

Condition XX: Offtaker of Last Resort (OLR)

Application

- 1 This condition applies from [to be confirmed].

OLR Scheme - Participation by Licensed Electricity Suppliers

- 2 Where the Authority issues an OLR Notice to the licensee and:
 - (a) the licensee is a Mandatory OLR Licensee, it must submit an OLR Bid to the Authority in respect of each Backstop Power Purchase Agreement (BPPA) enclosed with the OLR Notice;
 - (b) the licensee is a Voluntary OLR Licensee, it may submit an OLR Bid to the Authority in respect of any BPPA enclosed with the OLR Notice.
- 3 Where the licensee is a Mandatory OLR Licensee, it is not required to comply with paragraph 2(a) where the Authority has, after issuing the OLR Notice, issued a notice to the licensee under paragraph [11] of the PPA Scheme Regulations.
- 4 Where the licensee submits an OLR Bid it may not subsequently withdraw, amend or revoke that OLR Bid.

OLR Notice

- 5 An OLR Notice is a notice given by the Authority to the licensee (and other licensed electricity suppliers) where:
 - (a) an electricity generator has submitted to the Authority and has not prior to submitting a Statement of Confirmation withdrawn, an expression of interest to enter into a BPPA in respect of a generating station (or a proportion of the capacity of a generating station);
 - (b) the electricity generator has, within 10 Working Days of submitting the expression of interest, submitted to the Authority a Statement of Confirmation in respect of that expression of interest; and
 - (c) the Authority has:
 - (i) in accordance with paragraph 10 given notice to the licensee of the electricity generator's expression of interest; and

- (ii) under and in accordance with the PPA Scheme Regulations, determined that the electricity generator is eligible to enter into a BPPA in respect of the generating station.

6 Each OLR Notice will:

- (a) specify the form and manner in which, and date by which, an OLR Bid is to be submitted to the Authority;
- (b) include the Project Information (excluding the Statement of Confirmation) submitted by the electricity generator; and
- (c) enclose a copy of each BPPA (incorporating the project-specific information as finalised by the Authority in reliance on the Project Information received by it from the electricity generator):
 - (i) which is subject to the auction; and
 - (ii) which the licensee (and other licensed electricity suppliers) will be offering to enter into under the OLR Scheme when submitting an OLR Bid for any such BPPA.

Information to be included in an OLR Bid

7 The licensee must in respect of each BPPA for which it submits an OLR Bid ('the applicable BPPA'):

- (a) submit the OLR Bid in the form and manner specified, and by the date specified, in the OLR Notice;
- (b) confirm in its OLR Bid whether or not it has an Additional BM Unit registered in its name for the GSP Group to which the generating station is connected;
- (c) where the licensee is a Mandatory OLR Licensee, submit the OLR Bid as an offer to enter into the applicable BPPA (by enclosing a signed but undated copy of the applicable BPPA) in the event the Authority determines, in accordance with the PPA Scheme Regulations, the licensee's OLR Bid to be the successful bid or the successful reserve bid for the BPPA (which offer shall be capable of acceptance by the electricity generator at any time prior to the date which is one month after the BPPA Commencement Date);
- (d) where the licensee is a Voluntary OLR Licensee:
 - (i) submit the OLR Bid as an offer to enter into the applicable BPPA (by enclosing a signed but undated copy of the applicable BPPA) in the event the Authority

determines, in accordance with the PPA Scheme Regulations, the licensee's bid to be the successful bid for the BPPA (which offer shall be capable of acceptance by the electricity generator at any time prior to the date which is one month after the BPPA Commencement Date); and

- (ii) specify whether or not the OLR Bid is also an offer to enter into the applicable BPPA in the event the Authority determines, in accordance with the PPA Scheme Regulations, the licensee's OLR Bid to be the successful reserve bid for the BPPA (and where the licensee specifies that its OLR Bid is an offer to enter into the applicable BPPA in the event of it being the successful reserve bid the offer shall be capable of acceptance by the electricity generator at any time prior to the date which is one month after the BBPA Commencement Date); and
- (e) specify the Management Fee it will apply in respect of the applicable BPPA should the Authority determine in accordance with the PPA Scheme Regulations that the licensee's bid is the successful bid, or as the case may be the successful reserve bid, for the BPPA.

OLR Scheme - Participation by Electricity Generators

- 8 For the purposes of this Condition [XX], an electricity generator is eligible to enter into a BPPA under the OLR Scheme in respect of a generating station (or a proportion of the capacity of a generating station) where:
- (a) the generating station is a Qualifying Station;
 - (b) the generating station is located in Great Britain, in the territorial sea adjacent to Great Britain, or in a renewable energy zone designated as such under the Energy Act 2004;
 - (c) the generating station is subject to a Relevant Contract:
 - (i) which was entered into prior to the OLR Closure Date applicable to the generating station;
 - (ii) to which the electricity generator is a party; and
 - (iii) in respect of which the Contract Commencement Date has occurred on or before the date the electricity generator submitted its expression of interest to the Authority;
 - (d) the generating station (or, as the case may be, the relevant proportion of the capacity of the generating station), is not subject to an existing BPPA (unless the existing BPPA

is due to expire or terminate on or before the BPPA Commencement Date of any new BPPA in respect of that generating station);

- (e) the electricity generator has not (and no previous party to the Relevant Contract described in paragraph (8)(c) has) previously withdrawn an expression of interest to enter into a BPPA in respect of the generating station after the date it submitted a Statement of Confirmation in respect of that expression of interest;
- (f) the electricity generator has not (and no previous party to the Relevant Contract described in paragraph (8)(c) has) failed to enter into a BPPA in respect of the generating station having been made an offer by a licensed electricity supplier under the OLR Scheme; and
- (g) any BPPA previously entered into in respect of the generating station has not been terminated by a licensed electricity supplier due to an Event of Default committed by the electricity generator (or by any previous party to the Relevant Contract described in paragraph (8)(c)).

OLR Scheme - Generator's Expression of Interest

- 9 Paragraph 10 applies where an electricity generator has submitted an expression of interest to the Authority which:
- (a) provides that the electricity generator is seeking to enter into a BPPA under the OLR Scheme in respect of the generating station specified in the expression of interest;
 - (b) states that the electricity generator is eligible to enter into a BPPA in respect of the specified generating station; and
 - (c) includes as a minimum such of the Project Information as is specified in paragraphs 12(a) to 12(c) (together with any of the other Project Information the electricity generator wishes to provide with its expression of interest).
- 10 Where this paragraph applies the licensee will, by such means as the Authority may from time to time specify:
- (a) be notified by the Authority of the electricity generator's expression of interest; and
 - (b) receive a copy of the Project Information provided by the electricity generator with its expression of interest (excluding any Statement of Confirmation that the electricity generator may have provided with the expression of interest).

OLR Scheme - Project Information

- 11 Project Information, in respect of an expression of interest, comprises:
- (a) the information referred to in paragraph 12; and
 - (b) a Statement of Confirmation.
- 12 The information referred to in this paragraph is information which provides details of:
- (a) the full name of the electricity generator (and, if applicable, the jurisdiction of its registration and registration number);
 - (b) the location, GSP Group and total generating capacity of, and the technology used by, the generating station;
 - (c) the agreement number of the Relevant Contract to which the generating station is subject;
 - (d) the proposed BPPA Commencement Date, which date must:
 - (i) where the Project Information is submitted to the Authority by the electricity generator less than 5 Working Days after the submission of the expression of interest, be a date which is between 26 and 45 Working Days after the date of the submission of the expression of interest;
 - (ii) where the Project Information is submitted to the Authority by the electricity generator 5 or more Working Days after the submission of the expression of interest, be a date which is between 22 and 41 Working Days after the date of the submission of the expression of interest;
 - (e) the metering information that is, or may be, required for the purposes of completing or entering into a BPPA; and
 - (f) any other matter in respect of which information is required for the purposes of completing or entering into a BPPA in respect of the generating station, as the Authority may from time to time specify.

Provision of Information to the Authority

- 13 Where the licensee enters into a BPPA it must within [TBC] days:
- (a) notify the Authority that the BPPA has been entered into and of the commencement date of the BPPA; and

- (b) submit to the Authority:
 - (i) evidence that it meets the required credit rating under the BPPA; or
 - (ii) a copy of the credit support document provided to the electricity generator under the BPPA.
- 14 Paragraph 15 applies where:
 - (a) the licensee is a party to a BPPA; and
 - (b) either party to the BPPA serves on the other party a Termination Notice (or purported Termination Notice) under the BPPA.
- 15 Where this paragraph applies the licensee must as soon as reasonably practicable:
 - (a) submit a copy of the Termination Notice (or purported Termination Notice) to the Authority;
 - (b) where the validity of any such Termination Notice is disputed by the recipient, give notice to the Authority of:
 - (i) the grounds for termination given by the party serving the Termination Notice;
 - (ii) the date on which the Termination Notice is stated to take effect; and
 - (iii) the nature of the dispute.

Disputes Regarding Termination of a BPPA

- 16 Where the licensee is a party to a BPPA, the licensee must ensure it does not commit a breach of the BPPA which results in termination of that BPPA by the counterparty.
- 17 Paragraph 18 applies where the Authority:
 - (a) has received a notice from the licensee that it has served a Termination Notice under a BPPA; and
 - (b) has not received a notice from the electricity generator that is the counterparty to the BPPA that it has served on the licensee a claim form disputing the licensee's right to terminate that BPPA ('the old BPPA').
- 18 Where this paragraph applies the Authority is entitled to determine that the information held by or provided to it does not support an electricity generator's statement that it has met the

requirement set out in paragraph 8(g) in respect of the generating station the subject of the old BPPA.

- 19 Paragraph 20 applies where the Authority has received:
- (a) a notice from the licensee that it has served a Termination Notice under a BPPA; and
 - (b) a notice from the electricity generator that is the counterparty to the BPPA that it has served on the licensee a claim form disputing the licensee's right to terminate that BPPA ('the old BPPA').
- 20 Where this paragraph applies the Authority is entitled to determine, unless and until such date as there is a final and binding court judgment in favour of the licensee upholding the right of the licensee to terminate the BPPA (which is not subject to any appeal), that the information held by or provided to it supports an electricity generator's statement that it has met the requirement set out in paragraph 8(g), in respect of the generating station the subject of the Old BPPA.

Mandatory OLR Licensee

- 21 The licensee shall be a “**Mandatory OLR Licensee**” in respect of any OLR Year where it receives a notice from the Authority notice under paragraph [8(2)(a)] of the PPA Scheme Regulations that it is required to participate in all auctions which take place in a particular OLR Year on the basis that it meets the relevant criterion set out in paragraph 22 (a **Mandatory Notice**).
- 22 The relevant criterion is that the total amount of electricity supplied by the licensee to Customers in the Applicable OLR Year is equal to or greater than 6% of the total amount of electricity supplied by all licensed electricity suppliers to Customers in the Applicable OLR Year.
- 23 Where the licensee receives a Mandatory Notice and does not already have an Additional BM Unit registered in its name for every GSP Group, it must within 20 Working Days of that Mandatory Notice commence all necessary steps to ensure that an Additional BM Unit is registered in its name for every GSP Group.

BPPA Terms and Conditions

- 24 The terms and conditions of each BPPA to be entered into under the OLR Scheme shall incorporate all of the terms and conditions determined by the Secretary of State in accordance with the PPA Scheme Regulations.

Definitions

25 In this Condition:

Additional BM Unit	has the meaning given to it in the Balancing and Settlement Code on [will be the date on which this condition is to take effect in the licence].
Applicable OLR Year	means the OLR Year ending on 31 March immediately preceding the date of the Mandatory Notice.
auction	means an auction conducted under the PPA Scheme Regulations.
Backstop Power Purchase Agreement (BPPA)	means an agreement for the sale and purchase of electricity incorporating the terms and conditions referred to in paragraph 24 of this Condition [XX].
BPPA Commencement Date	means, in respect of any BPPA, the date specified (or, where the context requires, to be specified) as the preferred commencement date in Schedule 1 of that BPPA.
Contract Commencement Date	means, in respect of a Relevant Contract, the start date of the period in respect of which the obligations relating to payments to be made under that Relevant Contract first take effect.
Contract for Difference	means a contract for difference entered into pursuant to chapter 2 of Part 2 of the Energy Act 2013.
Event of Default	means, in respect of any party to a BPPA, an event in respect of that party which gives rise to a termination right in favour of the other party to the BPPA.
GSP Group	has the meaning given to it in the Balancing and Settlement Code on [will be the date on which

	this condition is to take effect in the licence].
Investment Contract	means an investment contract entered into pursuant to chapter 4 of Part 2 of the Energy Act 2013.
Management Fee	means, in respect of any BPPA, the fee which the licensee will charge for entering into and managing that BPPA, which fee shall be expressed as an amount (whether negative or positive) for each MWh of electricity purchased under that BPPA.
Mandatory OLR Licensee	has the meaning given to it in paragraph 21.
OLR Bid	means an offer to enter into a BPPA in respect of a generating station, submitted by the licensee in accordance with this standard condition [XX] (Offtaker of Last Resort) or, where the context so requires, submitted by any licensed electricity supplier in accordance with standard condition [XX] (Offtaker of Last Resort) of its Electricity Supply Licence.
OLR Closure Date	means, in respect of a Qualifying Station of a particular technology, the date determined by the Secretary of State in accordance with the PPA Scheme Regulations.
OLR Notice	means a notice issued by the Authority under paragraph 5 and containing the information described in paragraph 6.
OLR Scheme	means the scheme established pursuant to sections 50 and 51 of the Energy Act 2013.
OLR Year	means each period of 12 months commencing on 1 April and ending on the next 31 March.

PPA Scheme Regulations	means [The Power Purchase Agreement Scheme Regulations 2014].
Project Information	has the meaning given to it in paragraph 11.
Qualifying Station	has the same meaning given to [“qualifying electricity generation station” in [Regulation 3(3)] of the Contracts for Difference (Allocation) Regulations 2014], but excludes any such station which is intended to generate the type of electricity generation mentioned in [Regulation 3(4)(c) and 3(4)(k)] of the Contracts for Difference (Allocation) Regulations 2014].
Relevant Contract	means a Contract for Difference or an Investment Contract.
Statement of Confirmation	<p>means a statement signed by a director of the electricity generator which:</p> <ul style="list-style-type: none"> (a) declares that the Project Information submitted to the Authority by the electricity generator in respect of the electricity generator’s expression of interest to enter into a BPPA is complete, true and accurate; and (b) confirms that the electricity generator understands that should it withdraw its expression of interest at any time following the submission of the statement and prior to the Authority completing an auction in respect of the expression of interest, it will no longer be eligible to participate in the OLR Scheme in respect of that generating station.
Termination Notice	means a notice given under and in accordance with a BPPA which provides for the BPPA to be

terminated prior to the expiry date of the BPPA.

Voluntary OLR Licensee

means a licensed electricity supplier that is not a Mandatory OLR Licensee.

Offtaker of Last Resort Licence Condition

Explanatory Notes

[This note is not part of the Licence Condition.]

Paragraph 1 confirms the date from which the licence condition will apply.

Paragraphs 2 to 4 oblige certain licensed electricity suppliers (Mandatory OLR Licensees) to offer to enter into a backstop power purchase agreement in respect of a generating station following receipt of a notice from the Authority (OLR Notice), and confirm that other licensed electricity suppliers (Voluntary OLR Licensees) can choose to do so.

Paragraphs 5 and 6 identify the information to be provided by an electricity generator and the steps to be taken by the Authority prior to the issue of an OLR Notice by it and detail the information to be contained in each OLR Notice.

Paragraph 7 contains details relating to the form of, and information to be provided (which includes details of the fee the licensed supplier will charge for 'managing' a backstop power purchase agreement) by the licensee in any offer it makes to enter into a backstop power purchase agreement.

Paragraph 8 confirms the category of electricity generator with whom the licensed supplier will be required to (in the case of a Mandatory OLR Licensee) or can choose (in the case of a Voluntary OLR Licensee) offer to enter into a backstop power purchase agreement, by reference to the eligibility requirements to be satisfied by the electricity generator and the relevant generating station in circumstances where the electricity generator wishes to enter into a backstop power purchase agreement in respect of that generating station (or a proportion of its capacity).

Paragraphs 9 and 10 set out the information which is to be provided to the Authority by an electricity generator that expresses an interest to enter into a backstop power purchase agreement, which information will in turn be sent by the Authority to licensed electricity suppliers for the purposes of submitting their offers.

Paragraphs 11 and 12 set out the circumstances in which the Authority will issue an OLR Notice, by way of confirming the full project information that an electricity generator needs to have provided to the Authority, and the period within which it must be provided.

Paragraphs 13 to 15 oblige the licensee to notify the Authority once it has entered into a backstop power purchase agreement and also to submit certain specified information to the Authority in respect of it having done so. They also specify the information that the licensee must provide to the Authority if either party to a backstop power purchase agreement serves notice on the other party seeking to terminate it before its expiry date (Termination Notice) and also where any such notice is disputed.

Paragraphs 16 requires the licensee to ensure that it does not commit a breach of a backstop power purchase agreement which results in it being terminated by the other party.

Paragraphs 17 and 18 confirm that where the Authority receives notice from a licensed electricity supplier that it has served a Termination Notice in respect of a backstop power purchase agreement, and the Authority has not received notice from the counterparty (the electricity generator) that it is taking legal action disputing the supplier's right to terminate, the Authority is entitled to determine that, for the purposes of determining eligibility for any future backstop power purchase agreements, the information it holds

does not support the electricity generator's statement that the eligibility criterion in paragraph 8(g) of the condition is satisfied.

Paragraphs 19 and 20 confirm that where the Authority receives notice from a licensed electricity supplier that it has served a Termination Notice in respect of a backstop power purchase agreement, and the Authority has received notice from the counterparty electricity generator that it is taking legal action disputing the supplier's right to terminate, the Authority is entitled to determine (until there is final court judgment upholding the supplier's right to terminate that is not subject to appeal) that, for the purposes of determining eligibility for any future backstop power purchase agreements, the information it holds supports the electricity generator's statement that the eligibility criterion in paragraph 8(g) of the condition is satisfied.

Paragraph 21 confirms that the licensee shall be a Mandatory OLR Licensee in respect of any OLR Year (and therefore obliged to participate in auctions for backstop power purchase agreements in that OLR Year) where it receives a notice from the Authority to that effect.

Paragraph 22 contains the criterion for identifying whether a licensed electricity supplier is a Mandatory OLR Licensee in respect of an OLR Year.

Paragraph 23 provides that where the licensee is notified by the Authority that it is a Mandatory OLR Licensee in respect of any OLR Year, if it does not have already have an additional BM unit registered for it in each GSP Group, it shall commence, within 20 working days of such notice, all necessary steps to ensure that it has an additional BM Unit registered in every GSP Group.

Paragraph 24 makes provision for the terms and conditions of BPPAs by reference to the Regulations.

Paragraph 25 contains the definitions used in the licence condition.