Settlement Code);

“*CFD counterparty payment*” means any payment which the CFD counterparty must make—

(a) under a CFD;

(b) under a connected agreement;

†

(c) to a CFD party for the purpose of compensating that person in respect of any breach of any duty (however that duty arises) owed to that person by the CFD counterparty which is connected to a CFD or a connected agreement,

~~†~~ and includes any payment made to a person to whom a benefit under a CFD or connected agreement has been assigned in accordance with the terms of that agreement;

“*CFD party*” means a person, other than the CFD counterparty, who is a party to a CFD or connected agreement and is entitled to payments under such an agreement;

“*CFD party payment*” means any payment which a CFD party must make to the CFD counterparty—

(a) under a CFD;

(b) under a connected agreement,

-and includes a payment made to a person to whom a benefit under a CFD or connected agreement has been assigned in accordance with the terms of that agreement;

“*CFD period contribution*” is to be construed in accordance with regulation 3;

“*connected agreement*” means any agreement entered into by the CFD counterparty or a CFD party, pursuant to a CFD;

“*electricity supplier*” means a person who is the holder of a licence to supply electricity under section 6(1)(d) of the Electricity Act 1989;

~~“~~<sup>2</sup>

“*estimated quarterly obligation period electricity supply*”, “*estimated quarterly obligation period income*”, and “*estimated quarterly obligation period payment cost*” are to be construed in accordance with regulation 7;

~~“~~“*excluded electricity*”, “*EII excluded electricity*” and “*green excluded electricity*” are to be construed in accordance with the Excluded Electricity Regulations;<sup>4</sup>

“*Excluded Electricity Regulations*” means the Electricity Supplier Obligations (Amendment & Excluded Electricity) Regulations 2015;<sup>3</sup>

“*Final Reconciliation Volume Allocation Run*” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“*first operational cost period*” means the period beginning on 1st January 2015 and ending on 31st March 2015;

“*generation counterparty payment*” and “*generation party payment*” have the meanings given in regulation 4(2);

“*Initial Volume Allocation Run*” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“*Interim Information Volume Allocation Run*” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“*interim rate payment*” is to be construed in accordance with regulation 8;

“*investment contract*” has the meaning given in Schedule 2 to the Act;

“*letter of credit*” means a letter from a person which contains an irrevocable and unconditional authorisation in favour of the CFD counterparty to be paid by that person on demand up to an amount stated in the letter;

“*mutualisation amount*” and “*mutualisation notice*” are to be construed in accordance with regulation 17;

“*operational cost period*” means—

(c) the first operational cost period, or

(d) any subsequent period beginning on 1st April in a year and ending on 31st March in the following year;

“*Post-Final Volume Allocation Run*” has the meaning given in the Balancing and Settlement Code

(see section U of that code);

“*quarterly obligation period*” means a period of 3 months commencing after 31st March 2015 on 1st April, 1st July, 1st October or 1st January ~~[...]~~<sup>4</sup>;

“*reconciliation determination*” and “*reconciliation period*” are to be construed in accordance with regulation 15(1);

“*Reconciliation Volume Allocation Run*” has the meaning given in the Balancing and Settlement Code (see section U of that code);

“*reserve payment*” means a payment an electricity supplier is required to make under regulation 11(1);

“*reserve period*” means a period running between the commencement of the 13th working day of a quarterly obligation period and the commencement of the 13th working day of the subsequent quarterly obligation period;

“*total reserve amount*” is to be construed in accordance with regulation 10;

“*working day*” means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.

(2) Any reference in these Regulations to an amount of electricity is a reference to that amount expressed in megawatt hours.

~~4(2A)~~ Any reference in these Regulations to a supply of electricity is a reference to its supply in Great Britain, and “supply” is to be construed in accordance with section 4(4) of the Electricity Act 1989.

~~5~~

(3) Any reference in these Regulations to an amount to be paid or provided is a reference to that amount expressed in pounds sterling and rounded to the nearest whole penny with any half of a penny being rounded upwards.

(4) Any reference in these Regulations to a CFD includes a reference to an investment contract which was transferred to the CFD counterparty by virtue of paragraph 16(1) of Schedule 2 to the Act.

~~[...]~~<sup>6</sup>

(6) Where more than one person is designated under section 7 of the Act as a CFD counterparty, the Schedule has effect and these Regulations have effect as set out in that Schedule.

### 3.— The supplier obligation

(1) Every electricity supplier who supplies electricity during a quarterly obligation period must, subject to paragraph (3), pay a CFD period contribution to the CFD counterparty in respect of that period.

(2) The CFD period contribution in relation to a supplier in respect of a quarterly obligation period is the sum of—

(a) CFD daily contributions for each day on which that supplier supplies electricity in that period calculated in accordance with regulation 4; and

(b) a CFD quarterly contribution for that period calculated in accordance with regulation 5.

(3) Where the amount of a supplier's CFD period contribution in respect of a quarterly obligation period is a negative number—

(a) the amount the supplier must pay under paragraph (1) in respect of that period is zero; and

(b) the CFD counterparty must pay the absolute value of that amount to that supplier.

(4) For the purpose of ensuring that the CFD period contribution is paid—

(a) an electricity supplier must—

(i) make interim payments in accordance with regulations 8(1) and 11(1) and, where so required, regulation 14(3), and

~~(ii) make supplier data reconciliation payments in accordance with regulation 9(2), and~~

~~[...]~~

(iii) make any required reconciliation payments in accordance with regulation 16(3)(a); and

(b) the CFD counterparty must—

~~(i) make counterparty data reconciliation payments in accordance with regulation 9(3), and~~

~~(ii) make any required reconciliation payments in accordance with regulation 16(3)(b).~~

#### 4.— CFD daily contributions

(1) The CFD daily contribution for a supplier for a day on which that supplier supplies electricity in a quarterly obligation period (the “relevant period”) is the amount given by—

$$\frac{(GP - CP) \times \frac{SDS}{TDS}}{(GP - CP) \times \frac{SDS - (XE + GE)}{TDS - (TE + GT)}}$$

where—

GP is the total amount of generation counterparty payments which the CFD counterparty is required to make in respect of electricity generation which occurred on that day;

CP is the total amount of generation party payments which the CFD counterparty has received from CFD parties in respect of electricity generation which occurred on that day;

SDS is the amount of electricity supplied by that supplier on that day;

~~+XE~~ is the amount of EII excluded electricity supplied by that supplier on that day;

GE is the amount of green excluded electricity supplied by that supplier in that quarterly obligation period divided by the number of days in that period;

~~+<sup>2</sup>~~

~~-TDS~~ is the total amount of electricity supplied by all suppliers on that day [;]<sup>3</sup>

~~+TE~~ is the total amount of EII excluded electricity supplied by all suppliers on that day;

GT is the total amount of green excluded electricity supplied by all suppliers in that quarterly obligation period divided by the number of days in that period.

~~+<sup>3</sup>~~

~~+<sup>1</sup>~~

(2) In this regulation ~~and regulation 5~~—

“billing statement” means a statement issued by the CFD counterparty to a CFD party under a CFD or connected agreement which sets out an amount which it or a CFD party must pay under that CFD or connected agreement;

“generation counterparty payment” means any CFD counterparty payment made under, or in respect of a breach of, a CFD or connected agreement—

(a) which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement; and

(b) the amount of which was stated in a billing statement issued before the 13th working day following the conclusion of the relevant period;

“generation party payment” means any CFD party payment made under a CFD or connected agreement—

(a) which is calculated directly by reference to an amount of electricity generated by a generating station which is the subject of that CFD or connected agreement; and

(b) the amount of which was stated in a billing statement issued before the 13th working day following the conclusion of the relevant period.

(3) For the purposes of this regulation and regulation 5, the amount of electricity supplied by a supplier is the amount of electricity which the BSCCo determines was supplied by that supplier on the basis of—

(a) a Final Reconciliation Volume Allocation Run; or

(b) where a Post-Final Volume Allocation Run has occurred in relation to the day on which the electricity was supplied, a Post-Final Volume Allocation Run.

## 5. CFD quarterly contribution

The CFD quarterly contribution for a supplier for a quarterly period is the amount given by—

$$\frac{[NDS - (NGS + DI)] \times \frac{SQS}{TQS}}{[NDS - (NGS + DI)] \times \frac{SQS - XEP}{TQS - AXP}}$$

where—

NDS is the total amount of CFD counterparty payments which are not generation counterparty payments which the CFD counterparty was required to make during that period;

NGS is the total amount of CFD party payments which are not generation party payments which the CFD counterparty has received from CFD parties during that period;

DI is any amount of interest which was paid by virtue of regulation 8(6), 9(7), 11(2), 14(8), 16(5), 17(6) or 25(5) during that period, less any amount of that interest which was paid to electricity suppliers by virtue of regulation 18(2);

SQS is the amount of electricity supplied by that supplier in that period;

~~XEP~~ is the amount of excluded electricity supplied by that supplier in that period;

~~±~~<sup>2</sup>

~~TQS~~ is the total amount of electricity supplied in that period ~~±~~<sup>3</sup>;

~~AXP~~ is the total amount of excluded electricity supplied by all suppliers in that period.

~~±~~<sup>3</sup>

~~±~~<sup>1</sup>

## 6.— Setting the interim levy rate

(1) The CFD counterparty must, in respect of every quarterly obligation period determine an interim levy rate which is to apply for that period.

(2) The CFD counterparty must determine an interim levy rate for a quarterly obligation period (“the rate period”) before—the commencement of the quarterly obligation period which immediately precedes the rate period.

~~(a) where the rate period commences on 1st April 2015, 1st January 2015,~~

~~(b) for any other rate period, the commencement of the quarterly obligation period which immediately precedes the rate period.~~

(3) Where the CFD counterparty has determined an interim levy rate for a quarterly obligation period it must publish a notice setting out that rate and must—

(a) issue that notice to every electricity supplier, and who supplied electricity on the day before the notice is published;

(b) issue that notice to any person who, in the opinion of the CFD counterparty, is, or will, become capable of supplying electricity during that period; and

(c) issue that notice to any person who becomes an electricity supplier during that period.

(4) Subject to paragraph (5), the interim levy rate for a quarterly obligation period is to be determined as the amount given by—

$$\frac{EOC - EOI}{EOS}$$

$$EOS$$

$$\frac{EOC - EOI}{EOS}$$

$$EOS$$

where—

EOC is the estimated quarterly obligation period payment cost, estimated in accordance with regulation 7(1);

EOI is the estimated quarterly obligation period income, estimated in accordance with regulation 7(3); and

EOS is the estimated quarterly obligation period electricity supply, estimated in accordance with regulation 7(4).

(5) Where the amount given by the calculation in paragraph (4) in relation to a quarterly obligation period is less than zero, the interim levy rate shall be determined as zero for that period.







**Regulation 7.—(Estimated cost, income & electricity supply)**

(1) The estimated quarterly obligation period payment cost in respect of a quarterly obligation period (“the rate period”) is the ~~amount which the CFD counterparty estimates will be required to be paid by it to CFD parties under every CFD or connected agreement to which it is, or is likely to become, a party during the rate~~ sum of the CFD counterparty’s estimates of TGPR and NDSR in respect of that period, having regard to the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

(a) the strike prices which, in the opinion of the CFD counterparty, will apply to CFDs ~~in respect of which payments may become due~~ during the rate period;

(b) the CFD counterparty's estimate of—

(i) where payments under a CFD may become due in relation to the generation of electricity in a settlement hour by a CFD generating station, the amount of electricity generated by each such CFD generating station in each settlement hour ~~in respect of which payments may become due~~ during the rate period;

(ii) where payments under a CFD may become due in relation to the generation of electricity in a settlement period by a CFD generating station, the amount of electricity generated by each such CFD generating station in each settlement period ~~in respect of which payments may become due~~ during the rate period;

(iii) the market reference price which is to apply in relation to each settlement hour ~~in respect of which a payment may become due~~ during the rate period;

(iv) the market reference price which is to apply in relation to each settlement period ~~in respect of which a payment may become due~~ during the rate period;

(v) the total amount of payments which ~~are not generation party payments that~~ the CFD counterparty will be required to make under CFDs during the rate period which are not payments based on the difference between a strike price and a market reference price in relation to electricity generated.

(3) The estimated quarterly obligation period income in respect of the rate period is the ~~amount which CFD counterparty’s estimate of the CFD counterparty estimates it will receive from CFD parties during~~ sum of TCPR and NGSR in respect of the rate period having regard to—

(a) the matters in paragraph (2)(a) and (b)(i) to (iv);

(b) the CFD counterparty's estimate of the total amount of payments which the CFD counterparty will receive under CFDs during the rate period which are not ~~payments based on the difference between a strike price and a market reference price in relation to electricity generated~~ generation

party payments;

(c) the CFD counterparty's estimate of the likelihood of the failure of CFD parties to make CFD party payments in accordance with CFDs.

(4) The estimated quarterly obligation period electricity supply in respect of the rate period is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers in the rate period ~~+~~ less the amount of EII excluded electricity which it estimates will be supplied by all suppliers in that period ~~+~~.

(5) In this regulation—

*“CFD generating station”* means any generating station which is the subject of a CFD;

*“CP” and “GP” are to be construed in accordance with regulation 4;*

*“market reference price”, “settlement hour”, “settlement period” and “strike price”* are to be construed in accordance with CFDs to which the CFD counterparty is a party;

*“NDS” and “NGS” are to be construed in accordance with regulation 5;*

*“NDSR” is the NDS required to be paid by the CFD counterparty during the rate period;*

*“NGSR” is the NGS which is paid to the CFD counterparty during the rate period;*

*“TCPR” is the sum total of all CP paid to the CFD counterparty in respect of electricity generation during the rate period; and*

*“TGPR” is the sum total of all GP required to be paid by the CFD counterparty in respect of electricity generation during the rate period.*

(6) For the purposes of this regulation reference to a CFD includes reference to a connected agreement.

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## 8.— Interim rate payments

(1) An electricity supplier must make a payment (“an interim rate payment”) to the CFD counterparty in respect of each day on which that supplier supplies electricity in Great Britain during a quarterly obligation period.

(2) The amount of an interim rate payment to be paid by a supplier in respect of a day is equal to the amount of electricity supplied by that supplier on that day ~~+~~ less any amount of EII excluded electricity supplied by that supplier on that day, ~~+~~<sup>±</sup> multiplied by the interim levy rate which applies in relation to that day.

(3) The interim levy rate which applies in relation to a day is—

(a) the rate determined under regulation 6, or

(b) where an adjusted interim rate which has been determined under regulation 12(1)(a) has effect in accordance with regulation 13(4), that rate.

(4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out an Interim Information Volume Allocation Run in respect of a day in a quarterly obligation period, issue a notice to each electricity supplier who supplied electricity on that day stating the interim rate payment which the supplier to whom the notice is issued must pay in respect of that day.

(5) A supplier must make an interim rate payment in respect of a day by the 5th working day after the day on which the CFD counterparty has issued a notice under paragraph (4) to that supplier.

(6) Where a supplier fails to pay all or part of an interim rate payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which that payment should have been made.

(7) For the purposes of paragraph (2), the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of an Interim Information Volume Allocation Run in respect of that day, as the amount of electricity supplied by that supplier on that day.

## **9.—Data reconciliation of interim rate payments**

~~(1) This regulation applies where, before the conclusion of a quarterly obligation period, the BSCCo carries out a relevant allocation run in respect of a day in that period and the reconciled interim rate amount in relation to that day for an electricity supplier is different to the net levied interim rate payment for that supplier.~~

~~(2) Where that reconciled interim rate amount is more than the net levied interim rate payment the supplier must pay the difference to the CFD counterparty.~~

~~(3) Where that reconciled interim rate amount is less than the net levied interim rate payment the CFD counterparty must pay the difference to the supplier.~~

~~(4) The CFD counterparty must, as soon as reasonably practicable after the BSCCo has carried out a relevant allocation run in respect of a day, issue a notice to each electricity supplier which states the amount which must be paid by virtue of paragraph (2) or (3).~~

~~(5) An electricity supplier who is required to make payment by virtue of paragraph (2) must make that payment by the 5th working day after the day on which the CFD counterparty issues the notice to that supplier under paragraph (4).~~

[Regulation 9 deleted]

## Regulation

~~(6) The CFD counterparty must make a payment it is required to make by virtue of paragraph (3) by the 8th working day after the day on which the BSCCo carried out the relevant allocation run following which the CFD counterparty is required to make that payment.~~

~~(7) Where a supplier fails to pay all or part of a payment it is required to make by virtue of paragraph (2) that supplier must pay the CFD counterparty simple interest at the rate specified in regulation 35(1) on any unpaid amount from the day after [the day on which that payment should have been made]<sup>1</sup>.~~

~~(8) For the purposes of this regulation—~~

~~(a) the reconciled interim rate amount for a supplier in relation to a day is equal to the amount of electricity supplied by that supplier on that day [less any amount of EH excluded electricity supplied by that supplier on that day]<sup>2</sup> multiplied by the interim levy rate which applies to that day by virtue of regulation 8(3);~~

~~(b) the net levied interim rate payment for a supplier in relation to a day is the sum of the interim rate payment that supplier was required to pay in respect of that day and any payments that supplier was previously required to pay in respect of that day by virtue of paragraph (2), less any payments the CFD counterparty was previously required to pay to that supplier in respect of that day by virtue of paragraph (3);~~

~~(c) a relevant allocation run is an Initial Volume Allocation Run or a Reconciliation Volume Allocation Run; and~~

~~(d) the amount of electricity supplied by an electricity supplier on a particular day is the amount of electricity which the BSCCo determines, on the basis of the most recent relevant allocation run in relation to that day, as the amount of electricity supplied by that supplier on that day.~~

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## 10.— (Reserve payments)

(1) The CFD counterparty must determine—

(a) the total amount of reserve payments (“the total reserve amount”) to be collected from suppliers in respect of each quarterly obligation period; and

(b) the amount of each electricity supplier's reserve payment in respect of each quarterly obligation period calculated in accordance with regulation 11.

(1A) The CFD counterparty must determine and publish its determination of the total reserve amount for a quarterly obligation period before the commencement of the quarterly obligation period which immediately precedes that period.

(2) The CFD counterparty must determine the ~~total reserve amount and the~~ amount of each electricity supplier's reserve payment for a quarterly obligation period— before the 13<sup>th</sup> working day of the quarterly obligation period which immediately precedes that period.

~~(a) where that period commences on 1st April 2015, before 1st January 2015;~~

~~(b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.~~

~~(3) The CFD counterparty must publish its determination of the total reserve amount for a quarterly obligation period—~~

~~(a) where that period commences on 1st April 2015, before 1st January 2015;~~

~~(b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.~~

(4) The CFD counterparty must issue a notice to every electricity supplier who supplied electricity during that the reference period (as defined in regulation 11(4)) which sets out the amount of that supplier's reserve payment for a quarterly obligation period— before the 13<sup>th</sup> working day of the quarterly obligation period which immediately precedes that period.

~~(a) where that period commences on 1st April 2015, before 1st January 2015;~~

~~(b) for any other quarterly obligation period, before the commencement of the quarterly obligation period which immediately precedes that period.~~

(5) The total reserve amount ~~for~~ in respect of a quarterly obligation period is the amount which the CFD counterparty determines it would need to be paid for there to be a 19 in 20 probability of it being able to make all the payments it is required to make to CFD parties during ~~that period~~ the reserve period which

begins during that quarterly obligation period, having regard to—

(a) the amount of interim rate payments which it expects to be paid during ~~the~~that reserve period;

(b) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that reserve period; and

~~(c) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the [estimated quarterly obligation period payment cost]<sup>±</sup> in respect of that period.~~

~~—(c) the CFD counterparty's estimate of the payments it expects to receive from CFD parties during that reserve period.~~

## 11.— Individual suppliers' reserve amounts

(1) An electricity supplier must make a reserve payment to the CFD counterparty in respect of a quarterly obligation period (“the relevant period”) by— the 13th working day of the relevant period.

~~(a) the 90th day after the day on which the CFD counterparty has issued a notice to that supplier under regulation 15(3) (notice of reconciliation payment) in the quarterly obligation period that immediately precedes the relevant period; or~~

~~(b) the 7th working day of the relevant period where—~~

~~(i) there is no quarterly obligation period which immediately precedes that period, or~~

~~(ii) no notice was issued to that supplier under regulation 15(3) in the quarterly obligation period that immediately precedes the relevant period.~~

(2) Where a supplier fails to pay all or part of a reserve payment by the date by which it must be paid in accordance with paragraph (1), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

(3) ~~The~~Subject to regulation 14A, the amount of a supplier's reserve payment in respect of the relevant period is the amount given by—

$$\del{TRA} \times \left( \frac{SRE}{RE} \right)$$

$$\underline{TRA} \times \left( \frac{SRE}{RE} \right)$$

where—

TRA is total reserve amount for that period;

SRE is the amount of electricity supplied by that supplier in the reference period as determined on the date on which that total reserve amount is determined; ~~+~~<sup>2</sup>

~~+~~SXE is the amount of EII excluded electricity supplied by that supplier in the reference period as determined on the date on which that total reserve amount is determined;

~~+~~<sup>3</sup>

~~-~~RE is the total amount of electricity supplied by all suppliers in the reference period as determined on the date on which that total reserve amount is determined ~~+~~<sup>4</sup>

~~+~~XE is the total amount of EII excluded electricity supplied by all suppliers in the reference period as determined on the date on which that total reserve amount is determined.

~~+~~<sup>4</sup>

1<sup>±</sup>

(4) The reference period is the most recent period of 30 consecutive days in respect of which the BSCCo has carried out an Initial Volume Allocation Run ~~[...]~~<sup>5</sup>.

before the CFD counterparty makes its determination under regulation 10(1A) in respect of the relevant period(5) For the purposes of paragraph (3) and regulation 14(4) the amount of electricity supplied by an electricity supplier in a reference period is the amount of all electricity which the BSCCo determines was supplied by that supplier in that period, on the basis of the most recent [BSC volume allocation run] <sup>6</sup>which the BSCCo has carried out.

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## 12.— In period adjustments

(1) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will be unable to make all payments it is required to make to CFD parties duringin respect of a quarterly obligation period it may, if it thinks it expedient to do so—

(a) determine an adjusted interim levy rate in respect of that period in accordance with regulation 13;

(b) determine an additional total reserve amount in respect of that period in accordance with regulation 14;

(c) determine an adjusted interim levy rate and an additional total reserve amount in respect of that period.

(2) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are kept informed of the likelihood that it will be unable to make all payments it is required to make to CFD parties duringin respect of a quarterly obligation period.

(3) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will collect significantly more from suppliers under regulations 8(1) and 11(1) duringin respect of a quarterly obligation period than the amount it requires to be able to make all payments it is required to make to CFD parties during that period it may, in accordance with regulation 13, determine an adjusted interim levy rate in respect of that period.

### 13.— Adjusted interim levy rate

(1) Subject to paragraph (2), an adjusted interim levy rate for a quarterly obligation period (“the rate period”) is to be determined as the amount given by—

$$\frac{EOC - (EOI + SPC)}{EPS}$$

$$\frac{EOC - (EOI + SPC)}{EPS}$$

where—

EOC is the estimated quarterly obligation period payment cost in respect of the rate period, estimated in accordance with regulation 7(1) as at the time of the determination of the adjusted interim levy rate;

EOI is the estimated quarterly obligation period income in respect of the rate period, estimated in accordance with regulation 7(3) as at the time of the determination of the adjusted interim levy rate;

SPC is the sum of—

(i) the total amount of interim rate payments which have been received by the CFD counterparty in ~~relation to~~respect of electricity supply during the rate period as at the time of the determination of the adjusted interim levy rate; and

(ii) the total amount of interim rate payments which the CFD counterparty estimates it will receive in ~~relation to~~respect of electricity supply during the rate period, in the period from the time of the determination of the adjusted interim levy rate until the adjusted interim levy rate has effect;

EPS is the amount of electricity which the CFD counterparty estimates will be supplied by all electricity suppliers [, less the amount of EII excluded electricity which it estimates will be supplied by all suppliers, in the period] <sup>1</sup> from the time the adjusted interim levy rate has effect until the conclusion of the rate period.

(2) Where the rate determined in accordance with paragraph (1) would be a negative number, the CFD counterparty must determine the adjusted interim levy rate as zero.

(3) Where the CFD counterparty has determined an adjusted interim levy rate it must publish a notice setting out that rate and must—

(a) issue that notice to every electricity supplier ~~, and who, in the opinion of the CFD counterparty,~~  
is, or will, become capable of supplying electricity during the rate period,

(b) issue that notice to any person who becomes an electricity supplier during that period ~~;~~ and

(c) where paragraph (5) applies, specify a date on which the rate shall have effect.

(4) ~~And~~ Where the adjusted interim levy rate is greater than the previous levy rate, it has effect from the latest of—

(a) the commencement of the rate period;

(b) the 30th day after the CFD counterparty has published the notice under paragraph (3);

(c) any later date in the rate period which the CFD counterparty specifies in the notice under paragraph (3).

(5) Where the adjusted interim levy rate is equal to or less than the previous levy rate, it has effect from the date specified in the notice published under paragraph (3).

(6) For the purpose of paragraphs (4) and (5), "previous levy rate" means the interim levy rate or the adjusted interim levy rate most recently determined in respect of the rate period.

#### 14.— Additional total reserve amount

(1) An additional total reserve amount ~~for~~in respect of a quarterly obligation period ~~(“the reserve period”)~~ is the amount which the CFD counterparty determines it would need to be paid, having regard to the matters set out in paragraph (2)—

(a) to be able to make any CFD counterparty payments it has failed to make during the reserve period; ~~and~~ which begins during that quarterly obligation period; and

(b) for there to be a 19 in 20 probability of it being able to make all payments it is required to make to CFD parties during ~~the~~that reserve period after the making of the determination.

(2) The matters referred in paragraph (1) are—

(a) the amount of interim rate payments which it expects to be paid during ~~the~~that reserve period after the making of the determination of the additional total reserve amount;

(b) any other amount which it expects to be paid by suppliers during ~~the~~that reserve period after the making of that determination;

(c) the likelihood of any supplier failing to make payments it is required to make under these Regulations during that period; and

(d) the estimated quarterly obligation period income, estimated quarterly obligation period electricity supply and the estimated quarterly period cost in respect of that period.

(3) Where the CFD counterparty determines an additional total reserve amount each electricity supplier must pay an additional reserve payment.

(4) An electricity supplier's additional reserve payment is the amount given by—

$$\frac{\left( TAA \times \frac{SRE}{RE} \right)}{\left( TAA \times \frac{SRE}{RE} \right)}$$

where—

TAA is the additional total reserve amount;

SRE is the amount of electricity (within the meaning given by regulation 11(5)) supplied by that supplier in the adjusted reference period as determined at the time that additional total reserve amount is determined;



[SXE is the amount of EII excluded electricity supplied by that supplier in the adjusted reference period as determined on the date on which that additional total reserve amount is determined;

] <sup>2</sup>

RE is the total amount of electricity (within the meaning given by regulation 11(5) ) supplied by all suppliers in the adjusted reference period, as determined at the time that additional total reserve amount is determined [;] <sup>3</sup>

[XE is the total amount of EII excluded electricity supplied by all suppliers in the adjusted reference period as determined on the date on which that additional total reserve amount is determined.

] <sup>3</sup>

] <sup>1</sup>

(5) For the purpose of paragraph (4), “*the adjusted reference period*” means the most recent period of 30 consecutive days in respect of which the [BSCCo] <sup>4</sup> has carried out an Initial Volume Allocation Run

(6) Where the CFD counterparty has determined an additional total reserve amount it must—

(a) publish a notice setting out its determination of the additional total reserve amount, and

(b) issue a notice to every electricity supplier who supplied electricity during the adjusted reference period setting out its determination of that supplier's additional reserve payment.

(7) An electricity supplier must pay an additional reserve payment in respect of the reserve period by the later of—

(a) the date by which a reserve payment is due from that supplier in respect of that period;

(b) the 30th day after the CFD counterparty has published a notice under paragraph (6)(a); or

(c) any later date which the CFD counterparty specifies in the notice published under paragraph (6)(a).

(8) Where a supplier fails to make all or part of an additional reserve payment by the date it must be paid in accordance with paragraph (7), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the date by which that amount should have been paid.

#### **14A.— Reduction of total reserve amount**

(1) Where the CFD counterparty is of the opinion that there is a high degree of likelihood that it will collect significantly more from suppliers under regulations 10 and 11 in respect of a quarterly obligation period than the amount it requires to be able to make all payments it is required to make during the

reserve period which begins during that quarterly obligation period, it may determine a reduction in the total reserve amount in respect of that period in accordance with paragraphs (1)(a) and (5) of regulation 10..

(2) Where the CFD counterparty makes a determination under paragraph (1) in respect of a quarterly obligation period, it must:

(a) publish a notice setting out its determination of the reduced total reserve amount for that period;

(b) recalculate the amount (the “reduced reserve amount”) each supplier must pay under regulation 11(1) in respect of that period in accordance with Regulation 11(3), save that the value of TRA (as defined in that regulation) is substituted for the reduced total reserve amount; and

(c) issue a notice to each electricity supplier who was issued a notice under regulation 10(4) in respect of that period setting out the amount that supplier must pay [under regulation 11(1)] in respect of that period.

(3) The CFD counterparty may not make a determination under paragraph (1) later than the 7th working day of the quarterly obligation period to which the total reserve amount relates.

(4) Where the CFD counterparty issues a notice to a supplier under paragraph (2)(c) and that supplier has already made a reserve payment in respect of the quarterly obligation period to which it relates which exceeds the reduced reserve amount due from that supplier, the CFD counterparty must pay back to that supplier the difference between the amount of that payment and the reduced reserve amount now due from that supplier as soon as reasonably practicable.

## 15.— Reconciliation payments

(1) The CFD counterparty must calculate, in accordance with regulation 16(1), the amounts to be paid as reconciliation payments by electricity suppliers or by that counterparty (“a reconciliation determination”) in respect of a quarterly obligation period (“the reconciliation period”)—

~~(a) as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the day which is the last day of the reconciliation period, and in any event before the conclusion~~(a) by the 8<sup>th</sup> working day of the quarterly obligation period which immediately follows the reconciliation period; and

(b) once in every subsequent quarterly obligation period until the final reconciliation determination has been carried out in respect of the reconciliation period, ~~as soon as reasonably practicable after the CFD counterparty has issued a notice under regulation 8(4) in respect of the last day of the quarterly obligation period which concluded immediately prior to that subsequent period, and in any event before the conclusion~~by the 8<sup>th</sup> working day of that subsequent period.

(2) The final reconciliation determination in respect of the reconciliation period is the 10th reconciliation determination made in respect of that period.

(3) Where the CFD counterparty makes a reconciliation determination it must, as soon as reasonably practicable, issue a notice to each electricity supplier ~~setting out—~~who supplied electricity during the reconciliation period, or who is due to make or receive a reconciliation payment, setting out—

(a) the amount of any reconciliation payment which the CFD counterparty must make to that supplier following that determination;

(b) the amount of any reconciliation payment which that supplier must make to the CFD counterparty following that determination.

## 16.— Determination of reconciliation payments

(1) The amount of a reconciliation payment to be paid to or by a supplier in respect of the reconciliation period is—

(a) the CFD counterparty's calculation, at the time of making that calculation, of the CFD period contribution in relation to that supplier in respect of the reconciliation period, less

(b) the net levied amount for that supplier in respect of that period.

(2) For the purposes of the calculation of a CFD period contribution, where a Final Reconciliation Volume Allocation Run or Post-Final Volume Allocation Run has not been carried out by the BSCCo in relation to a day in the reconciliation period, the amount of electricity supplied on that day by a supplier is to be determined on the basis of the most recent [BSC volume allocation run] <sup>1</sup> which the BSCCo has carried out in relation to that day.

(3) Where the amount of a reconciliation payment in relation to an electricity supplier—

(a) is a positive number that supplier must pay that amount to the CFD counterparty;

(b) is a negative number the CFD counterparty must pay the absolute value of that amount to that supplier.

(4) Where, following a reconciliation determination, the CFD counterparty must make a reconciliation payment to an electricity supplier, ~~or that electricity supplier must make a reconciliation payment to the CFD counterparty,~~ that payment must be made by the ~~90th~~13th working day ~~after of the day on~~ quarterly obligation period in which ~~the CFD counterparty has issued a notice to that supplier under regulation 15(3) in respect of~~ that reconciliation determination ~~was made, unless paragraph (4A) applies.~~

(4A) This paragraph applies where, as a result of a reconciliation determination, the CFD counterparty must make reconciliation payments ('excess payments'), and any electricity supplier must also make reconciliation payments to the CFD counterparty ('shortfall payments').

(4B) Where paragraph (4A) applies, the CFD counterparty must pay an electricity supplier entitled to a reconciliation payment as a result of a reconciliation determination—

(a) the amount calculated under paragraph (4C), by the 13th working day of the quarterly obligation period in which the determination was made; and

(b) the remainder of the reconciliation payment by the 13th working day of the quarterly obligation period which follows the quarterly obligation period in which the determination was made.

(4C) The amount referred to in paragraph (4B) is the amount given by—

$EP \times (TEP - TSP) / TEP$

Where:

EP is the amount of any excess payment due to a supplier,

TEP is the amount of total excess payments due to all suppliers, and

TSP is the amount of total shortfall payments due from all suppliers.

(4D) Where, following a reconciliation determination, an electricity supplier must make a reconciliation payment to the CFD counterparty, that payment must be made by the 13th working day of the quarterly obligation period after the quarterly obligation period in which that reconciliation determination was made.

(5) Where an electricity supplier is required to pay a reconciliation payment and it fails to pay all or part of that payment by the day on which that payment must be made, that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(6) For the purposes of paragraph (1), the net levied amount for a supplier in respect of a reconciliation period is the sum of—

(a) any payment that supplier was required to make under regulation 8(1) in respect of a day in the reconciliation period;

~~(b) the sum of any payments that supplier was required to make under regulation 9(2) in respect of days in the reconciliation period less the sum of any payments the CFD counterparty was required to make under regulation 9(3) in respect of days in that period;~~

(c) any payment that supplier was required to make under regulation 11(1) in respect of the reconciliation period;

(d) any payment that supplier was required to make under regulation 14(3) in respect of the reconciliation period;

(e) the sum of any reconciliation payments which that supplier was required to make under paragraph (3)(a) in respect of any previous reconciliation determination made in relation to the reconciliation period less the sum of any reconciliation payments which the CFD counterparty was required to make under paragraph (3)(b) in respect of any previous reconciliation determination made in relation to the reconciliation period.

(8)

## 17.— Mutualisation

(1) Where an electricity supplier (“the defaulting supplier”) fails to make a relevant payment the CFD counterparty may, subject to paragraph (3), require ~~every other electricity supplier~~ (“the non-defaulting suppliers”) to pay a share of an amount equal to the amount which was not paid by issuing a notice (“a mutualisation notice”) to each non-defaulting supplier.

(2) A mutualisation notice must state—

(a) the amount which the defaulting supplier failed to pay;

(b) the date by which the defaulting supplier should have paid that amount;

~~(c) the provision of these Regulations under which the defaulting supplier should have paid;~~

~~(d) in the case of a payment under regulation 8(1), the day to which that payment relates;~~

(e) the amount (“the mutualisation amount”) which the non-defaulting supplier to whom the notice is issued must pay, calculated in accordance with paragraph (7);

[

(f) the date (“the mutualisation date”) by which the mutualisation amount must be paid which must be—

(i) in the case of a mutualisation notice issued in respect of a relevant payment which the defaulting supplier was required to make by virtue of regulation 8(1) ~~or 9(2)~~, no earlier than 5 working days after the date on which the notice was issued; or

(ii) in the case of a mutualisation notice issued in respect of any other relevant payment which the defaulting supplier was required to make, no earlier than 30 days after the date on which the notice was issued.

] <sup>1</sup>

[(2A) A mutualisation date must be the same for each mutualisation notice issued in respect of a relevant payment which a defaulting supplier failed to pay.

] <sup>2</sup>

(3) A mutualisation notice may only be issued where the CFD counterparty is of the opinion that it will not hold any collateral (within the meaning given by regulation 19) provided by the defaulting supplier by the 5th working day after the day on which the CFD counterparty intends to issue that notice.

~~(4) Where the CFD counterparty issues mutualisation notices to non-defaulting suppliers it must, at the~~

~~same time, issue a notice to the defaulting supplier which states the matters mentioned in paragraphs (2)(a) to (d) and (f).~~

(5) Where the CFD counterparty has issued a mutualisation notice to an electricity supplier, that supplier must pay the mutualisation amount specified in the notice by the date specified in the notice.

(6) Where an electricity supplier fails to pay all or part of a mutualisation payment in accordance with paragraph (5), that supplier must pay the CFD counterparty simple interest on any unpaid amount at the rate specified in regulation 35(1) from the day after the day on which the payment should have been made.

(7) The mutualisation amount to be stated in a mutualisation notice to be issued to a nondefaulting supplier is the amount given by—

$$\frac{DA \times \left( \frac{SRES}{NDPE} \right)}{DA \times \left( \frac{SRES}{NDPE} \right)}$$

where—

DA is the amount which the defaulting supplier failed to pay;

SRES is the amount of electricity supplied by the non-defaulting supplier in the reference period as determined immediately before the notice is issued; [...]<sup>4</sup>

[EXE is the amount of EII excluded electricity supplied by the non-defaulting supplier in the reference period as determined immediately before the notice is issued;

]<sup>5</sup>

NDPE is the total amount of electricity supplied by all non-defaulting suppliers in the reference period as determined immediately before the notice is issued [;]<sup>6</sup>

[AXE is the total amount of EII excluded electricity supplied by all non-defaulting suppliers in the reference period as determined immediately before the notice is issued.

]<sup>6</sup>

]<sup>3</sup>

(8) For the purposes of paragraph (7)—

(a) the reference period is—

~~(i) in respect of a default which constituted a failure to make a payment under regulation 8(1), the day to which that payment relates, or~~

~~(ii) in respect of any other default,~~ the most recent period of 30 consecutive days in respect of

which the [BSCCo] <sup>7</sup> has carried out an Initial Volume Allocation Run; and

(b) the amount of electricity supplied by an electricity supplier in a reference period is the amount of electricity which the BSCCo determines, on the basis of the most recent [BSC volume allocation run] <sup>8</sup> which the BSCCo has carried out in relation to each day in that period, as the amount of electricity supplied by that supplier in that reference period.

(9) In this regulation and regulation 18 “*relevant payment*” means any payment which an electricity supplier is required to make by virtue of regulation 8(1), ~~9(2)~~, 11(1), 14(3), 16(3)(a) or 17(5).

~~—(10) For the purpose of paragraph (1), “non-defaulting supplier” means any supplier who supplied electricity during the reference period:~~

~~(a) who is not currently in default in respect of a relevant payment to the CFD counterparty; or~~

~~(b) who is currently in default in respect of a relevant payment to the CFD counterparty, but where the CFD counterparty is of the opinion that it will continue to hold collateral (within the meaning of regulation 19) provided by that supplier after the 5th working day after the day on which the CFD counterparty intends to issue the notice under paragraph (1).~~



## 18.— Repayment of mutualised amounts

(1) Where the CFD counterparty has issued a mutualisation notice in respect of a failure of an electricity supplier (“the defaulting supplier”) to make a relevant payment, and subsequently recovers any amount from that supplier in respect of that failure, that amount must be paid to electricity suppliers who were required to pay mutualisation amounts in respect of that failure, in accordance with paragraphs (2) and (3).

(2) The amount which the CFD counterparty must, by virtue of paragraph (1), pay an electricity supplier who was required to pay a mutualisation amount (“the non-defaulting supplier”) is the amount given by—

$$\frac{AR \times \left( \frac{SU}{AU} \right)}{AR \times \left( \frac{SU}{AU} \right)}$$

where—

AR is the amount recovered from the defaulting supplier in respect of the failure to make the relevant payment (“the relevant default”), including any interest paid by the defaulting supplier in respect of that failure;

SU is the mutualisation amount which the non-defaulting supplier was required to pay in respect of the relevant default; and

AU is the total amount of mutualisation payments which were required to be paid by all non-defaulting suppliers in respect of the relevant default.

(3) Any amount which the CFD counterparty is required to pay by virtue of paragraph (1) must be paid by the ~~5th~~15th working day after the day on which it recovers the amount to be paid.

## 19.— Requirement to provide collateral

(1) This regulation applies at all times after an electricity supplier makes an electricity supply in a quarterly obligation period in respect of which it is required to make an interim rate payment.

(2) Where this regulation applies the supplier must ensure that, on any day, the CFD counterparty holds sufficient collateral from the supplier to meet the supplier's collateral requirement for that day.

[ (3) The supplier's collateral requirement for a day (“the relevant day”) is determined by reference to the most recent period (“the relevant period”) of 21 consecutive days in respect of which the BSCCo had carried out a BSC volume allocation run prior to the last working day before the relevant day.

] <sup>1</sup>

[ (4) For each day in the relevant period, the amount of electricity supplied by the supplier on that day, less any amount of EII excluded electricity supplied by that supplier on that day, (both as determined on the last working day before the relevant day) multiplied by the interim levy rate which applies in relation to the relevant day gives a relevant amount.

] <sup>2</sup>

(5) The sum of the relevant amounts is the supplier's collateral requirement for the relevant day.

(6) The supplier is not to be treated as having breached its obligation under paragraph (2) where, after the first occasion on which it provided sufficient collateral to the CFD counterparty to meet its collateral requirement for a day—

(a) the amount of that supplier's collateral held by the CFD counterparty fell below that supplier's collateral requirement for a subsequent day; and

(b) by the second working day (“the cure day”) after that subsequent day, the supplier provides sufficient collateral to the CFD counterparty to meet its collateral requirement for the cure day.

(7) Collateral may be provided in the form of—

(a) cash;

(b) appropriate letters of credit; or

(c) a combination of the two.

(8) For the purposes of this regulation—

(a) collateral is held by the CFD counterparty where it is provided to the CFD counterparty and not called (within the meaning of regulation 22);

(b) the amount of electricity supplied by a supplier on any day is the amount which the BSCCo determines, on the basis of the most recent [BSC volume allocation run] <sup>3</sup> carried out by the BSCCo in relation to that day, as the amount of electricity that the supplier supplied on that day; and

(c) the interim levy rate which applies in relation to a day is the interim levy rate which applies in relation to that day by virtue of regulation 8(3).

(9) In this regulation “*appropriate letter of credit*” is to be construed in accordance with regulation 20(1).

|

## **20.— Appropriate letters of credit**

(1) For the purposes of regulation 19, a letter of credit is appropriate if—

- (a) it is issued by a person who holds a required rating; and
- (b) it is provided on terms which the CFD counterparty considers are appropriate.

(2) The terms which the CFD counterparty may consider are appropriate under paragraph (1)(b) include terms relating to—

- (a) the manner in which any demand for payment under a letter of credit is to be made;
- (b) the manner in which any payment under a letter of credit is to be made;
- (c) requirements about the holding of funds to meet demands for payment under a letter of credit.

(3) Where an electricity supplier has provided the CFD counterparty with a letter of credit issued by a person who ceases to hold a required rating that letter will not constitute an appropriate letter of credit from the 10th working day after the day on which that person ceases to hold that rating.

(4) Subject to paragraph (5), a person holds a required rating if that person has been assessed by—

- (a) Fitch Ratings as having a short term debt rating of “F1” or better;
- (b) Moody's as having a short term debt rating of “P-1” or better; or
- (c) Standard and Poor's as having a short term debt rating of “A-1” or better.

(5) Where the CFD counterparty is of the opinion that the requirement that appropriate letters of credit must be issued by persons holding a short term debt rating mentioned in paragraph (4)(a) to (c) is too onerous in the circumstances, and subject to having regard to its duty under regulation 28(1), it may issue a notice to electricity suppliers specifying alternative short term debt ratings, and that notice shall remain in force until such time as it is withdrawn.

(6) The CFD counterparty may withdraw a notice under paragraph (5) (“the first notice”) by issuing a further notice (“the withdrawal notice”) to electricity suppliers setting out the date from which the first notice is to be withdrawn (that date being no earlier than 10 working days after the day on which the withdrawal notice is issued).

(7) The CFD counterparty must, before 1st December 2014, publish a document setting out the terms of letters of credit which it is likely to regard as appropriate for the purposes of paragraph (1)(b), and must

keep any such document under review and publish any revision from time to time.

(8) In this regulation—

*“Fitch Ratings”* means Fitch Ratings Limited (registered company number 01316230);

*“Moody’s”* means the corporation known as Moody’s Investors Service Inc. incorporated in the US State of Delaware with the file number 0577904;

*“Standard and Poor’s”* means the corporation known as Standard & Poor’s Financial Services LLC. incorporated in the US State of Delaware with the file number 4621989.

## 21.— Calling of collateral

(1) Collateral provided by an electricity supplier is called by the CFD counterparty where the CFD counterparty issues a notice to that supplier which sets out the amount of collateral which is to be called.

(2) The CFD counterparty may issue a notice under in paragraph (1) to an electricity supplier if that supplier has failed to make a relevant payment and—

(a) 2 working days have passed since the day on which that supplier should have made that payment; or

(b) the CFD counterparty is of the opinion that there is no prospect of that supplier making that payment by 2 working days after the day on which that supplier should have made that payment.

(3) The amount of collateral which may be called by the CFD counterparty where a supplier has failed to make a relevant payment is the lesser of—

(a) the amount of collateral provided by that supplier; or

(b) the amount of that relevant payment or, where there is more than one relevant payment which that supplier has failed to make and in respect of which a notice under paragraph (1) could be issued, the sum of all relevant payments in respect of which a notice under paragraph (1) could be issued.

(4) Where the whole or part of a supplier's collateral which was provided in the form of cash has been called by the CFD counterparty that amount is to be treated as a payment made by that supplier to the CFD counterparty at the time that collateral was called.

(5) Where the whole or part of a supplier's collateral which was provided in the form of a letter of credit has been called by the CFD counterparty—

(a) the CFD counterparty must take steps to demand payment from the person who provided the letter in the amount of the lesser of—

(i) the amount which can be demanded under that letter, or

(ii) the amount of collateral which has been called; and

(b) the amount which has been paid to the CFD counterparty under that letter is to be treated as a payment by that supplier to the CFD counterparty made at the time that amount is received by the CFD counterparty.

(6) In this regulation—

*“relevant payment”* means any payment which a supplier is required to make by virtue of regulation

| 8(~~1~~, ~~9~~(~~2~~), 11(1), 14(3), 16(3)(a) or 17(5) which has not been made by that supplier by the time that payment should have been made, and which remains unpaid.

## **22.— Withdrawal of collateral and payment of interest**

(1) Where the collateral provided by an electricity supplier and held by the CFD counterparty is more than that supplier's collateral requirement, that supplier may make a request that the CFD counterparty repay or return as much collateral as exceeds the supplier's collateral requirement by giving a notice to the CFD counterparty.

(2) Where a request under paragraph (1) has been received by the CFD counterparty, it must, before the 2nd working day after the day on which the request was received, repay or return the lesser of—

(a) the amount requested by the supplier; or

(b) the amount of collateral which the CFD counterparty determines exceeds that supplier's collateral requirement at the time the payment is to be made.

(3) Where a supplier has provided collateral in the form of cash, and the CFD counterparty holds that sum in an account which bears interest, it must pay to that supplier an amount equal to any such interest earned in relation to that sum within 515 working days of receiving that interest.



## 25.— Enforcement of requirements

(1) Any requirement of an electricity supplier under these Regulations is enforceable by the Authority as if any such requirement was a relevant requirement on a regulated person for the purposes of section 25 of the Electricity Act 1989 <sup>1</sup>.

~~(1A) Any requirement of an electricity supplier under these Regulations shall remain enforceable notwithstanding any failure by the CFD counterparty to comply with any requirement under these Regulations.~~

(2) Where the CFD counterparty determines that an electricity supplier has not complied with any requirement to pay an amount required under these Regulations it may issue a notice to that supplier setting out—

(a) the amount which the CFD counterparty determines that supplier should have paid; ~~and;~~

~~(b) the basis on which the CFD counterparty determined the amount;~~

~~(c) the date on which the amount should have been paid;~~

(d) the rate, if any, of interest which applies to the amount; ~~and~~

~~(e) any amount of interest which has accrued as at the date of the notice.~~

[(3) Where the CFD counterparty determines that an electricity supplier has not complied with a requirement to ensure that the CFD counterparty holds sufficient collateral under regulation 19(2) it may issue a notice to that supplier which specifies the amount of collateral which the supplier would have to provide to meet that supplier's collateral requirement for the day on which the notice is issued.

] <sup>2</sup>

(4) Where the CFD counterparty has issued a notice to a supplier under paragraph (3) that supplier is required to pay the amount specified in the notice to the CFD counterparty in cash by the next working day after the notice has been issued.

[...] <sup>3</sup>

(6) Where an electricity supplier makes a payment under paragraph (4) the amount of that payment constitutes collateral held by the CFD counterparty for the purposes of regulation 19.

(7) Where the CFD counterparty issues a notice to a supplier under paragraph (2) or (3)—

(a) it must also provide a copy of that notice to the Authority; and

(b) it may publish a copy of that notice, or a summary of that notice.

|

## 26.— Dispute notices

(1) An electricity supplier may dispute any determination made by the CFD counterparty under these Regulations [ or the Excluded Electricity Regulations] <sup>1</sup>, other than a determination made under or by virtue of regulation 27 [ of these Regulations] <sup>2</sup>, by giving a notice to the CFD counterparty setting out—

(a) the determination the supplier is disputing; and

(b) the basis on which the supplier disputes the determination.

(2) For the purposes of paragraph (1), a dispute about a determination made by the CFD counterparty includes a dispute about the failure of the CFD counterparty to make a determination.

(3) A notice under paragraph (1) must be given by an electricity supplier before the later of—

(a) the 28th day after the day on which the determination was made by the CFD counterparty;

(b) in the case of a determination in respect of which the CFD counterparty must issue a notice, the 28th day after the day on which that notice was issued;

(c) in the case of a dispute about the failure of the CFD counterparty to make a determination, the 28th day after the day on which the CFD counterparty should have made the relevant determination which is in dispute.

(4) An electricity supplier may not dispute a determination if and to the extent that the dispute is about a determination, made by the BSCCo, of an amount of electricity supplied (whether by that supplier or any other supplier).

(5) Where an electricity supplier has given a notice under paragraph (1) in respect of a determination, that determination still has effect notwithstanding the giving of that notice.

|

## 27.— Determination of disputes

(1) Where the CFD counterparty receives a notice under regulation 26(1) (“a dispute notice”) about a determination (or a failure to make a determination) under any provision of these Regulations [ or the Excluded Electricity Regulations] <sup>1</sup> (“a relevant provision”) it must, by the 28th day after the day on which it receives that notice either—

(a) reject the notice; or

(b) accept the notice (in full or in part) and make such determination under that provision as it thinks is necessary in consequence.

(2) Whether the CFD counterparty rejects or accepts a dispute notice, it must, on the same day, issue a notice (“a decision notice”) to the person who gave that dispute notice, setting out its decision and the reasons for it.

(3) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) it must, on the same day, issue to each electricity supplier who may be affected by the making of that determination a notice which sets out that determination.

(4) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and—

(a) that provision requires the determination to be made by a particular time which has passed, that determination has effect notwithstanding that requirement;

(b) that provision requires something to be done by it by a particular time which has passed, that thing must be done as soon as reasonably practicable after the determination.

(5) Where the CFD counterparty makes a determination under a relevant provision by virtue of paragraph (1)(b) and that provision requires an electricity supplier to make a payment, that payment must be made (notwithstanding what that provision says about the time by which a payment must be made) by the date specified by the CFD counterparty in the notice issued under paragraph (3) to that supplier, that date being no earlier than—

(a) the date by which, in the opinion of the CFD counterparty, it would be reasonably practicable for that electricity supplier to make that payment; or

(b) the earliest date by which that supplier would have had to have made that payment if the determination had been made at the time the determination which is the subject of the dispute notice was or (in the case where the CFD counterparty failed to make a determination) should have been made.

(6) Where an electricity supplier has paid an amount to the CFD counterparty, or the CFD counterparty

has paid an amount to that electricity supplier, and a determination made under a relevant provision by virtue of paragraph (1)(b) means that that amount should not have been paid, that amount must be returned to the person who paid it by—

(a) the 5th working day after the day on which the notice issued in respect of that determination was issued under paragraph (3);

(b) where the CFD counterparty is of the opinion that it would not be reasonably practicable for that amount to be returned by that date, such later date as the CFD counterparty specifies in the notice issued under paragraph (3) to that supplier in respect of that determination.

|

## 28.— Duties of the CFD counterparty to enforce and notify

(1) The CFD counterparty must exercise its functions in the manner best calculated to ensure the collection of all amounts which are required to be paid or provided by electricity suppliers under these Regulations, subject to paragraph (1A).

~~(1A) The CFD counterparty may, having regard to paragraph (1), waive or suspend any requirement on a supplier to pay interest under these regulations.~~(2) In paragraph (1) “functions” includes—

(a) any function conferred under these Regulations; and

—

(b) the recovery of any sum as a civil debt by virtue of section 9 of the Act.

(3) The CFD counterparty must take such steps as it considers necessary to ensure that electricity suppliers are—

(a)        informed of their liabilities under these Regulations; and

(b)        provided with information about liabilities which they may incur under these Regulations.

(4) Where the CFD counterparty writes-off any debt owed to it by an electricity supplier, it must issue a notice of that fact to every electricity supplier who was required to make a payment under regulation 17(5) in relation to that debt.

(5) The CFD counterparty must publish information which:

(a) relates to electricity suppliers’ potential liabilities arising over a period of three quarterly obligation periods; and

(b) in the CFD counterparty’s opinion would be of assistance to electricity suppliers in understanding those liabilities.

—

(6) Any information published or provided under paragraphs (3) or (4) shall not be binding on the CFD counterparty, and may differ from electricity suppliers’ eventual liabilities.

(7) The CFD counterparty is not required to publish any information relating to generators that have applied for but not been awarded CFDs or that may apply for CFDs in future.

(8) The CFD counterparty must publish information in accordance with paragraph (4) two quarterly obligation periods before the start of the first quarterly obligation period to which that information relates.

## 29.— Notices and publications

(1) Where the CFD counterparty is permitted or required to issue a notice (including a copy of a notice) to a person, that notice must be in writing and is issued if it has been sent (by or on behalf of the CFD counterparty) by post or electronic means to that person's proper address.

(2) In paragraph (1), “*proper address*” means—

(a) in the case of a body corporate—

(i) the registered or principal office of that person, or

(ii) an email address provided [ (and not withdrawn)] <sup>1</sup> by that person;

(b) in the case of a partnership—

(i) the principal office of the partnership, or

(ii) an email address provided [ (and not withdrawn)] <sup>2</sup> by—

(aa) that partnership,

(bb) a partner, or

(cc) a person having control or management of the partnership business;

(c) in the case of any other person, that person's last known address, which includes an email address (where that email address was provided [ (and has not been withdrawn)] <sup>3</sup> by that person).

(3) So as to enable the CFD counterparty to discharge its functions under these Regulations, an electricity supplier must, within 2 working days of first making an electricity supply after 1st January 2015, provide an email address to the CFD counterparty at which it can be contacted, and if that supplier subsequently changes that email address it must notify the CFD counterparty of that change.

(4) Where the CFD counterparty issues a notice to an electricity supplier under regulation 6(3)(a) or (b) it must set out an address and an email address for correspondence in that notice.

(5) An electricity supplier may give a notice to the CFD counterparty by sending it by post or electronic means to the address or email address contained in the most recent notice issued to that supplier under regulation 6(3)(a) or (b).

(6) Where the CFD counterparty is required to publish any information under these Regulations the CFD counterparty must publish that information in such manner as the CFD counterparty considers appropriate for the purpose of bringing it to the attention of persons who may be affected by that information.





### 30.— Set-off of payments by the CFD counterparty

(1) This regulation applies where—

(a) the CFD counterparty is liable to make a payment (“a relevant payment”) to an electricity supplier under these Regulations by a date (“the relevant date”); and

(b) ~~the amount it is liable to pay is equal to or less than the sum of all determined payments which~~ that supplier is liable to pay ~~at~~determined payments; and

~~(c) the CFD counterparty considers that~~ there is a high degree of likelihood that the electricity supplier will fail to pay a determined payment.

(2) Where this regulation applies the CFD counterparty may retain all or part of the relevant payment.

(3) Where the CFD counterparty does so, the amount retained is to be treated as if it was a payment made to it by the supplier on the relevant date.

(4) Where the CFD counterparty has retained all or part of a relevant payment under paragraph (2), it must, by the relevant date, issue a notice to the supplier stating the amount which has been retained.

(5) For the purposes of paragraph (1), a determined payment is a payment—

(a) which a supplier must make to the CFD counterparty by virtue of these Regulations;

(b) which the supplier has not yet made; ~~and~~

~~(c) which the supplier must make within 5 working days following the relevant date; and~~

(d) the amount of which has been determined.

(6) The amount of a payment which a supplier must make by virtue of these Regulations has been determined if—

(a) in the case of a payment which is calculated by reference to an amount of electricity determined by the BSCCo on the basis of a BSC volume allocation run, the BSCCo has carried out that BSC volume allocation run;

(b) in the case of a payment where the amount of that payment must be determined by the CFD counterparty in accordance with these Regulations, the CFD counterparty has determined the amount of that payment;

(c) in the case of a requirement to pay an amount of interest, the day by which that interest must be

paid has passed.

(7) For the purposes of this regulation and regulation 31 a requirement to provide collateral under regulation 19(2) is not a requirement to make a payment by virtue of these Regulations.

**30A.— Netting of payments by the CFD counterparty**

(1) This regulation applies where—

(a) the CFD counterparty must make a payment to an electricity supplier under these Regulations by a date (the “counterparty payment”); and

(b) that supplier must make a payment to the CFD counterparty by the same date (the “supplier payment”).

(2) Where this regulation applies and the counterparty payment is more than the supplier payment, payment of the counterparty payment less the supplier payment discharges-

(a) the CFD counterparty’s obligation to make the counterparty payment, and

(b) the supplier’s obligation to make the supplier payment.

(3) Where this regulation applies and the counterparty payment is less than the supplier payment, payment of the supplier payment less the counterparty payment discharges

(a) that supplier’s obligation to make the supplier payment, and

(b) the CFD’s counterparty’s obligation to make the counterparty payment.

(4) Where this regulation applies and the counterparty payment is equal to the supplier payment-

(a) the CFD counterparty’s obligation to make the counterparty payment is discharged, and

(b) the supplier’s obligation to make the supplier payment is discharged.

(5) Where this regulation applies, the CFD counterparty must notify the relevant supplier of the payment discharged in accordance with paragraphs (2) or (3) as soon as reasonably practicable.

### 31.— Discharge of obligations by payment

(1) This regulation applies where an electricity supplier makes a payment to the CFD counterparty for the purpose of discharging its relevant obligations but that payment is insufficient to do so.

(2) The CFD counterparty must use the payment—

(a) first, to discharge (in whole or in part) any relevant obligation of the supplier arising under regulation 23(1);

(b) where part of the payment remains, secondly, to discharge any relevant obligation of the supplier which is not one arising under regulation 23(1); and

(c) where part of the payment still remains, thirdly, to discharge any obligation of the supplier to make a payment of interest.

(3) Where more than one relevant obligation falls within a sub-paragraph of paragraph (2), the CFD counterparty must determine the order in which those obligations are to be discharged.

(4) On the day on which the CFD counterparty uses the payment it must issue a notice to the supplier which sets out the details of—

(a) any relevant obligation which has been wholly discharged;

(b) any relevant obligation which has been partially discharged, and the extent to which it has been discharged; and

(c) any relevant obligation which has not been discharged.

(5) For the purposes of this regulation, any amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3) is to be treated as a payment made by that supplier to the CFD counterparty for the purpose of discharging its relevant obligations.

(6) In this regulation—

“*payment of interest*” means a payment of interest which is required to be made by virtue of regulation 8(6), ~~9(7)~~, 11(2), 14(8), 16(5), 17(6), 23(6) or 25(5);

“*relevant obligation*”, in relation to an electricity supplier, means any obligation of that supplier to make a payment under these Regulations where the date by which that payment should have been made has passed.

### **32.— Use of payments**

(1) Where the CFD counterparty receives a payment from an electricity supplier under [regulation 23] <sup>1</sup> the CFD counterparty may only use that payment for the purposes of meeting its costs.

(2) Where the CFD counterparty receives a payment from an electricity supplier under any regulation, other than [regulation 23] <sup>2</sup>, the CFD counterparty may only use that payment for the purposes of making CFD counterparty payments or making payments to electricity suppliers under these Regulations.

(3) In this regulation, “costs” means any costs incurred by the CFD counterparty in connection with the performance by it of any function conferred on it by or by virtue of Chapter 2 of Part 2 of the Act.

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### 33.— Apportioning sums to CFDs

(1) This regulation applies where the CFD counterparty is unable fully to meet its liabilities under a CFD.

(2) For the purposes of this regulation the term “unable fully to meet its liabilities under a CFD” includes liabilities under a connected agreement.

(3) The CFD counterparty is unable fully to meet its liabilities under a CFD when the total amount held by the CFD counterparty at any time is less than the total amount of CFD counterparty payments it must pay at that time.

(4) Where this regulation applies, the amount which may be used to make CFD counterparty payments in relation to a particular CFD or connected agreement is the amount given by—

$$\cancel{AH} \times \left( \frac{OG}{OA} \right)$$

$$\underline{AH} \times \left( \frac{OG}{OA} \right)$$

where—

AH is the total amount held by the CFD counterparty;

OG is the amount of CFD counterparty payments owed in relation to that CFD or connected agreement; and

OA is the total amount of CFD counterparty payments which the CFD counterparty owes.

(5) An amount is held by the CFD counterparty if it is in possession of that amount and—

(a) it is an amount paid to it by electricity suppliers under these Regulations, other than an amount paid under or by virtue of regulation 23(1) or 23(6), or provided under regulation 19(2);

(b) it is an amount treated as a payment by an electricity supplier to the CFD counterparty by virtue of regulation 21(4) or (5) or regulation 30(3);

(c) it is an amount of collateral which was provided in the form of cash and the CFD counterparty is entitled to call that collateral by virtue of regulation 21;

(d) it is an amount received as a CFD party payment by the CFD counterparty; or

(e) it is any other amount provided to the CFD counterparty for the purpose of making CFD counterparty payments.



### **34.— Application of apportionment to CFDs**

(1) This regulation applies where a CFD or connected agreement contains a term that makes reference to amounts allocated pursuant to these Regulations (however that CFD or agreement describes these Regulations).

(2) Where both this regulation and regulation 33 apply, the amount allocated to that CFD or connected agreement, for the purposes of that term, is the amount calculated under regulation 33(4) which may be used by the CFD counterparty to make CFD counterparty payments in relation to that CFD or connected agreement.

(3) In all other cases where this regulation applies, the amount allocated to a CFD or connected agreement, for the purposes of that term, is the amount which is owed by the CFD counterparty in relation to that CFD or connected agreement.

### 35.— Interest

(1) For the purposes of [regulations 8(6), ~~9(7)~~, 11(2), 14(8), 16(5), 17(6) and 23(6)]<sup>1</sup>, the rate of interest is 5 per cent per annum over the relevant Bank of England base rate.

(2) The relevant Bank of England base rate—

(a) in respect of interest which starts to run on or after 1st January and before 1st July in any year, is the Bank of England base rate in force on 31st December in the previous year; and

(b) in respect of interest which starts to run on or after 1st July in any year, is the Bank of England base rate in force on 30th June in that year.

(3) Any requirement to pay interest by virtue of these Regulations is a requirement to pay the amount of that interest by the first working day after the day on which that interest has accrued.

(4) In this regulation, “*Bank of England base rate*” means—

(a) the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or

(b) where an order under section 19 of the Bank of England Act 1998 is in force, any equivalent rate determined by the Treasury under that section.



*Amber Rudd*

Parliamentary Under-Secretary of State Department of Energy and Climate Change

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