

ANNEX D

DISPATCHABLE POWER AGREEMENT: HEADS OF TERMS

Note: this Annex is subject to the "Disclaimer" section at the front of the update document to which it is annexed.

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INTRODUCTORY NOTES

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

These Heads of Terms should be read in conjunction with the document 'An update on the assessment of potential business models for Carbon Capture, Usage and Storage', December 2020 ("**Main Document**").

These Heads of Terms do not indicate any willingness or agreement on the part of the Department for Business, Energy & Industrial Strategy ("**BEIS**") to enter into, or procure entry into, the Agreement. These Heads of Terms do not constitute an offer and are not capable of acceptance.

In connection with the above, given the Heads of Terms are preliminary and indicative only, the provisions set out therein are subject to further consideration and development by BEIS. Those provisions and terms which require particular consideration and development (including where BEIS is yet to make decisions relating to policy matters, commercial issues, risk allocation, and the allocation of the Agreement) have been square bracketed (with footnotes) in the Heads of Terms. BEIS reserves the right to review and amend these square bracketed provisions, and all other provisions set out in the Heads of Terms.

PARTIES

The Dispatchable Power Agreement (Agreement) will be executed and delivered by the **Generator** and the **DPA Counterparty**¹.

BACKGROUND

- (A) The Agreement will be entered into following the [applicable contract allocation or negotiation process established pursuant to Chapter 2 of the Energy Act 2013]².
- (B) Prior to execution of the Agreement, the Generator will have satisfied [the eligibility criteria]³.
- (C) The Agreement is a private law, commercial contract made between the Parties and will be subject to private law remedies.

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

² Note to Reader: The method of allocating the DPA remains to be confirmed.

³ Note to Reader: To be confirmed how the DPA will be awarded (Direct Award or Competitive Allocation Process).

PART 1 DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In the Agreement:

"Acceptable Credit Standing" means, in relation to the Generator, that *[how the acceptable credit standing will be assessed is to be determined]*⁴

"Achieved CO₂ Capture Rate" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Adjusted Output Period" means a period of reduced or increased capture [or generation] by the Facility occurring during the Term as a direct result of a Qualifying Change in Law;

"Arbitral Award" has the meaning given to that term in clause 29.4 (Arbitration);

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

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

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

"Availability Due Date" has the meaning given to that term in clause 14.1 (Due Date for Payment);

"Availability of Capture" has the meaning given to that term in schedule 3 (Availability Payment Calculations)

"Availability of Generation" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Availability Payment" means the payment calculated in accordance with schedule 3 (Availability Payment Calculations) to be made by the DPA Counterparty to the Generator in the circumstances set out in clause 10 (Availability Payment);

"Availability Payment Billing Period" means a Month, except that the first AP Billing Period shall commence on the Start Date and end on the last day of the Month in which the Start Date occurs and the last AP Billing Period shall commence on the first day of the last Month of the Term and end on the last day of the Term, and **"AP Billing Period"** shall be construed accordingly;

"Availability Payment Billing Statement" has the meaning given to that term in clause 13.1 (Availability Billing Statement);

"Availability Payment Rate" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

⁴ Note to Reader: The Acceptable Credit Standing definition and the inclusion of the Credit Standing provisions are subject to further review.

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

"Base Performance Assumptions" means:

- (a) the Reference Plant CO₂ Emissions; and
- (b) the Reference Plant Gas Consumption,

with each of these terms representing a component of the Variable Payment as calculated in accordance with schedule 4 (Variable Payment Calculation);

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

"Billing Statements" means the Availability Payment Billing Statement or the Variable Payment Billing Statement (as applicable);

"BM Unit" has the meaning given to that term in the Balancing and Settlement Code;

"BM Unit Metered Volume" has the meaning given to that term in the Balancing and Settlement Code;

"BSC Agent" has the meaning given to that term in the Balancing and Settlement Code;

"BSC Company" has the meaning given to that term in the Balancing and Settlement Code;

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

"Capture Plant"⁵ means the part of the Facility described in schedule 1 (The Facility), which:

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

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

"Capture Plant Outage Relief Events" has the meaning given to that term in clause 10.4(b) (Capture Plant Outage Relief Events);

"Captured Carbon Dioxide Quality Standards" means [the compositional limits (minimum percentage of carbon dioxide and maximum levels of a range of contaminants) that are permissible for entry to the T&S Network, together with maximum and minimum entry pressure and maximum and minimum entry temperature, specified by the T&S Operator];

"Carbon Price" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

⁵ Note to Reader: We note that the definitions of "Capture Plant" and "Power Plant" may need to be adjusted if the Capture Plant is inherent to the cycle design of the Power Plant.

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

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

"Change in Applicable Law" means:

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

"Change in Law" means:

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

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

- (c) arises out of, or in connection with, a breach of or default under or with respect to, that Law, Directive, Industry Document or Required Authorisation by the Generator or any of its Representatives;
- (d) arises out of, or in connection with, a failure by the Generator or any of its Representatives to act in accordance with the Reasonable and Prudent Standard; or
- (e) represents no more than a continuous improvement or development of good practice which would be complied with in respect of a capturing facility [and/or generation facility]⁶ deploying the Facility Capture Technology [and/or the Facility Generation Technology] by a generator acting in accordance with the Reasonable and Prudent Standard;

"CiAL Dispute" has the meaning given to that term in clause 21.3 (CiAL Dispute);

"CiAL Request Criterion" means [*the definition and procedure will be detailed in the full DPA Contract*];⁷

⁶ Note to Reader: The Change in Law definition is subject to further review.

⁷ Note to Reader: A specified threshold will trigger the requirement for the DPA Counterparty to carry out a CiAL Review as was the case under AR3. This will be detailed in the full DPA contract.

"CiAL Request Notice" has the meaning given to that term in clause 21.1(b) (CiAL Review);

"CiAL Review" means a review conducted by the DPA Counterparty pursuant to clause 21.1 (CiAL Review) as to whether:

- (a) a Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective and, in each case as a direct result of such Change in Applicable Law being implemented, occurring or becoming effective, one (1) or more of the Required CiL Amendment Objectives will cease to be met; and
- (b) as a consequence of one (1) or more of the Required CiL Amendment Objectives ceasing to be met, Required CiL Amendments are necessary;

"CiAL Review Outcome Notice" has the meaning given to that term in clause 21.2 (Notification of outcome of CiAL Review);

"CiAL Review Trigger" has the meaning given to that term in clause 21.1 (CiAL Review);

"Claimant" has the meaning given to that term in clause 29.3(b) (Expert Determination);

"CO₂" means carbon dioxide;

"CO₂ Capacity Test" means a test, as requested by the DPA Counterparty at any time, to verify a Deemed CO₂ Capture Rate;

"CO₂ Capture Rate" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

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

"CO₂ Capture Rate Metering Data" means the Metering Data used in the calculation of the Achieved CO₂ Capture Rate in accordance with schedule 3 (Availability Payment Calculations) or schedule 4 (Variable Payment Calculation);

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

"CO₂ Capture Technology" means technology which captures carbon dioxide that has been produced by, or in connection, with commercial electricity generation;

"CO₂ Cost Differential" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"CO₂ Delivery Points" means the point(s) of connection of the Facility to the T&S Network to be identified on a plan which is annexed to the DPA;

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

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

"CO₂ Metering Obligation" means the obligation of the Generator under clause 18 (Generator's Undertaking: Metering);

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

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

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

- (a) relevant to generating and carbon capture facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology and the Facility Capture Technology);
- (b) required to be completed, followed or passed (as appropriate): (i) in order for a generating facility to generate and export electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation; and
- (c) required to be completed, followed or passed (as appropriate): (i) in order for a capturing facility to capture and export carbon dioxide emissions; or (ii) to demonstrate that a capturing facility is fit for commercial operation;

"Competent Authority" means any national, federal, regional, state, local, [European Union]⁸ or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality, and includes the Authority;

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

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

"Connected Disputes" has the meaning given to that term in clause 29.5 (Consolidation of Connected Disputes);

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

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

"Date of Referral" has the meaning given to that term in clause 29.3(e) (Expert Determination);

"Date of Response" has the meaning given to that term in clause 29.3(f) (Expert Determination);

"Deemed CO₂ Capture Rate" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Default" means a Termination Event or any event or circumstances specified in clause 4 (Termination Events) which would (with the passage of time, the giving of notice, the

⁸ Note to Reader: Definition to be kept under review in light of the UK's exit from the EU.

making of any determination under the Agreement or any combination of any of the foregoing) be a Termination Event;

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

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

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

"Delivery Body" means the person from time to time responsible under and by virtue of Section 10 the Energy Act 2013 for directing the DPA Counterparty to offer to enter into the Agreement and/or Dispatchable Power Agreements;

"Department" means the Department of Business, Energy and Industrial Strategy;

"Directive" means any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority which is legally binding upon the relevant Party or with which that Party would ordinarily comply acting (in the case of the Generator) in accordance with the Reasonable and Prudent Standard and, in circumstances in which the Generator is seeking to invoke the provisions of clause 20 (Change in Law), with which the Generator does in fact comply;

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

"Discriminatory Change in Law" means a Change in Law the terms of which specifically (and not merely indirectly or consequentially or by virtue of the disproportionate effect of any Change in Law that is of general application) apply to:

- (a) the Project and not to the design, development, construction, conversion, installation, completion, testing, commissioning, operation, maintenance and decommissioning of any other project;
- (b) the [Facility] and not to any other capture [and/or generating facility]⁹; or
- (c) the Generator and not to any other person;

"Dispatchable Power Agreement" or **"DPA"** means a dispatchable power agreement between the DPA Counterparty and an eligible generator entered into following the applicable contract allocation or negotiation process established under or by virtue of [the Energy Act 2013];

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

"Dispute Notice" means a notice in writing that initiates the Dispute Resolution Procedure and which contains the information required by clause 29.1(c) (Outline of the Dispute Resolution Procedure);

"Dispute Resolution Procedure" means the rules, obligations and procedures set out in clause 29 (Dispute Resolution Procedure);

"Distribution Connection and Use of System Agreement" means the agreement of that name that an Electricity Licensed Distributor is required to prepare or maintain in force

⁹ Note to Reader: The Discriminatory Change in Law definition is subject to further review.

in a form approved by the Authority under standard condition 22 (Distribution Connection and Use of System Agreement) of an Electricity Distribution Licence;

"DPA Counterparty Confidential Information" means:

- (a) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the DPA Counterparty or a Government Entity (including any such Information relating to United Kingdom government policy with respect to matters pertinent to Dispatchable Power Agreements or the Agreement) which the Generator (or its Representatives) receives or has received from the DPA Counterparty (or its Representatives) or any third party who receives or has received such Information from the DPA Counterparty (or its Representatives) in respect of the Agreement (including any Information which the Generator prepares which contains or makes explicit reference to such information or from which such Information is readily ascertainable); and
- (b) all Information relating to or arising from negotiations, discussions and correspondence in connection with the Agreement,

but excluding in each case any Excluded Information;

"DPA Counterparty Permitted Purposes" means:

- (a) complying with the DPA Counterparty's responsibilities and obligations, and exercising the DPA Counterparty's rights, powers and discretions, under or in connection with the Agreement or any other Dispatchable Power Agreement;
- (b) complying with the DPA Counterparty's responsibilities and obligations under or by virtue of the Energy Act 2013, any other Law, [any European Union law, or any Directive], policy or guidance;
- (c) reporting on the establishment, performance or operation of, or compliance with, the arrangements contemplated by the Agreement and/or Dispatchable Power Agreements; and
- (d) reporting to the Department on the performance, operation, and DPA Settlement Activities of the Project to enable or assist the Department to fulfil its functions in connection with the Dispatchable Power Agreement and/or CCUS Programme. The Department's functions include:
 - (i) the development of the Dispatchable Power Agreement;
 - (ii) the development of the CCUS Programme; and
 - (iii) any examination of the performance, efficiency, and effectiveness of the Project;

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

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

"Due Date" means the Availability Due Date or the Variable Payment Due Date (as applicable);

"EIR" means the Environmental Information Regulations 2004;

"Electricity Act" means the Electricity Act 1989;

"Electricity Delivery Point" means the point of connection of the Facility to the Electricity Transmission System or the Electricity Distribution System, as applicable (being the Boundary Point as defined in the Balancing and Settlement Code);

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

"Electricity Distribution Licence" means a licence granted or treated as granted under Section 6(1)(c) of the Electricity Act;

"Electricity Distribution System" means all or part of a distribution system in Great Britain operated by an Electricity Licensed Distributor;

"Electricity Licensed Distributor" means a person who is authorised by an Electricity Distribution Licence to distribute electricity;

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

"Electricity Metering Equipment" means the "Metering Equipment" as defined in, and registered pursuant to, the Balancing and Settlement Code to measure the flows at the Electricity Delivery Points of electricity with the Facility, its Metering System, and its associated BM Unit(s);

"Electricity Metering Obligation" mean the obligation of the Generator under clause 18 (Generator's Undertaking: Metering);

"Electricity Supplier" has the meaning given to that term in section 9(1) of the Energy Act 2013;

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

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

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

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

["Eligibility Criteria" means the eligibility criteria set out in the [EA 2013 Regulations]¹⁰, in each case as applicable to the Facility, the Generator or the Project in relation to the Agreement];

¹⁰ Note to Reader: To be determined whether the EA 2013 Regulations will be relied upon in respect of the eligibility criteria of a Power CCUS facility.

"Eligible Capture Technology" means CO₂ Capture Technology which is eligible for a Dispatchable Power Agreement, [as specified in the EA 2013 Regulations]¹¹ (as in effect as at the date of the Agreement);

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

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

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

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

"Estimated Metered Electricity Output" has the meaning given to that term in clause 11.4 (Estimates of Loss Adjusted Metered Electricity Output);

"Estimated Output Billing Period" has the meaning given to that term in clause 11.4 (Estimates of Loss Adjusted Metered Electricity Output);

"Estimated Output Billing Statement" has the meaning given to that term in clause 11.4 (Estimates of Loss Adjusted Metered Electricity Output);

"Estimated Output Settlement Unit" has the meaning given to that term in clause 11.4 (Estimates of Loss Adjusted Metered Electricity Output);

["EU Treaty" means the consolidated version of the Treaty establishing the European Union]¹²;

"Excluded Information" means Information:

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

"Expert" means any person appointed to determine a Dispute in accordance with clause 29.3 (Expert Determination);

"Expert Determination Dispute" means the following Disputes to be determined by an Expert in accordance with clause 29.3 (Expert Determination):

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

¹¹ Note to Reader: To be determined whether the EA 2013 Regulations will be relied upon in respect of the eligibility criteria of a Power CCUS facility.

¹² Note to Reader: Definition to be kept under review in light of the UK's exit from the EU.

"Expert Determination Notice" has the meaning given to that term in clause 29.3(a) (Expert Determination);

"Expert Determination Procedure" means the rules, obligations and procedures set out in clause 29.3 (Expert Determination);

"Facility" means the [Power Plant] and [Capture Plant]¹³ and all necessary interfaces and any other facilities or equipment required up to the Electricity Delivery Point(s) and CO₂ Delivery Point(s) as set out in schedule 1 (The Facility), for the safe, efficient, timely and economical operation of the [Power Plant] and [Capture Plant] in a manner to satisfy fully the requirements under the Agreement;

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

"Facility Generation Technology" means, in respect of the Facility, the generation technology deployed by the Facility, as specified in schedule 1 (The Facility);

"Facility Metering Equipment" means the Electricity Metering Equipment, the CO₂ Metering Equipment and the Gas Supply Metering Equipment;

"FM Affected Party" has the meaning given to that term in clause 23.1 (Relief due to Force Majeure);

"FoIA" means the Freedom of Information Act 2000 and any subordinate legislation made under that Act, together with (where the context requires) any guidance and codes of practice issued by the Information Commissioner in relation to such legislation;

"Force Majeure" means any event or circumstance including:

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

provided that such event or circumstance:

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

provided always that:

- (A) neither non-availability nor the lack of funds shall constitute Force Majeure; and
- (B) no event or circumstance which has occurred before the date on which the Generator applied for the Agreement of which, the Generator or

¹³ Note to Reader: We note that the definitions of "Capture Plant" and "Power Plant" may need to be adjusted if the Capture Plant is inherent to the cycle design of the Power Plant.

any of its Representatives either was aware, or (if it or they had made all due and careful enquiries and acted to a Reasonable and Prudent Standard) could be expected to have been aware, shall constitute a Force Majeure;

"Foreseeable Change in Law" means a Change in Law which is reasonably foreseeable on the date of the Agreement and which falls within one of a number of categories of foreseeable Changes in Law which will be set out in the Agreement [*and which will reflect the definition of "Foreseeable Change in Law" in the AR3 CfD Standard Terms and Conditions*];

"Fuel Composition" has the meaning given to that term in schedule 3 (Availability Payment Calculations)

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

"Gas Act" means the Gas Act 1986 as such act is amended or subsequent gas acts and any regulation made thereunder as amended or re-enacted from time to time;

"Gas Cost Differential" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

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

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

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

"Gas Price" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

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

"Gas Supply Metering Dispute" means a Dispute which relates to the metering of the gas supply to the Facility;

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

"Gas Supply Metering Obligation" means the obligation of the Generator under clause 18 (Generator's Undertaking: Metering);

"Gas Supply Points" means the point(s) of connection of the Facility to the gas supply to be identified on a plan which is annexed to the DPA;

"Gas Transmission System" means all or part of a transmission system in Great Britain operated by a Gas Licensed Transporter;

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

"GB System Operator" means the operator of the GB Transmission System;

"GB Transmission System" means the system consisting (wholly or mainly) of high voltage electric lines owned or operated by Electricity Transmission Licensees within Great

Britain that is used for the transmission of electricity from one generating station to a substation or to another generating station or between substations or to or from any interconnector;

"Generator Confidential Information" means:

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

but excluding in each case any Excluded Information;

"Generator Permitted Purpose" means:

- (a) complying with the Generator's responsibilities and obligations, and exercising the Generator's rights, powers and discretions, under or in connection with the Agreement; and
- (b) complying with the Generator's responsibilities and obligations under or by virtue of the Energy Act 2013, any other Law, [any European Union Law, or any Directive, policy or guidance]¹⁴;

"Generator QCiL Notice" has the meaning given to that term in clause 20.1 (Qualifying Change in Law: Procedure);

"Generator Repeating Representations" means each of the representations set out in clause 15.1 (Generator's Representations and Warranties) other than clauses 15.1(g) (No litigation), and 15.1(h) (No requirement to deduct or withhold);

"Government Entity" means:

- (a) any department, non-departmental public body, authority or agency of Her Majesty's Government of the United Kingdom or the Crown;
- (b) any of Her Majesty's Secretaries of State and any other Minister of the Crown;
- (c) any body corporate established by statute some or all of the members of which are appointed by a Secretary of State or Minister of the Crown; and
- (d) any other entity or person directly or indirectly wholly-owned by, or held on trust for, any of the foregoing;

"Grid Code" means the Grid Code that is required to be drawn up by the GB System Operator and approved by the Authority under standard condition C14 (Grid Code) of the Electricity Transmission Licence;

"Group" means, in respect of any Party, its subsidiaries, subsidiary undertakings, associated undertakings and any holding company of the Party and all other subsidiaries,

¹⁴

Note to Reader: The inclusion of the European Law reference is to be considered further.

subsidiary undertakings and associated undertakings of any such holding company from time to time;

"Identified Costs" has the meaning given to that term in clause 20.1(a)(iv)(A) (Qualifying Change in Law);

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

- (a) the generation, transmission, distribution, supply and trading of electricity in Great Britain, including the Grid Code, the SOTO Code, the Balancing and Settlement Code, the CUSC, the Master Registration Agreement, any Electricity Distribution Code, any Distribution Connection and Use of System Agreement and/or any other connection or use of system agreement with an Electricity Transmission Licensee or Electricity Licensed Distributor;
- (b) [the transmission, distribution, supply and trading of Gas in Great Britain, including the Uniform Network Code; the Independent Gas Transporter Network Codes; and the Supply Point Administration Agreement and/or any other connection or use of system agreement with a Gas Licensed Transporter or Gas Licensed Shipper]¹⁵; and
- (c) [*any applicable CO₂ industry codes*],

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

"Information" means all information of whatever nature and in whatever form, including in writing, orally, electronically and in a visual or machine-readable medium (including CD-ROM, magnetic and digital form) and, in relation to any obligation of any person to provide information pursuant to the Agreement, shall be limited to such information that is within the control of that person, and for these purposes information shall be deemed to be within the Generator's control if:

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

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

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

"Initial Longstop Date" means the date which falls [ten (10)] Business Days after the date of the Agreement;

"Initial Milestone Delivery Date" means [*a period to be determined*] after the date of the Agreement;

"Initial Net Dependable Capacity Estimate" means [*an estimate of the net dependable capacity of the Facility (expressed in MW) provided by the Generator*];

"Intellectual Property Rights" means:

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

¹⁵

Note to Reader: The definition of "Industry Documents" is subject to further review.

database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world; and

(b) all data and Information (whether or not Confidential Information);

"Key Project Document" means at any time:

- (a) any electricity connection agreement;
- (b) any gas supply agreement;
- (c) any T&S Connection Agreement;
- (d) any construction and tie-in agreement;
- (e) [any decommissioning programme, plan, agreement or arrangement approved by or entered into with any Government Entity, other Government owned entity or Competent Authority (if any)];
- (f) any planning permission; and
- (g) any real property agreement or lease,

in each case required at that time for the Project or the Facility;

"Law" means any Act of Parliament, any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, [any enforceable EU right within the meaning of Section 2 of the European Communities Act 1972]¹⁶, in each case in the United Kingdom and (to the extent directly binding on and/or enforceable against private persons within the United Kingdom) any obligations arising from a treaty or international convention to which the United Kingdom is a signatory;

"LCIA" means the London Court of International Arbitration;

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

"Longstop Date" means the last day of the Longstop Period following the final day of the Target Commissioning Window, as such last day of the Longstop Period date may be extended day for day for each day of delay to the Projects by reason of:

- (a) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of this clause 23 (Force Majeure) and this definition to be entitled to such extension; or
- (b) the failure of [*Electricity Distribution System/Electricity Transmission System or Gas Distribution System/Gas Transmission System or T&S Network*]¹⁷, as the case may be (not being the Generator or its Representatives), to carry out in a timely manner any agreed system reinforcement or connection works specified in the relevant construction agreement (save to the extent that such failure is due to the fault or negligence of the Generator or its Representatives) and provided that in the case of delays caused by reasons in (b):

¹⁶ Note to Reader: Definition to be kept under review in light of the UK's exit from the EU.

¹⁷ Note to Reader: The events which extend the Longstop Date are subject to further review by BEIS.

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

"Longstop Date Acceptance Tests" means the tests to be completed by the Generator in order to determine the: (i) Net Dependable Capacity; and (ii) CO₂ Capture Rate;

"Longstop Date Capacity Notice" has the meaning given to that term in clause 8.3 (Longstop Date Capacity Notice);

"Longstop Date Capacity Response Notice" has the meaning given to that term in clause 8.3 (Longstop Date Capacity Notice);

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

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

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

"Material Change" means:

- (a) in relation to the Electricity Metering Equipment a "Material Change" as defined in the Balancing and Settlement Code save that references to "Metering Equipment" within the definition of "Material Change" in the BSC shall be replaced by references to Electricity Metering Equipment;
- (b) in relation to the CO₂ Metering Equipment, a change to the systems and/or processes relating to such equipment which is of such a type or magnitude as to raise the reasonable expectation that the Generator's ability to meet its obligations under this Agreement relating to the CO₂ Metering Equipment will be affected;

"Metered CO₂ Output" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Metered Day Electricity Output" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Metered Electricity Output" means for each Settlement Unit, the Loss Adjusted Metered Electricity Output for such Settlement Unit as reported by a BSC Company or BSC Agent to the DPA Counterparty;

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

"Metered Electricity Output Recalculation Amount" has the meaning given to that term in clause 11.5 (Recalculations of Estimated Metered Electricity Output);

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

"Metering Access Rights" has the meaning given to that term in clause 18.6 (Access and testing of meters);

"Metering Access Termination Event" means an event as set out in clause 18.8 (Failure to provide Metering Access Rights);

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

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

"Metering Obligations" means the Electricity Metering Obligation, the CO₂ Metering Obligation and the Gas Supply Metering Obligation;

"Metering Points" means the Electricity Delivery Point, CO₂ Delivery Points, and the Gas Supply Points;

"Metering Schematic Obligation" has the meaning given to that term in clause 18.6 (Metering Schematic Obligation);

"Metering System" has the meaning given to that term in the Balancing and Settlement Code;

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

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

- (a) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of clause 23 (Force Majeure) and this definition to be entitled to such extension; or
- (b) the failure of [*Electricity Distribution System/Electricity Transmission System or Gas Distribution System/Gas Transmission System or T&S Network*]¹⁸, as the case may be (not being the Generator or its Representatives), to carry out in a timely manner any agreed system reinforcement or connection works specified in the relevant construction agreement (save to the extent that such failure is due to the fault or

¹⁸

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

negligence of the Generator or its Representatives) and provided that in the case of delays caused by reasons in (b):

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

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

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

["Minimum Reporting Content Requirements" means the content requirements, in a form and content reasonably satisfactory to the DPA Counterparty, in respect of the report to be provided by the Generator to the DPA Counterparty pursuant to clause 6.3(b)(i) (Reporting Obligations) relating to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Facility. The reports shall include, but shall not be limited to, the following:

- (a) an executive summary;
- (b) a schedule of forecast and actual key events with a balanced mix of critical and near critical path milestones;
- (c) a progress to date in narrative format;
- (d) an engineering status;
- (e) a procurement status;
- (f) a construction status;
- (g) a Facility start up status;
- (h) an updated 'S' curve for progress of design, procurement, construction and commissioning;
- (i) a contract programme updated to show progress achieved;
- (j) a baseline critical path together with any updated version of that as applicable;
- (k) an earned value analysis figures depicting progress against baseline with commentary on deviations from plan; and

(l) key risks with associated potential impact (quantified) on cost and schedule outturn.]¹⁹

"Month" means a calendar month;

"Monthly Availability Payment" has the meaning given to that term in clause 13.1 (Billing Statements);

"Net Available Capacity" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Net Dependable Capacity" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Net Dependable Capacity Estimate" means the Generator's estimate of the Net Dependable Capacity from time to time, being the Initial Net Dependable Capacity Estimate as may be adjusted pursuant to clause 8.1 (Adjustment to the Net Dependable Capacity Estimate);

"Net Dependable Capacity Estimate Adjustment Deadline" has the meaning given to that term in clause 8.1 (Adjustment to the Net Dependable Capacity Estimate);

"Net Dependable Capacity Estimate Adjustment Notice" has the meaning given to that term in clause 8.1 (Adjustment to the Net Dependable Capacity Estimate);

"Non-affected Party" has the meaning given to that term in clause 23.2(a) (Conditions to Force Majeure relief);

"Non-Operational Period" means each [Settlement Unit] in which the Facility does not:

- (a) export electricity as determined by reference to the Metered Electricity Output; and/or
- (b) export captured CO₂ to the T&S Network due to a T&S Outage Event to which clause 10.4(b) applies;

"OCP Acceptance Tests" means the tests to be completed by the Generator, pursuant to paragraphs 2(a) and 3(b) of Part B of schedule 2 (Conditions Precedent), in order to determine the (i) Net Dependable Capacity; and (ii) CO₂ Capture Rate;

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

"Operational Period" means each [Settlement Unit] during the Billing Period, excluding each [Settlement Unit] during a Non-Operational Period but for the avoidance of doubt including each [Settlement Unit] in which a Partial Outage Event occurs where the Facility exports electricity as determined by reference to the Metered Electricity Output;

["Other Change in Law"]²⁰ means a Change in Law made by Her Majesty's Government of the United Kingdom or which Her Majesty's Government of the United Kingdom has formally required a Competent Authority to make and which in either such case has an undue (being not objectively justifiable) discriminatory effect on the out-of-pocket costs

¹⁹ Note to Reader: The content of the reports are subject to further review by the Department.

²⁰ Note to Reader: This definition is subject to further review.

incurred or saved by the Generator or the Project when compared with the out-of-pocket costs incurred or saved as a result of such Change in Law by:

(a) *[The comparator groups are to be determined]*

in each case in the United Kingdom, provided that the fact that a Change in Law has a disproportionate effect shall not, of itself, mean that it is discriminatory;]

"Other Extra Variable Costs" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Partial Outage Event" means a partial Power Plant Outage Event due to the derating or curtailment of the Power Plant;

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

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

"Power Plant" means the plant equipment, and other facilities described in schedule 1 (The Facility) capable of generating and metering electricity, including all associated infrastructure required to integrate such facilities within the Project but excluding the Capture Plant²¹;

"Power Plant CO₂ Emissions" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Power Plant Outage Event" means an event requiring the submission of an electricity outage capacity declaration to REMIT declaring that the Power Plant is unavailable, curtailed or derated;

"Power Plant Outage Relief Event" has the meaning given to that term in clause 10.4(a) 10.4(b)(Outage Relief Events);

"Proceedings" means any proceeding, suit or action relating to or arising out of a Dispute, the Agreement but excluding any [Metering Dispute]²²;

"Project" means the design, development, construction, completion, testing, commissioning, operation, maintenance and decommissioning of the Facility;

"Project Commitments" means the requirements detailed in schedule 7 (Project Commitments) to be delivered by the Generator to the DPA Counterparty;

["Prolonged Force Majeure" means an event or circumstance of Force Majeure (excluding any Force Majeure that occurs by reason of a Change in Law), that occurs between *[a period of time to be determined]*, that prevents or delays the construction, completion, testing or commissioning of the Facility for at least *[a continuous period to be determined]*, as determined by the DPA Counterparty]²³;

"QCIL Adjusted Revenues Payment" has the meaning given to that term in clause 20.2 (QCIL Compensation);

²¹ Note to Reader: We note that the definitions of "Capture Plant" and "Power Plant" may be adjusted if the Capture Plant is inherent to the cycle design of the Power Plant.

²² Drafting Note: To be determined if Gas Metering Dispute and/or CO₂ Metering Dispute will be captured.

²³ Note to Reader: The inclusion of this definition is subject to whether there is a termination right for Prolonged Force Majeure.

"QCiL Capex Payment" has the meaning given to that term in clause 20.2 (QCiL Compensation);

"QCiL Compensation" means (i) a QCiL Opex Payment; (ii) a QCiL Capex Payment; (iii) a QCiL Adjusted Revenues Payment; (iv) a QCiL Construction Event Payment; (v) a QCiL Operations Cessation Event Payment; and (vi) any combination of any of the foregoing, as such amounts are calculated in accordance with clause 20.2(a);

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

"QCiL Construction Event Payment" has the meaning given to that term in clause 20.2 (QCiL Compensation);

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

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

"QCiL Operations Cessation Event" means:

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

"QCiL Operations Cessation Event Payment" has the meaning given to that term in clause 20.2 (QCiL Compensation);

"QCiL Opex Payment" has the meaning given to that term in clause 20.2 (QCiL Compensation);

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

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

"QSE Notice" has the meaning given to that term in clause 20.3 (Qualifying Shutdown Event);

"Qualifying Change in Law" means:

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

which, in each case, is not a Foreseeable Change in Law. [The annulment, suspension, revocation or other modification of any decision in relation to state aid/subsidy control in respect of the Agreement or Dispatchable Power Agreements by the European Commission or other Competent Authority shall not constitute a Qualifying Change in Law]²⁴;

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

- (a) a Government Entity (i) applying, implementing or changing the Law, (ii) applying or exercising its powers under the Law or (iii) applying, implementing and/or changing policy or guidance; or
- (b) a Competent Authority exercising powers, as required by a Government Entity's direction made under statutory powers; or
- (c) a Competent Authority exercising powers, as procured by a Government Entity; and
- (d) which the Generator can demonstrate (i) imposes a requirement that permanently prevents the whole of the Facility from operating or (ii) constitutes the refusal or the failure to give approval to a request for consent to any re-start of the whole Facility for a period exceeding [twenty four (24)] months,

unless such event was for reasons:

- (i) relating to or in connection with matters of health, safety, security, environment, transport or damage to property, where it was justifiable in the circumstances to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility;
- (ii) arising out of, in connection with, or resulting from the negligence, breach or fault of, or a failure to act in accordance with a Reasonable and Prudent Standard by, the Generator or any of its Representatives, where it was justifiable in the circumstances to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility; or
- (iii) [relating to any decision by any state aid/subsidy control Competent Authority in respect of the application of the state aid/subsidy control rules in the Agreement or the Dispatchable Power Agreement (including the annulment, invalidation, revocation, modification, suspension or replacement of any prior decision pursuant to such rules)];²⁵

"Reasonable and Prudent Standard" means the standard of a person seeking in good faith to comply with its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person

²⁴ Note to Reader: State Aid/Subsidy Control provisions are subject to further review by BEIS.

²⁵ Note to Reader: State Aid/Subsidy Control provisions are subject to further review by BEIS.

complying with all applicable Laws, Directives, Industry Documents and Required Authorisations and engaged in the same type of undertaking under the same or similar circumstances and conditions;

"Recalculation Amounts" means the CO₂ Capture Rate Recalculation Amount and/or the Metered Electricity Output Recalculation Amount;

"Reference Plant" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Reference Plant CO₂ Emissions" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Reference Plant Gas Consumption" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Reference Site Conditions" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"REMIT" means the dedicated 'REMIT' section of the of the [*the platform provider to be determined*]²⁶ pursuant to the EU regulation on energy market integrity and transparency (No 1227/2011);

"REMIT Declaration Capacity Data" has the meaning given to that term in clause 10.2 (REMIT Declaration Capacity Data);

"Representatives" means:

- (a) in respect of the DPA Counterparty:
 - (i) its directors, officials, officers, employees, agents, consultants and advisers; and
 - (ii) the DPA Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers;
- (b) in respect of the Generator:
 - (i) its directors, officers or employees;
 - (ii) any of its contractors, agents, consultants and advisers which are engaged in connection with the Project or the Agreement; and
 - (iii) the directors, officers, employees, agents, consultants and advisers of any of its contractors which are engaged in connection with the Project or the Agreement;
- (c) in respect of any Government Entity, its directors, officials, officers, employees, agents, consultants and advisers; or
- (d) in respect of any other person, its directors, officers, officials, employees, agents, consultants and advisers;

"Request for Information" means:

- (a) a request for information (as such term is defined in Section 8 of the FoIA); or

²⁶

Note to Reader: The platform provider to be determined.

(b) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR;

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

"Required CiL Amendment" means any amendment or supplement to the Agreement which is, as a direct result of a Change in Applicable Law being implemented, occurring or becoming effective, necessary to ensure that the Required CiL Amendment Objectives are met (provided that any such amendment or supplement shall not affect either: (i) the commercial intent of the Agreement; or (ii) the overall balance of risks, rights and obligations between the Parties, in each case as provided for in the Agreement);

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

["Required CO₂ Capture Rate" means an Achieved CO₂ Capture Rate not less than [*a percentage to be determined*];²⁷

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

["Required Net Dependable Capacity" means a [*a percentage to be determined*] of the Net Dependable Capacity Estimate;]²⁸

"Respondent" has the meaning given to that term in clause 29.3(b) (Expert Determination);

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

"Secretary of State" means the Secretary of State for Business, Energy and Industrial Strategy;

"Section C (system operator standard conditions) Direction" means a direction issued by the Authority or the Secretary of State, where appropriate, in accordance with standard condition A2 (Application of Section C) of the Electricity Transmission Licence;

"Senior Representative" means a senior employee or officer selected by a Party to represent it in relation to clause 29.2 (Resolution by the Senior Representatives);

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

²⁷ Note to Reader: To be confirmed whether a failure to achieve a required minimum CO₂ Capture Rate will result in a termination event.

²⁸ Note to Reader: To be confirmed whether a failure to achieve a required minimum Net Dependable Capacity will result in a termination event.

"Settlement Unit" means [each half hour period in a day occurring during the Term after the Start Date and starting at 00.00 on each such day]²⁹;

"SOTO Code" means the System Operator – Transmission Owner Code required to be in place pursuant to standard condition B12 (System Operator – Transmission Owner Code) of the Electricity Transmission Licence;

"Specific Change in Law"³⁰ means a Change in Law the terms of which specifically (and not merely indirectly or consequentially or by virtue of the disproportionate effect of any Change in Law that is of general application) apply to:

- (a) capturing facilities [and/or generation facilities] which deploy the same capture [and/or generation] technology as the Facility Capture Technology [and/or the Facility Generation Technology], or the capture [and/or generation] from, or the capture [and/or generation] related processes carried out at, such capturing facilities [and/or generation facilities], and not to other capturing facilities [and/or generation facilities], or the capture [and/or generation] from, or capture [and/or generation] related processes carried out at, other capturing facilities [and/or generation facilities];
- (b) capturing facilities [and/or generation facilities] the output of which is subject to a Dispatchable Power Agreement, or the capture [and/or generation] from, or any capture [and/or generation] related processes carried out at, such capturing facilities [and/or generation facilities], and not in respect of any capturing facilities [and/or generation facilities] which are not subject to a Dispatchable Power Agreement, or the capture [and/or generation] from, or capture [and/or generation] related processes carried out at, any capturing facilities [and/or generation facilities];
- (c) capturing facilities [and/or generation facilities] which deploy the same capture [and/or generation] as the Facility Capture Technology [and/or the Facility Generation Technology] and the output of which is subject to a Dispatchable Power Agreement, or the capture [and/or generation] from, or any capture [and/or generation] related processes carried out at, such capturing facilities [and/or generation facilities], and not to any capturing facilities [and/or generation facilities] which are not of the same or similar type to the Facility but which are subject to a Dispatchable Power Agreement, or the capture [and/or generation] from, or any capture [and/or generation] related processes carried out at, such other capturing facilities [and/or generation facilities]; or
- (d) the holding of shares in companies, the membership of partnerships, limited partnerships or limited liability partnerships, the participation in joint ventures (whether or not incorporated) or the holding of any other economic interest in an undertaking whose main business is the development, construction, operation and maintenance of generating and capturing facilities referred to in paragraph (a), (b) or (c) above and no other capturing facilities [and/or generation facilities];

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

- (a) no earlier than [*number of days to be inserted*] after the date of such notice;
- (b) no earlier than the first day of the Target Commissioning Window;

²⁹ Note to Reader: The definition of and use of the term "Settlement Unit" is subject to further review to ensure that the references in the DPA HoTs accurately reflect the relevant period applicable to each provision (i.e. half hourly period v daily period).

³⁰ Note to Reader: The definition of Specific Change in Law is subject to further review.

- (c) no earlier than the date of the CP Fulfilment Notice; and
- (d) no later than the Longstop Date,

and provided that on such first-mentioned date:

- (i) all the Generator Repeating Representations and the representation set out in clause 15.1(g) (No litigation) are true by reference to the facts and circumstances then existing;
- (ii) no Default has occurred which is continuing; and
- (iii) all Conditions Precedent (with the exception of those waived in accordance with clause 6.4 (Waiver)) continue to be fulfilled;

"Supplier Obligation" means [reference the Energy Act 2013 levy arrangements];

"Supporting Information" means any and all calculations, confirmations, data, documentation, evidence (including expert's reports), explanations, information, measurements, readings, reports (including expert's reports), representations and statements (whether in written or documentary form);

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

"Target CO₂ Capture Rate" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Target Commissioning Window" means [*a defined period (to be determined) before and after the target commissioning date notified by the Generator to the Delivery Body in its application for the Dispatchable Power Agreement*], as the last day of that period may be extended day for day for each day of delay to the construction, completion, testing or commissioning of the Facility by reason of:

- (a) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of clause 23 (Force Majeure) and this definition to be entitled to such extension; or
- (b) the failure of [*Electricity Distribution System/Electricity Transmission System or Gas Distribution System/Gas Transmission System or T&S Network*]³¹, as the case may be (not being the Generator or its Representatives), to carry out in a timely manner any agreed system reinforcement or connection works specified in the relevant construction agreement (save to the extent that such failure is due to the fault or negligence of the Generator or its Representatives) and provided that in the case of delays caused by reasons in (b):
 - (i) the Generator gives notice as soon as reasonably practicable to the DPA Counterparty of the nature and extent of the failure; and
 - (ii) there shall be no extension for any day of delay to the Project that could have been avoided by the Generator and its Representatives using reasonable endeavours:
 - (A) to mitigate the effects of such failure (including delay to the Project);

³¹

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

- (B) to carry out its obligations under the Agreement in any way that is reasonably practicable; and
- (C) to resume the performance of its obligations under the Agreement as soon as reasonably practicable,

"T&S Capacity Fee" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"T&S Connection Agreement" means the agreement between the T&S Operator and the Generator relating to the export of captured carbon dioxide to the T&S Network;

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

"T&S Network" means the network consisting (wholly or mainly) of pipelines owned or operated by the T&S Operator within Great Britain that is used for the transportation of carbon dioxide from one generating station to a storage facility or to or from any interconnector;

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

"T&S Outage Event" means an event or circumstance that prevents the Facility from accessing the T&S Network;

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

"T&S Unavailability Event" means an event or circumstance that prevents or delays the completion, testing or commissioning of the Facility or prevents the Facility from accessing the T&S Network, in each case for at least [*a continuous period to be determined*];

"T&S Volumetric Fee" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"T&S Volumetric Payment Rate" has the meaning given to that term in schedule 4 (Variable Payment Calculation);

"Technical Compliance Termination Event" means an event as set out in clause 18.5 (Failure to remedy Metering Obligations breach);

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

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

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

"Third Party" has the meaning given to that term in clause 32.5 (No third party rights);

"Total Metered Fuel Consumption" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Total Operational Period" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

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

"Uniform Network Code" means the uniform network code prepared pursuant to the Gas Transporter Licence;

"Variable Payment" means the payment calculated in accordance with schedule 4 (Variable Payment Calculation) to be made by the DPA Counterparty to the Generator in the circumstances set out in clause 11 (Variable Payment);

"Variable Payment Billing Period" means [*a period to be determined*]³², and **"VP Billing Period"** shall be construed accordingly;

"Variable Payment Billing Statement" has the meaning given to that term in clause 13.1 (Variable Payment Billing Statement);

"Variable Payment Due Date" has the meaning given to that term in clause 14.1 (Due Date for payment); and

"VAT" means:

- (a) any tax imposed by [any Member State of the European Union in conformity with the Council Directive of 28 November 2006 on the common system of value added tax (2006/112/EC) (including, in relation to the United Kingdom, any value added tax imposed by the Value Added Tax Act 1994 and/or any legislation or regulations supplemental thereto)]³³; and
- (b) any other tax of a similar nature [(whether imposed by a Member State of the European Union in substitution for, or in addition to, the tax mentioned above or imposed elsewhere)].³⁴

1.2 Interpretation

- (a) Any reference to the Agreement shall be deemed to include the Schedules.
- (b) Save for the purposes of clause 20 (Change in Law) and the definition of Change in Law, any reference in the Agreement to a Law, Directive or other similar enactment or instrument (including any European Union instrument) (together, an enactment) includes references to:
 - (i) that enactment as amended, supplemented or applied by or under any other enactment before, on or after the date of the Agreement;
 - (ii) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
 - (iii) any subordinate legislation made (before, on or after the date of the Agreement) under any enactment, including one within paragraph (i) or (ii) above.
- (c) Unless a contrary indication appears, any reference in the Agreement to:
 - (i) the Agreement or any other agreement or Industry Document is, save for the purposes of clause 20 (Change in Law) and the definition of **"Change in Law"**, a reference to the **"Agreement"** or other agreement or **"Industry**

³² Note to Reader: The Variable Payment settlement period is still under review. Please refer to the discussion in Annex C of the Main Document.

³³ Note to Reader: Definition to be kept under review in light of the UK's exit from the EU.

³⁴ Note to Reader: Definition to be kept under review in light of the UK's exit from the EU.

Document" as amended, supplemented, restated, novated or replaced from time to time;

- (ii) a **"clause"** or **"schedule"** is a reference to a clause of, or a schedule to, the Agreement;
 - (iii) the words **"include"** or **"including"** shall be construed without limitation to the generality of the preceding words;
 - (iv) a **"person"** includes any individual, firm, company, corporation, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
 - (v) a person includes its successors and permitted assignees or permitted transferees and, where a person ceases to exist, such other person to which all or some of its powers and functions may from time to time be transferred;
 - (vi) time shall be a reference to time in London, England;
 - (vii) words in the singular may be interpreted as including the plural, and vice versa; and
 - (viii) words of any gender include each other gender.
- (d) Any capitalised words, terms, phrases and abbreviations used specifically in any Schedule shall have the meanings set out in that Schedule.
- (e) clause and Schedule headings are for ease of reference only.
- (f) If there is a conflict between the main body of the Agreement and a Schedule, the main body of the Agreement shall prevail except as expressly provided for in the main body of the Agreement.

1.3 **Symbols and currency**

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

1.4 **No interest in the Facility**

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

PART 2 TERM AND TERMINATION

2. TERM

2.1 Commencement

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

2.2 Duration

(a) Subject to termination of the Agreement in the circumstances described in clauses 3.1 (Pre-Start Date termination), [3.2 (Termination for Prolonged Force Majeure)]³⁵, 3.3 (Termination for T&S Unavailability Event), 3.4 (Default termination), and 3.5 (Qualifying Change in Law termination) the Agreement shall continue until the [*number to be determined*] anniversary of the earlier of:

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

(the "**Term**").

(b) The provisions set out in clause 10 (Availability Payment) shall continue until the [*number to be determined*] anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window.

(c) The provisions set out in clause 11 (Variable Payment) shall continue until the [*number to be determined*] anniversary of the earlier of the Start Date and the last day of the Target Commissioning Window.

2.3 End of the Term

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

3. TERMINATION

3.1 Pre-Start Date termination

If:

- (a) the Generator fails or is unable to deliver the Milestone Certificate by the Milestone Delivery Date in accordance with clause 7.1 (Milestone satisfaction) or the Milestone Requirement are otherwise not met;
- (b) at any time prior to the Start Date, a Termination Event has occurred and is continuing;
- (c) all of the Initial Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty within [ten (10)] Business Days of the date of the Agreement; or
- (d) all of the Operational Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty on or before the Longstop Date,

³⁵ Note to Reader: To be determined whether Termination for Prolonged Force Majeure is included.

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

3.2 **[Termination for Prolonged Force Majeure**

If the DPA Counterparty determines that a Prolonged Force Majeure has occurred and is continuing, the DPA Counterparty shall have the right, but not the obligation, to terminate the Agreement with immediate effect upon giving the Generator notice of the same.]³⁶

3.3 **Termination for T&S Unavailability Event**

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

3.4 **Default termination**

(a) If at any time on or after the Start Date a Termination Event has occurred and is continuing, the DPA Counterparty shall have the right, but not the obligation, by notice to the Generator to designate a day as an early termination date with respect to the Agreement ("**Default Termination Date**"), specifying the relevant Termination Event.

(b) If the DPA Counterparty gives notice designating a Default Termination Date, the Agreement shall terminate on the Default Termination Date even if the circumstances giving rise to the Termination Event are no longer continuing.

3.5 **Qualifying Change in Law termination**

(a) If a Qualifying Change in Law is implemented, occurs or becomes effective and gives rise to or results in a QCiL Construction Event or a QCiL Operations Cessation Event (including a Qualifying Shutdown Event), the DPA Counterparty shall give notice to the Generator terminating the Agreement.

(b) The DPA Counterparty shall not exercise its right to terminate the Agreement in circumstances in which the Generator has provided a Generator QCiL Notice unless and until the Parties have agreed that a QCiL Construction Event or QCiL Operations Cessation Event has occurred or a determination to that effect has been made pursuant to the Dispute Resolution Procedure.

3.6 **No other termination right**

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

4. **TERMINATION EVENTS**

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

(a) **Insolvency**

the Generator:

(i) is dissolved or becomes insolvent;

³⁶ Note to Reader: To be determined whether Termination for Prolonged Force Majeure is to be included in the DPA.

- (ii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iii) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law or a petition is presented for its winding-up or liquidation;
 - (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (v) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official;
 - (vi) has a secured party take possession of all or substantially all its assets or has a distress, diligence, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets; or
 - (vii) is subject to any event with respect to it which under the applicable laws of any jurisdiction has an analogous effect to any of the events specified above;
- (b) **[Non-payment]**
- The Generator fails to pay any amount when due under the Agreement and that failure is not remedied on or before [*a period to be determined*] after the DPA Counterparty gives the Generator notice of that failure;]³⁷
- (c) **Breach of key obligations**
- (i) the Generator is no longer the legal and beneficial owner of the Facility (subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility);
 - (ii) the Generator is in breach of any of Clause 32.1 (Assignment); or
 - (iii) any director, officer or other senior manager of the Generator commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the Agreement.
- (d) **[Net Dependable Capacity and CO₂ Capture Rate]**
- (i) the Net Dependable Capacity demonstrated at the Longstop Date Acceptance Tests is lower than the Required Net Dependable Capacity; or
 - (ii) the CO₂ Capture Rate demonstrated at the Longstop Date Acceptance Tests is lower than the Required CO₂ Capture Rate; or
 - (iii) the Generator does not give a Longstop Date Capacity Notice on or prior to the date which is ten (10) Business Days after the later of:
 - (A) the Longstop Date; and

³⁷

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

(B) the date which is ten (10) Business Days after the DPA Counterparty has given notice to the Generator reminding the Generator of the requirement to give a Longstop Date Capacity Notice.】³⁸

(e) **[Credit support default**

- (i) the Generator or any credit support provider of the Generator fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any credit support document required under the Agreement if that failure is continuing after any applicable grace period has elapsed;
- (ii) other than in accordance with its terms or the terms of the Agreement or with the prior written consent of the DPA Counterparty, any credit support document required under the terms of the Agreement expires or terminates or fails or ceases to be in full force and effect for the purpose of the Agreement prior to the satisfaction of all obligations of the Generator under the Agreement to which that credit support document relates and such expiration, termination or cessation is not remedied within [*a period to be determined*]; or
- (iii) the Generator or any credit support provider of the Generator disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that credit support document;】³⁹

(f) **Metering**

A Technical Compliance Termination Event or a Metering Access Termination Event occurs.

(g) [*Facility's Performance*】⁴⁰

5. **CONSEQUENCES OF TERMINATION**

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

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

- (a) no termination payment shall be payable in consequence by either Party to the other Party; and
- (b) neither Party shall be entitled to make any claim against the other Party under or in connection with the Agreement save in respect of any antecedent breach of any provision of the Agreement.】⁴¹

³⁸ Note to Reader: To be determined whether this Termination Event will be included.

³⁹ Note to Reader: To be determined whether this Termination Event will be included.

⁴⁰ Note to Reader: BEIS are considering introducing penalties and/or a further termination event, in cases where the Generator's performance is poor for a prolonged period of time (particularly during the last years of the DPA). Please refer to the discussion in Annex C of the Main Document.

⁴¹ Note to Reader: Termination for Prolonged Force Majeure and Pre-Start Date provisions are subject to further review by BEIS.

5.2 **Consequences of T&S Unavailability Event termination**

If the DPA Counterparty terminates the Agreement pursuant to clause 3.3 (T&S Unavailability Event termination):

- (a) the DPA Counterparty shall on, or as soon as reasonably practicable after, the T&S Unavailability Termination Date calculate the termination payment ("**T&S Termination Payment**") in accordance with [*a formula to be determined*];
- (b) the DPA Counterparty shall notify the Generator of the amount of the T&S Termination Payment; and
- (c) the DPA Counterparty shall pay the T&S Termination Payment to the Generator (or as the Generator may direct) within [*a period to be determined*] of notification of the amount of the T&S Termination Payment, which amount shall bear interest in accordance with clause 14.6 (Default Interest).

5.3 **[Consequences of Default termination**

If the DPA Counterparty terminates the Agreement pursuant to clause 3.4 (Default termination):

- (a) the DPA Counterparty shall on, or as soon as reasonably practicable after, the Default Termination Date calculate the termination payment ("**Default Termination Payment**") in accordance with [*a formula to be determined*];
- (b) the DPA Counterparty shall notify the Generator of the amount of the Default Termination Payment;
- (c) the Generator shall pay the Default Termination Payment to the DPA Counterparty (or as the DPA Counterparty may direct) within [*a period to be determined*] of notification of the amount of the Default Termination Payment, which amount shall bear interest in accordance with clause 14.6 (Default Interest).; and
- (d) the DPA Counterparty shall have the right, but not the obligation, to set off the Default Termination Payment against any or all other amounts owing (whether or not matured, contingent or invoiced) by the DPA Counterparty to the Generator. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled. If an amount is unascertained, the DPA Counterparty may reasonably estimate the amount to be set off, subject to subsequent adjustment within [*a period to be determined*] of the amount becoming ascertained.]⁴²

5.4 **Consequences of Qualifying Change in Law termination**

If the DPA Counterparty terminates the Agreement pursuant to clause 3.5 (Qualifying Change in Law termination):

- (a) the DPA Counterparty shall on, or as soon as reasonably practicable after, the termination date calculate the termination payment ("**QCIL Termination Payment**") in accordance with [*a formula to be determined*];
- (b) the DPA Counterparty shall notify the Generator of the amount of the QCIL Termination Payment; and

⁴² Note to Reader: To be determined whether any compensation will be payable from the Generator to the DPA Counterparty.

- (c) the DPA Counterparty shall pay the QCiL Termination Payment to the Generator (or as the Generator may direct) within [*a period to be determined*] of notification of the amount of the QCiL Termination Payment, which amount shall bear interest in accordance with clause 14.6 (Default Interest).

5.5 **Survival**

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

- (a) save to the extent taken into account in the calculation of the Termination Payment (if any), the provisions of the Agreement as they relate to the payment of any sum due by one Party to the other under the Agreement;
- (b) the continued existence and validity of, and the rights and obligations of the Parties under, clause 1 (Definitions and Interpretation), clause 3 (Termination), this clause 5, [clause 12 (Other Payments)], clause 13 (Billing Statement), clause 14 (Payment Mechanics), [clause 24 (Acceptable Credit Standing)], and clauses 25 (Confidentiality) to 34 (Language) (inclusive)⁴³; or
- (c) any other right or obligation [*to be identified*] which is expressed to survive termination.

⁴³ Note to Reader: The surviving provisions are subject to further review.

PART 3 CONDITIONS PRECEDENT AND MILESTONE REQUIREMENT

6. CONDITIONS PRECEDENT

6.1 Conditions Precedent⁴⁴

The rights and obligations of the Parties under clause 10 (Availability Payment), clause 11 (Variable Payment), clause 13 (Billing Statement), clause 14 (Payment Mechanics), clause 18 (Generator's Undertakings: Metering), [and clause 24 (Acceptable Credit Standing)]⁴⁵ are conditional upon the fulfilment or waiver of the Conditions Precedent and shall commence on the Start Date.

6.2 Fulfilment of Conditions Precedent

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

6.3 Reporting Obligations

Operational Conditions Precedent: General Reporting Obligations

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

⁴⁴ Note to Reader: The full agreement will detail which provisions are effective at the date of: i) the Agreement; ii) the satisfaction of the Initial CPs; and iii) the satisfaction of the Operational CPs.

⁴⁵ Note to Reader: Subject to the inclusion of the Acceptable Credit Standing provision.

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

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

Operational Conditions Precedent: Construction Reporting Obligations

- (b) The Generator shall keep the DPA Counterparty fully informed as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Facility from the date of the Agreement until the occurrence of the Start Date and in particular (but without limitation) shall:
 - (i) provide the DPA Counterparty with reports (in a form and content reasonably satisfactory to the DPA Counterparty) on [a quarterly basis]⁴⁶ as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Facility. As a minimum, each report shall include the Minimum Reporting Content Requirements;
 - (ii) [provide the DPA Counterparty with the Supporting Information provided to the Generator's board of Directors (or an equivalent body or committee, as applicable) as to the progress towards the design, procurement, manufacturing, construction, completion, testing and commissioning of the Facility]; and
 - (iii) notify the DPA Counterparty by means of a Directors' Certificate together with reasonable details in support promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to delay the design, procurement, manufacturing, construction, completion, testing and commissioning of the Facility including:
 - (A) any remedial action that the Generator is taking or proposes to take;
 - (B) a revised Project timetable (and any delay in relation [to the Longstop Date]); and
 - (C) the estimated additional costs to the Project.

6.4 Waiver

The DPA Counterparty may agree by notice to the Generator to waive the fulfilment of all or any of the Conditions Precedent.

6.5 [State Aid/Subsidy Control

[●]]⁴⁷

⁴⁶ Note to Reader: The frequency of the reporting is to be considered further

⁴⁷ Note to Reader: State Aid/Subsidy Control provisions are subject to further review by BEIS.

7. **MILESTONE REQUIREMENT**

7.1 **Milestone satisfaction**

No later than the Milestone Delivery Date, the Generator shall deliver to the DPA Counterparty a Directors' Certificate certifying (having made due and careful enquiry) that:

- (a) it and its direct shareholders have in aggregate spent [*percentage to be determined*] or more of the Total Project Pre-Commissioning Costs on the Project; or
- (b) it has fulfilled the Project Commitments,

(each, a "**Milestone Requirement**"), together with supporting invoices, payment receipts and other evidence (including, if required by the DPA Counterparty, a report prepared at the Generator's cost from an independent third party approved by the DPA Counterparty) in a form and content reasonably satisfactory to the DPA Counterparty ("**Milestone Certificate**").

7.2 **Response to Milestone Certificate**

The DPA Counterparty shall notify the Generator within [twenty (20)] Business Days after receiving the Milestone Certificate whether it is satisfied that the Generator has achieved the Milestone Requirement.

7.3 **Waiver**

The DPA Counterparty may agree by notice to the Generator to waive the fulfilment of the Milestone Requirement.

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

The Generator shall promptly notify the DPA Counterparty by means of a Directors' Certificate together with reasonable details in support promptly upon becoming aware of any fact, matter or circumstance which will or is reasonably likely to prevent the Generator fulfilling the Milestone Requirement by the Milestone Delivery Date.

PART 4 NET DEPENDABLE CAPACITY

8. NET DEPENDABLE CAPACITY

8.1 Adjustment to the Net Dependable Capacity Estimate

- (a) The Generator may, if it considers that the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate, give a notice to the DPA Counterparty (a "**Net Dependable Capacity Estimate Adjustment Notice**"). A Net Dependable Capacity Estimate Adjustment Notice must be given to the DPA Counterparty no later than [*a deadline to be determined*] (the "**Net Dependable Capacity Estimate Adjustment Deadline**") and shall:
- (i) specify:
 - (A) the amount by which the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate;
 - (B) the new Net Dependable Capacity Estimate which is to apply to the Facility as a result of such reduction;
 - (ii) include details of any change in the Facility which will result from the reduction to the Net Dependable Capacity Estimate (which shall include revised details of the assets comprising the Facility and any revised aerial view of the unique geographical location of (a) the Facility; and (b) the Facility Metering Equipment); and
 - (iii) include such Supporting Information as the Generator considers to be relevant to evidence the detail of any changes to the asset comprising the Facility which will result from the reduction to the Net Dependable Capacity Estimate.
- (b) The new Net Dependable Capacity Estimate pursuant to clause 8.1(a)(i)(B) shall constitute the Net Dependable Capacity Estimate with effect from the date of the Net Dependable Capacity Estimate Adjustment Notice, provided that the Net Dependable Capacity Estimate Adjustment Notice specifies [*the maximum permitted reduction to be determined*].
- (c) Any Net Dependable Capacity Estimate Adjustment Notice shall be irrevocable and the Generator may not subsequently increase the Net Dependable Capacity Estimate.
- (d) The Generator may give a Net Dependable Capacity Estimate Adjustment Notice on only one (1) occasion prior to the Net Dependable Capacity Estimate Adjustment Deadline. Any Net Dependable Capacity Estimate Adjustment Notice given to the DPA Counterparty after the Net Dependable Capacity Estimate Adjustment Deadline shall be invalid and of no effect.

8.2 OCP Capacity Notice

- (a) The Generator shall, following the OCP Acceptance Tests, give a notice to the DPA Counterparty (an "**OCP Capacity Notice**"). An OCP Capacity Notice shall specify:
- (i) the Net Dependable Capacity; and
 - (ii) the CO₂ Capture Rate,
- which has been Commissioned as at the date of such notice, and shall include relevant Supporting Information.

- (b) An OCP Capacity Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Capacity Notice.
- (c) The DPA Counterparty shall give a notice to the Generator (an "**OCP Capacity Response Notice**") within [twenty (20)] Business Days after receiving the OCP Capacity Notice. An OCP Capacity Response Notice shall specify that either:
 - (i) the DPA Counterparty agrees with the Net Dependable Capacity and the CO₂ Capture Rate as specified in the OCP Capacity Notice; or
 - (ii) the DPA Counterparty:
 - (A) has not been provided with sufficient Supporting Information to determine the Net Dependable Capacity and/or the CO₂ Capture Rate; or
 - (B) does not agree with Net Dependable Capacity and/or the CO₂ Capture Rate which has been Commissioned as specified in the OCP Capacity Notice giving reasons,

and in each case requesting details of any additional or revised Supporting Information.

8.3 Longstop Date Capacity Notice

- (a) The Generator shall, following the Start Date, give a notice to the DPA Counterparty (a "**Longstop Date Capacity Notice**"). A Longstop Date Capacity Notice shall specify:
 - (i) the Net Dependable Capacity; and
 - (ii) the CO₂ Capture Rate,

which has been Commissioned as at the date of such notice, and shall include relevant Supporting Information.
- (b) A Longstop Date Capacity Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Longstop Date Capacity Notice.
- (c) The DPA Counterparty shall give a notice to the Generator (a "**Longstop Date Capacity Response Notice**") within [twenty (20)] Business Days after receiving the Longstop Date Capacity Notice. A Longstop Date Capacity Response Notice shall specify that either:
 - (i) the DPA Counterparty agrees with the Net Dependable Capacity and the CO₂ Capture Rate as specified in the Longstop Date Capacity Notice; or
 - (ii) the DPA Counterparty:
 - (A) has not been provided with sufficient Supporting Information to determine the Net Dependable Capacity and/or the CO₂ Capture Rate; or
 - (B) does not agree with Net Dependable Capacity and/or the CO₂ Capture Rate which has been Commissioned as specified in the Longstop Date Capacity Notice giving reasons,

and in each case requesting details of any additional or revised Supporting Information.

PART 5 PAYMENT CALCULATIONS

9. CO₂ CAPTURE RATE METERING DATA

9.1 Provision of CO₂ Capture Rate Metering Data

The Generator shall promptly provide or procure the provision of all CO₂ Capture Rate Metering Data to the DPA Counterparty.

9.2 Estimates of CO₂ Capture Rate Metering Data

- (a) If the DPA Counterparty has not received all or part of the CO₂ Capture Rate Metering Data from the Generator (such missing data being the "**Required Metering Data**") in respect of any [Settlement Unit] (an "**Estimated Data Settlement Unit**") within a Billing Period (an "**Estimated CO₂ Capture Rate Billing Period**") on or prior to the CO₂ Capture Rate Metered Cut-Off Time, the Achieved CO₂ Capture Rate for the Estimated Data Settlement Unit, as set in the Billing Statement relating to such Estimated CO₂ Capture Rate Billing Period (an "**Estimated CO₂ Capture Rate Billing Statement**"), shall be calculated by the DPA Counterparty in accordance with clauses 9.2(b) and 9.2(c) and used in schedule 3 (Availability Payment Calculations) or in schedule 4 (Variable Payment Calculation) (as applicable).
- (b) The Estimated Achieved CO₂ Capture Rate for each Estimated Data Settlement Unit within an Estimated CO₂ Capture Rate Billing Period (the "**Estimated CO₂ Capture Rate**") shall be calculated by the DPA Counterparty using (at its discretion):
 - (i) the CO₂ Capture Rate Metering Data for the most recent [Settlement Unit] prior to the Estimated Data Settlement Unit for which the DPA Counterparty has received all the CO₂ Capture Rate Metering Data; or
 - (ii) the CO₂ Capture Rate Metering Data for the Estimated Data Settlement Unit to the extent it is available and, for each item of Required Metering Data that is not available, the CO₂ Capture Rate Metering Data corresponding to such relevant unavailable item for the most recent [Settlement Unit] prior to the Estimated Data Settlement Unit for which the DPA Counterparty has received it,

in each case adjusted by the DPA Counterparty (acting reasonably to reflect):

- (A) the Facility's generating load factor and other relevant conditions during such Estimated Data Settlement Unit; and
 - (B) CO₂ Capture Rate Metering Data for previous [Settlement Units].
- (c) The Generator shall promptly provide Supporting Information in relation to the Facility's generating load factor and other relevant conditions where required by the DPA Counterparty for the purposes of calculating the Estimated CO₂ Capture Rate.

9.3 Recalculations of Estimated CO₂ Capture Rate

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

- (a) the DPA Counterparty shall recalculate the CO₂ Capture Rate for such [Settlement Unit] using such Required Metering Data; and
- (b) if the calculation performed by the DPA Counterparty pursuant to clause 9.3(a) results in a different CO₂ Capture Rate than that calculated by the DPA Counterparty

in relation to the Estimated Data Settlement Unit and reflected in the relevant Estimated CO₂ Capture Rate Billing Statement, then:

- (i) the recalculated CO₂ Capture Rate shall be used by the DPA Counterparty to recalculate the Payments for the relevant Estimated Data Settlement Unit; and
- (ii) any adjustment to the Availability Payment and/or Variable Payment for the Estimated CO₂ Capture Rate Billing Period ("**CO₂ Capture Rate Recalculation Amount**") shall be included as such in the relevant Billing Statement which is next issued by the DPA Counterparty.

9.4 **Prolonged Failure to Provide Metering Data**

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

10. **AVAILABILITY PAYMENT**

10.1 **Application**

The DPA Counterparty shall pay the Generator the Availability Payment in accordance with the terms of this clause 10 (Availability Payment), clause 13 (Billing Statements) and clause 14 (Payment Mechanics), with effect from the [Start Date] with such payment calculated in accordance with schedule 3 (Availability Payment Calculations).

10.2 **REMIT Declaration Capacity Data**

- (a) The Generator shall submit electricity capacity data declarations and details of Power Plant Outage Events (together with supporting details) in accordance with REMIT (the "**REMIT Declaration Capacity Data**").
- (b) If REMIT is unavailable at any time, the Generator shall promptly provide the REMIT Declaration Capacity Data, in a form and content satisfactory to the DPA

Counterparty (acting reasonably) and with the frequency that such data would have been provided had REMIT been available, to the DPA Counterparty.

10.3 Availability of Capture

- (a) During Operational Periods, the Generator shall provide or procure the provision of the Achieved CO₂ Capture Rate with Supporting Information (including the relevant CO₂ Capture Rate Metering Data and accompanying calculation in accordance with paragraph 3 (Calculation of Supporting Formulae) of schedule 3 (Availability Payment Calculations)) to the DPA Counterparty.
- (b) During Non-Operational Periods [*what will be the Deemed CO₂ Capture Rate is to be determined*]⁴⁸. The DPA Counterparty may request a CO₂ Capacity Test to verify the Deemed CO₂ Capture Rate⁴⁹.
- (c) [If the CO₂ Capture Rate within an AP Billing Period falls below the Minimum CO₂ Capture Rate, no Availability Payment shall be made to the Generator in respect of such AP Billing Period].

10.4 Outage Relief Events

- (a) Where a Power Plant Outage Event occurs as a direct result of:
 - (i) the Facility's connection to the [Electricity Distribution System/Electricity Transmission System] being de-energised or disconnected; or
 - (ii) the Facility's connection to the [Gas Distribution System/Gas Transmission System] being disrupted or disconnected,except to the extent that:
 - (A) such de-energisation and/or disconnection arises out of or in connection with any act, omission, breach or default of the Generator (including any breach by the Generator of an Industry Document, or the Generator has entered into an interruptible gas and/or electricity supply agreement); or
 - (B) prior to the Power Plant Outage Relief Event, the Generator has declared to the DPA Counterparty that the Power Plant is unavailable due to a Power Plant Outage Event which is not related to the events set out in limbs 10.4(a)(i) or 10.4(a)(ii) above,(a **"Power Plant Outage Relief Event"**), the Facility shall be deemed to have a Net Available Capacity equal to the Net Dependable Capacity for the applicable period for the purposes of calculating the Availability Payment in accordance with schedule 3 (Availability Payment Calculations).
- (b) Where a Capture Plant Outage Event occurs as a direct result of a T&S Outage Event, except to the extent that:
 - (i) the T&S Outage Event arises out of or in connection with any act, omission, breach or default of the Generator (including any breach by the Generator of an Industry Document); or

⁴⁸ Note to Reader: Please refer to the discussion in Annex C of the Main Document.

⁴⁹ Note to Reader: We note the approach for the Deemed CO₂ Capture Rate will likely differ depending on whether the Capture Plant is fully available or partially or fully unavailable in the relevant period.

- (ii) prior to the occurrence of the Capture Plant Outage Relief Event, the Generator has declared to the DPA Counterparty that the Capture Plant is unavailable due to a Capture Plant Outage Event which is not related to the T&S Outage Event,

(a "**Capture Plant Outage Relief Event**"), the Deemed CO₂ Capture Rate shall be determined pursuant to clause 10.3(b) and the Facility shall be considered to be in a Non-Operational Period for the purposes of calculating the Availability Payment in schedule 3 (Availability Payment Calculations).

- (c) Where a Power Plant Outage Event and a Capture Plant Outage Event occurs concurrently, and:
 - (i) the Availability of Generation is greater than the CO₂ Capture Rate, the Availability of Generation shall be deemed to be one (1); or
 - (ii) the CO₂ Capture Rate is equal or greater than the Availability of Generation, the CO₂ Capture Rate shall be deemed to be one (1),

for the applicable period for the purposes of calculating the Availability Payment in accordance with schedule 3 (Availability Payment Calculations)⁵⁰.

- (d) The Generator shall, promptly following the occurrence of a Power Plant Outage Relief Event or Capture Plant Outage Relief Event, submit a notice to the DPA Counterparty, evidencing in reasonable detail (with Supporting Information):
 - (i) the Power Plant Outage Relief Event or the Capture Plant Outage Relief Event; and
 - (ii) the steps that the Generator has taken and/or proposes to take to mitigate the effect of the relevant event,

together with a Directors' Certificate in relation to such Supporting Information stating whether the Generator, having made due and careful enquiry, considers the relevant event to be a Power Plant Outage Relief Event or Capture Plant Outage Relief Event (as relevant). The DPA Counterparty may request a CO₂ Capacity Test to verify the Deemed CO₂ Capture Rate where clause 10.4(b) applies.

10.5 **T&S Capacity Fee**

- (a) If by the Start Date the T&S Network has not been commissioned to enable the Facility to export captured CO₂ to the T&S Network, the T&S Capacity Fee component of the Availability Payment shall not be payable by the DPA Counterparty until the T&S Network is commissioned, and the T&S Capacity Fee shall be deemed to be zero (0) for the applicable period for the purposes of calculating the Availability Payment in accordance with schedule 3 (Availability Payment Calculations).
- (b) The [T&S Capacity Fee] component of the Availability Payment shall be adjusted by reference to any change to the corresponding payment terms in the T&S Connection Agreement⁵¹. The DPA Counterparty shall calculate, and notify the Generator of, the

⁵⁰ Note to Reader: The purpose of this provision is to avoid the Generator being penalised twice in the event of a Power Plant Outage Event and a Capture Plant Outage Event occurring simultaneously. In light of this, the payment mechanism is to be considered further.

⁵¹ Note to Reader: The T&S Capacity Fee payable by the Generator under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the T&S regulator. Please refer to the discussion in Section 3 of the Main Document.

resultant change to the Availability Payments in accordance with schedule 3 (Availability Payment Calculations).

10.6 **Indexation**

The Availability Payment Rate shall be [fully]⁵² indexed annually by reference to the change in the [*inflation index to be determined*]. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Availability Payment Rate in accordance with schedule 3 (Availability Payment Calculations).

11. **VARIABLE PAYMENT**

11.1 **Application**

The DPA Counterparty shall pay the Variable Payment to the Generator in accordance with terms of this clause 11 (Variable Payment), clause 13 (Billing Statements) and clause 14 (Payment Mechanics), with effect from the Start Date with such payment calculated in accordance with schedule 4 (Variable Payment Calculation).

11.2 **Payments Due**

- (a) If, in respect of a [Settlement Unit], the Variable Payment Rate is greater than zero (0), the DPA Counterparty shall pay the Generator such Variable Payment for the relevant [Settlement Unit] in accordance with clause 13.
- (b) If, in respect of a [Settlement Unit], the Variable Payment Rate is less than zero (0), no payment will be due by either Party for the relevant [Settlement Unit].

11.3 **Adjustments**

Indexation

- (a) The Gas Price shall be [*a gas price indicator to be determined*]⁵³. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Variable Payment in accordance with schedule 4 (Variable Payment Calculation).
- (b) The Carbon Price shall be indexed to [*the effective carbon cost for generators in the UK*]⁵⁴. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Variable Payment in accordance with schedule 4 (Variable Payment Calculation).
- (c) The Other Extra Variable Costs shall be indexed annually by reference to the change in the [*inflation index to be determined*]. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Variable Payment in accordance with schedule 4 (Variable Payment Calculation).

T&S Volumetric Fee

- (d) The T&S Volumetric Fee component of the Variable Payment shall be adjusted by reference to any change to [the corresponding payment terms in the T&S Connection

⁵² Note to Reader: BEIS is also considering partial indexation. Please refer to the discussion in Annex C of the Main Document.

⁵³ Note to Reader: The source to be determined and refer to Annex C of the Main Document.

⁵⁴ Note to Reader: The source to be determined and refer to Annex C of the Main Document.

Agreement]⁵⁵. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Variable Payment in accordance with schedule 4 (Variable Payment Calculation).

Adjustments to the Base Performance Assumptions

- (e) [The DPA Counterparty may adjust the Base Performance Assumptions pursuant [to a procedure to be determined]. The DPA Counterparty shall calculate, and notify the Generator of, the resultant change to the Variable Payment in accordance with schedule 4 (Variable Payment Calculation).]⁵⁶

11.4 Estimates of Loss Adjusted Metered Electricity Output

- (a) If the DPA Counterparty has not received notification from a BSC Company or a BSC Agent of the Loss Adjusted Metered Electricity Output for any Settlement Unit (an "**Estimated Output Settlement Unit**") within a VP Billing Period (an "**Estimated Output Billing Period**") on or prior to the Metered Electricity Output Cut-Off Time, the Loss Adjusted Metered Electricity Output for the Estimated Output Settlement Unit, as set out in the Variable Payment Billing Statement relating to such Estimated Output Billing Period (an "**Estimated Output Billing Statement**"), shall be calculated by the DPA Counterparty in accordance with clause 11.4(b).
- (b) The estimated Loss Adjusted Metered Electricity Output for each Estimated Output Settlement Unit comprised within an Estimated Output Billing Period (the "**Estimated Metered Electricity Output**") shall be calculated by the DPA Counterparty as being the Loss Adjusted Metered Electricity Output in the most recent Settlement Unit prior to the Estimated Output Settlement Unit for which the DPA Counterparty has received notification of the Loss Adjusted Metered Electricity Output from a BSC Company or a BSC Agent.

11.5 Recalculations of Estimated Metered Electricity Output

If a BSC Company or a BSC Agent subsequently notifies the DPA Counterparty of the Loss Adjusted Metered Electricity Output for an Estimated Output Settlement Unit:

- (a) the DPA Counterparty shall recalculate the Metered Electricity Output for such Settlement Unit using such Loss Adjusted Metered Electricity Output; and
- (b) if the calculation performed by the DPA Counterparty pursuant to clause 11.5(a) results in a different Metered Electricity Output than that calculated by the DPA Counterparty in relation to the Estimated Output Settlement Unit and reflected in the relevant Estimated Output Billing Statement, then:
- (i) the recalculated Metered Electricity Output shall be used by the DPA Counterparty to recalculate the Variable Payment for the relevant Estimated Output Settlement Unit; and
- (ii) any adjustment to the Variable Payment for the Estimated Output Billing Period ("**Metered Electricity Output Recalculation Amount**") shall be included as such in the Variable Payment Billing Statement which is next issued by the DPA Counterparty.

⁵⁵ Note to Reader: The T&S Volumetric Fee payable by the Generator under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the T&S regulator. Please refer to the discussion in Section 3 of the Main Document.

⁵⁶ Note to Reader: Please refer to the discussion in Annex C of the Main Document.

12. **OTHER PAYMENTS**

12.1 **[Gainshare mechanism]**⁵⁷

[To be determined]

⁵⁷ Note to Reader: The inclusion of a gainshare mechanism in the DPA is subject to further consideration by BEIS. Please refer to the discussion in Section 4 of the Main Document.

PART 7 BILLING AND PAYMENT

13. BILLING STATEMENTS

13.1 Availability Payment Billing Statement

On and from the Start Date and within [*a period to be determined*] after the last day of each AP Billing Period thereafter, the DPA Counterparty shall send to the Generator a statement (the "**Availability Payment Billing Statement**") showing the Availability Payment payable in respect of the previous AP Billing Period (the "**Monthly Availability Payment**") with such statement to confirm:

- (a) the Monthly Availability Payment for the relevant AP Billing Period with Supporting Information (including the accompanying calculation in accordance with schedule 3 (Availability Payment Calculations));
- (b) the CO₂ Capture Rate for each [Settlement Unit] falling within the relevant AP Billing Period with Supporting Information (including the accompanying calculation in accordance with schedule 3 (Availability Payment Calculations));
- (c) the Net Available Capacity for each [Settlement Unit] falling with the relevant AP Billing Period with accompanying summary of REMIT declaration capacities;
- (d) the Net Dependable Capacity for the relevant AP Billing Period with Supporting Information;
- (e) any Power Plant Outage Events and/or Capture Plant Outage Events (excluding Power Plant Outage Relief Events and/or Capture Plant Outage Relief Events) for the relevant AP Billing Period with Supporting Information (including the duration of the relevant event(s));
- (f) the use of any Estimated CO₂ Capture Rate in the calculation thereof; and
- (g) any CO₂ Capture Rate Recalculation Amounts within the relevant AP Billing Period in accordance with clause 9.3 (Recalculations of Estimated CO₂ Capture Rate).

13.2 Variable Payment Billing Statement

On and from the Start Date and within [*a period to be determined*] after the last day of each VP Billing Period, the DPA Counterparty shall send to the Generator a statement ("**Variable Payment Billing Statement**") showing:

- (a) the Variable Payment for each [Settlement Unit] falling within the relevant VP Billing Period, with Supporting Information (including the accompanying calculation with schedule 4 (Variable Payment Calculation));
- (b) the sum of the Variable Payments for all of the [Settlement Units] falling within the relevant VP Billing Period;
- (c) the Metered Electricity Output in respect of each [Settlement Unit] falling within the relevant VP Billing Period;
- (d) the Gas Price in respect of each [Settlement Unit] falling within the VP Billing Period;
- (e) the Carbon Price in respect of each [Settlement Unit] falling within the relevant VP Billing Period;
- (f) the T&S Volumetric Fee in respect of each [Settlement Unit] falling within the relevant VP Billing Period;

- (g) the CO₂ Capture Rate for each [Settlement Unit] falling within the relevant VP Billing Period with Supporting Information (including the accompanying calculation in accordance with schedule 4 (Variable Payment Calculation));
- (h) the use of any Estimated Metered Electricity Output or Estimated CO₂ Capture Rate in the calculation thereof; and
- (i) any Recalculation Amounts within the relevant VP Billing Period in accordance with clause 11.5 (Recalculations of Estimated Metered Electricity Output) and/or clause 9.3 (Recalculations of Estimated CO₂ Capture Rate).

14. PAYMENT MECHANICS

14.1 Due Date for payment

- (a) Subject to clause 31 (Limited recourse) and clause 14.1(b), on or before [*one or more period(s) or date(s) to be determined*] after receipt of:
 - (i) an Availability Payment Billing Statement ("**Availability Due Date**"), the DPA Counterparty shall pay the Generator the Monthly Availability Payment in such AP Billing Period in accordance with the Availability Payment Billing Statement; and
 - (ii) a Variable Payment Billing Statement ("**Variable Payment Due Date**"), the DPA Counterparty shall pay the Generator the Variable Payment in such VP Billing Period in accordance with the Variable Payment Billing Statement,

such payments to be made in Sterling by direct bank transfer or equivalent transfer of immediately available funds to the credit of the account in the United Kingdom specified by the Generator (which account may, but need not be, in its name).
- (b) In addition to any other remedies that the DPA Counterparty may have, the DPA Counterparty shall have the right, but not the obligation, to withhold or suspend payment under the Agreement at any time when the Generator is not complying with the Metering Obligations by reason of the Generator's fault or negligence or that of its Representatives.

14.2 Set Off

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

14.3 VAT and other taxes

- (a) If anything done under the Agreement is a supply on which VAT is chargeable, the recipient of that supply shall pay to the maker of it (in addition to any other amounts payable under the Agreement) an amount equal to any VAT so chargeable for which the maker of the supply is liable to account.
- (b) Subject to each Party's obligations relating to VAT, each Party shall cause all royalties, taxes, duties and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with the Agreement to be paid.

14.4 No deduction or withholding

- (a) Save as provided in clause 5.3(c) (Consequences of Default termination), all payments under the Agreement shall be made free of any restrictions or conditions

and without deduction or withholding (except to the extent required by law) on account of any other amount, whether by way of set-off or otherwise.

- (b) If a Party is required to deduct or withhold on account of tax, then that Party shall:
 - (i) promptly notify the other Party of such requirement;
 - (ii) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against that other Party; and
 - (iii) promptly forward to that other Party an official receipt (or a certified copy), or other documentation reasonably acceptable to that other Party, evidencing such payment to such authorities.

14.5 **Disputed payments**

- (a) If a Party disputes in good faith any sum shown in a Billing Statement as being payable by that Party, it shall:
 - (i) subject to clause 31 (Limited recourse) and clause 14.1(b) (Due Date for payment), make payment of the full amount set out in such Billing Statement on or before the Due Date; and
 - (ii) give notice of the amount in dispute and the reasons for the dispute to the other Party.
- (b) The Parties shall seek to settle the disputed amount using the Dispute Resolution Procedure.
- (c) A Party shall not be entitled to initiate any dispute concerning any sum shown in, or which should have been shown in, a Billing Statement more than [*a period to be determined*] months after the date of that Billing Statement.

14.6 **Default Interest**

- (a) Subject to clauses 14.6(c) and 32.11 (Costs), if either Party fails to pay any sum payable by it pursuant to the Agreement (including any amounts payable under any Arbitral Award or Expert determination) on the due date for payment, Default Interest shall accrue on that sum for the period from the due date for payment to the date of actual payment of that sum (after as well as before award or judgment).
- (b) The right to receive Default Interest pursuant to the Agreement (and as calculated in accordance with this clause 14.6 (Default Interest)) is not exclusive of any rights and remedies provided by law in respect of the failure to pay the relevant sum on the due date or at all, provided that the Late Payment of Commercial Debts (Interest) Act 1988 shall not apply in respect of any unpaid sum due pursuant to the Agreement.
- (c) Default Interest shall be payable by the DPA Counterparty only in circumstances in which the DPA Counterparty is in breach of clauses 31.1(a), 31.1(b), or 31.1(c), but not otherwise.

PART 8 REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

15. GENERATOR'S REPRESENTATIONS AND WARRANTIES

15.1 Agreement Date Representations

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

(a) **Status**

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

(b) **Power and authority**

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

(c) **Enforceability**

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

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

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

- (i) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a material adverse effect;;
- (ii) its constitutional documents;
- (iii) any Required Authorisations it to an extent or in a manner which has or is reasonably expected to have a material adverse effect; or
- (iv) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a material adverse effect.

(e) **Required Authorisations**

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

(f) **No Default**

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

(g) **No litigation:**

No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, tax claim or tax investigation which is current, pending or, so far as it is aware by reason of a formal written notice before action or similar, threatened

against it which, if adversely determined, would have or would reasonably be expected to have a material adverse effect.

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

It is not required by any applicable law, as modified by the published practice of any relevant Competent Authority, of any jurisdiction in which it is resident for tax purposes, to make any deduction or withholding for or on account of any tax from any payment to be made by it to the DPA Counterparty under the Agreement.

15.2 **Start Date representation**

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

(a) **Ownership**

The Generator is the legal and beneficial owner of the Facility, subject only to such rights and benefits as have been assigned by way of security to or in favour of any lender, affected person or parent undertaking of the Generator (or an agent or security trustee on its behalf) in accordance with clause 32.1 (Assignment).

(b) **Facility Generation Technology and Facility Capture Technology**

The generation and capture technology deployed by the Facility is the Facility Generation Technology and the Facility Capture Technology (as applicable).

15.3 **Repeating Representations**

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

16. **DPA COUNTERPARTY'S REPRESENTATIONS AND WARRANTIES**

16.1 The DPA Counterparty represents and warrants to the Generator that, as at the date of the Agreement, the following statements are true, accurate and not misleading:

(a) **Status**

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

(b) **Power and authority**

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

(c) **Enforceability**

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

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

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

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

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

It is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for tax purposes, to make any deduction or withholding for or on account of any tax from any payment to be made by it to the Generator pursuant to the Agreement.

16.2 The representations in clauses 16.1(a) to 16.1(d) are deemed to be made by the DPA Counterparty by reference to the facts and circumstances then existing on the Start Date.

17. **GENERATOR'S UNDERTAKINGS: GENERAL**

17.1 **General**

The Generator undertakes to the DPA Counterparty as follows:

(a) **Compliance with Laws**

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

(b) **Required Authorisations**

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

(c) **Industry Documents**

It shall at all times comply in all material respects with all terms of those Industry Documents to which it is a party or by which it is bound if failure to do so would have or would reasonably be expected to have a materially adverse effect.

(d) **No insolvency action**

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

administration, insolvency or bankruptcy law or similar law affecting creditors' rights generally.

(e) **Ownership**

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

(f) **Compliance of technology**

The Generator shall at all times ensure that the generation technology and the capture technology deployed by the Facility is the Facility Generation Technology and the Facility Capture Technology (as applicable), provided that (without prejudice to any other provision of this Agreement) this provision shall not prevent the operation of the Power Plant in unabated mode.

(g) **Notification**

The Generator shall:

- (i) provide the DPA Counterparty promptly with such information regarding compliance by the Generator with the undertakings in this clause 17 as the DPA Counterparty may reasonably request.
- (ii) give notice to the DPA Counterparty as soon as reasonably practicable upon becoming aware of the occurrence of any Default (together with the details of the steps, if any, being taken to remedy it).

18. **GENERATOR'S UNDERTAKINGS: METERING**

18.1 **Electricity Metering Obligation**

The Generator shall ensure that at all times with effect from the Start Date the Electricity Metering Equipment relating to the Facility:

- (a) has been installed at the metering point(s) identified in schedule 5 (Metering Points);
- (b) has been and is installed, configured, registered and maintained in accordance with the requirements of the Balancing and Settlement Code;
- (c) is configured exclusively in relation to the Facility and no other electrical output is metered through such meters; and
- (d) is operational and capable of measuring accurately the electrical output from the Facility at the Electricity Delivery Point.

18.2 **CO₂ Metering Obligation**

- (a) The Generator shall ensure that at all times with effect from the Start Date the CO₂ Metering Equipment relating to the Facility:
 - (i) has been installed at the metering point(s) identified in schedule 5 (Metering Points);
 - (ii) has been and is installed, configured, registered, operated and maintained in accordance with the requirements of the CO₂ Metering Specification, including to ensure that captured carbon dioxide which fails to comply with the Captured Carbon Dioxide Quality Standards is not exported to the T&S Network;

- (iii) is configured exclusively in relation to the Facility and no other carbon dioxide output is metered through such meters; and
 - (iv) is operational and capable of measuring accurately the carbon dioxide output from the Facility at the CO₂ Delivery Point.
- (b) The Generator shall ensure that at all times with effect from the Start Date the captured carbon dioxide from the Facility complies with the Captured Carbon Dioxide Quality Standards.

18.3 Gas Supply Metering Obligation

The Generator shall ensure that at all times with effect from the Start Date the Gas Supply Metering Equipment relating to the Facility:

- (a) has been installed at the metering point(s) identified in schedule 5 (Metering Points);
- (b) has been and is installed, configured, registered and maintained in accordance with the requirements of the [Uniform Network Code]⁵⁸;
- (c) is configured exclusively in relation to the Facility and no other gas supply is metered through such meters; and
- (d) is operational and capable of measuring accurately the gas supply from the Facility at the Gas Supply Point.

18.4 Investigate any fault or issue

With effect from the Start Date, the Generator undertakes to the DPA Counterparty to investigate any fault or issue with:

- (a) the Electricity Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the Balancing and Settlement Code;
- (b) the Gas Supply Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the [Uniform Network Code]; and/or
- (c) the CO₂ Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to [*to be determined*].

18.5 Metering Obligations breach

The DPA Counterparty may at any time notify the Generator if it considers that the Generator is in breach of its obligations under clauses 18.1 to 18.4. If the Generator fails to remedy such breach within [*a period to be specified in the Agreement*], then a **Technical Compliance Termination Event** will be deemed to have occurred.

18.6 Metering schematic obligation

- (a) If there is a Material Change to the Facility Metering Equipment, then the Generator shall notify the DPA Counterparty as soon as reasonably practicable after such change, setting out details of the Material Change that has been effected and provide an updated version of the relevant schematic diagram (the "**Metering Schematic Obligation**").
- (b) If the Generator is in breach of the Metering Schematic Obligation, the DPA Counterparty may elect to suspend payment of any payments which would otherwise

⁵⁸ Note to Reader: The relevant code referenced is subject to further review.

be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty notifies the Generator of: (i) its intention to suspend payment; and (ii) the date from which it proposes to effect such suspension.

- (c) If the Generator subsequently complies with its Metering Schematic Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of clause 18.6(b) above (without any interest being payable on such amounts).

18.7 **Access to and testing of meters**

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

18.8 **Failure to provide Metering Access Rights**

- (a) If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Metering Access Right, the DPA Counterparty may elect to suspend payment of any payments which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty notifies the Generator of: (i) its intention to suspend payment; and (ii) the date from which it proposes to effect such suspension.
- (b) If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Metering Access Rights, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of clause 18.8(a) above (without any interest being payable on such amounts).
- (c) If the Generator:
 - (i) is in breach of its obligation to permit the DPA Counterparty to exercise the Metering Access Rights; and
 - (ii) has not permitted the DPA Counterparty to exercise such Metering Access Rights within [twenty (20)] Business Days of receipt of a notice requesting the same,

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

19. **GENERATOR'S UNDERTAKINGS: INFORMATION PROVISION**

19.1 **Provision of information to the DPA Counterparty**

In addition and without prejudice to its obligations under clauses 6.3 (Reporting), 7.4 (Notification of difficulties in achieving the Milestone), 17.1 (Generator's undertakings: General) and 23.3 (Provision of Force Majeure information), the Generator, acting in accordance with the Reasonable and Prudent Standard, shall promptly provide the DPA

Counterparty (and, if requested by the DPA Counterparty, the DPA Settlement Services Provider) with:

- (a) the Generator's estimate of the expected Start Date, the Net Dependable Capacity Estimate as at the Start Date and the commissioning profile of the Facility;
- (b) all information requested by the DPA Counterparty to comply with its obligations under the Agreement;
- (c) as from [*a period (to be determined) prior to*] the Start Date and [*at intervals to be determined*], forecasts of the expected:
 - (i) Availability of Generation;
 - (ii) CO₂ Capture Rate;
 - (iii) Metered Electricity Output; and
 - (iv) [*any other information to be determined*],
- (d) details of any material events or circumstances that will or are reasonably likely to affect significantly the following:
 - (i) Availability of Generation;
 - (ii) CO₂ Capture Rate;
 - (iii) Metered Electricity Output; or
 - (iv) [*any other information to be determined*],
- (e) all information reasonably requested by the DPA Counterparty regarding the financial condition, business and operations of the Generator;
- (f) all information reasonably requested by the DPA Counterparty for the purposes of compiling, evaluating and publishing statistics relating to the outcome of the Dispatchable Power Agreement and the CCUS Programme;
- (g) all information reasonably requested by the DPA Counterparty for the purposes of assessing compliance by the Generator with the Metering Obligations;
- (h) the details of any litigation, proceedings, determinations, claims or investigations against the Generator which could have a material adverse impact on the Generator's ability to comply with its obligations under the Agreement;
- (i) the data required to determine the Availability of Generation, CO₂ Capture Rate, and the Metered Electricity Output in respect of each [Settlement Unit] and other data required by the DPA Counterparty or the DPA Settlement Services Provider to perform its functions under or in connection with the Agreement (including that required for settlement); and
- (j) as soon as reasonably practicable, all information reasonably requested that represents the status and progress of the Project to date against contractual and Project milestones, showing the critical path of the Project towards these milestones up to the delivery of the Longstop Date Capacity Notice.

19.2 **Accuracy of information**

The Generator shall ensure that:

- (a) all forecasts and forward-looking statements provided by or on behalf of the Generator under clause 19.1 (Provision of information to the DPA Counterparty) shall be prepared on a reasonable basis and shall be made in good faith after careful consideration; and
- (b) all other information relating to the Project, the Facility or the Generator provided by or on behalf of the Generator under clause 19.1 (Provision of information to the DPA Counterparty) is true, complete and accurate in all material respects and not misleading.

PART 9 CHANGE IN LAW

20. QUALIFYING CHANGE IN LAW

20.1 Procedure

- (a) If a Party considers that a Qualifying Change in Law has occurred or is shortly to occur, it may give notice to the other Party of that fact together with:
- (i) supporting evidence in reasonable detail of the Qualifying Change in Law;
 - (ii) the date it considers the Qualifying Change in Law to have occurred or is expected to occur, as the case may be;
 - (iii) specify why it considers that the notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether it considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law; and
 - (iv) in the case of a notice given by the Generator with respect to a Qualifying Change in Law (a "**Generator QCiL Notice**"):
 - (A) a statement, together with Supporting Information, in reasonable detail, of the costs which the Generator reasonably expects to incur and/or save (taking account of the Generator's obligation to minimise costs and maximise cost savings under clause 20.5 (Mitigation)), in each case over the remainder of the Term arising from the occurrence of the Qualifying Change in Law ("**Identified Costs**") (and excluding, for the avoidance of doubt, costs referred to in clause 20.7 (Indemnity)); and
 - (B) Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to mitigate the effect of the Qualifying Change in Law,together with a Directors' Certificate in relation to such Supporting Information stating whether the Generator, having made due and careful enquiry, considers the relevant Change in Law to be a Qualifying Change in Law.
- (b) If the DPA Counterparty gives notice to the Generator under clause 20.1(a) with respect to a Change in Law which the DPA Counterparty considers may be a Qualifying Change in Law, the Generator shall as soon as practicable, and in any event within [forty (40)] Business Days after receipt of such notice, provide the DPA Counterparty with:
- (i) the Supporting Information set out in clause 20.1(a) (on the assumption that the Change in Law is a Qualifying Change in Law);
 - (ii) a Directors' Certificate in relation to such Supporting Information stating whether the Generator, having made due and careful enquiry, considers the relevant Change in Law to be a Qualifying Change in Law.
- (c) The DPA Counterparty shall be under no obligation to consider any notice from the Generator under clause 20.1(a) unless and until the Generator has provided the DPA Counterparty with all the information, documents and evidence required of it under that clause.

- (d) As soon as practicable, and in any event within [fifteen (15)] Business Days, after the earlier of: (x) notice by the Generator under clause 20.1(a) together with all the information, documents and evidence required of it under that clause; and (y) notice by the DPA Counterparty under clause 20.1(a) and the provision by the Generator of the information referred to in clause 20.1(b), as the case may be, the Parties shall meet to discuss and, in good faith, seek to agree:
 - (i) whether a Qualifying Change in Law has occurred or will occur and the date or expected date of such occurrence;
 - (ii) in the case of a Qualifying Change in Law:
 - (A) the QCiL Effective Date;
 - (B) whether the relevant Qualifying Change in Law will, or is reasonably expected to, result in Identified Costs;
 - (C) the amounts, forecasts and estimates applicable to that Qualifying Change in Law and any other matters necessary to determine the quantum of the QCiL Compensation; and
 - (D) the steps or additional steps, as the case may be, which the Generator should take to mitigate the effect of the Qualifying Change in Law;
 - (iii) the QCiL Compensation in respect of such Qualifying Change in Law.

20.2 QCiL Compensation

- (a) Subject to clause 20.2(b), compensation in respect of a Qualifying Change in Law shall be calculated:
 - (i) if there are QCiL Costs or QCiL Savings relating to the operation of the Project, in accordance with [*a formula to be determined*] (a "**QCIL Opex Payment**");
 - (ii) if there are QCiL Costs or QCiL Savings relating to the acquisition, disposal, modification or construction of any asset in respect of the Project, in accordance with [*a formula to be determined*] (a "**QCIL Capex Payment**");
 - (iii) if there is an Adjusted Output Period, in accordance with [*a formula to be determined*] (a "**QCIL Adjusted Revenues Payment**");
 - (iv) if there is a QCiL Construction Event, in accordance with [*a formula to be determined*] (a "**QCIL Construction Event Payment**"); and
 - (v) if there is a QCiL Operations Cessation Event, in accordance with [*a formula to be determined*] (a "**QCIL Operations Cessation Event Payment**").
- (b) If a Qualifying Change in Law occurs which gives rise to or results in: (i) QCiL Costs; or (ii) an Adjusted Output Period where capture [and/or generation] by the Facility is reduced (a "**Reduced Output Period**"); or (iii) any combination of the foregoing:
 - (i) before the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Costs, and/or impact of the Reduced Output Period is greater than the amount of the QCiL Construction Event Payment that would have been payable if such Qualifying Change in Law were to have constituted a QCiL Construction Event; or
 - (ii) on or after the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Costs and/or

impact of the Reduced Output Period is greater than the amount of the QCiL Operations Cessation Event Payment that would have been payable if such Qualifying Change in Law were to have constituted a QCiL Operations Cessation Event,

then the amount of the QCiL Compensation payable by it to the Generator in respect of the Qualifying Change in Law shall be limited to:

- (A) if clause 20.2(b)(i) applies, the amount of the QCiL Construction Event Payment that would have been payable; or
- (B) if clause 20.2(b)(ii) applies, the amount of the QCiL Operations Cessation Event Payment that would have been payable.

20.3 **Qualifying Shutdown Event**

- (a) If a Qualifying Shutdown Event has occurred, the Generator may give notice to that effect to the DPA Counterparty (a "**QSE Notice**"). A QSE Notice shall:
 - (i) include reasonable details of the Qualifying Shutdown Event;
 - (ii) specify the date on which the Qualifying Shutdown Event occurred;
 - (iii) specify the Generator's good faith estimate of the QCiL Costs and the QCiL Savings, reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring;
 - (iv) include such Supporting Information, in reasonable detail, which the Generator considers to be relevant and supportive of the foregoing; and
 - (v) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with clause 20.5 (Mitigation) and the Reasonable and Prudent Standard.
- (b) Any QSE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the QSE Notice.
- (c) A QSE Notice shall be deemed to constitute a Generator QCiL Notice and the provisions of clause 20 (Qualifying Change in Law) shall apply (with the necessary modifications) for the purposes of:
 - (i) agreeing or determining whether a Qualifying Shutdown Event has occurred;
 - (ii) (if a Qualifying Shutdown Event has occurred) agreeing or determining the amount of QCiL Compensation resulting from the occurrence of such Qualifying Shutdown Event (on the basis that a Qualifying Shutdown Event constitutes a QCiL Operation Cessation Event) and the terms and conditions upon which such QCiL Compensation will be paid or effected; and
 - (iii) agreeing or determining any and all other related matters pertinent to the foregoing.

20.4 **True-Up**

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

20.5 Mitigation

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

20.6 Disputes

- (a) If the Parties are not able to agree any of the matters referred to in this clause 20, either Party may refer the Dispute to the Dispute Resolution Procedure.
- (b) Until the Dispute has been resolved by agreement between the Generator and the DPA Counterparty or determination in accordance with the Dispute Resolution Procedure, there shall be no QiL Compensation payable.

20.7 Indemnity

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

21. CHANGE IN APPLICABLE LAW

21.1 CiAL Review

- (a) The DPA Counterparty shall conduct a CiAL Review if:
 - (i) it determines that:
 - (A) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and
 - (B) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiL Amendment Objectives will cease to be met; or
 - (ii) the CiAL Request Criterion⁵⁹ is met,
- (each, a "**CiAL Review Trigger**").
- (b) If the Generator considers that:

⁵⁹ Note to Reader: A certain threshold would trigger the DPA Counterparty to carry out a CiAL Review as was the case under AR3. The definition and procedure will be detailed in the full DPA contract.

- (i) any Change in Applicable Law: (i) has been implemented, has occurred or has become effective; or (ii) is expected to be implemented, to occur or to become effective; and
- (ii) as a result of such Change in Applicable Law being implemented, occurring or becoming effective one (1) or more of the Required CiL Amendment Objectives will cease to be met,

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

- (A) shall specify why, and the date on which, the Generator considers that a Change in Applicable Law: (a) has been implemented, has occurred or has become effective; or (b) is expected to be implemented, occur or become effective;
- (B) shall specify why the Generator considers that the Change in Applicable Law results or will result in one (1) or more of the Required CiL Amendment Objectives ceasing to be met; and
- (C) may set out the Generator's opinion of the Required CiL Amendment(s),

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

21.2 **Notification of outcome of CiAL Review**

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

- (a) set out the outcome of the CiAL Review and, if applicable, the Required CiL Amendments; and
- (b) specify the date from which such Required CiL Amendments are to take effect.

21.3 **CiAL Dispute**

- (a) The Generator may, no later than [twenty (20)] Business Days after receipt of a CiAL Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such CiAL Review (a "**CiAL Dispute**").
- (b) The Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any CiAL Review if there is a manifest error or fraud in any determination by the DPA Counterparty as to:

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

in each case contained within the CiAL Review Outcome Notice, and any CiAL Dispute which is based upon grounds other than those specified in this clause 21.3(b) shall be invalid and of no effect.

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

21.4 **Compliance with the Agreement**

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

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

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

(b) Subject to this clause 21 (Change in Applicable Law), the Parties shall be relieved from liability, and deemed not to be in breach of the Agreement for any failure or delay in the performance under the Agreement if and to the extent such failure or delay is directly attributable to the occurrence and continuation of a Change in Applicable Law, provided that nothing in this clause 21 (Change in Applicable Law) shall relieve either Party from any obligation to pay any sum due and payable to the other Party pursuant to the Agreement.

PART 10 PROTECTIONS: FORCE MAJEURE

22. EU AND UK TRANSITION PROVISIONS

[BEIS reserves its position in respect of certain provisions in the DPA which may need to be amended in light of the UK's exit from the EU].

23. FORCE MAJEURE

23.1 Relief due to Force Majeure

Subject to the provisions of this clause 23 (Force Majeure), a Party affected by Force Majeure (an "**FM Affected Party**") shall:

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

23.2 Conditions to Force Majeure relief

The FM Affected Party's relief from liability under clause 23.1 (Relief due to Force Majeure) is subject to and conditional upon:

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

23.3 Provision of Force Majeure information

- (a) In addition to its notification obligation under clause 23.2 (Conditions to Force Majeure relief), the FM Affected Party shall give notice as soon as reasonably practicable to the Non-affected Party in writing (to the extent that such Information is reasonably available) of:
 - (i) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure (including delay to the Project) and to carry out its obligations under the Agreement;
 - (ii) the anticipated date of resumption of performance of its obligations under the Agreement; and
 - (iii) such other details relating to the Force Majeure and its effects (including delay to the Project) as may be reasonably requested by the Non-affected Party,

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

- (b) The FM Affected Party shall notify the Non-affected Party [*the interval period to be determined*]:
 - (i) of any update to the Information provided under clause 23.3(a) and shall give notice as soon as reasonably practicable to the Non-affected Party upon it becoming aware of any material developments or additional material Information relating to the Force Majeure and its effects; and
 - (ii) where the Force Majeure is a continuing one, that it is continuing, accompanied by an explanation and Information to show that the events or circumstances concerned continue to meet all requirements of the definition of Force Majeure.

24. **[GENERATOR CREDIT STANDING**⁶⁰

24.1 **Generator Credit Standing**

- (a) The Generator shall at all times have and maintain an Acceptable Credit Standing.
- (b) The Generator shall provide the DPA Counterparty with such Information as the DPA Counterparty may from time to time reasonably require to demonstrate that the Generator has (or does not have) an Acceptable Credit Standing.
- (c) If at any time the Generator does not have an Acceptable Credit Standing, the Generator shall:
 - (i) give written notice of such fact to the DPA Counterparty as soon as reasonably practicable, together with Supporting Information; and
 - (ii) keep the DPA Counterparty fully informed of all steps and actions that the Generator is undertaking as contemplated by clause 24.2 (*Sanction for not having an Acceptable Credit Standing*).

24.2 **Sanction for not having an Acceptable Credit Standing**

If the Generator does not have an Acceptable Credit Standing, unless it regains an Acceptable Credit Standing within twenty (20) Business Days of becoming aware that it no longer has an Acceptable Credit Standing, the DPA Counterparty may suspend the payments under and in accordance with the Agreement with effect from the date falling twenty (20) Business Days after Generator becoming aware that it no longer has an Acceptable Credit Standing. If the Generator subsequently regains an Acceptable Credit Standing, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of this clause 24.2 (without any interest being payable on such amounts).]

24.3 **[Credit Support**

*[The inclusion of a credit cover requirement on the Generator is to be determined]]*⁶¹

⁶⁰ Note to Reader: The Acceptable Credit Standing definition and the inclusion of the Credit Standing provisions are subject to further review by BEIS.

⁶¹ Note to Reader: The inclusion of a Generator credit cover requirement is subject to further review by BEIS.

PART 11 CONFIDENTIALITY, ANNOUNCEMENTS AND FREEDOM OF INFORMATION

25. CONFIDENTIALITY

25.1 Confidentiality restrictions: application to the terms of the Agreement

The Parties agree that, subject to clause 26 (Announcements), the provisions of the Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

25.2 Generator Confidential Information

- (a) The DPA Counterparty shall keep all Generator Confidential Information confidential and shall not disclose Generator Confidential Information without the prior written consent of the Generator other than as permitted by this clause 25.
- (b) The DPA Counterparty shall not make use of any Generator Confidential Information otherwise than for fulfilling the DPA Counterparty Permitted Purposes, except with the express prior written consent of the Generator.
- (c) clause 25.2(a) shall not apply to any disclosure:
 - (i) by the DPA Counterparty of Generator Confidential Information (on a confidential basis):
 - (A) to its Representatives to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
 - (B) to any person engaged in providing services to the DPA Counterparty to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
 - (C) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the DPA Counterparty considers such disclosure is required to enable or assist:
 - (aa) the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes; or
 - (bb) the relevant Government Entity: (i) to fulfil any of its functions arising out of or in connection with the Agreement or any other Dispatchable Power Agreement; or (ii) perform any function ancillary or related functions arising out of or for the purposes of this Agreement or any other Dispatchable Power Agreement; or (ii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the [Energy Act 2013]; and
 - (D) to the Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the DPA Settlement Services Provider or the Delivery Body (or to their respective Representatives) to the extent that the DPA Counterparty considers such disclosure is necessary to enable or assist: (a) the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with this Agreement or for the purposes of any other Dispatchable Power Agreement or to fulfil or perform any ancillary or related function, duty or obligation (including

any such functions, duties or obligations arising by virtue of or pursuant to the [Energy Act 2013]);

provided that:

(1) the DPA Counterparty shall use all reasonable endeavours to inform the recipient of the Generator Confidential Information of the DPA Counterparty's obligations under clause 25.2; and

(2) in the case of disclosure of Generator Confidential Information pursuant to clauses 25.2(c)(i)(A), 25.2(c)(i)(C), or 25.2(c)(i)(C) the DPA Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to the same obligation of confidentiality as contained in clause 25.2;

- (ii) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where such Generator Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (iii) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the Balancing and Settlement Code;
- (iv) by the DPA Counterparty of Generator Confidential Information:
 - (A) to any Parliamentary committee, but only if and to the extent that the DPA Counterparty considers such disclosure is required to enable or assist it to fulfil any DPA Counterparty Permitted Purpose;
 - (B) to the Department to enable or assist the Department to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that the Department has notified the DPA Counterparty that such disclosure is required to enable or assist the Department to fulfil its functions;
 - (C) [to the Department to enable or assist the Department to make a disclosure to the European Commission or other Competent Authority, but only if and to the extent that the DPA Counterparty considers such disclosure is necessary or advisable in connection with the application of the state aid/subsidy control rules of the EU Treaty or in connection with any European Commission decision relating to those rules; or
 - (D) to the European Commission or other Competent Authority, but only if and to the extent that the DPA Counterparty considers such disclosure is necessary or advisable in connection with the application of the state aid/subsidy control rules of the EU Treaty or in connection with any European Commission decision relating to those rules]⁶²;
- (v) which is required:
 - (A) by the FoIA;
 - (B) by the EIR; or

⁶² Note to Reader: The position on State Aid/Subsidy Control disclosures are subject to review and to be determined by the Department.

- (C) for the purposes of compliance with any other Law or Directive having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the DPA Counterparty; or
- (vi) by the DPA Counterparty of Generator Confidential Information:
 - (A) to which the Generator has agreed in writing in advance; or
 - (B) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of the Agreement.
- (d) Prior to any disclosure of Generator Confidential Information by the DPA Counterparty pursuant to clause 25.2(c)(iv) or 25.2(c)(v)(C), the DPA Counterparty shall use reasonable endeavours to notify the Generator of the Generator Confidential Information to be disclosed, provided that:
 - (i) it is lawful and reasonably practicable in the circumstances to do so; and
 - (ii) in the case of any disclosure pursuant to clause 25.2(c)(iv)(A) or 25.2(c)(iv)(B), it is not inconsistent with Parliamentary convention.
- (e) The disclosure of Generator Confidential Information by the DPA Counterparty in reliance on the exception set out in clause 25.2(c)(v)(A) or 25.2(c)(v)(B) shall be subject to the provisions of clause 27 (Freedom of information).

25.3 **DPA Counterparty: liability for Representatives and service providers**

The DPA Counterparty shall be responsible for:

- (a) any failure by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to clauses 25.2(c)(i)(A) or 25.2(c)(i)(C) to comply with clause 25.2(a) as if they were subject to it; and
- (b) any use by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to 25.2(c)(i)(A) or 25.2(c)(i)(C), of any Generator Confidential Information in breach of clause 25.2(b), as if they were subject to it.

25.4 **DPA Counterparty Confidential Information**

- (a) The Generator shall keep all DPA Counterparty Confidential Information confidential and shall not disclose DPA Counterparty Confidential Information without the prior written consent of the DPA Counterparty other than as permitted by this clause 25.
- (b) The Generator shall not make use of any DPA Counterparty Confidential Information otherwise than for the purpose of fulfilling the Generator Permitted Purpose, except with the express prior written consent of the DPA Counterparty.
- (c) clause 25.4(a) shall not apply to any disclosure:
 - (i) by the Generator of DPA Counterparty Confidential Information (on a confidential basis):
 - (A) to its Representatives to enable or assist the Generator to fulfil the Generator Permitted Purpose;
 - (B) to members of its Group (and their respective Representatives) to enable or assist the Generator to fulfil the Generator Permitted Purpose;

- (C) to the providers or prospective providers to the Generator of debt financing, refinancing or credit support and their professional advisers, provided that such disclosure is restricted to Information necessary for the purposes of assessing the financing, refinancing or credit support;
- (D) to *bona fide* prospective purchasers of the Facility provided that such disclosure is restricted to Information necessary for the purpose of assessing the potential purchase;
- (E) to the Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the DPA Settlement Services Provider or the Delivery Body (or to their respective Representatives) to the extent that the DPA Counterparty considers such disclosure is necessary to enable or assist: (a) the DPA Counterparty to fulfil the Generator Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with this Agreement or for the purposes of any other Dispatchable Power Agreement or to fulfil or perform any ancillary or related function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the [Energy Act 2013]); or
- (F) for the purposes of:
 - (aa) the examination and certification by its auditors of the Generator's accounts; or
 - (bb) complying with a proper request from its insurance adviser or insurer on placing or renewing any insurance policies,
 provided that:
 - (1) the Generator shall use reasonable endeavours to inform the recipient of the DPA Counterparty Confidential Information of the Generator's obligations under clause 25.4; and
 - (2) in the case of disclosure of DPA Counterparty Confidential Information pursuant to clause 25.4(c)(i)(A) to 25.4(c)(i)(D), the Generator shall ensure that the recipient of the DPA Counterparty Confidential Information shall be subject to the same obligation of confidentiality as contained in clause 25.4;
- (ii) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (save where such DPA Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (iii) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the Balancing and Settlement Code;
- (iv) which is required by any Law or Directive (including the rules of any securities exchange or clearing system) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator; or

- (v) by the Generator of DPA Counterparty Confidential Information:
 - (A) to which the DPA Counterparty has agreed in writing in advance; or
 - (B) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of the Agreement.
- (d) Prior to any disclosure of DPA Counterparty Confidential Information by the Generator pursuant to clause 25.4(c)(iv), the Generator shall use reasonable endeavours to notify the DPA Counterparty of the DPA Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

25.5 **Generator: liability for Representatives, service providers**

The Generator shall be responsible for:

- (a) any failure by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to clause 25.4(c)(i)(A) to 25.4(c)(i)(D) to comply with clause 25.4(a) as if they were subject to it; and
- (b) any use by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to clauses 25.4(c)(i)(A) or 25.4(c)(i)(B), of any DPA Counterparty Confidential Information in breach of clause 25.4(b) as if they were subject to it; and
- (c) any failure by any person to whom DPA Counterparty Confidential Information is disclosed pursuant to clauses 25.4(c)(i)(C) or 25.4(c)(i)(D) to comply with the restrictions on usage of DPA Counterparty Confidential Information provided for in such clauses.

26. **ANNOUNCEMENTS**

26.1 **No announcements**

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

26.2 **Generator permitted announcements**

Notwithstanding clause 26.1 (No announcements), the Generator may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Agreement or any related or ancillary matter if and to the extent required by any Law or Directive (including the rules of any securities exchange or clearing system) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator, provided the Generator shall agree the contents of such announcement or public statement with the DPA Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed).

26.3 **DPA Counterparty permitted announcements**

The DPA Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the Agreement or any related or ancillary matter that it considers to be necessary, desirable or appropriate (acting reasonably) provided that, if and to the extent that such announcement or statement contains any Generator Confidential Information, the making, publication, issuance or release of such announcement or public statement does not breach clause 25 (Confidentiality).

27. **FREEDOM OF INFORMATION**

27.1 **The Generator acknowledges that:**

- (a) the DPA Counterparty is subject to the requirements of the FoIA and the EIR and the Generator shall assist and cooperate with the DPA Counterparty, at the Generator's expense, to enable it to comply with its disclosure obligations under the FoIA and the EIR; and
- (b) the DPA Counterparty shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in the Agreement or any other agreement, whether the Information it holds (or held on its behalf) that is the subject of a Request for Information:
 - (i) is exempt or excepted from disclosure under the FoIA or the EIR, as appropriate; and
 - (ii) is to be disclosed in response to a Request for Information,and in no event shall the Generator respond directly to a Request for Information unless expressly authorised to do so in writing by the DPA Counterparty.

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

- (a) provide the DPA Counterparty with a copy of all such Information in its possession or power in the form that the DPA Counterparty requires as soon as practicable and in any event within five working days of the DPA Counterparty's request or such other period as the DPA Counterparty may specify; and
- (b) provide all necessary assistance as reasonably requested by the DPA Counterparty in connection with any such Information to enable the DPA Counterparty to respond to a Request for Information within the time for compliance set out in Section 10 of the FoIA or Regulation 5 of the EIR.

27.3 The Generator shall ensure that all Information held on behalf of the DPA Counterparty is retained for disclosure and shall permit the DPA Counterparty to inspect such Information as requested from time to time.

27.4 If the Generator receives a Request for Information in relation to the DPA Counterparty or in connection with the Agreement, the Generator shall transfer any such Request for Information to the DPA Counterparty as soon as practicable after receipt and in any event within two working days, and the provisions of this clause 31 shall apply as if the Request for Information had been received by the DPA Counterparty.

27.5 The Generator acknowledges that any notification to the DPA Counterparty which identifies Generator Confidential Information is of indicative value only and that the DPA Counterparty may nevertheless be obliged to disclose Generator Confidential Information in accordance with the requirements of the FoIA and the EIR.

27.6 The Generator acknowledges that the DPA Counterparty may, acting in accordance with the Code of Practice on the discharge of public authorities' functions under Part 1 of the FoIA (issued under Section 45 of the FoIA) or the Code of Practice on the discharge of the obligations of public authorities under the EIR (issued under Regulation 16 of EIR), be obliged under the FoIA or the EIR to disclose Information unless an exemption applies. The DPA Counterparty may at its discretion consult the Generator with regard to whether the FoIA or the EIR applies to the Request for Information and whether an exemption applies.

27.7 Nothing in this clause 27 shall restrict or prevent the publication by the DPA Counterparty of any Information in accordance with:

- (a) any publication scheme (as defined in the FoIA) adopted and maintained by the DPA Counterparty in accordance with the FoIA; or
- (b) any model publication scheme (as defined in the FoIA) applicable to the DPA Counterparty as may be published from time to time by the Information Commissioner,

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

PART 12 INTELLECTUAL PROPERTY RIGHTS

28. INTELLECTUAL PROPERTY RIGHTS

28.1 Retention of Intellectual Property Rights

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

28.2 Licence of Intellectual Property Rights

Each Party shall license its Intellectual Property Rights to the other Party on a non-exclusive, royalty-free, non-transferable basis, to the extent necessary to enable that other Party to perform its obligations pursuant to the Agreement, save that the licence granted to the DPA Counterparty in respect of Intellectual Property Rights created by or on behalf of the Generator pursuant to the Agreement shall:

- (a) be exclusive (save for the Generator's right to use such Intellectual Property Rights for the purposes of the Agreement);
- (b) permit the DPA Counterparty to sub-license; and
- (c) permit the DPA Counterparty to use such Intellectual Property Rights after expiry or termination of the Agreement.

28.3 Indemnity for infringement of Intellectual Property Rights

The Generator shall indemnify the DPA Counterparty in respect of any infringement of third party Intellectual Property Rights arising from use of materials provided by the Generator.

PART 13 DISPUTE RESOLUTION

29. DISPUTE RESOLUTION PROCEDURE

29.1 Outline of the Dispute Resolution Procedure

- (a) If a Dispute arises, the objective of the Parties shall be to seek to ensure that the Dispute is resolved as quickly, as efficiently and as cost-effectively as possible. Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve such Dispute through negotiation in accordance with the foregoing objective.
- (b) The Generator and the DPA Counterparty shall continue to observe and perform all of their respective duties, responsibilities and obligations under the Agreement notwithstanding any Dispute which falls to be resolved in accordance with this clause 29.
- (c) Except as otherwise expressly provided in the Agreement, if a Dispute arises, either Party may serve a Dispute Notice on the other Party in order to initiate the Dispute Resolution Procedure. The Dispute Notice shall include the following details:
 - (i) the subject matter of the Dispute and the issues to be resolved (including, in the context of a Dispute under clause 14.5 (Disputed payments), the disputed amount);
 - (ii) the position the referring Party believes is correct and the referring Party's reasons for that position;
 - (iii) the identity of the referring Party's Senior Representative;
 - (iv) details of any other disputes of which the Party is aware that may be consolidated or joined;
 - (v) copies of any documents which the referring Party considers to be important and/or relevant; and
 - (vi) a statement of the relief, determination, remedy or recourse which the referring Party seeks.
- (d) Following the service by any Party of a Dispute Notice:
 - (i) the Parties shall seek to resolve the Dispute in accordance with clause 29.2 (Resolution by the Senior Representatives) by convening a meeting of the Senior Representatives of the Parties; and
 - (ii) if the Senior Representatives are unable to settle, compromise or resolve the Dispute in accordance with clause 29.2 (Resolution by the Senior Representatives), the Dispute shall be resolved by referring it to the Arbitral Tribunal in accordance with clause 29.4 (Arbitration) with the exception of Disputes relating to [a limited number of specific circumstances to be listed], where the Dispute shall be referred to an Expert for determination in accordance with clause 29.3 (Expert Determination).

29.2 Resolution by the Senior Representatives

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

- (b) If the Senior Representatives of the Parties are able to resolve the Dispute within [*a period to be determined*] of the date of the Dispute Notice (or within such further time as the Senior Representatives of the Parties may agree in writing), the Senior Representative Settlement shall be documented in writing and shall be signed by the Senior Representative of each Party but shall not be legally binding unless and until both Parties have observed and complied with this clause 29.2(b).
- (c) If the Senior Representatives of the Parties are unable to resolve the Dispute within [*a period to be determined*] of the date of service of the Dispute Notice (or within such further time as the Senior Representatives of the Parties may agree in writing), either Party may refer the Dispute to an Expert for determination in accordance with clause 29.3 (Expert Determination) or to arbitration in accordance with clause 29.4 (Arbitration), as the case may be.
- (d) Unless the Parties otherwise agree in writing, any statement, concession, waiver or agreement (other than a Senior Representative Settlement) made by a Party in the course of discussions pursuant to this clause 29.2 shall be without prejudice to the Dispute. The Parties agree not to raise, refer to or rely on any such statement, concession, waiver or agreement (other than a Senior Representative Settlement) in any subsequent expert determination, arbitration or other legal proceedings whether related to the Dispute or otherwise.

29.3 **Expert Determination**

- (a) Either Party may, subject to clause 29.2 (Resolution by the Senior Representatives), refer a Dispute to be determined by an Expert if either: (i) the Parties have agreed in writing that a Dispute is amenable to determination by an Expert pursuant to clause 29.2(c); or (ii) the Dispute is an Expert Determination Dispute. Such referral shall be effected by either Party giving a notice (an "**Expert Determination Notice**") to the other Party. An Expert Determination Notice shall:
 - (i) the nature and a brief description of the Dispute;
 - (ii) details of where and when the Dispute has arisen;
 - (iii) the nature of the relief, determination, remedy or recourse sought;
 - (iv) details of any other disputes of which the Party is aware that may be consolidated or joined; and
 - (v) a proposal as to the identity of the Expert, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies the Expert to determine the relevant Expert Determination Dispute.
- (b) The Party receiving the Expert Determination Notice (Respondent) shall, within [*a period to be determined*] of service of the Expert Determination Notice, notify the other Party (Claimant) whether or not it is willing to appoint the Expert proposed by the Claimant. If the Respondent does not agree with the Claimant's proposal, the Respondent must propose an alternative Expert for consideration by the Claimant. If the Parties have failed to agree on the appointment of the Expert within [*a period to be determined*] of the date of the Expert Determination Notice (or such other period as the Parties may agree), any Party may request that the Expert be appointed by the LCIA, which shall be requested to choose a suitably qualified and experienced Expert for the Dispute in question, whose appointment shall be binding on the Parties.
- (c) Within [*a period to be determined*] of receipt of the proposed appointment or nomination, the Expert shall confirm its appointment in writing to the Parties stating:
 - (i) its willingness and availability to act; and

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

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

29.4 **Arbitration**

- (a) Either Party may refer a Dispute to arbitration in accordance with the LCIA Arbitration Rules provided that the Dispute has not been resolved by the Parties' Senior Representatives in accordance with clause 29.2 (Resolution by the Senior Representatives) or by an Expert in accordance with clause 29.3 (Expert Determination).
- (b) Any Dispute referred to arbitration shall be resolved in accordance with the LCIA Arbitration Rules, which rules are to be treated as incorporated by reference into this clause 29.4.
- (c) The Arbitral Tribunal shall make its award in writing (the "**Arbitral Award**"). The Parties agree that all final Arbitral Award shall be binding on the Parties save that no Arbitral Award shall impose an amendment to the Agreement.
- (d) The Arbitral Tribunal shall consist of three (3) Arbitrators except where the Parties have agreed in writing that the Arbitral Tribunal shall consist of one (1) Arbitrator (the "**Mutual Appointment Decisions**").
- (e) If the Arbitral Tribunal is to consist of:
 - (i) three (3) Arbitrators, each Party shall nominate one (1) Arbitrator to be appointed by the LCIA as contemplated by the LCIA Arbitration Rules and the

third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chairman; or

- (ii) one (1) Arbitrator, the parties shall use reasonable endeavours to agree on the identity of the Arbitrator no later than ten (10) Business Days after the Mutual Appointment Decision, failing which the Arbitrator shall be appointed by the LCIA as contemplated by the LCIA Arbitration Rules.

(f) The seat, or legal place, of any arbitration shall be London.

(g) The language to be used in any arbitral proceedings shall be English.

29.5 **Consolidation of Connected Disputes**

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

29.6 **No Other Proceedings**

- (a) Subject to limb (b) and clause 29.7 below, any and all Disputes are to be finally resolved in accordance with the Dispute Resolution Procedure, and neither Party shall commence any Proceedings in respect of a Dispute other than in accordance with the Dispute Resolution Procedure. If either Party commences any Proceedings in breach of the Dispute Resolution Procedure, it shall not oppose an application for strike-out, termination, discontinuance or stay of such Proceedings.
- (b) Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time:
 - (i) commence or prosecute Proceedings against the other Party in the courts of England and Wales for:
 - (A) an order to obtain urgent injunctive or other equitable relief, including specific performance;
 - (B) judgment to enforce a Senior Representatives Settlement, the determination of an Expert, or an Arbitral Award; and/or
 - (ii) give a notice of arbitration to the other Party so as to prevent the expiry of any applicable period of limitation or prescription, or the application of the equitable doctrine of laches.

29.7 **Metering Disputes**

- (a) Electricity Metering Disputes shall be resolved solely as a Trading Dispute in accordance with the Balancing and Settlement Code and the Dispute Resolution Procedure shall not apply to any such Electricity Metering Disputes.
- (b) [Gas Supply Metering Disputes shall be resolved in accordance with [Uniform Network Code]].

- (c) CO₂ Metering Disputes shall be resolved in accordance with the relevant industry code. If the relevant industry code is not available, it shall be resolved in accordance with clause 29.3 (Expert Determination).

PART 14 GENERAL PROVISIONS REGARDING LIABILITIES, REMEDIES AND WAIVERS

30. LIABILITIES, REMEDIES AND WAIVERS

30.1 Liabilities

(a) Consequential loss

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

- (i) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties at the date of the Agreement as the probable result of such breach; or
- (ii) any loss of profit, loss of revenue, loss of use, loss of goodwill or any special, indirect or consequential loss,

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

(b) Reasonable pre-estimate

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

(c) No Double-Recovery

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

30.2 No waiver

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

30.3 **Consents**

Any consents, approvals, waivers or agreements to be given by the DPA Counterparty pursuant to the Agreement shall be given in writing and may be given or withheld by the DPA Counterparty at its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the DPA Counterparty may in its sole discretion determine. The exercise of discretion by the DPA Counterparty shall in no way limit the manner in or extent to which that discretion may be exercised in future or give rise to any amendment or modification to the Agreement.

30.4 **Entire agreement**

- (a) The Agreement together with [other relevant agreements to be listed] constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made with respect thereto other than those included in the Agreement.
- (b) Each Party acknowledges that in entering into the Agreement it has not relied on, and shall have no right or remedy in respect of, any pre-contractual statement (whether made negligently or innocently) other than as expressly set out in the Agreement.
- (c) Nothing in this clause 30.4 shall limit or exclude liability for fraud.
- (d) For the purpose of this clause 30.4, pre-contractual statement means any draft, agreement, undertaking, representation, warranty, promise, assurance, arrangement or public statement of any nature whatsoever, whether or not in writing, relating to the subject matter of the Agreement made or given by either Party, the Secretary of State or the Delivery Body at any time prior to the date of the Agreement.

30.5 **Severability**

If any provision or part of a provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect or impair:

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

31. **LIMITED RECOURSE ARRANGEMENTS, UNDERTAKINGS AND ACKNOWLEDGEMENTS**

31.1 **DPA Counterparty payment undertakings**

- (a) The DPA Counterparty shall make appropriate requests to Electricity Suppliers on the basis provided for by the Supplier Obligation for the purpose of ensuring that it is in sufficient funds to meet its liabilities in full pursuant to the Agreement.
- (b) The DPA Counterparty shall, to the extent consistent with the DPA Counterparty's proper exercise of its functions and duties pursuant to the [Energy Act 2013]⁶³ or any other statutory function or duty, as soon as reasonably practicable:
 - (i) take such steps as are necessary to recover from an Electricity Supplier any sum which the Electricity Supplier is required by virtue of the Supplier

⁶³ Note to Readers: The legislative powers of the DPA Counterparty are to be determined.

Obligation to pay to the DPA Counterparty and which has not been paid by the date on which it is required by virtue of the Supplier Obligation to be paid and which is necessary to ensure the DPA Counterparty can meet its liabilities in full pursuant to the Agreement;

- (ii) at the times and otherwise in the manner prescribed by the Supplier Obligation, issue and enforce notices to Electricity Suppliers requiring the provision and/or payment of financial collateral to ensure the DPA Counterparty can meet its liabilities in full pursuant to the Agreement;
 - (iii) take such action (including the taking and prosecution of legal proceedings) against Electricity Suppliers as is necessary to ensure that the DPA Counterparty can meet its liabilities in full pursuant to the Agreement;
 - (iv) pursue any Electricity Supplier which has defaulted in making payment pursuant to the Supplier Obligation as a civil debtor unless, acting reasonably, the DPA Counterparty considers that there are more appropriate means of pursuing the defaulting Electricity Supplier or securing payment due to the Generator;
 - (v) take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds (if any) available to the DPA Counterparty, including:
 - (A) moneys standing to the credit of any designated risk, reserve or shortfall fund; and/or
 - (B) moneys available by reason of any 'make whole', loss mutualisation or similar arrangements among Electricity Suppliers or others in respect of any shortfall in amounts due and owing but not paid by Electricity Suppliers to the DPA Counterparty for the purposes of enabling the DPA Counterparty to make payments pursuant to Dispatchable Power Agreements,as is necessary for the purpose of meeting its liabilities in full pursuant to the Contract for Difference; and
 - (vi) notify the Secretary of State if the DPA Counterparty has reason to believe that it will have insufficient funds available to make when due the totality of the payments to generators that are required pursuant to the Dispatchable Power Agreements.
- (c) The DPA Counterparty shall notify the Generator if it is of the opinion that it will have insufficient funds to meet its liabilities in full pursuant to the Agreement.
- (d) The DPA Counterparty agrees that in circumstances where the DPA Counterparty has failed to pay an amount on the due date therefor pursuant to the Agreement:
- (i) damages alone would not be an adequate remedy for any breach by it of its obligations set out in paragraphs 31.1(b)(i) to 31.1(b)(v).
 - (ii) accordingly, the Generator will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the DPA Counterparty of its obligations set out in paragraphs 31.1(b)(i) to 31.1(b)(v); and
 - (iii) it will not raise any objection to an application by the Generator for any such remedies.

- (e) Without prejudice to clause 31.2 (Limited Recourse), the maximum liability of the DPA Counterparty in respect of breach by it of clauses 31.1(a), 31.1(b), and 31.1(c) shall be limited to an amount equivalent to the Default Interest on the amount which has not been paid by the DPA Counterparty to the Generator pursuant to the Agreement by reason of the relevant breach for the period from what would have been the date of payment but for such breach to the date of actual payment, provided that the limit of liability in this clause 31.1(e) shall not apply where the breach is caused by the gross negligence or wilful misconduct of the DPA Counterparty.

31.2 **Limited recourse**

- (a) Notwithstanding any other provision of the Agreement:
 - (i) the liability of the DPA Counterparty pursuant to the Agreement shall not exceed the aggregate of:
 - (A) the amounts from time to time received and held by the DPA Counterparty, and allocated to the Agreement, pursuant to the Supplier Obligation; and
 - (B) any other funds of the type referred to in clause 31.1(b)(v) from time to time received and held by the DPA Counterparty, and allocated to the Agreement, whether pursuant to the Supplier Obligation or otherwise; and
 - (ii) the DPA Counterparty shall not be in default pursuant to the Agreement in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in 31.2(a) which are necessary to make such payment, but if and to the extent that such payment is not made, the DPA Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

31.3 **Damages for breach**

- (a) The Parties acknowledge and agree that:
 - (i) the DPA Counterparty shall have full right and liberty to recover from the Generator any loss, damage, cost or expense suffered or incurred by the DPA Counterparty as a result of a breach by the Generator of the Agreement and for this purpose no regard shall be had to the right or ability (if any) of the DPA Counterparty to recover such loss, damage, cost or expense from all or any Electricity Suppliers or any other person pursuant to any regulations made pursuant to the Energy Act 2013 (including the Supplier Obligation); and
 - (ii) to the extent that any such loss, damage, cost or expense is recovered by the DPA Counterparty from the Generator, it is the intent that the DPA Counterparty will not keep those amounts but will, pursuant to the regulations made pursuant to the Energy Act 2013 (including the Supplier Obligation):
 - (A) use such amounts to make good any loss, damage, cost or expense suffered or incurred by the DPA Counterparty;
 - (B) pass or return those amounts to the Electricity Supplier(s) or other persons entitled thereto pursuant to such regulations; and/or

- (C) use such amounts for the benefit of such Electricity Supplier(s) or other person(s).

PART 15 MISCELLANEOUS

32. GENERAL PROVISIONS

32.1 Assignment

(a) Restriction on transfers

Subject to this clause 32.1, neither Party may:

- (i) assign to any person all or any of its rights or benefits under the Agreement;
- (ii) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under the Agreement; or
- (iii) transfer (whether by way of novation, sub-contract, delegation or otherwise) to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the Agreement,

without the prior written consent of the other Party.

(b) Permitted Transfer by the DPA Counterparty

Notwithstanding clause 32.1(a) (Restriction on transfers), no consent of the Generator shall be required for the DPA Counterparty to:

- (i) transfer all or any of its rights, benefits or obligations under the Agreement to:
 - (A) any person pursuant to a transfer scheme in accordance with the Energy Act 2013; or
 - (B) any person designated as a DPA Counterparty in accordance with the Energy Act 2013,

and the DPA Counterparty shall ensure (to the extent that it is so able) that in any such case all accrued payment liabilities, if any, of the DPA Counterparty under the Agreement also transfer to the same person; or

- (ii) sub-contract or delegate to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the Agreement,

on such terms (subject as above) as the DPA Counterparty considers appropriate.

(c) Transfers by the DPA Counterparty

If the DPA Counterparty effects a transfer pursuant to clause 32.1(b) (Permitted Transfer by the DPA Counterparty), the Generator shall at its own cost enter into such further agreements as are necessary in order to substitute the relevant transferee for the DPA Counterparty and to give effect to any consequential amendments to the Agreement that are necessary to give effect thereto.

(d) Permitted Assignment by the Generator

- (i) Notwithstanding clause 32.1(a) (Restriction on transfers), no consent of the DPA Counterparty shall be required to effect an assignment by the Generator of all (but not part) of its rights and benefits under the Agreement by way of security to or in favour of any bank or financial institution (or an agent or

security trustee on its behalf) in relation to the financing or refinancing of the Generator's business activities.

- (ii) The Generator shall effect an assignment pursuant to this clause 32.1(d)32.1(d) by giving the DPA Counterparty prior written notice [*of not less than a period to be determined*] specifying the details of the assignee.

(e) **Transfers by the Generator**

If the DPA Counterparty consents to the transfer by the Generator of all of its rights, benefits and obligations under the Agreement to a transferee, the Generator shall effect a transfer of the Facility to the same transferee contemporaneously with the transfer of the Agreement.

32.2 **Direct agreement**

At the request of any bank or financial institution (or agent or security trustee on its behalf) in whose favour the Generator assigns its rights under the Agreement in accordance with clause 32.1(d) (Permitted Assignment by the Generator), the DPA Counterparty shall at the cost of the Generator enter into a direct agreement with such person in such form as the DPA Counterparty may approve.

32.3 **No variation**

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

32.4 **Notices**

(a) **Communications in writing**

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

(b) **Addresses**

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

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

provided that a Party may change its notice details on giving notice to the other Party of the change in accordance with this clause 32.4. That notice shall only be effective on the date falling [*period to be determined*] after the notification has been received or such later date as may be specified in the notice.

(c) **Deemed receipt**

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

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

(d) **Service of process**

The provisions of this clause 32.4 shall not apply in relation to any document relating to service of process.

32.5 No third party rights

- (a) Subject to clause 32.5(b), the Parties do not intend that any term of the Agreement should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to the Agreement.
- (b) The following clauses confer a benefit on certain persons named therein who are not a party to the Agreement (each, for the purposes of this clause 32.5, a Third Party) and, subject to clause 32.5(c), is intended to be enforceable by the Third Parties: *[to be completed]*.
- (c) Notwithstanding the provisions of this clause 32.5, the Agreement may be varied in any way and at any time by the Parties only without the consent of any Third Party.

32.6 Index and market report changes

[To be developed]

32.7 Further assurance

Each Party shall at its own cost do or procure the doing of all things and execute or procure the execution of all further documents necessary to give full force and effect to the rights given and the transactions contemplated by the Agreement.

32.8 Generator cooperation

- (a) If the DPA Counterparty notifies the Generator that there is an issue relating to the operation or the mechanics of the Agreement and this issue is common to all generators or a class of them with a Dispatchable Power Agreement, the Generator shall at its own cost cooperate with the DPA Counterparty and other relevant generators (including participating in joint working group sessions) with a view to agreeing a mutually acceptable solution that is capable of application to all relevant Dispatchable Power Agreements and which will ensure the terms of those Dispatchable Power Agreements are kept aligned so far as is practicable.
- (b) *[If the DPA Counterparty is notified or becomes aware that the European Commission or other Competent Authority has decided that the United Kingdom must recover any state aid/subsidy granted or paid in relation to the Agreement and that decision has*

not been annulled, the DPA Counterparty shall promptly notify the Generator of this and the Generator shall repay or procure repayment of the relevant sums so notified to the DPA Counterparty or as the DPA Counterparty directs without delay.

- (c) The Generator shall, on reasonable notice, provide the DPA Counterparty with the information and assurances reasonably necessary for the United Kingdom to comply with the terms of any European Commission decision on state aid/subsidy control in respect of the Agreement and/or Dispatchable Power Agreements.]⁶⁴

32.9 **No partnership**

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

32.10 **DPA Counterparty contracting as principal**

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

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

32.11 **Costs**

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

32.12 **Counterparts**

The Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

⁶⁴ Note to Reader: This provision is subject to the UK's exit from the EU transition provisions.

33. **GOVERNING LAW**

33.1 **Governing law**

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

33.2 **Jurisdiction**

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

33.3 **Agent for service of process**

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

34. **LANGUAGE**

34.1 **English language**

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

34.2 **Translations**

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

34.3 **Translation costs**

Any agreement by the DPA Counterparty under clause 34.1 (English language) may be given conditional upon an undertaking by the Generator to bear any costs or expenses incurred by the DPA Counterparty in translating the relevant information into English.

SCHEDULE 1

The Facility

[Description of the Facility to be inserted]

SCHEDULE 2

Conditions Precedent

Part A

Initial Conditions Precedent

1. Legal Opinion

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

- (a) is duly formed and validly existing under the laws of the jurisdiction of formation; and
- (b) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Agreement.

2. KYC Documentation

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

3. The Facility

Delivery to the DPA Counterparty of the following:

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

4. Key Project Documents

Delivery to the DPA Counterparty evidence, in form and content satisfactory to the DPA Counterparty, that the Key Project Documents have been entered into by the Generator.

5. **[Acceptable Credit Standing**

Delivery to the DPA Counterparty evidence, in form and content satisfactory to the DPA Counterparty, the Generator has an Acceptable Credit Standing.]⁶⁵

6. **[Eligibility Requirements⁶⁶**

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

- (a) a declaration by the authorised person(s) of the Generator that the Facility will use eligible fuels, with a description of the fuels to be used;
- (b) a Development Consent Order under the Planning Act 2008 or Town and Country Planning Act 1990 consent for associated infrastructure as appropriate;
- (c) a grid connection offer signed by the Generator and the Electricity Transmission System Operator;
- (d) the Generator's:
 - (i) Companies Register Certificate of Incorporation;
 - (ii) most recent Annual Return (where available); and
 - (iii) VAT Certificate of Registration;
- (e) a copy of the resolution of the Generator's board of directors approving the terms of and the transactions contemplated by this Agreement and resolving that it executes, deliver and perform this Agreement;
- (f) a declaration by the authorised person(s) of the Generator that it is not in receipt of any other scheme of funding by a Government Entity; and
- (g) a certificate from the Secretary of State certifying that the Generator has submitted a supply chain plan which meets the required standard.]

⁶⁵ Note to Reader: The inclusion of the Acceptable Credit Standing CP is subject to further review.

⁶⁶ Note to Reader: The inclusion of the Eligibility Requirements as Initial CP's is subject to further review.

Part B
Further Conditions Precedent

Operational

1. DPA Settlement Services Provider

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

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

2. Electricity Generation

Delivery to the DPA Counterparty of the following:

- (a) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Net Dependable Capacity of not less than [*a percentage to be determined*] of the Net Dependable Capacity Estimate has been Commissioned;
- (b) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Generator is complying in full with the Electricity Metering Obligations at clause 18 (Generator's Undertakings: Metering);
- (c) a date and time stamped copy of the electrical schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the Electricity Metering Equipment associated with all assets comprised within the Facility (including details of the type of Balancing and Settlement Code - approved metering installed in compliance with the Electricity Metering Obligations);
- (d) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Electricity Metering Equipment is fully compliant with the Balancing and Settlement Code; and
- (e) the expected generation output data, in form and content satisfactory to the DPA Counterparty, acting reasonably, not to be delivered before delivery of the evidence referred to in clause 2(a).

3. CO₂ Capture

Delivery to the DPA Counterparty of the following:

- (a) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Generator is complying in full with the CO₂ Metering Obligations at clause 18 (Generator's Undertakings: Metering);
- (b) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Commissioned Facility achieves an Achieved CO₂ Capture Rate of not less than [[*a percentage to be determined*]] or [the Minimum CO₂ Capture Rate];

- (c) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the captured carbon dioxide from the Commissioned Facility complies with the Captured Carbon Dioxide Quality Standards;
- (d) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the CO₂ Metering Equipment (including CO₂ Delivery Points) associated with all assets comprised within the Facility (including details of the type of metering and CO₂ Metering Equipment installed in compliance with the CO₂ Metering Obligation);
- (e) evidence, in form and content satisfactory to the DPA Counterparty, that the Facility has connected to the T&S Network in accordance with the T&S Operator's compliance requirements ("**T&S Connection Confirmation**"), unless where: (i) the T&S Network is unavailable; and (ii) the Generator has completed the [necessary T&S Network connection works], this Operational Condition Precedent shall be temporarily waived by the DPA Counterparty until the T&S Network is available. Within [*a period to be determined*] of the Generator becoming aware that the T&S Network is available, the Generator shall provide the T&S Connection Confirmation within [*a period to be determined*]; and
- (f) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Metered CO₂ Output meets the CO₂ Metering Specification.

4. **Gas Supply**

Delivery to the DPA Counterparty of the following:

- (a) evidence, in form and content satisfactory to the DPA Counterparty, acting reasonably, that the Generator is complying in full with the Gas Supply Metering Obligations at clause 18 (Generator's Undertakings: Metering); and
- (b) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the Gas Supply Metering Equipment (including Gas Supply Points) associated with all assets comprised within the Facility (including details of the type of metering and Gas Supply Metering Equipment installed in compliance with the Gas Supply Metering Obligation).

5. **[Supply Chain Certificate**

Delivery to the DPA Counterparty of a certificate from the Secretary of State certifying that the Generator's supply chain implementation report has been approved by the Secretary of State.]⁶⁷

6. **[State Aid/Subsidy Control Declaration Operational CP**

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

⁶⁷ Note to Reader: The inclusion and precise wording/operation of the supply chain OCP is subject to further review by HM Government and subject to the outcome of the consultation titled: 'Contracts for Difference for Low Carbon Electricity Generation. Changes to Supply Chain Plans and the Contracts for Difference (CfD) contract: consultation document. Published 24 November 2020. Available: <https://www.gov.uk/government/consultations/contracts-for-difference-cfd-changes-to-supply-chain-plans-and-the-cfd-contract>.

- (a) no state aid/subsidy has been received by the Generator or by any other person in relation to the costs of the Project (excluding the state aid/subsidy control arising under this Agreement); or
- (b) state aid/subsidy control has been received by the Generator or by any other person in relation to the costs of the Project (excluding the state aid/subsidy control arising under this Agreement), and that: (i) such state aid/subsidy control has been repaid to the granter of the aid or funding in full, or (ii) such state aid/subsidy control is expressly authorised by a state aid/subsidy control Competent Authority to be cumulated with the Agreement.]⁶⁸

⁶⁸

Note to Reader: State Aid/Subsidy Control provisions are subject to further review by BEIS.

SCHEDULE 3

Availability Payment Calculations

[Note to Reader: The following formulae are provisional and throughout 2021 the Department will be testing and further developing such formulae as required]

1. DEFINITIONS: AVAILABILITY PAYMENT CALCULATIONS

In this Schedule 3 (Availability Payment Calculations):

"Achieved CO₂ Capture Rate" means the CO₂ capture rate (*expressed as a percentage (%)*) for the Facility during the relevant AP Billing Period calculated in accordance with paragraph 3 (Calculation of Supporting Formulae) of this schedule;

"Availability of Capture" means the CO₂ capture rate (*expressed as a percentage (%)*) during the relevant AP Billing Period, based on the Achieved CO₂ Capture Rate and Deemed CO₂ Capture Rate, calculated in accordance paragraph 3 (Calculation of Supporting Formulae) of this schedule, and **"CO₂ Capture Rate"** shall be construed accordingly;

"Availability of Generation" means the generation availability of the Facility (*expressed as a percentage (%)*) during the relevant AP Billing Period, calculated in accordance paragraph 3 (Calculation of Supporting Formulae) of this schedule;

"Availability Payment Rate" means [*to be agreed between the Generator and the DPA Counterparty*] (*expressed in £/MWh*);

"Calculated CO₂ Generated" means the mass quantity of carbon dioxide (*expressed in tCO₂*) generated by the Facility, based upon the Total Metered Fuel Consumption and Fuel Composition during the AP Billing Period, converted to an equivalent mass quantity of carbon dioxide based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO₂ Emissions from Power Stations, EUETS Phase 2";

"Calculated CO₂ Generated with T&S Outage" means the mass quantity of carbon dioxide (*expressed in tCO₂*) generated by the Facility, based upon the Total Metered Fuel Consumption and Fuel Composition during periods of T&S Outage Events over the AP Billing Period converted to an equivalent mass quantity of carbon dioxide based upon an oxidation factor of 1.0 as per the guidelines in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO₂ Emissions from Power Stations, EUETS Phase 2";

"Deemed CO₂ Capture Rate" means the CO₂ capture rate (*expressed as a percentage (%)*), for any [Settlement Unit] during which a Non-Operational Period has occurred (including where a Capture Plant Outage Relief Event applies), shall be [*to be determined*] pursuant to clause 10.3(b) (Availability of Capture) [or subsequently verified through a CO₂ Capacity Test that is undertaken pursuant to clause 10.3(b) or clause 10.4(c)]⁶⁹;

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

"Metered CO₂ Output"⁷⁰ means the mass quantity of carbon dioxide (*expressed in tCO₂*) entering the T&S Network as measured at the CO₂ Delivery Point(s) during the relevant Billing Period;

⁶⁹ Note to Reader: Please refer to the discussion on the Deemed CO₂ Capture Rate in Annex C of the Main Document.

⁷⁰ Note to Reader: BEIS' expectation is that captured carbon dioxide which fails to comply with the Captured Carbon Dioxide Quality Standards will not be exported to the T&S Network through the valve equipment at the CO₂ Delivery Point(s), and will therefore not be considered to be "Metered CO₂ Output".

"Net Available Capacity" means, subject to clause 10.4(a) (Outage Relief Events), the declared available capacity (*expressed in MW*) of the Facility by the Generator in relation to any Power Plant Outage Event during the AP Billing Period;

"Net Dependable Capacity" means the net generating capacity (*expressed in MW*) of the Facility on a continuous and reliable basis, at Reference Site Conditions, available at the Electricity Delivery Point(s), with the Capture Plant operating simultaneously at the Target CO₂ Capture Rate, as demonstrated by the OCP Acceptance Test or (where relevant) by the Longstop Date Acceptance Test⁷¹;

"Period Hours" means the number of hours in the applicable AP Billing Period;

"Power Plant Outage Event Duration" means the duration in minutes of a Power Plant Outage Event;

"Target CO₂ Capture Rate" means [*to be agreed between the Generator and the DPA Counterparty*] (*expressed as a percentage (%)*);

"T&S Capacity Fee" means any transmission and storage capacity fee for captured CO₂ (*expressed in £*) payable in accordance with the T&S Connection Agreement⁷², during the relevant AP Billing Period;

"Total Metered Fuel Consumption" means the aggregate metered fuel consumption of the Facility as measured at the Gas Supply Point(s) during the relevant AP Billing Period;

"Total Non-Operational Period" means the aggregate of the Non-Operational Periods in all [Settlement Units] during the AP Billing Period in hours; and

"Total Operational Period" means the aggregate of all [Settlement Units] during the AP Billing Period in hours, excluding the Total Non-Operational Period.

2. **CALCULATION OF AVAILABILITY PAYMENT**

The Availability Payment shall, subject to and in accordance with clause 10 (Availability Payment), be calculated for each AP Billing Period in accordance with the following formula:

$$AP = (AG \times AC \times NDC \times APCR) + TSCF^{73}$$

where:

AP	=	Availability Payment in AP Billing Period (£)
AG	=	Availability of Generation (%)
AC	=	Availability of Capture (%)
APCR	=	Availability Payment Rate (£/MW)
TSCF	=	T&S Capacity Fee (£)

⁷¹ Note to Reader: BEIS is considering whether the Net Dependable Capacity should be tested/adjusted on an annual basis.

⁷² Note to Reader: The T&S Capacity Fee payable by the Generator under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the T&S regulator. Please refer to the discussion in Section 3 of the Main Document.

⁷³ Note to Reader: BEIS is considering whether the TSCF should form part of the Availability Payment during periods of unavailability of the generation and/or capture plant.

NDC = Net Dependable Capacity (*MW*)

3. CALCULATION OF SUPPORTING FORMULAE

3.1 Calculation of Availability of Generation

- (a) The formula for calculating the Availability of Generation (AG) for each [Settlement Unit] is as follows:

$$AG^{74} = 1 - \frac{\sum((NDC - NAC_i) \times (\Delta T_{Event_i} \div 60))}{NDC \times \Delta T_{PH}}$$

where:

AG = Availability of Generation (%)
NDC = Net Dependable Capacity (*MW*)
NAC_i = Net Available Capacity (*MW*)
 $\Delta T_{Event,i}$ = Power Plant Outage Event Duration (*minutes*)
 ΔT_{PH} = Period Hours (*hours*)

3.2 Calculation of the Availability of Capture

- (a) The formula for calculating the Availability of Capture (AC)⁷⁵ for each [Settlement Unit] is as follows:

$$AC^{76} = \frac{ACR_{ph} \times \Delta T_{OP} + \sum DCR_i \times \Delta T_{NOP_i}}{\Delta T_{PH} \times TCR}$$

where:

AC = Availability of Capture (%)
ACR_{ph} = Achieved CO₂ Capture Rate (%)
 ΔT_{OP} = Total Operational Period (*hours*)
DCR_i = Deemed CO₂ Capture Rate (%)
 $\Delta T_{NOP,i}$ = Total Non-Operational Period (*hours*)
 ΔT_{PH} = Period Hours (*hours*)
TCR = Target CO₂ Capture Rate (%)

⁷⁴ Note to Reader: AG shall be limited to a maximum value of 1.

⁷⁵ Note to Reader: As detailed in clause 10.3(c), BEIS is considering a Minimum CO₂ Capture Rate.

⁷⁶ Note to Reader: BEIS is considering a maximum limit value for the Availability of Capture.

(b) The formulae for calculating the Achieved CO₂ Capture Rate (ACR_{ph}) is as follows:

$$ACR_{ph} = \frac{CO_{2exp}}{CO_{2gen} - CO_{2gen_TS}}$$

where:

ACR_{ph}	=	Achieved CO ₂ Capture Rate (%)
CO_{2exp}	=	Metered CO ₂ Output in AP Billing Period (tCO_2)
CO_{2gen}	=	Calculated CO ₂ Generated in AP Billing Period (tCO_2)
CO_{2gen_TS}	=	Calculated CO ₂ Generated with T&S Outage in AP Billing Period (tCO_2)

SCHEDULE 4

Variable Payment Calculations

[Note to Reader: The formula(s) are provisional and throughout 2021 the Department will be testing and further developing the formulas as required]

1. DEFINITIONS: VARIABLE PAYMENT CALCULATIONS

In this Schedule 4 (Variable Payment Calculations):

"Carbon Price" means the [effective carbon cost for generators in the UK]⁷⁷ (expressed in £/tCO₂);

"CO₂ Cost Differential" means the CO₂ costs differential due to the Facility calculated in accordance with paragraph 3.2 (CO₂ Cost Differential) of this schedule (expressed in £/MWh);

"Gas Cost Differential" means the gas costs differential due to the Facility calculated in accordance with paragraph 3.1 (Gas Cost Differential) of this schedule (expressed in £/MWh);

"Gas Price" means [a gas price indicator to be determined]⁷⁸ (expressed in pence/therm);

"Metered CO₂ Output" has the meaning given to that term in schedule 3 (Availability Payment Calculations);

"Metered Day Electricity Output" means for day *i* in VP Billing Period, the Loss Adjusted Metered Electricity Output as reported by a BSC Company or BSC Agent to the DPA Counterparty;

"Other Extra Variable Costs" means the additional operational costs attributable to the Facility [to be agreed between the Generator and the DPA Counterparty] (expressed in £/MWh);

"Power Plant CO₂ Emissions" means the Facility's CO₂ emissions (expressed in tCO₂/MWh), at Reference Site Conditions, [to be agreed between the Generator and the DPA Counterparty];

"Power Plant Gas Consumption" means the Facility's gas consumptions (expressed in therms/MWh), at Reference Site Conditions, [to be agreed between the Generator and the DPA Counterparty];

"Reference Plant" means a hypothetical reference competing unabated power project operating at the Reference Site Conditions;

"Reference Plant CO₂ Emissions" means the Reference Plant's CO₂ emissions (tCO₂/MWh), at Reference Site Conditions, [to be agreed between the Generator and the DPA Counterparty] and subject to adjustments by the DPA Counterparty pursuant to [a procedure to be determined]⁷⁹;

"Reference Plant Gas Consumption" means the Reference Plant's gas consumption (expressed in therms/MWh), at Reference Site Conditions, [to be agreed between the

⁷⁷ Note to Reader: The source to be determined.

⁷⁸ Note to Reader: Please refer to the discussion on the Gas Price in Annex C of the Main Document.

⁷⁹ Note to Reader: Please refer to the discussion of this Reference Plant assumption in Annex C of the Main Document.

Generator and the DPA Counterparty], and subject to adjustment by the DPA Counterparty pursuant to [a procedure to be determined]⁸⁰;

"Reference Site Conditions" means the reference site conditions detailed in paragraph 3.4 (Reference Site Conditions) of this schedule;

"T&S Volumetric Fee" means any volumetric transmission and storage fee (*expressed in £/tCO₂*) for captured carbon dioxide payable in accordance with the T&S Connection Agreement⁸¹;

"T&S Volumetric Payment Rate" means the volumetric transmission and storage payment due to the Facility calculated in accordance with paragraph 3.3 (T&S Volumetric Payment Rate) of this schedule (*expressed in £/MWh*); and

"Variable Payment Rate" means the payment rate calculated in accordance with paragraph 2 (Calculation of Variable Payment) of this schedule (*expressed in £/MWh*).

2. CALCULATION OF VARIABLE PAYMENT

The Variable Payment shall, subject to and in accordance with clause 11 (Variable Payment), be calculated for each VP Billing Period in accordance with the following formula:

$$VP = \sum (VPR_i \times MWh_i)$$

$$VPR_i = GC + CC + OC + TSVPR \text{ [Note]}^{82}$$

where:

VP	=	Variable Payment in the VP Billing Period (£)
VPR _i	=	Variable Payment Rate for day <i>i</i> of VP Billing Period (£/MWh)
MWh _i	=	Metered Day Electricity Output for day <i>i</i> of VP Billing Period (MWh)
GC	=	Gas Cost Differential (£/MWh)
CC	=	CO ₂ Cost Differential (£/MWh)
OC	=	Other Extra Variable Costs (£/MWh)
TSVPR	=	T&S Volumetric Payment Rate for day <i>i</i> of VP Billing Period (£/MWh)

3. CALCULATION OF SUPPORTING FORMULAE

3.1 Gas Cost Differential

⁸⁰ Note to Reader: Please refer to the discussion of this Reference Plant assumption in Annex C of the Main Document.

⁸¹ Note to Reader: The T&S Volumetric Fee payable by the Generator under the T&S Connection Agreement is likely to be indexed to the fee that will be verified by the T&S regulator. Please refer to the discussion in Section 3 of the Main Document.

⁸² Note to Reader: (i) BEIS is likely to add an adjustment factor to adjust VPR_i based upon the CO₂ Capture Rate for the relevant day, please refer to the discussion in Annex C of the Main Document; and (ii) VPR_i will be zero for periods of T&S Outage Events and/or Capture Plant Outage Events.

(a) The formula for calculating the Gas Cost Differential (GC) is as follows:

$$GC = \frac{GP}{100} \times (GU_{CCUS} - GU_{Ref})$$

where:

GC	=	Gas Cost Differential (£/MWh)
GP	=	Gas Price (pence/therm)
GU _{Ref}	=	Reference Plant Gas Consumption (therms/MWh)
GU _{CCUS}	=	Power Plant Gas Consumption (therms/MWh)

3.2 CO₂ Cost Differential

(a) The formula for calculating CO₂ Cost Differential (CC) is as follows:

$$CC = CP \times (CO2E_{CCUS} - CO2E_{Ref})$$

where:

CC	=	CO ₂ Cost Differential (£/MWh)
CP	=	Carbon Price (£/tCO ₂)
CO2E _{Ref}	=	Reference Plant CO ₂ Emissions (tCO ₂ /MWh)
CO2E _{CCUS}	=	Power Plant CO ₂ Emissions (tCO ₂ /MWh)

3.3 T&S Volumetric Payment Rate

(a) The formula for calculating the T&S Volumetric Payment Rate (TSVPR) is as follows:

$$TSVPR = TSVF \times \frac{CO2_{exp,i}}{MWh_i}$$

where:

TSVPR	=	T&S Volumetric Payment Rate (£/MWh)
TSVF	=	T&S Volumetric Fee (£/tCO ₂)
CO2 _{exp,i}	=	Metered CO ₂ Output (tCO ₂) for day <i>i</i> of VP Billing Period
MWh _i	=	Metered Day Electricity Output for day <i>i</i> of VP Billing Period

3.4 Reference Site Conditions

The Reference Site Conditions are as follows:

[The Reference Site Conditions are to be determined]

SCHEDULE 5

Metering Points

[Description of the Electricity Delivery Points, CO₂ Delivery Points and Gas Supply Points to be inserted.]

SCHEDULE 6

CO₂ Metering Specification

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

SCHEDULE 7

Project Commitments

Delivery to the DPA Counterparty of the following:

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

((iii) to (vii), together the "**Facility Requirements**");
- (c) Supporting Information evidencing (i) that the Generator has, or will have, sufficient financial resources to meet the Total Project Spend and (ii) the Facility Requirements.
- (d) Supporting Information evidencing the following:

- (i) entry by the Generator into an engineering, procurement and construction contract for the Facility, providing for the supply and installation of the Material Equipment.
- (ii) entry by the Generator into an agreement for the supply of the Material Equipment.
- (iii) entry by the Generator into: (i) a framework agreement for the supply of the Material Equipment; and (ii) a binding purchase order for the Material Equipment.

For the purpose of this schedule, the following definition shall apply to this Agreement:

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