

## **Annex B: Feed-in Tariff with Contract for Difference: Heads of Terms**

## CONTENTS

1.	Definitions and Interpretation	2
2.	Term	17
3.	Termination	17
4.	Consequences of Termination	18
5.	Conditions Precedent	20
6.	Milestone	22
7.	Metered Output	23
8.	Reference Price	23
9.	Strike Price	23
10.	Payment of Differences	24
11.	Billing Statement	26
12.	Payment Mechanics	27
13.	Metering	30
14.	Information Provision	31
15.	Generator's Representations and Warranties	32
16.	CfD Counterparty's Representations and Warranties	34
17.	Undertakings	34
18.	Change in Law	37
19.	Force Majeure	41
20.	Termination Events	43
21.	Acceptable Collateral	46
22.	Confidentiality	48
23.	Announcements	52
24.	Freedom of information	52

25.	Intellectual Property Rights	55
26.	Dispute Resolution Procedure	56
27.	General Provisions	62
28.	Governing Law	68
29.	Language	69
	Schedule 1 The Facility	70
	Schedule 2 Conditions Precedent	71
	Schedule 3 Reference Price Calculation	73
	Schedule 4 Metering Points	74

## **HEADS OF TERMS**

### *Introductory Notes*

*These Heads of Terms are preliminary and indicative draft terms for the Feed-in Tariff with Contract for Difference (**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 Annex A (Feed-in Tariff with Contracts for Difference: Operational Framework) (**Operational Framework**).*

*These Heads of Terms do not indicate any willingness or agreement on the part of the Secretary of State for the Department of Energy and Climate Change to enter into, or procure entry into, the Agreement. These Heads of Terms do not constitute an offer and are not capable of acceptance.*

**PARTIES**

The Feed-in Tariff with Contract for Difference (**Agreement**) will be executed and delivered by the **Generator** and the **CfD Counterparty**.

**BACKGROUND**

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

## Part 1: Introduction

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In the Agreement:

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

**Affected Party** has the meaning given to that term in Clause 19.1 (*Relief due to Force Majeure*);

**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;

**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 Transmission Licence;

**Billing Period** means [*the period (to be determined) over which Difference Amounts will be aggregated for the purpose of making payments under the Agreement*];

**Billing Statement** has the meaning given to that term in Clause 11.1 (*Billing Statement*);

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

**Central Meter Registration Service** has the meaning given to that term in the Balancing and Settlement Code;

**CfD Counterparty Confidential Information** means:

- (a) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the CfD Counterparty or a Government Entity (including any such Information relating to United Kingdom government policy with respect to matters pertinent to FIT Contracts for Difference or the Agreement) which the Generator receives or shall have received from the CfD Counterparty or any third party who has received such Information from the CfD Counterparty in connection with, or pursuant to, the Generator or the CfD Counterparty entering into or having entered into the Agreement (including all such Information which the Generator prepares which contains or reflects or is generated from such Information); 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;

**CfD Counterparty Permitted Purposes** means:

- (a) complying with the CfD Counterparty's responsibilities and obligations, and exercising the CfD Counterparty's rights, powers and discretions, under or in connection with the Agreement or FiT Contracts for Difference;
- (b) complying with the CfD Counterparty's responsibilities and obligations under or by virtue of the Energy Act 2013; and
- (c) reporting on the establishment, performance or operation of, or compliance with, the arrangements contemplated by the Agreement and FiT Contracts for Difference;

**CfD Settlement Agent** means [*an agent (to be identified) of the CfD Counterparty*];

**Change in Industry Documents** means the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to any Industry Document after the date of the Agreement;

**Change in Law** means any of the following events occurring after the date of the Agreement:

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

other than, in each case, in circumstances in which the Generator is seeking to invoke the provisions of Clause 18 (*Change in Law*) and the Change in Law arises out of, in connection with or results from:

- (i) a breach of or default under or with respect to the Law, Directive, Industry Document or Required Authorisation (as applicable) by the Generator, its contractors, sub-contractors or agents; or
- (ii) the failure by the Generator, its contractors, sub-contractors or agents to act in accordance with the standard of a Reasonable and Prudent Operator;

**Claimant** has the meaning given to that term in Clause 26.3(C) (*Expert Determination*);

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

**Conditions Precedent** means the conditions precedent set out in Schedule 2 (*Conditions Precedent*);

**Confidential Information** means CfD Counterparty Confidential Information and Generator Confidential Information;

**Connected Disputes** has the meaning given to that term in Clause 26.5 (*Consolidation of Connected Disputes*);

**Consumer Price Index** means the Consumer Price Index (CPI) published by the Office for National Statistics;

**Contract Quantity** means [*the maximum theoretical low carbon output of the Facility based on its intended installed capacity, noting that the Contract Quantity may be adjusted as described in the Operational Framework*] (expressed in MW);

**Cover Period** has the meaning given to that term in Clause 21.1 (*Credit cover requirement*);

**CP Fulfilment Notice** has the meaning given to that term in Clause 5.2(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 Transmission Licence;

**Date of Referral** has the meaning given to that term in Clause 26.3(F) (*Expert Determination*);

**Date of Response** has the meaning given to that term in Clause 26.3(G) (*Expert Determination*);

**Default** means a Termination Event or any event or circumstances specified in Clause 20 (*Termination Events*) which would (with the passage of time, the giving of notice, the making of any determination under the Agreement or any combination of any of the foregoing) be a Termination Event;

**Default Termination Date** has the meaning given to that term in Clause 3.3(A) (*Default termination*);

**Delivery Body** means the person from time to time responsible under and by virtue of [Section 6 of] the Energy Act 2013 for directing the CfD Counterparty to offer to enter into the Agreement and/or FiT Contracts for Difference;

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

**Department** means the Department of Energy and Climate Change;

**Difference** means, in respect of a Settlement Period, the amount of the difference (expressed in £/MWh) between the Reference Price and the Strike Price for the relevant Settlement Period provided that where the Reference Price is a negative number, the maximum amount of the Difference (expressed in £/MWh) shall be an amount equal to the Strike Price;

**Difference Amount** means, in respect of a Settlement Period, the amount (expressed in Sterling) that is the product of:

- (a) the lesser of:
  - (i) the greater of (A) the Metered Output (scaled to reflect the low carbon content, if appropriate) for the relevant Settlement Period, and (B) zero; and
  - (ii) the product of the Contract Quantity and the duration of the Settlement Period in hours; and
- (b) the Difference in respect of that Settlement Period;

**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 standard of a Reasonable and Prudent Operator and, in circumstances in which the Generator is seeking to invoke the provisions of Clause 18 (*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 apply specifically (and not merely indirectly or consequentially or by virtue of the disproportionate effect of any Change in Law that is of general application) to:

- (a) the Project and not to any other project; or
- (b) the Generator and not to any other person;

**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 26.1(C) (*Outline of the Dispute Resolution Procedure*);

**Dispute Resolution Procedure** means the rules, obligations and procedures set out in Clause 26 (*Dispute Resolution Procedure*);

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

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

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

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

**Due Date** has the meaning given to that term in Clause 12.1(A) (*Due Date for payment*);

**EIR** means the Environmental Information Regulations 2004;

**Electricity Act** means the Electricity Act 1989;

**Estimated Information** has the meaning given to that term in Clause 11.2 (*Estimated Information*);

**EU Treaty** means the consolidated version of the Treaty establishing the European Union;

**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 of any duty of confidentiality attaching thereto prior to it being acquired by or furnished to it;

**Expert** means any person appointed to determine a Dispute in accordance with Clause 26.3 (*Expert Determination*);

**Expert Nominating Body** means [*to be completed*];

**Facility** means the generating facility particulars of which are set out in Schedule 1 (*The Facility*);

**FiT Contract for Difference** means a feed-in tariff with contract for difference between the CfD 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;

**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 that is beyond the reasonable control of the Affected Party (in the case of the Generator, acting and having acted as a Reasonable and Prudent Operator) which the Affected Party could not reasonably have avoided or overcome and which is not due to the Affected Party's fault or negligence or that of its contractors, sub-contractors or agents, provided always that neither non-availability nor the lack of funds shall constitute Force Majeure;

**Foreseeable Change in Law** means a Change in Law which:

- (a) was reasonably foreseeable by a Reasonable and Prudent Operator at the date of the Agreement; or
- (b) is any of the following, namely [*to be included*],

and, without prejudice to the generality of the foregoing, a Change in Law shall be foreseeable if on the date of the Agreement the Change in Law has been published, including:

- (i) in a draft Bill as part of a Governmental Department Consultation Paper;
- (ii) in a Bill;
- (iii) in a draft statutory instrument;
- (iv) as a proposal in the Official Journal of the European Union;
- (v) in a consultation document of the Competent Authority; or
- (vi) in the final modification report of the relevant Industry Document administrator,

but in each case only to the extent that the Change in Law takes effect in substantially the form published before the date of the Agreement or has substantially the same effect;

**Fuel Security Code** has the meaning given to that term in the Transmission Licence;

**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 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;

**General Change in Law** means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law;

**Generation Licence** means an electricity generation licence granted or treated as granted under Section 6(1)(a) of the Electricity Act that authorises a person to generate electricity;

**Generator Confidential Information** means:

- (a) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Generator or the Project which the CfD Counterparty receives or shall have received from the Generator or any third party who has received such Information from the Generator in connection with, or pursuant to, the Generator or the CfD Counterparty entering into or having entered into the Agreement (including all such Information which the CfD Counterparty prepares which contains or reflects or is generated from such Information); 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 complying with the Generator's responsibilities and obligations, and exercising the Generator's rights, powers and discretions, under or in connection with the Agreement;

**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*), 15.1(J) (*No requirement to deduct or withhold*) and 15.1(K) (*Tax residence*));

**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 Transmission Licence;

**Identified Costs** has the meaning given to that term in Clause 18.1(A)(iii)(b) (*Qualifying Change in Law and Change in Industry Documents*);

**Industry Documents** means any and all agreements, codes and instruments regulating 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 Distribution Code, any Distribution Connection and Use of System Agreement and/or any other connection or use of system agreement with a Transmission Licensee or Licensed Distributor;

**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;

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

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

**Key Project Document** means at any time:

- (a) any electricity connection agreement;
- (b) any decommissioning programme, plan, agreement or arrangement approved by or entered into with any Government Entity, other Government owned entity or Competent Authority;
- (c) any planning permission; and
- (d) 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, 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;

**Licensed Distributor** means a person who is authorised by a Distribution Licence to distribute electricity;

**Longstop Date** means [a date to be determined and which is expected to vary by technology type], as such date 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) where the Generator is the Affected Party, Force Majeure affecting the Project; or
- (b) the failure of the transmission or distribution system owner, as the case may be (not being the Generator or its affiliates), 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, its contractors, sub-contractors or agents),

or such later date as the CfD Counterparty may agree in writing with the Generator;

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

**Metered Data** has the meaning given to that term in Clause 7.2 (*Calculation of Metered Output*);

**Metered Output** has the meaning given to that term in Clause 7.1 (*Metered Output*);

**Metering Obligation** mean the obligation of the Generator under Clause 13.1 (*Metering undertaking*) other than ongoing compliance with paragraph (7)(e) of Schedule 2 (*Metering Points*);

**Milestone** has the meaning given to that term in Clause 6.1 (*Milestone satisfaction*);

**Milestone Certificate** has the meaning given to that term in Clause 6.1 (*Milestone satisfaction*);

**Milestone Delivery Date** has the meaning given to that term in Clause 6.1 (*Milestone satisfaction*) as such date may be extended day for day, where the Generator is the Affected Party, for each day that the Generator is delayed in fulfilling the Milestone by reason of Force Majeure affecting the Project;

**Minimum Spend Amount** means [*to be defined; see the Operational Framework for further detail*];

**MW** means megawatt;

**MWh** means megawatt-hour;

**Net Payable Amount** has the meaning given to that term in Clause 11.1(D) (*Billing Statement*);

**Non-affected Party** has the meaning given to that term in Clause 19.2(A) (*Conditions to Force Majeure relief*);

**Notice of Intention to Seek Determination** has the meaning given to that term in Clause 26.3(A) (*Expert Determination*);

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

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

**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 prevents or delays the construction, completion, testing or commissioning of the Facility or prevents the Facility from generating at least [*Metered Output at a level to be determined*] for at least [*a continuous period to be determined*];

**Qualifying Change in Law** means:

- (a) a Discriminatory Change in Law; and/or
- (b) a Specific Change in Law,

which was not a Foreseeable Change in Law. The annulment, suspension, revocation or other modification of any decision in relation to State aid in respect of the Agreement or FiT Contracts for Difference by the European Commission or other Competent Authority shall not constitute a Qualifying Change in Law;

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

conditions, and references to the **standard of a Reasonable and Prudent Operator** shall be construed accordingly;

**Reference Price** has the meaning given to that term in Clause 8 (*Reference Price*);

**Request for Information** means:

- (a) a request for information (as such term is defined in Section 8 of the FoIA); or
- (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 Sum** has the meaning given to that term in Clause 21.1 (*Credit cover requirement*);

**Respondent** has the meaning given to that term in Clause 26.3(C) (*Expert Determination*);

**Secretary of State** means the Secretary of State for Energy and Climate Change;

**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 Transmission Licence;

**Senior Representative** means a senior employee or officer selected by a Party to represent it in relation to Clause 26.2 (*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;

**Settlement Period** means a Settlement Period under and as defined in the Balancing and Settlement Code;

**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 Transmission Licence;

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

- (a) generation facilities of the same or similar type to the Facility;

- (b) generation facilities the generation output of which is subject to a FIT Contract for Difference;
- (c) generation facilities of the same or similar type to the Facility and the generation output of which is subject to a FIT Contract for Difference; 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 generation facilities of the same or similar type to the Facility and/or the generation output of which is subject to a FIT Contract for Difference;

**Start Date** means the date so notified to the CfD Counterparty by the Generator in accordance with Clause 5.2(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;
- (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 5.4 (*Waiver*)) continue to be fulfilled;

**Sterling** or **£** means the lawful currency of the United Kingdom;

**Strike Price** has the meaning given to that term in Clause 9.1 (*Strike Price*);

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

**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 FIT Contract for Difference*], 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) where the Generator is the Affected Party, Force Majeure affecting the Project;
- or

- (b) the failure of the transmission or distribution system owner, as the case may be (not being the Generator or its affiliates), 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, its contractors, sub-contractors or agents),

or such other period as the CfD Counterparty may agree in writing with the Generator;

**Tax Treaty** has the meaning given to that term in Clause 15.1(K)(iii)(a) (*Generator's Representations and Warranties*);

**Term** has the meaning given to that term in Clause 2.2 (*Duration*);

**Termination Event** has the meaning given to that term in Clause 20 (*Termination Events*);

**Termination Payment** has the meaning given to that term in Clause 4.3(A) (*Consequences of Default termination*);

**Third Party** has the meaning given to that term in Clause 27.10 (*No third party rights*);

**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;

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

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

**Transmission System Operator** means the holder of a 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;

**Trigger Date** means each date, being no earlier than the Start Date, on and from which and [*in respect of a look forward period to be determined*] the CfD Counterparty reasonably considers that the Reference Price is likely to be greater than the Strike Price and in consequence of which the Generator may be liable to make payment to the CfD Counterparty under the Agreement; 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); 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).

## 1.2 Interpretation

- (A) Any reference to the Agreement shall be deemed to include the Schedules.
- (B) Save for the purposes of Clause 18 (*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 18 (*Change in Law*) and the definition of **Change in Law**, a reference to the Agreement or other agreement or Industry 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 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 5 (*Conditions Precedent*), the Agreement shall commence on the date of the Agreement.

#### 2.2 Duration

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*) and 3.3 (*Default termination*), the Agreement shall continue until the [number to be determined] anniversary of the earlier of:

- (A) the Start Date; and
- (B) the last day of the Target Commissioning Window,  
  
(the **Term**).

#### 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 6.1 (*Milestone satisfaction*) or the Milestone is otherwise not met;
- (B) at any time prior to the Start Date, a Termination Event has occurred and is continuing; or
- (C) any of the Conditions Precedent is not fulfilled or waived by the CfD Counterparty on or before the Longstop Date,

the CfD 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 a Prolonged Force Majeure shall occur and be continuing, the CfD Counterparty shall have the right, but not the obligation, to terminate the Agreement with immediate effect upon giving the Generator notice of the same.

### 3.3 Default termination

- (A) If at any time on or after the Start Date a Termination Event has occurred and is continuing, the CfD 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 CfD 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.

### 3.4 No other termination right

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

## 4. CONSEQUENCES OF TERMINATION

### 4.1 Consequences of Pre-Start Date termination

If the CfD Counterparty shall terminate the Agreement pursuant to Clause 3.1 (*Pre-Start Date termination*):

- (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.

### 4.2 Consequences of termination for Prolonged Force Majeure

If the CfD Counterparty shall terminate the Agreement pursuant to 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.

### 4.3 Consequences of Default termination

If the CfD Counterparty shall terminate the Agreement pursuant to Clause 3.3 (*Default termination*):

- (A) the CfD Counterparty shall on, or as soon as reasonably practicable after, the Default Termination Date calculate the termination payment (**Termination Payment**) in accordance with [*a formula to be determined*];
- (B) the CfD Counterparty shall notify the Generator of the amount of the Termination Payment;
- (C) the Generator shall pay the Termination Payment to the CfD Counterparty (or as the CfD Counterparty may direct) within [*a period to be determined*] of notification of the amount of the Termination Payment, which amount shall bear interest in accordance with Clause 12.5(C) (*Interest*); and
- (D) the CfD Counterparty shall have the right, but not the obligation, to set off the Termination Payment against any or all other amounts owing (whether or not matured, contingent or invoiced) by the CfD Counterparty to the Generator. The right of set off shall be without prejudice and in addition to any other right to which the CfD Counterparty is otherwise entitled. If an amount is unascertained, the CfD 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.

### 4.4 Survival

Upon termination of the Agreement, the Parties shall have no further obligations under the Agreement but termination 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 4, Clauses 10.5 (*Limited recourse*), 11 (*Billing Statement*) and 12 (*Payment Mechanics*) and Clauses 21 (*Acceptable Collateral*) to 29 (*Language*) (inclusive); or
- (C) any other right or obligation [*to be identified*] which is expressed to survive termination.

### Part 3: Conditions Precedent

#### 5. CONDITIONS PRECEDENT

##### 5.1 Conditions Precedent

The rights and obligations of the Parties under Clauses 7 (*Metered Output*), 8 (*Reference Price*), 10 (*Payment of Differences*), 11 (*Billing Statement*), 12 (*Payment Mechanics*), 13.1 (*Metering*) and 21 (*Acceptable Collateral*) are conditional upon the fulfilment or waiver of the Conditions Precedent and shall commence on the Start Date.

##### 5.2 Fulfilment of Conditions Precedent

- (A) The Generator shall use all reasonable endeavours to fulfil or procure the fulfilment of the Conditions Precedent as soon as practicable and in any event before the Longstop Date.
- (B) The CfD Counterparty shall notify the Generator (**CP Fulfilment Notice**) as soon as reasonably practicable after the fulfilment (or waiver in accordance with Clause 5.4 (*Waiver*)) of all of the Conditions Precedent.
- (C) Upon receipt of the CP Fulfilment Notice, the Generator shall notify the CfD 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*).

##### 5.3 Reporting

The Generator shall keep the CfD Counterparty fully informed as to progress towards fulfilment of the Conditions Precedent and in particular (but without limitation) shall:

- (A) provide the CfD Counterparty with reports in form and content reasonably satisfactory to the CfD Counterparty [*at intervals to be determined*] as to the progress made in or towards fulfilment of the Conditions Precedent;
- (B) notify the CfD Counterparty by means of a Directors' Certificate each time the Generator considers a Condition Precedent has been fulfilled; and
- (C) notify the CfD Counterparty by means of a Directors' Certificate together with reasonable details in support promptly upon the Generator becoming aware:
  - (i) of any fact, matter or circumstance which will or is reasonably likely to prevent any of the Conditions Precedent being fulfilled within the Target Commissioning Window or by the Longstop Date; or
  - (ii) that any of the 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 CfD Counterparty.

**5.4 Waiver**

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

**Part 4: Milestone****6. MILESTONE****6.1 Milestone satisfaction**

No later than [*a date to be specified which will be before the Target Commissioning Window and which may differ depending on technology type*] (**Milestone Delivery Date**) the Generator shall deliver to the CfD Counterparty a Directors' Certificate certifying (having made due and careful enquiry) that the Minimum Spend Amount has been expended with respect to the Project (**Milestone**), together with supporting invoices, payment receipts and other evidence (including, if required by the CfD Counterparty, a report prepared at the Generator's cost from an independent third party approved by the CfD Counterparty) of such expenditure in form and content reasonably satisfactory to the CfD Counterparty (**Milestone Certificate**).

**6.2 Notification of difficulties in achieving the Milestone**

The Generator shall promptly notify the CfD 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 by the Milestone Delivery Date.

## Part 5: Metered Output, Reference Price and Strike Price

### 7. METERED OUTPUT

#### 7.1 Metered Output

**Metered Output** in respect of a Settlement Period shall be the loss-adjusted net metered electricity (expressed in MWh) delivered by the Generator from the Facility at the Delivery Point(s) and calculated using Metered Data in accordance with Clause 7.2 (*Calculation of Metered Output*).

#### 7.2 Calculation of Metered Output

The Metered Output in respect of a Settlement Period shall be calculated from data (**Metered Data**) obtained as follows:

- (A) in respect of a Facility that has settlement meters registered with the Central Meter Registration Service, the loss-adjusted metered data used for the purpose of settlement of imbalances under the Balancing and Settlement Code in respect of the relevant Settlement Period;
- (B) in respect of a Facility that has an Additional BM Unit registered by the supplier under the Balancing and Settlement Code, the loss-adjusted metered data of that Additional BM Unit as calculated under the Balancing and Settlement Code in respect of the relevant Settlement Period; or
- (C) in any other case, the loss-adjusted metered data calculated with respect to the Facility in a manner consistent with the requirements of the Balancing and Settlement Code in respect of the relevant Settlement Period.

### 8. REFERENCE PRICE

The **Reference Price** shall be calculated by or on behalf of the CfD Counterparty in accordance with Schedule 3 (*Reference Price Calculation*) and will be expressed in £/MWh.

### 9. STRIKE PRICE

#### 9.1 Strike Price

The **Strike Price** will be set out in the Agreement and will be expressed in £/MWh.

#### 9.2 Strike Price indexation

The Strike Price shall be indexed annually by reference to the change in the Consumer Price Index, as described in the Operational Framework. The CfD Counterparty shall calculate, and notify the Generator of, the resultant change to the Strike Price.

## Part 6: Payment Obligations

### 10. PAYMENT OF DIFFERENCES

#### 10.1 Two-way payments

The payment of Difference Amounts under the Agreement shall be two-way.

#### 10.2 Payments by the CfD Counterparty

Subject to Clause 10.5 (*Limited recourse*) if, in respect of a Settlement Period, the Reference Price is less than the Strike Price, the CfD Counterparty shall pay the Generator the Difference Amount for the relevant Settlement Period.

#### 10.3 Payments by the Generator

If, in respect of a Settlement Period, the Reference Price is greater than the Strike Price, the Generator shall pay the CfD Counterparty the Difference Amount for the relevant Settlement Period.

#### 10.4 Transmission System Operator or Licensed Distributor actions

Payments to the Generator in respect of or pursuant to:

- (A) instructions issued by the Transmission System Operator or a Licensed Distributor, as the case may be; or
- (B) directions given or actions taken under the Fuel Security Code,

shall not be calculated or made under the terms of the Agreement, and the CfD Counterparty shall have no liability whatsoever under the Agreement to pay or compensate the Generator in respect of any resulting lost output.

#### 10.5 Limited recourse

- (A) The CfD Counterparty shall make appropriate requests to suppliers on the basis provided for by the Supplier Obligation for the purpose of ensuring that it is in sufficient funds to make payments due under the Agreement.
- (B) Notwithstanding any other provision of the Agreement:
  - (i) the liability of the CfD Counterparty under or in respect of the Agreement shall not exceed the amount from time to time received and held by the CfD Counterparty under the Supplier Obligation and allocated to the Agreement in accordance with [*insert reference to the appropriate regulation dealing with the receipt and apportionment of funds under the Supplier Obligation*]; and
  - (ii) the CfD Counterparty shall not be in default under the Agreement in not making any payment that is due and owing if and to the extent that it

shall not have received the corresponding and allocated amount under the Supplier Obligation, but the CfD Counterparty shall continue to owe such amount and shall be required to make such payment promptly (and, in any event, within [*a period to be determined*]) after and to the extent of its receipt of such corresponding and allocated amount.

## Part 7: Billing and Payment

### 11. BILLING STATEMENT

#### 11.1 Billing Statement

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

- (A) the Difference Amount for each Settlement Period in the relevant Billing Period and noting the use of any Estimated Information in the calculation thereof;
- (B) any other amounts owing from one Party to the other in relation to any preceding Billing Period that:
  - (i) have not been included on a previous Billing Statement (including any reconciliation payments under Clause 11.3 (*Reconciliation*)); or
  - (ii) have been included on a previous Billing Statement but have not been paid and which continue to be owed by one Party to the other (including those amounts referred to in Clause 10.5(B)(ii) (*Limited recourse*));
- (C) any other amounts under the Agreement due from one Party to the other in respect of that Billing Period; and
- (D) the net amount payable (excluding, for the avoidance of doubt, any Termination Payment) (the **Net Payable Amount**).

#### 11.2 Estimated Information

To the extent that any information required to prepare a Billing Statement is not available at the time the Billing Statement is prepared, that Billing Statement shall be based on a reasonable estimate of that information (**Estimated Information**) which, as regards the calculation of Metered Output for any Settlement Period in circumstances where Metered Data has not been received by the CfD Settlement Agent or is otherwise unavailable, shall be estimated as follows:

- (A) where Metered Data has been received in respect of any prior Settlement Period but not for any following Settlement Period, the Metered Data received in respect of the latest such prior Settlement Period shall be used to calculate the Metered Output for the relevant Settlement Period as if it were the Metered Data in respect of that Settlement Period;
- (B) where Metered Data has been received in respect of any following Settlement Period but not for any prior Settlement Period, the Metered Data received in respect of such earliest following Settlement Period shall be used to calculate the Metered Output for the relevant Settlement Period as if it were the Metered Data for that Settlement Period;

- (C) where Metered Data has been received in respect of both prior and following Settlement Periods, the Metered Data shall be estimated by interpolation using the Metered Data received in respect of the latest prior Settlement Period and the earliest following Settlement Period for which Metered Data has been received and such estimated Metered Data shall be used to calculate the Metered Output for the relevant Settlement Period as if it were the Metered Data for that Settlement Period; and
- (D) where there is no Metered Data available, the Metered Data used to calculate the Metered Output for the relevant Settlement Period shall be set at the derated capacity of the Facility until such time as the Metered Data is received.

### 11.3 Reconciliation

If a Billing Statement contains Estimated Information or the information contained in any Billing Statement is subsequently determined to be incorrect or otherwise requires to be adjusted, the Billing Statement for subsequent Billing Period(s) shall be adjusted to reconcile any amount in a previous Billing Statement that was based on Estimated Information, incorrect information or information that requires to be adjusted with the amount based on the actual, corrected or adjusted information, as the case may be, for the relevant prior Billing Period.

## 12. PAYMENT MECHANICS

### 12.1 Due Date for payment

- (A) Subject to Clause 10.5 (*Limited recourse*) and Clause 12.1(B), on or before [*one or more period(s) or date(s) to be determined*] after receipt of a Billing Statement (**Due Date**), the CfD Counterparty or the Generator, as the case may be, shall pay to the other Party to whom it is due the Net Payable Amount in such Billing Period in accordance with the Billing Statement, such payment 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 such other Party (which account may, but need not be, in its name).
- (B) In addition to any other remedies that the CfD Counterparty may have, the CfD 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 Obligation by reason of the Generator's fault or negligence or that of its contractors, sub-contractors or agents.

### 12.2 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.

### 12.3 No deduction or withholding

- (A) Save as provided in Clause 4.3(D) (*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.

### 12.4 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 10.5 (*Limited recourse*) and Clause 12.1(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.

### 12.5 Interest

- (A) If the CfD Counterparty fails to pay any amount under the Agreement by the Due Date by reason of its not having received the corresponding amount under the Supplier Obligation, interest shall be payable on that amount (as well after

as before judgment) at an annual rate equal to [*to be completed*] per cent. from the Due Date to the date payment is made.

- (B) If, following the resolution of a Dispute, a Party is required to pay an amount under the Agreement, interest shall be payable on that amount (as well after as before judgment) at an annual rate equal to [*to be completed*] per cent. from the date when the amount would have been paid if the Dispute had not occurred to the date payment is made.
- (C) Save as provided in Clauses 12.5(A) and 12.5(B), if a Party fails to pay any amount under the Agreement by the Due Date, interest shall be payable on that amount (as well after as before judgment) at an annual rate equal to [*to be completed*] per cent. from the Due Date to the date payment is made.

**Part 8: Metering****13. METERING****13.1 Metering undertaking**

The Generator shall ensure that at all times with effect from the Start Date it shall comply in all material respects with the requirements of paragraph (7) of Schedule 2 (*Conditions Precedent*).

**13.2 Access to and testing of meters**

The Generator shall grant the CfD Counterparty and any suitable persons nominated by the CfD 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 CfD Counterparty to read and verify the Metered Output and inspect and conduct tests in respect of the metering equipment from time to time.

**Part 9: Information Provision****14. INFORMATION PROVISION****14.1 Provision of information to the CfD Counterparty**

In addition and without prejudice to its obligations under Clauses 5.3 (*Reporting*), 6.2 (*Notification of difficulties in achieving the Milestone*), 17.1 (*Generator's undertakings*) and 19.3 (*Provision of Force Majeure information*), the Generator, acting in accordance with the standard of a Reasonable and Prudent Operator, shall promptly provide the CfD Counterparty (and, if requested by the CfD Counterparty, the CfD Settlement Agent) with:

- (A) as from [*a period (to be determined) prior to*] the Start Date [*at intervals to be determined*], forecasts of the expected availability of the Facility and the Metered Output;
- (B) as from the Start Date, the data required to calculate the Metered Output in respect of each Settlement Period and other data required by the CfD Counterparty or the CfD Settlement Agent to perform its functions under or in connection with the Agreement (including that required for settlement);
- (C) details of any material events or circumstances that will or are reasonably likely to affect the Project; and
- (D) such further information regarding the financial condition, business and operations of the Generator as the CfD Counterparty may from time to time reasonably request for the purposes of the Agreement.

**14.2 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 14.1 (*Provision of information to the CfD 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 14.1 (*Provision of information to the CfD Counterparty*) is true, complete and accurate in all material respects and not misleading.

**Part 10: Representations, Warranties and Undertakings****15. GENERATOR'S REPRESENTATIONS AND WARRANTIES**

15.1 The Generator makes the representations and warranties set out in this Clause 15.1 to the CfD Counterparty on the date of the Agreement.

- (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.
- (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;
  - (ii) its constitutional documents;
  - (iii) any Required Authorisations; 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 at law or in equity or before any Competent Authority is current, pending or, so far as it is aware, threatened against it or any of its affiliates which, if adversely determined, would have or would reasonably be expected to have a material adverse effect.
- (H) **Principal status:** it has negotiated, entered into and executed the Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

- (I) **Risk assumption:** it has entered into the Agreement with a full understanding of the material terms and risks of the Agreement and it is capable of assuming those risks.
- (J) **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 CfD Counterparty under the Agreement.
- (K) **Tax residence:** it is the sole person beneficially entitled to payments received by it under the Agreement and:
  - (i) it is a company resident in the United Kingdom for United Kingdom tax purposes;
  - (ii) it is a party to the Agreement solely for the purposes of a trade or part of a trade carried on by it in the United Kingdom through a permanent establishment and any payment received by it under the Agreement would be required to be brought into account in calculating its chargeable profits (within the meaning given by Section 19 of the Corporation Tax Act 2009); or
  - (iii) it:
    - (a) is treated as resident in a jurisdiction having a double taxation agreement (a **Tax Treaty**) with the United Kingdom, which makes provision for full exemption from tax imposed by the United Kingdom on interest, for the purposes of that Tax Treaty;
    - (b) does not carry on a business in the United Kingdom through a permanent establishment with which its entry into and performance of the Agreement is effectively connected; and
    - (c) meets all other conditions in the Tax Treaty for full exemption from United Kingdom taxation on interest which relate to it (including its tax or other status, the manner in which or the period for which it holds any rights under the Agreement, the reasons or purposes for its acquisition of such rights and the nature of any arrangements by which it disposes of or otherwise turns to account such rights).

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

## 16. CFD COUNTERPARTY'S REPRESENTATIONS AND WARRANTIES

- 16.1 The CfD Counterparty makes the representations and warranties set out in this Clause 16.1 to the Generator on the date of the Agreement.

- (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.
- (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;
  - (ii) its constitutional documents; or
  - (iii) 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) **Principal status:** it has entered into and executed the Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

- 16.2 The representations in Clause 16.1 (*CfD Counterparty's Representations and Warranties*) are deemed to be made by the CfD Counterparty by reference to the facts and circumstances then existing on the Milestone Delivery Date and the Start Date.

## 17. UNDERTAKINGS

### 17.1 Generator's undertakings

The Generator undertakes to the CfD Counterparty as follows:

- (A) **Compliance with Laws**

It shall at all times comply with all Laws and Directives applicable to it in all material respects.

(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.

(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 and which are relevant to the performance by it of its obligations under the Agreement.

(D) **No insolvency action**

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

(E) **Project specific undertakings**

- (i) It shall ensure, or shall procure, that the Facility is designed, developed, constructed, completed, tested, commissioned, operated, maintained and decommissioned in all material respects in accordance with the standard of a Reasonable and Prudent Operator.
- (ii) It shall not enter into a single transaction or a series of transactions (whether related or not and whether voluntary or involuntary) to sell, lease, transfer or otherwise dispose of the Facility unless contemporaneously therewith the transferee takes a transfer of the Agreement in accordance with, and subject to the terms and conditions of, Clause 27.1 (*Assignment*).
- (iii) [*Additional technology specific undertakings may be required.*]

(F) **Notification**

- (i) It shall provide the CfD Counterparty promptly with such information regarding compliance by the Generator with the undertakings in this Clause 17.1 as the CfD Counterparty may reasonably request.
- (ii) It shall notify the CfD Counterparty promptly upon becoming aware of the occurrence of any Default (and the steps, if any, being taken to remedy it).

**17.2 CfD Counterparty's undertakings**

The CfD Counterparty undertakes to the Generator as follows:

(A) ***Compliance with Laws***

It shall at all times comply in all material respects with Laws and Directives applicable to it, in each case to the extent that the same expressly relate to the Agreement and/or the CfD Counterparty's obligations under the Agreement.

(B) ***Notification***

- (i) It shall provide the Generator promptly with such information regarding compliance by the CfD Counterparty with the undertaking in Clause 17.2(A) (*Compliance with Laws*) as the Generator may reasonably request.
- (ii) It shall notify the Generator promptly upon becoming aware of any breach by the CfD Counterparty of any material obligation under the Agreement (and the steps, if any, being taken to remedy it).

## Part 11: Contingencies

### 18. CHANGE IN LAW

#### 18.1 Qualifying Change in Law and Change in Industry Documents

- (A) If a Party, acting (in the case of the Generator) in accordance with the standard of a Reasonable and Prudent Operator, considers that a Qualifying Change in Law or a Change in Industry Documents 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 or Change in Industry Documents, as the case may be;
  - (ii) the date it considers the Qualifying Change in Law or Change in Industry Documents to have occurred or is expected to occur, as the case may be; and
  - (iii) in the case of notice given by the Generator with respect to a Qualifying Change in Law:
    - (a) an explanation in reasonable detail as to why it considers the Change in Law to be a Qualifying Change in Law;
    - (b) a statement, together with supporting evidence in reasonable detail, of the costs which the Generator reasonably expects to incur and/or the costs which the Generator reasonably expects to save (taking account of the Generator's obligation to minimise costs and maximise cost savings under Clause 18.3 (*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 18.4 (*Costs*));
    - (c) a Directors' Certificate certifying, having made due and careful enquiry, that:
      - (1) the information provided under Clause 18.1(A)(iii)(b) is true, complete and accurate in all material respects and not misleading; and
      - (2) in their opinion, the Identified Costs (having aggregated and netted all costs and savings arising from the same Qualifying Change in Law and taken account of the Generator's obligation to minimise costs and maximise cost savings under Clause 18.3 (*Mitigation*)) are material; and

- (d) an explanation in reasonable detail of the steps that the Generator has taken and/or proposes to take to mitigate the effect of the Qualifying Change in Law.
- (B) If the CfD Counterparty gives notice to the Generator under Clause 18.1(A) with respect to a Change in Law which the CfD Counterparty considers may be a Qualifying Change in Law, the Generator shall as soon as practicable, and in any event within [*a period to be determined*] after receipt of such notice, provide the CfD Counterparty with:
- (i) the information set out in Clause 18.1(A)(iii)(b) (on the assumption that the Change in Law is a Qualifying Change in Law);
  - (ii) a Directors' Certificate certifying, having made due and careful enquiry, that:
    - (a) the information referred to in Clause 18.1(B)(i) is true, complete and accurate in all material respects and not misleading;
    - (b) in their opinion whether:
      - (1) the Change in Law is a Qualifying Change in Law; and
      - (2) the Identified Costs (having aggregated and netted all costs and savings arising from the same Qualifying Change in Law, and taken account of the Generator's obligation to minimise costs and maximise cost savings under Clause 18.3 (*Mitigation*)) are material; and
  - (iii) an explanation in reasonable detail of the steps that the Generator has taken and/or proposes to take to mitigate the effect of the Qualifying Change in Law.
- (C) The CfD Counterparty shall be under no obligation to consider any notice from the Generator under Clause 18.1(A) unless and until the Generator shall have provided the CfD Counterparty with all the information, documents and evidence required of it under that Clause.
- (D) As soon as practicable, and in any event within [*a period to be determined*], after the earlier of: (x) notice by the Generator under Clause 18.1(A) together with all the information, documents and evidence required of it under that Clause; and (y) notice by the CfD Counterparty under Clause 18.1(A) and the provision by the Generator of the information referred to in Clause 18.1(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 or Change in Industry Documents, as the case may be, 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) whether the Identified Costs are material (having aggregated and netted all costs and savings arising from the same Qualifying Change in Law, and taken account of the Generator's obligation to minimise costs and maximise cost savings under Clause 18.3 (*Mitigation*));
  - (b) whether any and, if so, what change to the Strike Price for the remainder of the Term should be made in accordance with Clause 18.2 (*Strike Price adjustment*);
  - (c) 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; and
  - (d) whether any amendments to the Agreement of the type referred to in Clause 18.1(D)(iii) are required to deal with the Qualifying Change in Law which is a Change in Industry Documents; and
- (iii) in the case of a Change in Industry Documents which is not a Qualifying Change in Law, the amendments (if any) to the Agreement to take account of the Change in Industry Documents so that the Agreement may continue in force and each Party is able to comply with its obligations under the Agreement. The Parties agree that the purpose of any such amendments shall be solely to enable the mechanics of the Agreement to be amended such that the Agreement, as so amended, integrates effectively with the relevant Change in Industry Documents.

## 18.2 Strike Price adjustment

- (A) Subject to Clause 18.2(B), if the Identified Costs are material, the Strike Price for the remainder of the Term shall be adjusted in accordance with [*a formula to be determined*].
- (B) No change shall be made to the Strike Price by reason of a Qualifying Change in Law unless the Identified Costs (having aggregated and netted all costs and savings arising from the same Qualifying Change in Law, and taken account of the Generator's obligation to minimise costs and maximise cost savings under Clause 18.3 (*Mitigation*)) are material.
- (C) (i) This Clause 18.2(C) applies if the CfD Counterparty reasonably considers it unlawful, impossible or impracticable for the Generator or the CfD Counterparty, as the case may be, to make payment of the Identified Costs over the remainder of the Term by way of an adjustment to the Strike Price in accordance with Clause 18.2(A) (including where there may be limitations on either Party making or receiving payment in full over the remainder of the Term by reason of constraint on the Generator's ability to generate from the Facility, the limited remaining

Term or the difficulty or undesirability of the CfD Counterparty recovering such sums over the relevant period under the Supplier Obligation).

- (ii) The CfD Counterparty shall propose to the Generator an alternative formulation or method by which the Generator or the CfD Counterparty, as the case may be, shall be compensated for the Identified Costs to the same extent that it would have been compensated under Clause 18.2(A) and shall consult the Generator as to whether the alternative formulation or method is acceptable to the Generator. The CfD Counterparty shall consider any representation made by the Generator as to the acceptability or otherwise of such alternative formulation or method before setting out by notice to the Generator (such notice to be final and binding on both Parties) whether the alternative formulation or method is to be adopted and, if so, the applicable terms. If the CfD Counterparty decides not to adopt the alternative formulation or method (with or without amendment), it may propose a further alternative formulation or method and the procedure in this paragraph (ii) shall be repeated as many times as necessary.

### **18.3 Mitigation**

- (A) The Generator shall promptly take all reasonable steps, acting as a Reasonable and Prudent Operator, to minimise any costs and maximise any cost savings arising from a Qualifying Change in Law (including, to the extent permissible, by bringing the Facility back online at the Contract Quantity 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 the Qualifying Change in Law.
- (B) The Generator shall promptly notify the CfD 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 CfD Counterparty may reasonably request.

### **18.4 Costs**

The Generator shall within [*a period to be determined*] of demand indemnify the CfD Counterparty against any and all costs and expenses (including professional fees) properly incurred by the CfD Counterparty in giving or responding to any notice of a Qualifying Change in Law or Change in Industry Documents, as the case may be, under Clause 18.1 (*Qualifying Change in Law and Change in Industry Documents*), in evaluating whether a Qualifying Change in Law or Change in Industry Documents has occurred, and in its discussions and dealings with the Generator with respect to the Qualifying Change in Law or Change in Industry Documents, as the case may be.

### **18.5 Compliance with Law**

- (A) A Change in Law shall not be a basis for terminating the Agreement. Any increase in the cost to either Party of performing the Agreement which results

from a Change in Law shall not entitle such Party to suspend performance of its obligations under the Agreement.

- (B) Neither Party shall be deemed in breach of any of its obligations under the Agreement to the extent that such breach is caused by the occurrence of a Change in Law.

## 18.6 Disputes

- (A) If a Dispute shall arise between the Parties as to any of the matters referred to in this Clause 18 (and a Dispute shall be deemed to arise within [*a period to be determined*] of a request by either Party under this Clause 18.6(A) to resolve the Dispute), either Party shall have the right to refer the Dispute in accordance with the Dispute Resolution Procedure.
- (B) In the case of a Qualifying Change in Law, if the Parties reach agreement on the matters referred to in Clause 18.1(D) (*Qualifying Change in Law and Change in Industry Documents*) or 18.2 (*Strike Price adjustment*) or a determination is made under the Dispute Resolution Procedure with respect to such matters after the date when the Qualifying Change in Law occurs, the Parties or the [*Expert/Arbitral Tribunal*], as the case may be, shall also decide whether any reconciliation payments need to be made in order that the Parties are put in the position that they would have been if the agreement had been reached or the determination had been made as at the date when the Qualifying Change in Law occurred.

## 18.7 General Change in Law

There shall be no amendment to the Agreement in respect or on account of any General Change in Law not being a Change in Industry Documents.

## 19. FORCE MAJEURE

### 19.1 Relief due to Force Majeure

Subject to the provisions of this Clause 19, a Party affected by Force Majeure (**Affected Party**) shall 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 to the extent arising from or attributable to Force Majeure.

## 19.2 Conditions to Force Majeure relief

The Affected Party's relief from liability under Clause 19.1 (*Relief due to Force Majeure*) is subject to and conditional upon:

- (A) the Affected Party promptly notifying 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 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.

## 19.3 Provision of Force Majeure information

- (A) In addition to its notification obligation under Clause 19.2 (*Conditions to Force Majeure relief*), the Affected Party shall promptly notify the Non-affected Party in writing (to the extent that such information is reasonably available) of:
  - (i) the steps being taken to remove or mitigate the effect of the Force Majeure 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 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 Affected Party shall provide such information to the Non-affected Party as soon as it becomes reasonably available.

- (B) The Affected Party shall notify the Non-affected Party [*at intervals to be determined*] of any update to the information provided under Clause 19.3(A) and shall promptly notify the Non-affected Party upon it becoming aware of any material developments or additional material information relating to the Force Majeure and its effects.

## Part 12: Termination Events

### 20. 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;
  - (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 CfD Counterparty gives the Generator notice of that failure;
- (C) **breach of warranty:** any representation or warranty made by the Generator in the Agreement proves to have been:
- (i) false in any material respect; or
  - (ii) misleading in any material respect,
- at the time it was made or deemed to be repeated unless the circumstances giving rise to the misrepresentation:

- (a) are capable of remedy; and
  - (b) are remedied within [*a period to be determined*] after the earlier of the CfD Counterparty giving notice of the misrepresentation and the Generator becoming aware of the misrepresentation;
- (D) **irremediable material breach:** the Generator fails to perform a material obligation under the Agreement, which failure is incapable of remedy;
- (E) **remediable material breach which is not remedied:** the Generator fails to perform a material obligation under the Agreement, which failure is capable of remedy, and following the CfD Counterparty giving the Generator notice of the failure:
- (i) that failure is not remedied within a reasonable period (having regard to the nature of the failure and the steps required to remedy it); and
  - (ii) the Generator does not within [*a period to be determined*] of that notice (unless the failure has been remedied in that time) provide the CfD Counterparty with a remedial plan setting out in reasonable detail the steps, and timing for the carrying out of those steps, to ensure that that failure is remedied within the period referred to in Clause 20(E)(i);
- (F) **Key Project Documents:**
- (i) any Key Project Document is terminated as a result of an event of default (howsoever described) by the Generator; or
  - (ii) any Key Project Document or material provision thereof is or becomes invalid, illegal, ineffective or unenforceable (other than as a result of a Change in Law) and this has, or could reasonably be expected to have, a material adverse effect;
- (G) **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 CfD 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;
- (H) **loss of licence:** where the Generator is required to hold a Generation Licence, it does not hold or ceases to hold a valid Generation Licence and the Generation Licence is not replaced or reinstated within [*a period to be determined*]; or
- (I) **loss of the Facility:** other than as a result of Force Majeure, all or a material part of the Facility is destroyed or suffers an actual or constructive loss and, after taking into account any insurance proceeds, claims for damages and other funds which are to be applied in repair, reinstatement or replacement, such destruction or loss has, or could reasonably be expected to have, a material adverse effect.

**Part 13: Credit Support****21. ACCEPTABLE COLLATERAL****21.1 Credit cover requirement**

No later than [*a period to be determined*] prior to each Trigger Date notified by the CfD Counterparty, the Generator shall provide and procure the maintenance of collateral in accordance with this Clause 21 in an amount [*to be determined*] (**Required Sum**) and for the [*look forward period to be determined*] during which the CfD Counterparty reasonably considers that the Reference Price is likely to be greater than the Strike Price and in consequence of which the Generator may be liable to make payment to the CfD Counterparty under the Agreement (**Cover Period**).

**21.2 Provision of collateral**

- (A) The Generator shall deliver, and procure that the CfD Counterparty is and continues to be the beneficiary of, a letter of credit in form and content reasonably satisfactory to the CfD Counterparty valid for the Cover Period (or, as the case may be, a lesser period [*to be determined*]) issued by a [*qualifying issuer with a credit rating to be determined*] in respect of the Required Sum or the Generator shall ensure that a cash amount equivalent to the Required Sum is secured in favour of the CfD Counterparty in a manner and on terms reasonably satisfactory to the CfD Counterparty.
- (B) Where a Generator has provided collateral in the form of a letter of credit, no later than [*a period to be determined*] before the letter of credit is due to expire the Generator shall ensure that the letter of credit is extended or shall procure a new letter of credit is issued by a [*qualifying issuer with a credit rating to be determined*] valid for the remainder of the Cover Period (or, as the case may be, a lesser period [*to be determined*]) in respect of the Required Sum.
- (C) If the Generator provides a letter of credit in order to satisfy its obligations under this Clause 21, the Generator shall be entitled from time to time to substitute any such letter of credit with another letter of credit which conforms with the provisions of the Agreement issued by a [*qualifying issuer with a credit rating to be determined*].
- (D) If, at any time, the issuer of a letter of credit procured by the Generator ceases to possess the required credit rating or otherwise ceases to be a [*qualifying issuer*] then the Generator shall procure the replacement of such letter of credit within [*a period to be determined*] of the Generator becoming aware of the relevant event with another letter of credit which conforms with the provisions of the Agreement issued by a [*qualifying issuer with a credit rating to be determined*].

### 21.3 Making a demand

The CfD Counterparty shall be entitled to make a demand under a letter of credit procured by the Generator or draw down on any cash amount secured in its favour in the following circumstances:

- (A) 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 CfD Counterparty gives the Generator notice of the failure, in an amount of the payment; or
- (B) the Generator fails to procure the extension or replacement of a letter of credit in accordance with Clause 21.2 (*Provision of collateral*), in an amount of the letter of credit.

**Part 14: Confidentiality, Announcements, Freedom of Information****22. CONFIDENTIALITY****22.1 Confidential Information**

The Parties agree that, subject to Clause 23 (*Announcements*), the provisions of the Agreement shall not be treated as Confidential Information and may be disclosed without restriction<sup>1</sup>.

**22.2 Generator Confidential Information**

- (A) The CfD 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 22.
- (B) The CfD Counterparty shall not make use of any Generator Confidential Information otherwise than for fulfilling the CfD Counterparty Permitted Purposes, except with the express prior written consent of the Generator.
- (C) Clause 22.2(A) shall not apply to any disclosure:
  - (i) by the CfD Counterparty of Generator Confidential Information (on a confidential basis):
    - (a) to its directors, officers, employees, agents and advisers;
    - (b) to any person engaged in providing services to the CfD Counterparty for any purpose related or ancillary to the Agreement or FiT Contracts for Difference;
    - (c) to any Government Entity or its directors, officials, officers, employees, agents and advisers (or to any person engaged in providing services to such Government Entity) for any purpose related to or ancillary to the Agreement or FiT Contracts for Difference, including where the CfD Counterparty considers such disclosure is required to enable or assist:
      - (1) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or

---

<sup>1</sup> Consideration will be given as to whether any provisions of the Agreement that are commercially sensitive will be excluded from the application of this Clause.

- (2) the relevant Government Entity to fulfil any of its functions arising out of or in connection with the Agreement or FiT Contracts for Difference;
- (d) to the Transmission System Operator, any Licensed Distributor, the CfD Settlement Agent or the Delivery Body but only to the extent that the CfD Counterparty considers such disclosure is necessary to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or
- (e) where the CfD Counterparty considers that such disclosure is required to enable or assist it to fulfil any CfD Counterparty Permitted Purpose,

provided that the CfD Counterparty shall use all reasonable endeavours to inform the recipient of the Generator Confidential Information of the CfD Counterparty's obligations under Clause 22.2. In the case of disclosure of Generator Confidential Information pursuant to Clause 22.2(C)(i)(a), the CfD Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to the same obligation of confidentiality as contained in Clause 22.2;

- (ii) by the CfD Counterparty of Generator Confidential Information to enable a Dispute to be settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (save where such Generator Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (iii) by the CfD Counterparty of Generator Confidential Information:
  - (a) to any Parliamentary committee, but only if and to the extent that the CfD Counterparty considers such disclosure is required to enable or assist it to fulfil any CfD 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 CfD 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 CfD Counterparty considers such disclosure is necessary or advisable in connection with the application of the State aid 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 CfD Counterparty considers such disclosure is necessary or advisable in connection with the application of the State aid rules of the EU Treaty or in connection with any European Commission decision relating to those rules;
- (iv) which is required:
  - (a) by the FoIA;
  - (b) by the EIR; or
  - (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 CfD Counterparty; or
- (v) by the CfD 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 CfD Counterparty pursuant to Clause 22.2(C)(iii) or 22.2(C)(iv)(c), the CfD 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 22.2(C)(iii)(a) or 22.2(C)(iii)(b), it is not inconsistent with Parliamentary convention.
- (E) The disclosure of Generator Confidential Information by the CfD Counterparty in reliance on the exception set out in Clause 22.2(C)(iv)(a) or 22.2(C)(iv)(b) shall be subject to the provisions of Clause 24 (*Freedom of information*).

### **22.3 CfD Counterparty Confidential Information**

- (A) The Generator shall keep all CfD Counterparty Confidential Information confidential and shall not disclose CfD Counterparty Confidential Information without the prior written consent of the CfD Counterparty other than as permitted by this Clause 22.
- (B) The Generator shall not make use of any CfD Counterparty Confidential Information otherwise than for the purpose of fulfilling the Generator Permitted Purpose, except with the express prior written consent of the CfD Counterparty.

- (C) Clause 22.3(A) shall not apply to any disclosure:
- (i) by the Generator of CfD Counterparty Confidential Information (on a confidential basis):
    - (a) to its directors, officers, employees, agents and advisers;
    - (b) to any person engaged in providing services to the Generator for any purpose related or ancillary to the Agreement;
    - (c) to the providers or prospective providers of debt financing or refinancing and their professional advisers for the purposes of assessing the financing or refinancing;
    - (d) to the Transmission System Operator, any Licensed Distributor, the CfD Settlement Agent or the Delivery Body but only to the extent that such disclosure is necessary for the purposes of performance of the Generator's obligations, and exercise of the Generator's rights, powers and discretions, under the Agreement; or
    - (e) for the purposes of:
      - (1) the examination and certification of the Generator's accounts; or
      - (2) complying with a proper request from its insurance adviser or insurer on placing or renewing any insurance policies,

provided that the Generator shall inform the recipient of the CfD Counterparty Confidential Information of the Generator's obligations under Clause 22.3. In the case of disclosure of CfD Counterparty Confidential Information pursuant to Clause 22.3(C)(i)(a), the Generator shall ensure that the recipient of the CfD Counterparty Confidential Information shall be subject to the same obligation of confidentiality as contained in Clause 22.3;
  - (ii) by the Generator of CfD Counterparty Confidential Information to enable a Dispute to be settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (save where such CfD Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
  - (iii) 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
  - (iv) by the Generator of CfD Counterparty Confidential Information:

- (a) to which the CfD 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 CfD Counterparty Confidential Information by the Generator pursuant to Clause 22.3(C)(iii), the Generator shall use reasonable endeavours to notify the CfD Counterparty of the CfD Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

## **23. ANNOUNCEMENTS**

### **23.1 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 CfD Counterparty (such consent not to be unreasonably withheld or delayed).

### **23.2 Generator permitted announcements**

Notwithstanding Clause 23.1 (*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 CfD Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed).

### **23.3 CfD Counterparty permitted announcements**

The CfD 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 22 (*Confidentiality*).

## **24. FREEDOM OF INFORMATION**

### **24.1 The Generator acknowledges that:**

- (A) the CfD Counterparty is subject to the requirements of the FoIA and the EIR and the Generator shall assist and cooperate with the CfD Counterparty, at the Generator's expense, to enable it to comply with its disclosure obligations under the FoIA and the EIR; and

(B) the CfD 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 CfD Counterparty.

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

- (A) provide the CfD Counterparty with a copy of all such Information in its possession or power in the form that the CfD Counterparty requires as soon as practicable and in any event within five working days of the CfD Counterparty's request or such other period as the CfD Counterparty may specify; and
- (B) provide all necessary assistance as reasonably requested by the CfD Counterparty in connection with any such Information to enable the CfD 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.

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

24.4 If the Generator receives a Request for Information in relation to the CfD Counterparty or in connection with the Agreement, the Generator shall transfer any such Request for Information to the CfD Counterparty as soon as practicable after receipt and in any event within two working days, and the provisions of this Clause 24 shall apply as if the Request for Information had been received by the CfD Counterparty.

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

24.6 The Generator acknowledges that the CfD 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 CfD 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.

24.7 Nothing in this Clause 24 shall restrict or prevent the publication by the CfD Counterparty of any Information in accordance with:

- (A) any publication scheme (as defined in the FoIA) adopted and maintained by the CfD Counterparty in accordance with the FoIA; or
- (B) any model publication scheme (as defined in the FoIA) applicable to the CfD 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 CfD Counterparty shall take account of whether, in its sole opinion, such Generator Confidential Information would be exempt from disclosure under the FoIA.

## **Part 15: Intellectual Property Rights**

### **25. INTELLECTUAL PROPERTY RIGHTS**

#### **25.1 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.

#### **25.2 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 CfD 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 CfD Counterparty to sub-license; and
- (C) permit the CfD Counterparty to use such Intellectual Property Rights after expiry or termination of the Agreement.

#### **25.3 Indemnity for infringement of Intellectual Property Rights**

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

## Part 16: Dispute Resolution

### 26. DISPUTE RESOLUTION PROCEDURE

#### 26.1 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 CfD 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 26.
- (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 12.4 (*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 26.2 (*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 26.2 (*Resolution by the Senior Representatives*), the Dispute shall be resolved by referring it to the Arbitral Tribunal in accordance with Clause 26.4 (*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 26.3 (*Expert Determination*).

- (E) Notwithstanding any other provision of the Dispute Resolution Procedure, any Party may at any time:
- (i) apply to the English Courts for:
    - (a) an order restraining a Party from doing any act or compelling a Party to do any act; or
    - (b) judgment to enforce a Senior Representative Settlement, the decision of an Expert, or an arbitral award; and/or
  - (ii) serve a notice of arbitration so as to prevent the expiry of any applicable period of limitation or prescription, or the application of the equitable doctrine of laches.

## **26.2 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 26.2(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 26.3 (*Expert Determination*) or to arbitration in accordance with Clause 26.4 (*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 26.2 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.

### 26.3 Expert Determination

- (A) Either Party may refer a Dispute to be determined by an Expert by sending a **Notice of Intention to Seek Determination** to the other Party provided that the Dispute relates to *[a limited number of specific circumstances to be listed]* and has not been resolved by the Parties' Senior Representatives in accordance with Clause 26.2 (*Resolution by the Senior Representatives*).
- (B) The Notice of Intention to Seek Determination shall include:
- (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.
- (C) The Party receiving the Notice of Intention to Seek Determination (**Respondent**) shall, within *[a period to be determined]* of service of the Notice of Intention to Seek Determination, 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 Notice of Intention to Seek Determination (or such other period as the Parties may agree), any Party may request that the Expert be appointed by the Expert Nominating Body, 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.
- (D) Within *[a period to be determined]* of receipt of the proposed appointment or nomination, the Expert shall confirm his appointment in writing to the Parties stating:
- (i) his willingness and availability to act; and
  - (ii) that he has no conflict of interest which prevents him from determining the Dispute.
- (E) 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.
- (F) The date on which the Expert and the other Party receive the Claimant's submission shall be the **Date of Referral**.
- (G) 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**).
- (H) The Expert shall reach a decision within [*a period to be determined*] of the Date of Response.
- (I) In determining any Dispute referred to him, 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 his decision in accordance with the applicable laws in relation to the Dispute referred to him;
  - (v) if requested by one of the Parties, shall provide reasons for his decision, which shall be communicated to the Parties; and
  - (vi) shall not be entitled to amend the Agreement as part of his determination.
- (J) The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or his decision or the procedure by which he reaches his decision.
- (K) In determining any Dispute referred to him for a decision the Expert at his sole and absolute discretion shall take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral which may include:
- (i) considering any written representations, statements and experts' reports submitted to him by the Parties;

- (ii) instructing an expert and/or taking Counsel's opinion as to any matter raised in the expert determination, but he 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 he may not in so doing purport to decide any matter excluded from this Dispute Resolution Procedure.
- (L) The Expert shall not be liable for anything done or omitted in the discharge or purported discharge of his 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.
  - (M) 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 Notice of Intention to Seek Determination had just been served.
  - (N) The replacement Expert shall be authorised to determine any Dispute which was submitted to his predecessor but which his predecessor had not decided at the time when his predecessor became unable or unwilling to act.
  - (O) The Expert's decision shall be final and binding upon the Parties.
  - (P) 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.
  - (Q) The Expert may, in his 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 he 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.

#### **26.4 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 26.2 (*Resolution by the Senior Representatives*) or by an Expert in accordance with Clause 26.3 (*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 26.4. The Parties agree that all final arbitral awards shall be binding on the Parties save that no arbitral award shall impose an amendment to the Agreement.

- (C) The Arbitral Tribunal shall consist of three Arbitrators. Each Party shall nominate one Arbitrator to be appointed by the LCIA. The third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chairman.
- (D) The seat, or legal place, of any arbitration shall be London.
- (E) The language to be used in any arbitral proceedings shall be English.

## **26.5 Consolidation of Connected Disputes**

Where a Dispute arises under the Agreement and a dispute arises under any other FIT Contract for Difference (**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.

**Part 17: Miscellaneous****27. GENERAL PROVISIONS****27.1 Assignment****(A) Restriction on transfers**

Subject to this Clause 27.1, 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 CfD Counterparty**

Notwithstanding Clause 27.1(A) (*Restriction on transfers*), no consent of the Generator shall be required for the CfD 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 CfD Counterparty in accordance with the Energy Act 2013,

and the CfD Counterparty shall ensure (to the extent that it is so able) that in any such case all accrued payment liabilities, if any, of the CfD 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 CfD Counterparty considers appropriate.

**(C) Transfers by the CfD Counterparty**

If the CfD Counterparty effects a transfer pursuant to Clause 27.1(B) (*Permitted Transfer by the CfD 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 CfD 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 27.1(A) (*Restriction on transfers*), no consent of the CfD 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 27.1(D) by giving the CfD 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 CfD 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.

**27.2 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 27.1(D) (*Permitted Assignment by the Generator*), the CfD Counterparty shall at the cost of the Generator enter into a direct agreement with such person in such form as the CfD Counterparty may approve.

**27.3 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.

**27.4 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.

**27.5 No variation**

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

**27.6 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 27.6 shall limit or exclude liability for fraud.

- (D) For the purpose of this Clause 27.6, **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.

## 27.7 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.

## 27.8 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. Unless otherwise stated, emails are not 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 CfD 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 27.8. 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 27.8 shall not apply in relation to any document relating to service of process.

**27.9 Consents**

Any consents, approvals, waivers or agreements to be given by the CfD Counterparty pursuant to the Agreement shall be given in writing and may be given or withheld by the CfD Counterparty at its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the CfD Counterparty may in its sole discretion determine. The exercise of discretion by the CfD 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.

**27.10 No third party rights**

- (A) Subject to Clause 27.10(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 27.10, a **Third Party**) and, subject to Clause 27.10(C), is intended to be enforceable by the Third Parties: [*to be completed*].
- (C) Notwithstanding the provisions of this Clause 27.10, the Agreement may be varied in any way and at any time by the Parties only without the consent of any Third Party.

**27.11 Index and market report changes**

*[To be developed. Please refer to the Operational Framework.]*

**27.12 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.

**27.13 Generator cooperation**

- (A) If the CfD 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 FiT Contract for Difference, the Generator shall at its own cost cooperate with the CfD 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 FiT Contracts for Difference and which will ensure the terms of those FiT Contracts for Difference are kept aligned so far as is practicable.
- (B) If the CfD 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 granted or paid in relation to the Agreement and that decision has not been annulled, the CfD Counterparty shall promptly notify the Generator of this and the Generator shall repay or procure repayment of the relevant sums so notified to the CfD Counterparty or as the CfD Counterparty directs without delay.
- (C) The Generator shall, on reasonable notice, provide the CfD 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 in respect of the Agreement and/or FiT Contracts for Difference.

**27.14 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.

**27.15 CfD Counterparty contracting as principal**

- (A) The Generator acknowledges and agrees that the CfD 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 directors, officers, employees, officials, agents, contractors, sub-contractors or shareholders of the CfD 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 CfD 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 CfD 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 CfD Counterparty.
- (B) The Generator acknowledges and agrees that none of the CfD 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.

#### **27.16 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.

#### **27.17 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.

### **28. GOVERNING LAW**

#### **28.1 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.

#### **28.2 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.

**28.3 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.

**29. LANGUAGE****29.1 English language**

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

**29.2 Translations**

In the case of any information which is translated into English, prior to its being delivered to the CfD 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.

**29.3 Translation costs**

Any agreement by the CfD Counterparty under Clause 29.1 (*English language*) may be given conditional upon an undertaking by the Generator to bear any costs or expenses incurred by the CfD Counterparty in translating the relevant information into English.

**Schedule 1  
The Facility**

*[Description of the Facility to be inserted.]*

**Schedule 2**  
**Conditions Precedent**

Delivery to the CfD Counterparty of the following in form and content reasonably satisfactory to the CfD Counterparty:

- (1) evidence of compliance by the Generator and the Project with the published eligibility criteria for the award of the Agreement;
- (2) a copy of the detailed planning permission for the Facility and confirmation that such planning permission has not lapsed, expired or been terminated, revoked or withdrawn and any conditions contained in such planning permission required to be satisfied by the Start Date have been so satisfied;
- (3) copies of all Required Authorisations which the Generator is required to obtain or make by the Start Date and confirmation that those Required Authorisations have not lapsed or expired or been withdrawn, retracted, terminated or otherwise ceased to be effective;
- (4) if the Facility connects directly to the Transmission System, the Interim Operational Notification issued by the Transmission System Operator under the Grid Code;
- (5) if the Facility does not connect directly to the Transmission System, written confirmation from the relevant Licensed Distributor or, if no such confirmation is applicable, a Directors' Certificate certifying that the Distribution Code compliance process for connection to and export to the Distribution System has been satisfied together with, as applicable depending on the size and location of the connection, the Interim Operational Notification issued by the Transmission System Operator under the Grid Code;
- (6) written confirmation from the CfD Settlement Agent that:
  - (a) the CfD Settlement Agent has received all information required by it relating to the terms of the Agreement; and
  - (b) the CfD Settlement Agent is in receipt of all standing data required by it to enable it to process the settlement of payments under the Agreement and that systems and processes are in place for it to continue to receive and process the necessary data;
- (7) evidence that all meters and metering equipment relating to the Facility:
  - (a) have been installed at the metering point(s) identified in Schedule 4 (*Metering Points*);

- (b) have been and are installed, configured, registered and maintained in accordance with the requirements of the Balancing and Settlement Code;<sup>2</sup>
  - (c) are configured exclusively in relation to the Facility and no other electrical output is metered through such meters;
  - (d) are operational and capable of measuring accurately the electrical output from the Facility at the Delivery Point; and
  - (e) are reasonably acceptable to the CfD Settlement Agent for the purposes of the Agreement;
- (8) evidence that the installed capacity at the Facility (expressed in MW) is not less than [*a prescribed percentage to be determined*] of the Contract Quantity, together with written confirmation from [*person to be identified*] to the same effect; and
- (9) evidence that any collateral required under Clause 21 (*Acceptable Collateral*) has been provided by the Generator.

---

<sup>2</sup> It is anticipated that the metering provisions in the Balancing and Settlement Code (or other code, if applicable) may need adjustment to accommodate the FiT Contracts for Difference metering requirements.

**Schedule 3**  
**Reference Price Calculation**

*[Note: Please refer to the Operational Framework for further information.]*

**Schedule 4**  
**Metering Points**

*[Description of the Metering Points to be inserted.]*