

DATED [●]

[]

as the **GENERATOR**

and

[]

as the **CfD COUNTERPARTY**

CONTRACT FOR DIFFERENCE

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DRAFT CONTRACT FOR DIFFERENCE

Introductory Note

*This document contains key proposed terms for the Feed-in Tariff with Contract for Difference (“**FiT CfD**”). The terms set out in this document do not constitute definitive drafting for the entirety of the FiT CfD.*

This document should be read in conjunction with the “Explanatory Notes” and the “EMR Contract for Difference: Contract and Allocation Overview” document.

This document does 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, a FiT CfD. This document does not constitute an offer and is not capable of acceptance.

THIS AGREEMENT is dated [●] and made between:

- (1) [●] (the “**Generator**”); and
- (2) [●] (the “**CfD Counterparty**”).

BACKGROUND

- (A) This Agreement is entered into following the applicable contract allocation or negotiation process established under or by virtue of the Energy Act 2013.
- (B) The Generator has satisfied the Eligibility Criteria.
- (C) The CfD Counterparty is a company wholly owned by the UK Government and is entering into this Agreement solely for the purpose of implementing the provisions of the Energy Act 2013.

IT IS AGREED as follows.

Part 1
Introduction

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement (including the Recitals):

“**Aggregate Difference Amount**” has the meaning given to that term in Clause 11.5(J);

“**Agreement Date**” means the date of this Agreement;

“**APX Index**” means the APX Power UK Day-Ahead Auction Base index, as administered by APX Holding B.V. (either directly or through one or more of its subsidiaries) or any successor of such index;¹

“**Arbitral Award**” has the meaning given to that term in Clause 36.22;

“**Arbitration Procedure**” has the meaning given to that term in Clause 36.1;

“**Authority**” means the Gas and Electricity Markets Authority established under section 1 of the Utilities Act 2000;

“**Balancing and Settlement Code**” or “**BSC**” means the Balancing and Settlement Code that is provided for in Standard Condition C3 (Balancing and Settlement Code (BSC)) of the Transmission Licence;

*[“**Baseload Market Reference Price**” has the meaning given to that term in Clause 7.2;]²*

“**Billing Period**” means a 24 hour period starting at 23:00 on a day and ending at 23:00 on the following day;

“**Billing Statement**” has the meaning given to that term in Clause 11.2;

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

*[“**Calculation EFA Season**” has the meaning given to that term in Clause 10.1(A);]³*

¹ Note to Generator: The mechanism for addressing changes to indices (or the weighting of indices) used in the context of FiT Contracts for Difference is subject to further consideration by DECC. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

² Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

“**CfD Counterparty Confidential Information**” has the meaning given to that term in Clause 32.1;

“**CfD Documents**” means this Agreement and any contract or agreement entered into between the Parties pursuant to it;

“**CfD Settlement Agent**” means any person appointed for the time being and from time to time as the agent of the CfD Counterparty to carry out the CfD Settlement Functions;

“**CfD Settlement Functions**” means the functions to be carried out by the CfD Settlement Agent (in its capacity as agent of the CfD Counterparty) in connection with:

- (A) the calculation, invoicing, reconciliation and settlement of payments to be made pursuant to this Agreement; and
- (B) the calculation of collateral requirements and the provision of collateral in accordance with Clause 31 (*Acceptable collateral*);

“**CfD Settlement Required Information**” means all the information required by the CfD Settlement Agent as information:

- (A) relating to this Agreement; and
- (B) required by it to carry out the CfD Settlement Functions;

“**Change Control Procedure**” means the change control procedures set out in Annex 3 (*Change Control Procedure*);

“**Change in Law**” has the meaning given to that term in Clause 22.1;

“**Commissioned**” means, in relation to the Facility, that:

- (A) the Facility has successfully completed such procedures as demonstrate, at the time they were undertaken, compliance with the usual industry standards and practices (consistent with compliance with the Reasonable and Prudent Standard) for commissioning that type of generating facility; and
- (B) such procedures and tests have demonstrated that the Facility is fit for commercial operation;

“**Compensatory Interest Amount**” has the meaning given to that term in Clause 11.7;

³ Note to Generator: These definitions are only applicable to FIT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies. DECC is giving further consideration to the manner in which EFA-related definitions are to be adjusted to take account of any future shift away from the EFA Calendar.

“Competent Authority” means:

- (A) any national, federal, regional, state, local, European Union or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality; or
- (B) any private body to the extent it carries out one or more public functions,

and includes the Authority, the Secretary of State and the Environment Agencies but excludes the CfD Counterparty;

“Conditions Precedent” means the Initial Conditions Precedent and the Further Conditions Precedent;

“Confidential Information” means CfD Counterparty Confidential Information and Generator Confidential Information;

“Contractor” means any contractor, sub-contractor, consultant or adviser of or to the Generator;

“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;

“DECC” means the Department of Energy and Climate Change;

“Default” means:

- (A) a Termination Event; or
- (B) an event or a circumstance which would (with the passage of time, the giving of notice, the making of any determination under this Agreement or any combination of any of the foregoing) be a Termination Event;

“Default Interest” has the meaning given to that term in Clause 12.2(A);

“Delivery Body” means the person from time to time responsible under and by virtue of [section [•]]⁴ of the EA 2013 for directing the CfD Counterparty to offer to enter into this Agreement;

“Difference” means, in respect of a [Settlement Period][Settlement Hour], an amount (expressed in pounds) calculated in accordance with the following formula:

$$\text{Difference} = \text{MIN}(SP_t - MRP_t, SP_t)$$

⁴ Note to Generator: To be completed once the Energy Bill is finalised.

where:

SP_t is the Strike Price in *[Settlement Period][Settlement Hour]*⁵ (t) (expressed in £/MWh); and

MRP_t is the *[Baseload Market Reference Price][Intermittent Market Reference Price]* applicable to *[Settlement Period][Settlement Hour]* (t) (expressed in £/MWh);

“**Difference Amount**” means, in respect of a *[Settlement Period][Settlement Hour]*, the amount (expressed in pounds) calculated in accordance with the following formula:

$$\text{Difference Amount} = \text{MIN}(SP_t - MRP_t, SP_t) \times \text{MIN}(Q_t \times h_t, M_t)$$

where:

SP_t is the Strike Price in *[Settlement Period][Settlement Hour]* (t) (expressed in £/MWh);

MRP_t is the *[Baseload Market Reference Price][Intermittent Market Reference Price]* applicable to *[Settlement Period][Settlement Hour]* (t) (expressed in £/MWh);

Q_t is the Maximum Contract Capacity applicable to *[Settlement Period][Settlement Hour]* (t) (expressed in MW);

h_t is the number of hours in *[Settlement Period][Settlement Hour]* (t); and

M_t is the Metered Output during *[Settlement Period][Settlement Hour]* (t);

“**Directive**” means, in relation to any Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority:

- (A) which is legally binding upon that Party or with which that Party would ordinarily comply, acting (in the case of the Generator) to the Reasonable and Prudent Standard; and
- (B) in circumstances in which the Generator is seeking to invoke the provisions of Clause 23 (*Qualifying Change in Law*) with which the Generator does comply;

⁵ Note to Generator: Facilities which deploy baseload generation technologies will use the defined term “Settlement Period” in the calculation of their market reference price, for billing purposes and related concepts such as strike price adjustments. Facilities which deploy intermittent generation technologies will use the defined term “Settlement Hour” in relation to the same.

“Directors’ Certificate” means a certificate signed by two directors of the Generator having made, and confirmed in the certificate as having made, due and careful enquiry in relation to the matters set out therein;

“Dispute” means any dispute, claim or controversy in any way relating to, in connection with or arising out of this Agreement or any other CfD Document, whether contractual or non-contractual (and including any dispute, claim or controversy regarding: (i) their existence, negotiation, validity or enforceability; (ii) the performance or non-performance of a Party’s duties and obligations under them; or (iii) breach or termination of any of them), but excluding a Metering Dispute;

“Dispute Resolution Procedure” means the rules, obligations and procedures set out in Clause 36 (*Dispute Resolution Procedure*), including with respect to the Arbitration Procedure and the Expert Determination 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 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 EA 1989;

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

“EA 1989” means the Electricity Act 1989;

“EA 2013” means the Energy Act 2013;

“EA 2013 Regulations” means any and all regulations made pursuant to any of chapters [2, 4 and 5] (including the associated schedules of any of those chapters) of part [2] of the EA 2013;

[[“EFA Calendar” means the calendar published by the Futures and Options Association in relation to power trading and settlement, as may be amended by the Power Trading Committee from time to time;]]⁶

⁶ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

["EFA Day" means, in respect of any day, a 24 hour period starting at 23:00 on the previous day and ending at 23:00 on that day;]

["EFA Month" means a period of four, five or six consecutive EFA Weeks as determined by the EFA Calendar;

"EFA Season" means a period of six consecutive EFA Months commencing in or around either April or October;

*"EFA Summer Season" in any year means the EFA Season commencing in or around April in that year;]*⁷⁸

*"EFA Week" means a period of seven consecutive EFA Days commencing on a Sunday at 23:00;*⁹

"EIR" means the Environmental Information Regulations 2004;

"Eligibility Criteria" means the eligibility criteria provided for or set out in EA 2013 Regulations in relation to the allocation of FiT Contracts for Difference, in each case as applicable to the Facility, the Generator or the Project in relation to this Agreement;

"Eligible Generation Technology" means a Generation Technology which is eligible for a FiT Contract for Difference, as specified in EA 2013 Regulations;

*["Energy Content" of a substance means the gross calorific value of one kilogram of that substance (expressed in megajoules), as specified in, or calculated in accordance with, the FMS Agreement;]*¹⁰

"Environment Agencies" means:

- (A) the Environment Agency in England and Wales;
- (B) the Scottish Environment Protection Agency; and
- (C) any successor Government Entity established from time to time to undertake the functions and duties of the Environment Agency in England and Wales

⁷ Note to Generator: These definitions are only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

⁸ DECC is giving further consideration to the manner in which EFA-related definitions are to be adjusted to take account of any future shift away from the EFA Calendar.

⁹ Note to Generator: DECC is giving further consideration to the manner in which this definition is to be adjusted to take account of any future shift away from the EFA Calendar.

¹⁰ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

and/or the Scottish Environment Protection Agency under the Environment Act 1995;

“Estimated Loss Adjusted Metered Output” means an estimate of the Loss Adjusted Metered Output in respect of a *[Settlement Period][Settlement Hour]*, as calculated in accordance with Clause 6.5;

“European Union” means the European Union, established by the Treaty of the European Union signed at Maastricht on 7 February 1992 (as amended by any later treaty);

“Existing Scheme” means the “Renewables Obligation” scheme established under section 32 EA 1989;

“Existing Scheme Facility” means a generation facility which is covered by, accredited under or benefits from the Existing Scheme;

“Expert Determination Procedure” has the meaning given to that term in Clause 36.1;

“Facility” means the generating facility specified in the FiT CfD Application and described in Annex 1 (*The Facility*);

“Facility Generation Technology” means, with respect to the Facility, the Eligible Generation Technology deployed by the Facility, as specified in the FiT CfD Application;

“FiT CfD Application” means the application by the Generator for this FiT Contract for Difference and to which this Agreement relates;¹¹

“FiT CfD Application Date” means the date of the FiT CfD Application;

“FiT Contract for Difference” means a feed-in tariff with a 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 EA 2013;

“FM Affected Party” has the meaning given to that term in Clause 42.2;

["FMS Agreement" means a fuel management and sampling agreement in the form set out in Annex 7 (FMS Agreement), to be entered into by the Generator and the CfD Counterparty and to be effective from the Start Date;]¹²

¹¹ Note to Generator: This will be subject to the approval process outlined or provided for in the EA 2013 Regulations.

¹² Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

*["FMS Questionnaire" means the fuel management and sampling questionnaire to be submitted by the Generator to the CfD Counterparty on or before the Agreement Date;]*¹³

"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 FM Affected Party (in the case of the Generator, acting and having acted to a Reasonable and Prudent Standard) which the FM Affected Party could not reasonably have avoided or overcome and which is not due to the FM Affected Party's fault or negligence or that of its Representatives, provided always that neither non-availability nor the lack of funds shall ever constitute Force Majeure;

["Fuel with Variable Renewable Content" means fuels composed wholly or partially of renewable material whose Energy Content can vary over time, as defined in the EA 2013 Regulations;

"Fuel with Variable Renewable Content Audit" means any audit or reconciliation of:

- (A) *the Energy Content of any Fuel with Variable Renewable Content used in any Fuel with Variable Renewable Content Facility; or*
- (B) *the mass of Fuel with Variable Renewable Content or mass of all fuel sources used by any Fuel with Variable Renewable Content Facility,*

conducted pursuant to and in accordance with the FMS Agreement;

"Fuel with Variable Renewable Content Facility" has the meaning given to that term in the EA 2013 Regulations;]¹⁴

"Further Conditions Precedent" means the conditions precedent set out in Part B of Schedule 1 (*Conditions Precedent*);

"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;

¹³ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

¹⁴ Note to Generator: These definitions are only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

“Generation Technology” means a generation technology deployed by a generating facility;

“Generator Confidential Information” has the meaning given to that term in Clause 32.1;

“Generator Repeating Warranties” means each of the representations and warranties set out in Clause 19.1 (other than Clauses 19.1(H) and 19.1(I));

“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;

“Indexation Anniversary” has the meaning given to that term in Clause 9.3;

“Industry Documents” means any and all agreements, codes, standards and instruments regulating the generation, transmission, distribution, supply or trading of electricity in Great Britain, including the Grid Code, the SOTO Code, the Balancing and Settlement Code, Code Subsidiary Documents, 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 written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form) and, in relation to any obligation of any person to provide information pursuant to this 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 a person’s control if:

- (A) it is within the possession of such person;
- (B) such person has a right to possession of it; or
- (C) such person has a right to inspect or take copies of it;

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

“Initial Conditions Precedent” means the conditions precedent set out in Part A of Schedule 1 (*Conditions Precedent*);

“Installed Capacity” means the capacity of the Facility (expressed in MW) were it to be operated in accordance with the Eligibility Criteria on a continual basis at the maximum capacity possible without causing damage to it (assuming any source of power used by it to generate electricity was available to it without interruption);

“Installed Eligible Capacity Estimate” means the estimated Installed Capacity of the Facility once fully operational, as specified in the FiT CfD Application, and as may be adjusted pursuant to Clause 5 (*Installed Eligible Capacity Estimate adjustments*);

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

*[“Intermittent Index” means each of the APX Index and N2Ex Index or such other replacement or additional index or indices as is or are determined in accordance with this Agreement, and “Intermittent Indices” shall mean all such indices.]*¹⁵

*[“Intermittent Market Reference Price” has the meaning given that term in Clause 8 ([Intermittent Market Reference Price]);]*¹⁶

“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;

“Legal Reservations” means:

- (A) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (B) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (C) the time barring of claims under applicable limitation laws;

¹⁵ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy intermittent generation technologies. The mechanism for addressing changes to indices (or the weighting of indices) used in the context of FiT Contracts for Difference is subject to further consideration by DECC. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

¹⁶ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy intermittent generation technologies.

- (D) defences of set-off or counterclaim; and
- (E) similar principles, rights and defences available at law;

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

“**Longstop Date**” means the last day of the Longstop Period following the final day of the Target Commissioning Window, as such date may be extended day for day for each day of delay to the design, development, construction, conversion, installation, completion, testing or commissioning of the Facility by reason of:

- (A) Force Majeure affecting the Project; or
- (B) the failure of the Transmission System Operator, Licensed Distributor [*or Offshore Transmission Owner*]¹⁷, as the case may be (not being the Generator or its Representatives), to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which the Transmission System Operator, Licensed Distributor [*or Offshore Transmission Owner*]¹⁸ is a party (save to the extent that such failure is due to the fault or negligence of the Generator or its Representatives);

“**Longstop Period**” means the period set out against the Facility Generation Technology in column 3 of the table in Schedule 2 (*Target Commissioning Window and Longstop Date*);

“**Loss Adjusted Metered Output**” means the BM Unit Metered Volume for the Facility in respect of a [*Settlement Period*][*Settlement Hour*] as measured by the Relevant Metering Equipment, adjusted for transmission losses as allocated in accordance with Section T of the Balancing and Settlement Code;

“**Master Registration Agreement**” means the agreement 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;

“**Material**” means [*●*];¹⁹

¹⁷ Note to Generator: To be included if applicable to the Facility.

¹⁸ Note to Generator: To be included if applicable to the Facility.

¹⁹ Note to Generator: An appropriate materiality threshold is currently being developed. It may differ as between QCIL Lost Revenues and QCIL Net Costs / Savings.

“Material Adverse Effect” means, with respect to the Generator, a material adverse effect on the ability of the Generator to perform or comply with its obligations under this Agreement or any other CfD Document;

“Material Generation Technology” means a Generation Technology that accounts for at least 1 per cent. of all installed generation capacity in MW in the United Kingdom;

“Maximum Contract Capacity” means *[to be developed]*;²⁰

“Metered Output” means the metered output of the Facility in a *[Settlement Period][Settlement Hour]*, as calculated in accordance with Clause 6 (*Metered Output*);

“Metering Dispute” has the meaning given to that term in Clause 11.13;

“Milestone” has the meaning given to that term in Clause 4.2;

“Milestone Delivery Date” means *[●]*;²¹

“N2Ex Index” means the N2Ex Day-Ahead Auction Market index for physical delivery, jointly operated by NASDAQ OMX Commodities A.S. and Nord Pool Spot A.S., or any successor of such index;²²

“Offshore Transmission Owner” means the holder of an offshore transmission licence granted or treated as granted under section 6(1)(b) of the EA 1989;

“Party” means a party to this Agreement;

“Payment Disruption Event” means a material disruption to those payment systems or to those financial markets which are, in each case, required to operate in order for payments or transfers of money to be made by the Generator under this Agreement and which is not caused by, and is beyond the control of, the Generator;

*["Power Trading Committee" means the power trading committee of the Futures and Options Association];*²³

²⁰ Note to Generator: This definition is expected to be used to capture the maximum available support for the Facility under the CfD. The definition is being developed to ensure that it captures this for all facility types. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

²¹ Note to Generator: This will be a specified date which will be before the Target Commissioning Window and which may differ depending on technology type.

²² Note to Generator: The mechanism for addressing changes to indices (or the weighting of indices) used in the context of FiT Contracts for Difference is subject to further consideration by DECC. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

²³ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

[“Price Index” means each price index set out in Clause 7.3, as amended from time to time, as applicable and “Price Indices” shall be construed accordingly;]²⁴

“**Proceedings**” means any proceeding, suit or action arising out of or in connection with a Dispute, this Agreement or any other CfD Document;

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

“**Qualifying Change in Law**” has the meaning given to that term in Clause 22.1;

“**Reasonable and Prudent Standard**” means the standard of 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;

“**Reconciliation Amount**” has the meaning given to that term in Clause 11.6;

“**Relevant Metering Equipment**” means the BM Unit or Supplier BM Unit installed in respect of the Facility which is registered under and compliant with the Balancing and Settlement Code;

[“Renewable Qualifying Multiplier” in respect of any [Settlement Period][Settlement Hour] shall be calculated in accordance with the following formula:

$$\text{Renewable Qualifying Multiplier} = \frac{A \times B}{C \times D}$$

where:

A is the mass in kilograms of Fuel with Variable Renewable Content used by the Facility to produce electricity during the [Settlement Period][Settlement Hour];

B is the Energy Content of the Fuel with Variable Renewable Content used by the Facility to produce electricity during the [Settlement Period][Settlement Hour];

²⁴ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

- C *is the mass in kilograms of all fuel used by the Facility to produce electricity during the [Settlement Period][Settlement Hour]; and*
- D *is the Energy Content of all fuel used by the Facility to produce electricity during the [Settlement Period][Settlement Hour];²⁵*

“Representatives” means:

- (A) with respect to the CfD Counterparty, its directors, officers, employees, agents, consultants and advisers;
- (B) with respect to the Generator:
- (i) its directors, officers, employees, agents, consultants and advisers;
 - (ii) its Contractors; and
 - (iii) the directors, officers, employees, agents, consultants and advisers of its Contractors;
- (C) with respect to any Government Entity, its directors, officials, officers, employees, agents, consultants and advisers; or
- (D) with respect to any other body corporate, its directors, officers, employees, agents, consultants and advisers;

“Required Authorisation” means, in relation to each Party, each licence, accreditation, authorisation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation, permission or other approval of or from any Competent Authority required to enable that Party to perform its obligations under this Agreement and the other CfD Documents and, in the case of the Generator, to design, develop, construct, convert, complete, test, commission and operate the Facility;

“Secretary of State” means the Secretary of State for Energy and Climate Change (or any successor office thereto);

“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;

“Service Document” means a claim form, application notice, order, judgment or other document relating to any Proceedings;

²⁵ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

[“**Settlement Hour**” means an hour of the EFA Day where such EFA Day is divided into 24 hour-long periods commencing at the start of the EFA Day;]²⁶

“**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;

“**Start Date**” has the meaning given to that term in Clause 3.12;

“**State Aid Rules**” means:

- (A) the State aid provisions of the Treaty on the Functioning of the European Union;
- (B) any associated European Union legislation in relation to such State aid provision including Council Regulation 659/1999; and
- (C) any relevant decisions or judgments of the European Commission, the Court of Justice of the European Union or any other Competent Authority in relation to such State Aid provision;

“**Strike Price**” means the strike price set out in Clause 9.1, as amended in accordance with this Agreement;

“**Target Commissioning Date**” means the date notified by the Generator to the Delivery Body in its FiT CfD Application as its “**Target Commissioning Date**”;

“**Target Commissioning Window**” means the period notified by the Generator to the Delivery Body in its FiT CfD Application as its “**Target Commissioning Window**”, such period:

- (A) being of the duration set out in column 2 of Schedule 2 (*Target Commissioning Window and Longstop Date*) in respect of the Facility Generation Technology;
- (B) commencing on or before the Target Commissioning Date; and
- (C) ending on or after the Target Commissioning Date,

as such period may be extended day for day for each day of delay to the design, development, construction, conversion, installation, completion, testing or commissioning of the Facility by reason of:

- (i) Force Majeure affecting the Project; or

²⁶ Note to Generator: This definition is only applicable to FIT Contracts for Difference entered into in respect of facilities which deploy intermittent generation technologies. DECC is giving further consideration to the manner in which EFA-related definitions are to be adjusted to take account of any future shift away from the EFA Calendar.

- (ii) the failure of the Transmission System Operator, Licensed Distributor *[or Offshore Transmission Owner]*²⁷ as the case may be (not being the Generator or its Representatives), to carry out in a timely manner any required system reinforcement or connection works specified in the construction agreement attributable to the Facility and to which the Transmission System Operator, Licensed Distributor *[or Offshore Transmission Owner]*²⁸ is a party (save to the extent that such failure is due to the fault or negligence of the Generator or its Representatives);

“**Tax**” means all taxes, levies, duties, imposts and any charges, deductions or withholdings in the nature of tax including taxes on gross or net income, profits or gains and taxes on receipts, sales, use, occupation, development, franchise, employment, value added and personal property, together with all penalties, charges and interest relating to any of them;

“**Term**” has the meaning given to that term in Clause 2.2;

“**Termination Date**” means the day designated as an early termination date in accordance with this Agreement;

“**Termination Event**” has the meaning given to that term in Clause 29.2;

“**Termination Payment**” means a payment calculated in accordance with the formula set out in Schedule 3 (*Termination Payment*);

*[“**Trading Day**” means an EFA Day on which trading on the markets from which the Price Indices are derived are open for trading or would, but for any unplanned unavailability of service, have been open for trading;]*²⁹

“**Transmission Licence**” means an electricity transmission licence granted or treated as granted under section 6(1)(b) of the EA 1989 that authorises a person to transmit electricity;

“**Transmission Licensee**” means any person who is authorised by a Transmission Licence to transmit 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; and

²⁷ Note to Generator: To be included if applicable to the Facility.

²⁸ Note to Generator: To be included if applicable to the Facility.

²⁹ Note to Generator: This definition is only applicable to FIT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies. DECC is giving further consideration to the manner in which EFA-related definitions are to be adjusted to take account of any future shift away from the EFA Calendar.

“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.

Balancing and Settlement Code definitions

- 1.2 References in this Agreement to **“BM Unit”**, **“BM Unit Metered Volume”**, **“Code Subsidiary Documents”**, **“Metering Points”**, **“Settlement Period”**, **“Settlement Run”**, **“Supplier”** and **“Supplier BM Unit”** shall have the meanings given to such terms in the BSC.

Interpretation

- 1.3 Any reference to this Agreement shall be deemed to include the Annexes and Schedules.
- 1.4 Save for the purposes of Part 11 (*Changes in Law*), any reference in this Agreement to a Law, Directive or other similar enactment or instrument (including any European Union instrument) (together, an **“enactment”**) includes references to:
- (A) that enactment as amended, supplemented or applied by or under any other enactment before, on or after the Agreement Date;
 - (B) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
 - (C) any subordinate legislation made (before, on or after the Agreement Date) under any enactment, including an enactment falling within Clause 1.4(A) or 1.4(B) above.
- 1.5 Unless a contrary indication appears, any reference in this Agreement to:
- (A) this Agreement, any CfD Document, any Industry Document or any other agreement is, save for the purposes of Part 11 (*Changes in Law*), a reference to this Agreement, any CfD Document any Industry Document or any other agreement as amended, supplemented, restated, novated or replaced from time to time;
 - (B) an **“Annex”**, **“Clause”**, **“paragraph”**, **“Part”** or **“Schedule”** is a reference to an annex, clause, paragraph or part of or a schedule to, this Agreement;
 - (C) the words **“include”** and **“including”** shall be construed without limitation to the generality of the preceding words;
 - (D) 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;

- (E) 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;
- (F) time shall be a reference to time in London, England;
- (G) words in the singular shall be interpreted as including the plural, and *vice versa*; and
- (H) words of any gender include the other gender.

- 1.6 Any capitalised words, terms, phrases and abbreviations used in any Annex, Part or Schedule shall have the meanings set out in that Annex, Part or Schedule.
- 1.7 Headings are for ease of reference only.
- 1.8 If there is a conflict between the main body of this Agreement and any Annex, Part or Schedule, the main body of this Agreement shall prevail.

Symbols and currency

- 1.9 Any reference in this Agreement to “**£**”, “**pounds**” or “**sterling**” is to the lawful currency of the United Kingdom.
- 1.10 Any reference in this Agreement to “**MW**” is to megawatts and to “**MWh**” is to megawatt hours.

No interest in the Facility

- 1.11 Nothing in this 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

2. TERM

Commencement

2.1 Subject to Clause 3 (*Conditions Precedent*), this Agreement shall become effective, and the rights and obligations of the Parties under this Agreement shall commence and become binding, on the Agreement Date.

Duration

2.2 Subject to termination of this Agreement in the circumstances described in Clauses 27.2 and 27.5, this Agreement shall continue until the [15th]³⁰ anniversary of the earlier of:

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

(the “**Term**”).

End of the Term

2.3 At the end of the Term, this Agreement shall expire automatically and without compensation.

³⁰ Note to Generator: For certain Generation Technologies, this period may be different. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

Part 3
Conditions Precedent

3. CONDITIONS PRECEDENT

Definitions

3.1 In this Clause 3 (*Conditions Precedent*):

“**Agreement Date Provisions**” means Part 1 (*Introduction*), Part 2 (*Term*), Part 3 (*Conditions Precedent*), Clause 9 (*Strike Price*), Part 7 (*General payment mechanics*), Clause 18.1(A), Clause 18.1(D), Clause 18.1(E), Clause 18.3, Clause 19.1, Clause 20.1, Clause 21 (*Undertakings*), Part 12 (*Termination*) and Part 14 (*Confidentiality, announcements and Freedom of Information*) to Part 18 (*Miscellaneous*) (inclusive);³¹

“**CP Fulfilment Notice**” means a notice substantially in the form set out in Part A of Annex 2 (*Notices*);

“**Further Condition Precedent Evidence**” has the meaning given to that term in Clause 3.8(B);

“**Further CP Provisions**” means all of the provisions of this Agreement other than the Agreement Date Provisions and the Initial CP Provisions;

“**Initial CP Longstop Date**” means the date falling [●] Business Days after the Agreement Date;

“**Initial CP Provisions**” means Clause 4 (*Milestone*), Clause 5 (*Installed Eligible Capacity Estimate adjustments*), Clause 10.1(B), Clause 18.1(C), Clause 18.2, Clause 19.2, Clause 19.3, Clause 20.2 and Part 11 (*Changes in Law*); and³²

“**Start Date Notice**” has the meaning given to that term in Clause 3.12.

Provisions effective and binding from Agreement Date

3.2 The provisions of, and the rights and obligations of the Parties under, the Agreement Date Provisions shall become effective and binding on the Agreement Date.

³¹ Note to Generator: This is an indicative list subject to further refinement and development.

³² Note to Generator: This is an indicative list subject to further refinement and development.

Initial Conditions Precedent

- 3.3 The provisions of, and the rights and obligations of the Parties under, the Initial CP Provisions are conditional upon the Initial Conditions Precedent being fulfilled by the Generator or waived by the CfD Counterparty in accordance with Clause 3.16.
- 3.4 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Initial Conditions Precedent as soon as reasonably practicable after the Agreement Date and in any event within [●] Business Days of the Agreement Date.

Further Conditions Precedent

- 3.5 The provisions of, and the rights and obligations of the Parties under, the Further CP Provisions are conditional upon the Further Conditions Precedent being fulfilled by the Generator or waived by the CfD Counterparty in accordance with Clause 3.16.
- 3.6 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Further Conditions Precedent as soon as reasonably practicable and in any event before the Longstop Date.
- 3.7 The Generator shall keep the CfD Counterparty fully informed as to progress towards fulfilment of the Further 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 and in accordance with the reasonable requirements of the CfD Counterparty as to the timing and frequency of such reporting) as to the progress made in or towards fulfilment of the Further Conditions Precedent;
 - (B) deliver a Directors' Certificate to the CfD Counterparty each time the Generator considers a Further Condition Precedent has been fulfilled certifying that the Further Condition Precedent has been fulfilled, and providing evidence in respect of the fulfilment of such Further Condition Precedent in accordance with Part B of Schedule 1 (*Conditions Precedent*); and
 - (C) deliver to the CfD Counterparty a Directors' Certificate together with reasonable details in support promptly upon the Generator becoming aware (having made due and reasonable enquiry):
 - (i) of any fact, matter or circumstance which would or would be reasonably likely to prevent any of the Further Conditions Precedent from being fulfilled by the Longstop Date; or
 - (ii) that any of the Further Conditions Precedent which had previously been notified to the CfD Counterparty as fulfilled pursuant to Clause 3.7(B) 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 fulfilment of the relevant Further Condition Precedent has been waived in writing by the CfD Counterparty.

- 3.8 The CfD Counterparty shall, within [●] Business Days of receipt from the Generator of a Directors' Certificate pursuant to Clause 3.7(B):
- (A) confirm that it considers that the Further Condition Precedent to which the Directors' Certificate relates has been fulfilled; or
 - (B) notify the Generator that it does not consider that the Further Condition Precedent to which the Directors' Certificate relates has been fulfilled and, if so, provide details of the additional evidence, information and documentation which the CfD Counterparty requires to be satisfied that the Further Condition Precedent has been fulfilled (the "**Further Condition Precedent Evidence**").
- 3.9 The Generator shall provide the Further Condition Precedent Evidence as soon as reasonably practicable, and in any event within [●] Business Days of receipt of notification pursuant to Clause 3.8(B).
- 3.10 The CfD Counterparty shall, within [●] Business Days of receipt of the Further Condition Precedent Evidence, inform the Generator of whether it considers that the relevant Further Condition Precedent has been fulfilled.
- 3.11 The CfD Counterparty shall give a CP Fulfilment Notice to the Generator no later than 10 Business Days after the fulfilment by the Generator (or waiver by the CfD Counterparty in accordance with Clause 3.16) of all of the Further Conditions Precedent.

Notification of Start Date

- 3.12 No later than 10 Business Days following receipt of the CP Fulfilment Notice, the Generator shall give a notice to the CfD Counterparty (a "**Start Date Notice**"). A Start Date Notice shall:
- (A) be substantially in the form set out in Part B of Annex 2 (*Notices*);
 - (B) specify that it is a Start Date Notice;
 - (C) specify the date which the Generator proposes to be the Start Date for the purposes of this Agreement, such date being:
 - (i) at least 10 Business Days after the date on which the Start Date Notice is given;
 - (ii) no earlier than the first day of the Target Commissioning Window; and
 - (iii) no later than the Longstop Date; and

- (D) be accompanied by a Directors' Certificate certifying the matters set out in Clauses 3.14(B)(i) to 3.14(B)(iv) (inclusive) by reference to the facts and circumstances then existing,

(the date so notified being, subject to Clause 3.14, the "**Start Date**").

3.13 On the Start Date, the Generator shall deliver to the CfD Counterparty a Directors' Certificate certifying the matters set out in Clauses 3.14(B)(i) to 3.14(B)(iv) (inclusive) as at the Start Date by reference to the facts and circumstances then existing.

3.14 A Start Date Notice shall be effective in determining the Start Date for the purposes of this Agreement only if:

- (A) the Generator complies with its obligation under Clause 3.13; and
- (B) on the date such Start Date Notice is given and on the proposed Start Date specified in the Start Date Notice:
- (i) the Generator Repeating Warranties are true, accurate and not misleading by reference to the facts and circumstances then existing;
 - (ii) the representations set out in Clauses 19.1(H) and 19.2 are true, accurate and not misleading by reference to the facts and circumstances then existing;
 - (iii) no Default has occurred which is continuing unremedied and which has not been waived by the CfD Counterparty; and
 - (iv) all Conditions Precedent (except those waived in accordance with Clause 3.16) continue to be fulfilled.

3.15 If the Generator gives a Start Date Notice to the CfD Counterparty and such notice is, pursuant to Clause 3.14, ineffective, this shall not, subject to Part 12 (*Termination*), preclude the Generator from giving a further Start Date Notice to the CfD Counterparty. Clauses 3.12 to 3.14 (inclusive) shall apply *mutatis mutandis* to any such further Start Date Notice.

Waiver

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

Part 4
Milestone

4. MILESTONE

Definitions

4.1 In this Clause 4 (*Milestone*):

“**Milestone Assessment Response Notice**” has the meaning given to that term in Clause 4.3;

“**Milestone Certificate**” has the meaning given to that term in Clause 4.2;

“**Milestone Notice**” has the meaning given to that term in Clause 4.2;

“**Requested Milestone Supporting Information**” has the meaning given to that term in Clause 4.3(C)(ii); and

“**Substantial Financial Commitment**” means [●]³³.

Milestone Notice

4.2 No later than the Milestone Delivery Date, the Generator shall give to the CfD Counterparty a notice (the “**Milestone Notice**”) that the Substantial Financial Commitment has been complied with in respect of the Project (the “**Milestone**”), together with evidence of such compliance in form and content reasonably satisfactory to the CfD Counterparty (the “**Milestone Certificate**”). The Milestone Notice shall:

- (A) be substantially in the form set out in Part C of Annex 2 (*Notices*);
- (B) specify that it is a Milestone Notice;
- (C) be accompanied by a Directors’ Certificate certifying that the Substantial Financial Commitment has been complied with in respect to the Project; and
- (D) include invoices, payment receipts and such other documentation as is necessary to evidence compliance with the Substantial Financial Commitment and, if the Generator has been notified in advance by the CfD Counterparty that it is so required, a report prepared at the Generator’s cost from an independent

³³ Note to Generator: This will be a measure of the financial commitment made by the Generator. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

third party approved by the CfD Counterparty confirming that the Substantial Financial Commitment has been complied with in respect of the Project.³⁴

- 4.3 Upon receipt of the Milestone Notice, the CfD Counterparty shall within [●] Business Days, give a notice to the Generator (a “**Milestone Assessment Response Notice**”). A Milestone Assessment Response Notice shall:
- (A) be substantially in the form set out in Part D of Annex 2 (*Notices*);
 - (B) specify that it is a Milestone Assessment Response Notice; and
 - (C) specify whether the CfD Counterparty considers that:
 - (i) the Milestone has been met; or
 - (ii) it has not been provided with sufficient evidence to determine whether the Milestone has been met and, if so, details of the additional evidence, information and documentation which the CfD Counterparty requires to determine whether the Milestone has been met (the “**Requested Milestone Supporting Information**”).
- 4.4 If the CfD Counterparty states in the Milestone Assessment Response Notice that:
- (A) the Milestone has been met, then the Milestone will be deemed to have been met for the purposes of this Agreement;
 - (B) the CfD Counterparty has not been provided with sufficient evidence to determine whether the Milestone has been met, then:
 - (i) the Generator shall provide the Requested Milestone Supporting Information as soon as reasonably practicable, and in any event within [●] Business Days of the Milestone Delivery Date; and
 - (ii) upon receipt of the Requested Milestone Supporting Information, the CfD Counterparty shall as soon as reasonably practicable, and in any event within [●] Business Days, give a further Milestone Assessment Response Notice to the Generator, save that nothing in this Clause 4.4(B)(ii) shall require the CfD Counterparty to specify in any Milestone Assessment Response Notice that the Milestone has been met unless and until the CfD Counterparty is satisfied of the same.

³⁴ Note to Generator: DECC is considering appropriate metrics to evidence the Substantial Financial Commitment and it is currently envisaged that these will vary depending on the Generation Technology.

5. INSTALLED ELIGIBLE CAPACITY ESTIMATE ADJUSTMENTS³⁵

Definitions

5.1 In this Clause 5 (*Installed Eligible Capacity Estimate adjustments*):

“**Alternate Installed Eligible Capacity**” has the meaning given to that term in Clause 5.2(E);

“**Relevant Geological Issue**” means geological conditions affecting the Facility of which no generator acting to a Reasonable and Prudent Standard and having made all due and careful enquiries would have been aware, and of which the Generator was not aware, at the FiT CfD Application Date;

“**Relevant Geological Issue Notice**” has the meaning given to that term in Clause 5.2;

“**Relevant Geological Issue Response Notice**” has the meaning given to that term in Clause 5.3; and

“**RGI Supporting Information**” has the meaning given to that term in Clause 5.3(C)(iii).

Relevant Geological Issue adjustment

5.2 On or prior to the giving of the CP Fulfilment Notice by the Generator, if the Generator considers that a Relevant Geological Issue has occurred, it may give a notice to the CfD Counterparty (a “**Relevant Geological Issue Notice**”). A Relevant Geological Issue Notice shall:

- (A) be substantially in the form set out in Part E of Annex 2 (*Notices*);
- (B) specify that it is a Relevant Geological Issue Notice;
- (C) include evidence, in reasonable detail, of the Relevant Geological Issue;
- (D) include an explanation, in reasonable detail, as to why the Generator considers it would be uneconomic for the Generator (operating in accordance with the Reasonable and Prudent Standard) to meet the Installed Eligible Capacity Estimate as a consequence of the occurrence of such Relevant Geological Issue; and
- (E) specify the amount by which the Installed Eligible Capacity Estimate should be adjusted to take into account the Relevant Geological Issue and the Installed Eligible Capacity Estimate which will apply if such adjustment is made (the “**Alternate Installed Eligible Capacity Estimate**”).

³⁵ Note to Generator: See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

5.3 If the Generator gives a Relevant Geological Issue Notice to the CfD Counterparty, the CfD Counterparty shall as soon as reasonably practicable, and in any event within [●] Business Days after receipt of such Relevant Geological Issue Notice, give a notice to the Generator (a “**Relevant Geological Issue Response Notice**”). A Relevant Geological Issue Response Notice shall:

- (A) be substantially in the form set out in Part F of Annex 2 (*Notices*);
- (B) specify that it is a Relevant Geological Issue Response Notice; and
- (C) specify whether the CfD Counterparty considers that:
 - (i) a Relevant Geological Issue has occurred;
 - (ii) a Relevant Geological Issue has not occurred; or
 - (iii) the CfD Counterparty has not been provided with sufficient evidence to determine:
 - (a) whether the Relevant Geological Issue has occurred; or
 - (b) whether it will accept the Alternate Installed Eligible Capacity Estimate,

and shall provide details of the additional evidence, information and documentation which the CfD Counterparty requires to determine whether the Relevant Geological Issue has occurred or whether to accept the Alternate Installed Eligible Capacity Estimate (the “**RGI Supporting Information**”).

5.4 If the CfD Counterparty specifies in the Relevant Geological Issue Response Notice that:

- (A) the CfD Counterparty considers that a Relevant Geological Issue has occurred, then (except where it has requested RGI Supporting Information relating to the Alternate Eligible Capacity Estimate) the Relevant Geological Issue Response Notice shall:
 - (i) include a confirmation that the CfD Counterparty agrees with the Alternate Installed Eligible Capacity Estimate specified in the Relevant Geological Issue Notice, in which case the Alternate Installed Eligible Capacity Estimate shall constitute the Installed Eligible Capacity Estimate with effect from the date of the Relevant Geological Issue Response Notice; or
 - (ii) state that the CfD Counterparty does not agree with the Alternate Installed Eligible Capacity Estimate specified in the Relevant Geological Issue Notice, in which case the Installed Eligible Capacity Estimate shall continue to apply for the purposes of this Agreement, unless and until it is varied in accordance with Clause 36 (*Dispute Resolution Procedure*);

- (B) the CfD Counterparty considers that a Relevant Geological Issue has not occurred, in which case the Installed Eligible Capacity Estimate shall continue to apply for the purposes of this Agreement, unless and until it is varied in accordance with Clause 36 (*Dispute Resolution Procedure*); or
- (C) the CfD Counterparty requires the Generator to provide RGI Supporting Information:
 - (i) the Generator shall provide the RGI Supporting Information as soon as reasonably practicable, and in any event within [●] Business Days of receipt of the Relevant Geological Issue Response Notice; and
 - (ii) upon receipt of the RGI Supporting Information, the CfD Counterparty shall as soon as reasonably practicable, and in any event within [●] Business Days, give a further Relevant Geological Issue Response Notice to the Generator, save that nothing in this Clause 5.4(C)(ii) shall require the CfD Counterparty to specify in any Relevant Geological Issue Response Notice that a Relevant Geological Issue has occurred (or whether it accepts any Alternate Installed Eligible Capacity Estimate proposed by the Generator) unless and until the CfD Counterparty is satisfied of the same.

5.5 No adjustment(s) to the Installed Eligible Capacity Estimate pursuant to Clause 5.4(A)(i) will lead to an adjustment to the Strike Price.³⁶

³⁶ Note to Generator: Other permitted adjustments to the Installed Eligible Capacity Estimate (see footnote 35) may be subject to a Strike Price adjustment.

Part 5
Metered Output, market reference prices and Strike Price

6. METERED OUTPUT³⁷

[Metered Output

6.1 “**Metered Output**” for a *[Settlement Period][Settlement Hour]* shall be equal to:

- (A) *the Loss Adjusted Metered Output; or*
- (B) *if the Loss Adjusted Metered Output is unavailable for such [Settlement Period][Settlement Hour], the Estimated Loss Adjusted Metered Output.]*

[Metered Output

6.2 “**Metered Output**” for a *[Settlement Period][Settlement Hour]* shall be equal to:

- (A) *the Loss Adjusted Metered Output multiplied by the Renewable Qualifying Multiplier; or*
- (B) *if the Loss Adjusted Metered Output is unavailable for such [Settlement Period][Settlement Hour], the Estimated Loss Adjusted Metered Output multiplied by the Renewable Qualifying Multiplier.*

6.3 *The values used to calculate the Renewable Qualifying Multiplier shall be determined in accordance with the following provisions:*

- (A) *subject to Clauses 6.3(B) and 6.3(C), the values used in relation to a [Settlement Period][Settlement Hour] ([SP][SH]) shall be the values used for the equivalent [Settlement Period][Settlement Hour] 12 weeks prior to the day in which [SP][SH] falls ([SP][SH]-[12]);*
- (B) *subject to Clause 6.4, where the value for [SP][SH]-[12] has been revised pursuant to any Fuel with Variable Renewable Content Audit, such revised value shall be used; and*
- (C) *where there is no Renewable Qualifying Multiplier for [SP][SH]-[12], the Renewable Qualifying Multiplier as set out in the FMS Agreement shall be used.³⁸*

³⁷ Note to Generator: Clause 6.1 shall be used for generators to whom the Renewable Qualifying Multiplier does not apply. Clauses 6.2 to 6.4 shall be used for generators to whom the Renewable Qualifying Multiplier applies.

³⁸ Note to Generator: This limb will be used to cover off the first twelve weeks of generation, where historic data will not be available.

- 6.4 *If a Fuel with Variable Renewable Content Audit relates to a period comprising multiple [Settlement Periods][Settlement Hours] and requires the calculation of the Renewable Qualifying Multiplier to be performed on an aggregate basis, then the adjustment so resulting shall be applied equally to all [Settlement Periods][Settlement Hours] comprising the period to which the Fuel with Variable Renewable Content Audit relates.]*
- 6.5 Any “**Estimated Loss Adjusted Metered Output**” shall be calculated in accordance with the Balancing and Settlement Code provisions for the estimation of Loss Adjusted Metered Output, including BSC Procedure 03 and BSC Procedure 502.³⁹

7. **[BASELOAD MARKET REFERENCE PRICE]**

[Definitions]

- 7.1 *In this Clause 7 ([Baseload Market Reference Price]):*

“Baseload Contract” means a contract providing for delivery of a constant volume of power for each Settlement Period in the period for which such contract is in force;⁴⁰

“Baseload Contract Price” means the price (in pounds) per MWh of a Baseload Contract as determined by the relevant Price Index;

“Baseload Forward Season Index” means an index of prices (in sterling) per MWh for the delivery of a Baseload Contract;

“Calculation EFA Season” has the meaning given to that term in Clause 10.1; and

“Reference Price Sample Period” means the [•] Trading Days preceding the first day of the Calculation EFA Season.

Baseload Market Reference Price calculation

- 7.2 The **“Baseload Market Reference Price”** shall be expressed in £/MWh and shall be calculated in accordance with the following formula:

$$\text{Baseload Market Reference Price} = \left(\sum_d \left(\frac{\sum_j (\text{BP}_{j,d} \times \text{BQ}_{j,d} \times W_j)}{\sum_j (\text{BQ}_{j,d} \times W_j)} \right) \right) / N_d$$

where:

³⁹ Note to Generator: A mechanism is being developed for providing estimated data where neither Loss Adjusted Metered Output nor Estimated Loss Adjusted Metered Output is available for any reason.

⁴⁰ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies.

W_j is the weight attributed to each Price Index (j), as determined from time to time (expressed as a decimal) and such that the sum of all weights for all Price Indices included in the Baseload Market Reference Price equals 1;⁴¹

\sum_j denotes the sum across the Price Indices (j);

\sum_d denotes the sum across the Trading Days (d) included in the Reference Price Sample Period;

$BP_{j,d}$ is, for each Price Index (j), the Baseload Contract Price quoted on Trading Day (d) in the Reference Price Sample Period for delivery throughout the Calculation EFA Season;

$BQ_{j,d}$ is, for each Price Index (j), the quantity of power in MWh traded through the trades considered in determining $BP_{j,d}$ for the Trading Day (d); and

N_d is the number of Trading Days in the Reference Price Sample Period.

7.3 Unless and until changed in accordance with the terms of this Agreement, the Price Indices used in the calculation of the Baseload Market Reference Price shall be the Baseload Forward Season Indices produced by [●].⁴²

7.4 If the Futures and Options Association recommends that market participants switch from the EFA Calendar to an alternative calendar then the definitions of Calculation EFA Season, EFA Calendar, EFA Day, EFA Months, EFA Season, EFA Weeks and EFA Summer Season shall be amended under the Change Control Procedure in accordance with such transitional guidelines as are issued by the Futures and Options Association.]

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8. **[INTERMITTENT MARKET REFERENCE PRICE]⁴⁴**

[Definitions

8.1 In this Clause 8 ([Intermittent Market Reference Price]):

⁴¹ Note to Generator: The mechanism for addressing changes to indices (or the weighting of indices) used in the context of FiT Contracts for Difference is subject to further consideration by DECC. See the "EMR Contract for Difference: Contract and Allocation Overview" for further information.

⁴² Note to Generator: The list of indices is currently being developed.

⁴³ Note to Generator: DECC is giving further consideration to consequential adjustments to take account of any future shift away from the EFA Calendar.

⁴⁴ Note to Generator: This Clause is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy intermittent generation technologies.

“Day Ahead Hourly Price” means the price (in sterling) for delivery of power in a Settlement Hour as determined via the auction occurring on the previous Trading Day conducted by the operator of the relevant Intermittent Index; and

“Day Ahead Hourly Volume” means the volume of power traded for delivery in a Settlement Hour via the auction occurring on the previous Trading Day conducted by the operator of the relevant Intermittent Index.

Intermittent Market Reference Price calculation

8.2 If the Intermittent Indices have published a “GB Day Ahead Hourly Price” in relation to a Settlement Hour, then the Intermittent Market Reference Price for such Settlement Hour shall be expressed in £/MWh and shall be such “GB Day Ahead Hourly Price”.

8.3 If:

(A) the Intermittent Indices have not published a “GB Day Ahead Hourly Price” in relation to such Settlement Hour; and

(B) the Day Ahead Hourly Price in £/MWh for each Intermittent Index is the same,

then the Intermittent Market Reference Price for the relevant Settlement Hour shall be expressed in £/MWh and shall be such Day Ahead Hourly Price.

8.4 If:

(A) the Intermittent Indices have not published a “GB Day Ahead Hourly Price” in relation to such Settlement Hour; and

(B) the Day Ahead Hourly Price in £/MWh for each Intermittent Index is not the same,

then the Intermittent Market Reference Price for the relevant Settlement Hour shall be expressed in £/MWh and shall be calculated in accordance with the following formula:

$$\text{Intermittent Market Reference Price} = \left(\frac{\sum_e (\text{DAP}_{e,t} \times \text{DAV}_{e,t})}{\sum_e \text{DAV}_{e,t}} \right)$$

where:

\sum_e is the sum across the Intermittent Indices;

$\text{DAP}_{e,t}$ is the Day Ahead Hourly Price in £/MWh in Settlement Hour (t) as determined in the auction on the previous Trading Day conducted by the operator of Intermittent Index (e); and

$\text{DAV}_{e,t}$ is the Day Ahead Hourly Volume of power transacted in MWh in the auction conducted by the operator of Intermittent Index (e) for Settlement Hour (t).]

9. STRIKE PRICE

Strike Price

- 9.1 At the Agreement Date, the Strike Price is £[•] per MWh.
- 9.2 The Strike Price may be changed only in accordance with the provisions of this Agreement.⁴⁵

Strike Price indexation

- 9.3 The Strike Price in £/MWh shall be adjusted each calendar year on, and with effect from, the first day of the EFA Summer Season (the “**Indexation Anniversary**”) to an amount calculated in accordance with the following formula:

$$\text{Strike Price} = (SP^{base} + ADJ_t^{base}) \times \Pi_t$$

where:

SP^{base} is the Base Year Strike Price;

ADJ_t^{base} denotes the sum of the Strike Price Adjustments applicable in [Settlement Period][Settlement Hour] (t), expressed in Base Year Terms; and

Π_t is the Inflation Factor applying in [Settlement Period][Settlement Hour] (t).

- 9.4 For the purpose of Clause 9.3:

“**Base Year**” means [•];⁴⁶

“**Base Year CPI**” means the arithmetic mean of the monthly values of the CPI in the Base Year;

“**Base Year Strike Price**” means the Strike Price as at the Agreement Date;

“**Base Year Terms**” means, for any Strike Price Adjustment initially expressed in a price base period (x), with (x) being a calendar year other than the Base Year, the Strike Price Adjustment in respect of the Base Year (ADJ_{base}), as calculated in accordance with the following formula:

⁴⁵ Note to Generator: Calculations for Strike Price adjustments due to alteration of Installed Capacity or curtailment other than through a Foreseeable Change in Law are being developed. See the “EMR Contract for Difference: Contract and Allocation Overview” for further information.

⁴⁶ Note to Generator: The Base Year will be defined on instructions by the Delivery Body or the Secretary of State on entry into this Agreement.

$$ADJ_{base} = ADJ_x \times \frac{CPI_{base}}{CPI_x}$$

where:

ADJ_x is the Strike Price Adjustment (expressed in £/MWh) in any year (x);

CPI_{base} denotes the Base Year CPI;

CPI_x denotes the average monthly CPI over the year (x);

“CPI” means the index of consumer prices published each month by the Office for National Statistics;

“Inflation Factor”⁴⁷ means in respect of each [*Settlement Period*][*Settlement Hour*] (t):

- (i) in the absence of any re-basing of the CPI which has taken effect prior to the end of the year, the Inflation Factor (Π_t) shall be:

$$\Pi_t = \frac{CPI_t}{CPI_{base}}$$

where:

CPI_t denotes the Reference CPI applicable at time (t); and

CPI_{base} denotes the Base Year CPI; or

- (ii) if CPI is re-based, the Inflation Factor (Π_t) will be adjusted by the ratio between the old and new CPI series, as follows:

$$\Pi_t = \frac{CPI_t^{new}}{CPI_{base}^{old}} \times \frac{CPI_b^{old}}{CPI_b^{new}}$$

where:

CPI_t denotes the Reference CPI in respect of that [*Settlement Period*][*Settlement Hour*] (t);

CPI_b denotes the CPI in the month in which re-basing of the CPI takes effect;

⁴⁷ Note to Generator: If there is a re-basing of CPI, this will apply to all of the contracts.

CPI_x^{old} denotes the values for the CPI in period (x) under the old series;
and

CPI_x^{new} denotes the values for the CPI in period (x) under the new series.

“Reference CPI” means, in respect of any calendar year, the CPI most recently published as at [●] Business Days prior to the Indexation Anniversary in that year; and

“Strike Price Adjustment” means any adjustment to the Strike Price in accordance with Part 11 (*Changes in Law*) and resulting from the occurrence of a Qualifying Change in Law, expressed in Base Year Terms.

Part 6
Billing and payment

10. PRICE NOTIFICATIONS

10.1 *[The CfD Counterparty shall calculate (or procure the calculation by the CfD Settlement Agent of):*

- (A) *the Baseload Market Reference Price in respect of each EFA Season on the first day of such EFA Season (the “**Calculation EFA Season**”) and shall give notice to (or procure that the CfD Settlement Agent gives notice to) the Generator of the Baseload Market Reference Price; and]*⁴⁸
- (B) any adjustment to the Strike Price in accordance with Clause 9.3 and notify the Generator at least [●] Business Days prior to the Indexation Anniversary.

11. BILLING STATEMENTS AND PAYMENTS OF DIFFERENCE AMOUNTS

Definitions

11.1 In this Clause 11 (*Billing Statements and payments of Difference Amounts*):

“**Aggregate Difference Amount**” has the meaning given to that term in Clause 11.5(J);

“**Billing Date**” has the meaning given to that term in Clause 11.3;

“**Billing Statement Dispute Notice**” has the meaning given to that term in Clause 11.12(B);

“**Compensatory Interest Amount**” has the meaning given to that term in Clause 13.1;[and]

“**Net Payable Amount**” means, in respect of a Billing Period, the amount calculated in accordance with Clause 11.9[.];[and

“**RQM Adjustment Amount**” has the meaning given to that term in Clause 11.8.]⁴⁹

⁴⁸ Note to Generator: This sub-clause is only applicable to FiT Contracts for Difference entered into in respect of facilities which deploy baseload generation technologies. Baseload Market Reference Prices are calculated for an entire season so notification is appropriate. Intermittent Market Reference Prices are calculated on a daily basis so generators will be aware of them on an ongoing basis.

⁴⁹ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

Delivery of billing statement

- 11.2 The CfD Counterparty shall, in relation to each Billing Period, deliver (or procure that the CfD Settlement Agent delivers) a billing statement to the Generator (each such billing statement being a “**Billing Statement**”).
- 11.3 Each Billing Statement shall be delivered to the Generator no later than seven Business Days after the end of the relevant Billing Period (the date of such delivery being the “**Billing Date**”).
- 11.4 Clause 47 (*Notices*) shall not apply to the delivery of Billing Statements to the Generator by (or on behalf of) the CfD Counterparty.⁵⁰

Contents of Billing Statement

- 11.5 Each Billing Statement shall be substantially in the form set out in Annex 6 (*Billing Statement*) and shall set out or identify the following:

Identification information

- (A) the Billing Period to which the Billing Statement relates;
- (B) the name or unique identifier of the Generator;
- (C) the details of the Facility;

Aggregate Difference Amount calculation

- (D) the Metered Output in respect of each [*Settlement Period*][*Settlement Hour*] falling in the relevant Billing Period and, if Estimated Loss Adjusted Metered Output has been used in relation to any [*Settlement Period*][*Settlement Hour*], notification of this;
- (E) [*the Renewable Qualifying Multiplier for each [Settlement Period][Settlement Hour];*]⁵¹
- (F) the Strike Price applicable to each [*Settlement Period*][*Settlement Hour*] falling in such Billing Period;

⁵⁰ Note to Generator: It is DECC’s expectation that Billing Statements will be sent electronically. Detailed mechanisms for dispatch of Billing Statements are currently expected to be provided in December.

⁵¹ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

- (G) the *[Baseload Market Reference Price for each Settlement Period][Intermittent Market Reference Price for each Settlement Hour]* falling in the relevant Billing Period;
- (H) the Difference for each of the *[Settlement Periods][Settlement Hours]* falling in the relevant Billing Period;
- (I) the Difference Amounts for each of the *[Settlement Periods][Settlement Hours]* falling in the relevant Billing Period;
- (J) the sum of the Difference Amounts for the *[Settlement Periods][Settlement Hours]* falling in the relevant Billing Period (the “**Aggregate Difference Amount**”);

Additional components of the Billing Statement

- (K) any Reconciliation Amounts;
- (L) any Compensatory Interest Amount;*[and]*
- (M) *[the RQM Adjustment Amount; and]*⁵²
- (N) the Net Payable Amount in respect of that Billing Period.

Calculation of Reconciliation Amounts

11.6 The “**Reconciliation Amounts**” in respect of each Billing Period shall comprise any revisions to the Net Payable Amount in respect of any preceding Billing Period which are necessary to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Dispute;
- (C) the substitution of Estimated Loss Adjusted Metered Output with Loss Adjusted Metered Output; and
- (D) the correction of any error in any previous Billing Statement.

Calculation of Compensatory Interest Amount

11.7 The “**Compensatory Interest Amount**” in respect of each Billing Period shall comprise interest due and payable in relation to any Reconciliation Amount reflected in such

⁵² Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

Billing Statement, such amount being calculated in accordance with Sections N6.4.2 and N6.4.2A of the BSC.

[Calculation of RQM Adjustment Amount

- 11.8 The “**RQM Adjustment Amount**”⁵³ in respect of each Billing Period shall comprise any adjustment to the Metered Output, or any Reconciliation Amount attributable to such Metered Output, in relation to any prior Billing Period where such adjustment is required to reflect the outcome of any Fuel with Variable Renewable Content Audit.⁵⁴

Calculation of Net Payable Amount

- 11.9 The “**Net Payable Amount**” in respect of each Billing Period shall be expressed in pounds and shall be calculated in accordance with the following formula:

$$NPA = ADA - (GRA + GCIA + [GRQMAA]) + (CRA + CCIA + [CRQMAA])$$

where:

NPA	is the Net Payable Amount;
ADA	is the Aggregate Difference Amount in respect of such Billing Period (which may be: (i) a positive amount, representing an amount payable by the CfD Counterparty to the Generator; or (ii) a negative amount, representing an amount payable by the Generator to the CfD Counterparty);
GRA	is any Reconciliation Amount resulting in the Generator owing a greater amount to the CfD Counterparty in relation to any Billing Period or the CfD Counterparty owing a lesser amount to the Generator in respect of any Billing Period;
GCIA	is any Compensatory Interest Amount owed by the Generator to the CfD Counterparty in respect of such Billing Period;
[GRQMAA]	is any RQM Adjustment Amount resulting in the Generator owing a greater amount to the CfD Counterparty in relation to any Billing Period

⁵³ Note to Generator: It is anticipated that there will be periodic audits of the quality and quantity of fuel with variable content being used by relevant Generators and that this will be fed into the BSC settlement process.

⁵⁴ Note to Generator: This Clause is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

*or the CfD Counterparty owing a lesser amount to the Generator in respect of any Billing Period;]*⁵⁵

CRA is any Reconciliation Amount resulting in the Generator owing a lesser amount to the CfD Counterparty in relation to any Billing Period or the CfD Counterparty owing a greater amount to the Generator in relation to any Billing Period;[and]

CCIA is any Compensatory Interest Amount owed by the CfD Counterparty to the Generator in respect of such Billing Period[.]; and]

[CRQMAA is any RQM Adjustment Amount resulting in the Generator owing a lesser amount to the CfD Counterparty in relation to any Billing Period or the CfD Counterparty owing a greater amount to the Generator in relation to any Billing Period;]⁵⁶

Settlement of Billing Statement

11.10 If the Net Payable Amount is a negative number, no later than the end of the fifth Business Day following the delivery of the Billing Statement, the Generator shall pay to the CfD Counterparty the absolute value of the Net Payable Amount by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Clause 16.1(A).

11.11 Subject to Clauses 11.15 and 44 (*Limited recourse*), if the Net Payable Amount is a positive number, no later than the end of the [•] Business Day following the delivery of the Billing Statement, the CfD Counterparty shall pay (or procure that the CfD Settlement Agent pays) to the Generator the Net Payable Amount by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the CfD Counterparty pursuant to Clause 16.1(B).

Billing Statement Disputes

11.12 If a Party disputes any sum shown in a Billing Statement as being payable by that Party, it shall:

- (A) subject to Clauses 11.15 and 44 (*Limited recourse*), make payment of the full amount set out in such Billing Statement on or before the due date; and
- (B) give a notice to the other Party (a “**Billing Statement Dispute Notice**”) which shall:

⁵⁵ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

⁵⁶ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

- (i) be substantially in the form set out in Part G of Annex 2 (*Notices*);
- (ii) specify that it is a Billing Statement Dispute Notice; and
- (iii) specify:
 - (a) the Billing Statement(s) to which the dispute relates;
 - (b) the name or unique identifier of the Generator;
 - (c) the details of the Facility;
 - (d) the Billing Statement items to which the dispute relates;
 - (e) the amount in dispute and the apportionment of such amount in relation to the relevant Billing Statement items;
 - (f) the position the Party believes is correct and the Party's reasons for that position; and
 - (g) any other evidence, information and documentation that the Party deems relevant in relation to the dispute.

11.13 If a dispute under Clause 11.12 relates to the Loss Adjusted Metered Output or Estimated Loss Adjusted Metered Output (a "**Metering Dispute**"):

- (A) such Metering Dispute shall be treated as a "Trading Dispute" under the Balancing and Settlement Code and shall be resolved in accordance with the provisions set out therein (to the exclusion of the Dispute Resolution Procedure);
- (B) the final determination of the Metering Dispute in accordance with the foregoing shall be binding on the Parties; and
- (C) neither Party shall dispute or attempt to dispute such final determination.

11.14 Any Metering Dispute must be brought by the Party within the limitation period set out in Section W.3.2 of the Balancing and Settlement Code.

Metering obligation and Eligibility Criteria default

11.15 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:

- (A) the Generator is in breach of its obligations under Clause 17 (*Metering*) by reason of the Generator's fault or negligence or that of its Representatives; or⁵⁷
- (B) the Generator is in breach of its obligations under Clause 21.2(F).

11.16 If the CfD Counterparty ceases to withhold or suspend any payments withheld or suspended pursuant to Clause 11.15, no interest shall accrue or be payable in respect of the period for which such payments were withheld or suspended.

⁵⁷ Note to Generator: In addition to the right to terminate for an uncured breach by the Generator of its metering obligations, the CfD Counterparty has the right to suspend payment if the Generator is not complying with its metering obligations. Exercise of suspension under this Clause would not prevent termination if the breach went unremedied.

Part 7
General payment mechanics

12. DEFAULT INTEREST

Definitions

12.1 In this Clause 12 (*Default Interest*):

“**Compound SONIA**” means for any period (a “**Calculation Period**”) the rate of return for that Calculation Period of a daily compound interest investment (it being understood that the reference rate for the calculation of interest is the sterling daily overnight reference rate) calculated as follows:

$$\left[\prod_{i=1}^D (1 + (SONIA_i \times DCF_i)) - 1 \right] \times \frac{365}{d}$$

where:

- D* is the number of Business Days in that Calculation Period;
- i* is a series of whole numbers from one to “D” each representing the relevant Business Day in chronological order from, and including, the first Business Day in that Calculation Period;
- SONIA_i* for any Business Day “i” in that Calculation Period, is a reference rate equal to the overnight rate (expressed as a per annum rate) as calculated by the Wholesale Markets Bankers’ Association and appearing on the Bloomberg SONIO/N Page in respect of that day (or if the Bloomberg SONIO/N Page ceases to provide that rate or ceases to be available, the nearest equivalent rate as determined by the CfD Counterparty, acting reasonably);
- DCF_i* is the number of calendar days in that Calculation Period for which the rate is *SONIA_i* divided by 365; and
- d* is the number of calendar days in that Calculation Period; and

The “**Default Rate**” for any period is a rate per annum equal to:

- (A) Compound SONIA for that period; plus
- (B) 3.5 per cent (3.5%).

Calculation of Default Interest

12.2 Subject to Clauses 13 (*Compensatory interest*) and 48 (*Costs*):

- (A) if either Party fails to pay any sum payable by it under this Agreement (including any Arbitral Award) on the due date for payment, interest (“**Default Interest**”) shall accrue on that sum at the Default Rate for the period from the due date for payment to the date of actual payment of that sum (after as well as before award or judgment); and
- (B) Default Interest shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and a year of 365 days.

12.3 The Late Payment of Commercial Debts (Interest) Act 1988 shall not apply in respect of any unpaid sum due under this Agreement. Save as provided in the previous sentence, the right to receive Default Interest pursuant to this Agreement (and as calculated in accordance with this Clause 12 (*Default Interest*)) is not exclusive of any rights, powers and remedies provided by law in respect of the failure to pay the relevant sum on the date or at all.

13. COMPENSATORY INTEREST

Application of Compensatory interest provisions

- 13.1 This Clause 13 (*Compensatory interest*) shall apply to Reconciliation Amounts included in a Billing Statement.
- 13.2 No Default Interest shall be payable by one Party to the other Party in relation to the amount in respect of which Compensatory Interest Amount has been accrued save that Default Interest shall accrue in respect of any Compensatory Interest Amount (and the Reconciliation Amount to which it relates) if and to the extent that such Compensatory Interest Amount has accrued and become due and payable and has not been paid.

14. SET-OFF

The CfD Counterparty may set off any matured obligation due by the Generator under this Agreement against any obligation (whether or not matured) owed by the CfD Counterparty to the Generator.

15. DEDUCTIONS AND WITHHOLDINGS

All payments required to be made by the Generator under this Agreement shall be made in full, free and clear of any right of set-off and from any restriction, condition or deduction because of any counterclaim.

16. ACCOUNTS AND PAYMENTS

16.1 Payments made to:

- (A) the CfD Counterparty shall be made to such account as may be notified to the Generator by the CfD Counterparty (or on behalf of the CfD Counterparty by the CfD Settlement Agent) from time to time; and

(B) the Generator shall be made to such account in the United Kingdom as may be notified to the CfD Counterparty by the Generator from time to time.

16.2 On each date on which payment is required to be made by the Generator or the CfD Counterparty under this Agreement, such payment shall be made to the Generator or the CfD Counterparty (as the case may be) for value on the due date.

**Part 8
Metering**

17. METERING

Metering Undertaking

17.1 The Generator shall at all times ensure that:

- (A) the Relevant Metering Equipment meets all applicable rules and standards provided for in the Balancing and Settlement Code, including Section K and Section L of the BSC;
- (B) the Relevant Metering Equipment is registered under the Balancing and Settlement Code in respect of the Facility such that the BM Unit Metered Volume of that BM Unit or Supplier BM Unit (as applicable) shall comprise:
 - (i) all output electricity generated by the Facility (excluding, if the Facility is an Existing Scheme Facility, all output electricity to which the Existing Scheme relates);
 - (ii) all input electricity used by the Facility (excluding, if the Facility is an Existing Scheme Facility, all input electricity utilised in the production of output electricity to which the Existing Scheme relates); and
 - (iii) no other electrical output or input save for that referred to in Clauses 17.1(B)(i) and 17.1(B)(ii) above;
- (C) all information technology systems relating to Relevant Metering Equipment are satisfactorily installed, commissioned, configured, operational, maintained, tested and are fully compliant with Section L of the BSC; and
- (D) the electrical schematic referred to in paragraph (H) of Part B of Schedule 1 (*Conditions Precedent*) is maintained at all times and shall, if such electrical schematic materially changes⁵⁸, notify the CfD Counterparty as soon as reasonably practicable and provide an accurate and complete updated copy of the electrical schematic with such notification.

Access to and testing of meters

17.2 The Generator shall grant the CfD Counterparty and any persons nominated by the CfD Counterparty the right of access from time to time, at reasonable times and on reasonable notice, to the Facility and the Relevant Metering Equipment and to such plant, property or assets owned, occupied or controlled by the Generator and to which

⁵⁸ Note to Generator: The threshold for where an update is material is being developed.

the Generator can lawfully grant access as may be reasonably necessary for the CfD Counterparty to read and verify any relevant data and inspect and conduct tests in respect of the Relevant Metering Equipment.

Part 9
Information provision

18. INFORMATION PROVISION

Provision of information to the CfD Counterparty

18.1 The Generator, acting to a Reasonable and Prudent Standard, shall provide the CfD Counterparty (and, if so requested by the CfD Counterparty, the CfD Settlement Agent) with:

- (A) from the Agreement Date and at monthly intervals thereafter, estimates of the:
 - (i) expected Start Date;
 - (ii) Installed Capacity as at the Start Date; and
 - (iii) commissioning profile of the Facility.
- (B) from the Start Date, promptly and no later than five Business Days after the information is requested, the information required by the CfD Counterparty or the CfD Settlement Agent to perform its functions under or in connection with this Agreement (including the CfD Settlement Required Information);
- (C) from the Milestone Delivery Date until the Start Date, forecasts of the expected availability of the Facility and the Metered Output;⁵⁹
- (D) promptly, and no later than five Business Days after the Generator has become aware of a material event or circumstance which is reasonably likely to significantly affect the Metered Output of the Facility, details of such material event or circumstance; and
- (E) promptly, and no later than five Business Days after such information is requested, 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 this Agreement or any other CfD Document.

18.2 The obligations of the Generator pursuant to Clause 18.1 shall be in addition and without prejudice to its obligations under Clauses 3 (*Conditions Precedent*), 17.1(D), 21.2(l), 42.5 and 45.3.

⁵⁹ Note to Generator: DECC is giving further consideration as to what requirements will be placed on the Generator to keep the CfD Counterparty informed. It is currently anticipated that the forecasts will broadly reflect the information which would be provided to National Grid in the ordinary and usual course.

Accuracy of information

18.3 The Generator shall ensure that:

- (A) all forecasts and forward-looking statements provided by or on behalf of the Generator under Clause 18.1 are prepared on a reasonable basis and are provided in good faith after due 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 18.1 is true, complete and accurate in all material respects and not misleading.

Part 10
Representations, warranties and undertakings

19. GENERATOR'S REPRESENTATIONS AND WARRANTIES

Agreement Date representations

19.1 The Generator represents and warrants to the CfD Counterparty that, as at the Agreement Date, the following statements are true, accurate and not misleading:

- (A) *Status*: The Generator:
- (i) is duly formed and validly existing under the laws of its jurisdiction of formation; and
 - (ii) has the power to own its assets and carry on its business as it is currently being conducted and as contemplated by this Agreement and the other CfD Documents.
- (B) *Power and authority*: The Generator has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the other CfD Documents and the obligations contemplated by this Agreement and the other CfD Documents.
- (C) *Enforceability*: The obligations expressed to be assumed by the Generator under this Agreement and the other CfD Documents are legal, valid, binding and enforceable subject to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into and performance by the Generator of, and the transactions contemplated by, this Agreement and the other CfD Documents does not and will not conflict with:
- (i) any Law or Directive applicable to it;
 - (ii) its constitutional documents;
 - (iii) any Required Authorisations to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect; or
 - (iv) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect.
- (E) *Required Authorisations*: Save where the absence thereof would not have a Material Adverse Effect, all Required Authorisations have been obtained or effected by the Generator and are in full force and effect and all conditions of, and obligations and liabilities under, any Required Authorisations which are required to be complied with or satisfied on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been complied with in all material respects.

- (F) *Compliance with Eligibility Criteria:* The Generator is in compliance with the Eligibility Criteria for the allocation of this Agreement.
- (G) *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 this Agreement and the other CfD Documents.
- (H) *No litigation:* No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claims or Tax investigation is current, pending or, so far as it is aware, threatened against the Generator which, if adversely determined, would have or would reasonably be expected to have a Material Adverse Effect.
- (I) *No requirement to deduct or withhold:* The Generator 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 this Agreement.

Start Date Representation: Ownership

- 19.2 On and from the Start Date, the Generator represents and warrants that it is the legal and beneficial owner of the Facility.

Repeating Representations

- 19.3 The Generator Repeating Warranties are deemed to be repeated by the Generator on:

- (A) the Milestone Delivery Date; and
- (B) the Start Date,

in each case by reference to the facts and circumstances then existing.

20. CfD COUNTERPARTY'S REPRESENTATIONS AND WARRANTIES

- 20.1 The CfD Counterparty represents and warrants to the Generator that as at the Agreement Date the following statements are true, accurate and not misleading:

- (A) *Status:* The CfD Counterparty 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 this Agreement and the other CfD Documents.
- (B) *Power and authority:* The CfD Counterparty has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement and the other CfD Documents and the obligations contemplated by this Agreement and the other CfD Documents.

- (C) *Enforceability*: The obligations expressed to be assumed by the CfD Counterparty under this Agreement and the other CfD Documents and the other CfD Documents are legal, valid, binding and enforceable subject to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into and performance by the CfD Counterparty of, and the transactions contemplated by, this Agreement and the other CfD Documents 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.

20.2 The representations in Clause 20.1 are deemed to be repeated by the CfD Counterparty on:

- (A) the Milestone Delivery Date; and
- (B) the Start Date,

in each case by reference to the facts and circumstances then existing.

21. UNDERTAKINGS

Definitions

21.1 In this Clause 21 (*Undertakings*):

“**Generation Licence**” means an electricity generation licence granted or treated as granted under section 6(1)(a) of the EA 1989 that authorises a person to generate electricity; and

“**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 or Competent Authority;
- (C) any planning permission; *[and]*

- (D) *[the FMS Agreement; and]*⁶⁰
 - (E) any real property agreement or lease,
- relating to the Project or the Facility.

Generator undertakings

21.2 The Generator undertakes to the CfD Counterparty as follows:

- (A) *Compliance with Laws and Directives*: The Generator shall at all times comply with all Laws and Directives applicable to it in all material respects.
- (B) *Required Authorisations*: The Generator shall promptly obtain, and at all times comply with and do all that is necessary to maintain in full force and effect, all Required Authorisations, if failure to do so would have a Material Adverse Effect.
- (C) *Industry Documents*: The Generator 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.
- (D) *No insolvency action*: The Generator 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) *Ownership*: The Generator shall at all times as from the Start Date be the legal and beneficial owner of the Facility.
- (F) *Compliance with Eligibility Criteria*: The Generator shall at all times remain in compliance with the Eligibility Criteria.
- (G) *Key Project Documents*: The Generator shall at all times comply in all material respects with all the terms of the Key Project Documents to which it is a party or by which it is bound.
- (H) *Generation Licence*: Where the Generator is required to hold a Generation Licence, it shall at all times comply in all material respects with all the terms of the Generation Licence.

⁶⁰ Note to Generator: This definition is only applicable to FiT Contracts for Difference entered into in respect of facilities to which the Renewable Qualifying Multiplier is relevant.

(l) *Notification:*

- (i) The Generator shall provide the CfD Counterparty promptly with such information regarding compliance by the Generator with the undertakings in this Clause 21.2 as the CfD Counterparty may reasonably request.
- (ii) The Generator shall give notice to the CfD Counterparty promptly upon becoming aware of the occurrence of any Default (and the steps, if any, being taken to remedy it).

Part 11
Changes in Law

22. DEFINITIONS AND INTERPRETATION

Definitions

22.1 In this Part 11 (*Changes in Law*):

“**Assumed Load Factor**” means the assumed load factor in respect of the Facility Generation Technology, as published by DECC and used to set the Strike Price;

“**CfD Counterparty QCiL Notice**” has the meaning given to that term in Clause 23.1;

“**Change in Law**” means the occurrence of any of the following events after the Agreement Date:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to any Law or Directive;
- (B) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to any Industry Document;
- (C) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to any Required Authorisation; or
- (D) a change in the interpretation or application of any Law, Directive, Industry Document or Required Authorisation by any Competent Authority,

save (in each case) to the extent that, in circumstances in which the Generator is seeking to invoke the provisions of Clause 23 (Qualifying Change in Law):

- (i) the Change in Law arises out of, or in connection with, a breach of or default under or with respect to, that Law, Directive, Industry Document or Required Authorisation by the Generator or any of its Representatives;
- (ii) the Change in Law arises out of, or in connection with, a failure by the Generator or any of its Representatives to act in accordance with the Reasonable and Prudent Standard; or
- (iii) the Change in Law represents no more than a continuation of an improvement or development of standards which would be complied with in respect of a generating facility deploying the Facility Generation Technology by a generator acting in accordance with a Reasonable and Prudent Standard;

“**Discount Rate**” means the hurdle rate for the Facility Generation Technology, as published by DECC and used to set the Strike Price;

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

- (A) the Project and not to any other project;
- (B) the Facility and not to any other generating facility; or
- (C) the Generator and not to any other person;

“Effective Projected Generation” means the projected generation of the Facility as calculated in accordance with the formula set out in Clause 24.14;

“EU IAS Regulation” means Regulation (EC) No. 1606/2002 of the European Parliament and of the Council;

“Excluded Change in Law” means a Change in Law which is not a Qualifying Change in Law;

“Expected QCiL Effective Date” means the date on which a Notified Change in Law is expected to be implemented, occur or become effective;

“Foreseeable Change in Law” means a Change in Law which meets any of the following criteria, namely:

- (A) it results from the enactment and implementation of any part of chapters 2, 4 and 5 (including the associated schedules of any of those chapters) of part 2 of the EA 2013;
- (B) it was, on or after 1 January 2000 but before the Agreement Date, published:
 - (i) in a Bill, a draft Bill or an Act of Parliament which had been enacted but which had not (in whole or in part) come into effect;
 - (ii) in draft subordinate legislation or subordinate legislation which had not (as regards that Change in Law) come into effect;
 - (iii) as a proposal in the Official Journal of the European Union or in any European Union law which had not (as regards that Change in Law) come into effect;
 - (iv) in a draft Required Authorisation or Required Authorisation which had been made but which had not (as regards that Change in Law) come into effect;
 - (v) in a draft Directive or in a Directive which had been made but which had not (as regards that Change in Law) come into effect;
 - (vi) in a draft treaty or draft international convention in relation to which the UK Government had made a public statement (from which it had not

prior to the Agreement Date publicly resiled) that it would be a signatory or a treaty or international convention to which the UK was a signatory but which had not (as regards that Change in Law) come into effect;

- (vii) as a proposal or option in a consultation document of a Competent Authority where such proposal or option is:
 - (a) the only proposal in such consultation document;
 - (b) a proposal or option on which the Competent Authority is currently consulting or in respect of which it is considering consultation responses; or
 - (c) the stated preferred proposal or option of the Competent Authority,

unless in any such case that proposal or option has been superseded by another proposal or option or formally withdrawn, or the Competent Authority has formally indicated that it does not intend to proceed with it; or

- (viii) a proposal or options for which was (or were) published in a final modification report or proposal in respect of a relevant Industry Document,

but in each case only to the extent that the Change in Law takes effect in substantially the same form, or has substantially the same effect, as that which was published;

- (C) it was, on or after 1 January 2000 but before the Agreement Date, contained in draft subordinate legislation or subordinate legislation, draft European Union Law, a draft Required Authorisation, a draft Directive or a final modification report or proposal in respect of a relevant Industry Document, which, on or prior to the Agreement Date, had not been published but a copy of which had been received (whether in hard copy or electronic version) by: (1) the Generator or any group members of the Generator; or (2) any Contractor in connection with the Generator's participation in the Project, where the Generator knew or ought to have known (having made due and careful enquiries) that the document had been so received, but in each case only to the extent that the Change in Law takes effect in substantially the same form, or has substantially the same effect, as that which was contemplated in the relevant document;
- (D) it occurs as a result of the amendment, supplement, termination, repeal, replacement or withdrawal of all or part of any document which is referred to in any Law, Directive, Industry Document or Required Authorisation in existence at the Agreement Date provided that:
 - (i) on or before the Agreement Date, a document setting out the nature of such amendment, supplement, termination, repeal, replacement or withdrawal (whether or not in draft) has been published, has been

received (in hard copy or electronic form) by the Generator or any group members of the Generator has been received (in hard copy or electronic form) or by any Contractor in connection with the Generator's participation in the Project, where the Generator knew or ought to have known (having made due and careful enquiries) that the document had been so received; and

- (ii) such amendment, supplement, termination, repeal, replacement or withdrawal is in substantially the same form, or has substantially the same effect, as that so published or received;
- (E) it constitutes the re-enactment, re-making or similar of the whole or part of any Law, Directive, Industry Document or Required Authorisation which is in force or otherwise in effect on the Agreement Date, provided that the provision as so re-enacted, re-made or similar is in substantially the same form, or has substantially the same effect, as that of which it is a re-enactment or re-making or similar;
 - (F) it implements or gives effect to the whole or part of any European Union law (or draft thereof) or the whole or part of an international treaty or convention which had been published on or after 1 January 2000 but before the Agreement Date (and notwithstanding that implementation proposals and/or related sanctions for any part of the UK had not been published or had not in whole or in part come into effect prior to the Agreement Date) provided that the Change in Law has substantially the same application as the provision in the European Union law (or draft thereof) or international treaty or convention which it implements;
 - (G) it results from any Required Authorisation or Directive obtained or made under or for the purposes of another Required Authorisation or Directive which was made before, or is in force on, the Agreement Date (the "**First Required Authorisation or Directive**") (unless the Generator is obliged to obtain such a Required Authorisation or Directive because of an unforeseeable amendment to the First Required Authorisation or Directive made after the Agreement Date);
 - (H) it results from any exercise of the Royal Prerogative made and published on or after 1 January 2000 but before the Agreement Date, to the extent that it takes effect in substantially the same form, or has substantially the same effect, as that which was so made or published; or
 - (I) it constitutes a change in the interpretation or application of any Law, Directive, Industry Document or Required Authorisation by any Competent Authority if such interpretation or application is in accordance with a proposal set out in a document (whether or not in draft) which was, on or after 1 January 2000 but before the Agreement Date, published or received (in either hard copy or electronic form) by (1) the Generator or any group members of the Generator; or (2) any Contractor in connection with the Generator's participation in the Project, where the Generator knew or ought to have known (having made due and careful enquiries) that the document had been so received, but in each case only to the extent that the Change in Law takes effect in substantially the

same form, or has substantially the same effect, as that which was contemplated in the relevant document;

“Generator QCiL Notice” has the meaning given to that term in Clause 23.5;

“Generator QCiL Response Notice” has the meaning given to that term in Clause 23.2;

“IASB” means the International Accounting Standards Board;

“IFRS” means the body of pronouncements issued or adopted by the European Union and complying with Article 4 of the EU IAS Regulation and associated interpretations issued by the IASB and International Accounting Standards and associated interpretations adopted by the IASB as modified, amended or supplemented from time to time;

“Notified Change in Law” means a Change in Law to which a CfD Counterparty QCiL Notice or a Generator QCiL Notice relates;

“Other Change in Law” means a Change in Law made by the UK Government or which the UK Government has formally required a Competent Authority to make and which in either such case has an undue, and not objectively justifiable, discriminatory effect on the actual costs incurred or saved by the Generator or the Project when compared with the costs incurred or saved as a result of such Change in Law by:

- (A) all generators which operate generating facilities in the United Kingdom deploying one or more Material Generation Technologies; or
- (B) all other generators deploying the Facility Generation Technology in the United Kingdom,

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

“QCIL Capital Costs” means any QCiL Costs classified as capital costs in accordance with IFRS, including in particular IAS 16 (Property Plant and Equipment) and IAS 11 (Construction Contracts);

“QCIL Capital Savings” means any QCiL Savings classified as capital savings under IFRS, including in particular IAS 16 (Property Plant and Equipment) and IAS 11 (Construction Contracts);

“QCIL Compensation Date” means, in respect of a Notified Change in Law, either the QCiL Effective Date or, if earlier, the date on which the Generator (acting in accordance with a Reasonable and Prudent Standard) would have incurred costs or realised

savings in anticipation of such Notified Change in Law being implemented, occurring or becoming effective;

“QCIL Construction Costs” means *[to be developed]*;⁶¹

“QCIL Construction Payment” has the meaning given to that term in Clause 24.1(C);

“QCIL Costs” means, in relation to a Qualifying Change in Law, all costs (including in relation to Tax) which will or are reasonably likely to be reasonably incurred by the Generator arising directly from such Qualifying Change in Law, if and to the extent that such costs would have been incurred or suffered by a generator acting to a Reasonable and Prudent Standard as a result of or in anticipation of such Qualifying Change in Law being implemented, occurring or becoming effective but excluding any costs incurred by virtue of Clause 28.3;⁶²

“QCIL Directors’ Certificate” means a Directors’ Certificate given to the CfD Counterparty pursuant to Clause 23.4;

“QCIL Effective Date” means the date on which a Notified Change in Law has been implemented, has occurred or become effective;

“QCIL Hurdle Requirement” has the meaning given to that term in Clause 24.2;

“QCIL Lost Revenues” means, in respect of a Qualifying Change in Law, the reduction in revenue which will or is reasonably likely to be suffered by the Generator during a Reduced Output Period and which directly results from, or is a reasonably foreseeable consequence of, that Qualifying Change in Law;

“QCIL Lost Revenues Adjustment” has the meaning given to that term in Clause 24.1(B);

“QCIL Mitigation Obligation” means the obligation of the Generator in Clause 26.2;

“QCIL Net Capital Costs” means, where QCIL Capital Costs in respect of a Qualifying Change in Law exceed the QCIL Capital Savings in respect of such Qualifying Change in Law, the QCIL Capital Costs less the QCIL Capital Savings;

⁶¹ Note to Generator: It is currently envisaged that QCIL Construction Costs will cover sunk costs (including in respect of any necessary decommissioning works) in circumstances in which a Qualifying Change in Law permanently prevents the construction of the facility. In this regard, the calculation of sunk costs will: (i) take account of any savings (for example, insurance proceeds and Tax reliefs) made by the Generator; and (ii) only take into account those sunk costs which are unavoidable and wholly attributable to the construction of the Facility. In each case, QCIL Construction Costs will be calculated by reference to the Generator’s obligation to act in accordance with a Reasonable and Prudent Standard and comply with the QCIL Mitigation Obligation.

⁶² Note to Generator: See footnote 69.

“QCiL Net Capital Savings” means, where QCiL Capital Savings in respect of a Qualifying Change in Law exceed the QCiL Capital Costs in respect of such Qualifying Change in Law, the QCiL Capital Savings less the QCiL Capital Costs;

“QCiL Net Costs” means, where QCiL Costs in respect of a Qualifying Change in Law exceed the QCiL Savings in respect of such Qualifying Change in Law, the net present value of the QCiL Costs less the QCiL Savings;

“QCiL Net Costs/Savings Adjustment” shall have the meaning given to that term in Clause 24.1(A);

“QCiL Net Operating Costs” means, where QCiL Operating Costs in respect of a Qualifying Change in Law exceed the QCiL Operating Savings in respect of such Qualifying Change in Law, the QCiL Operating Costs less the QCiL Operating Savings;

“QCiL Net Operating Savings” means, where QCiL Operating Savings in respect of a Qualifying Change in Law exceed the QCiL Operating Costs in respect of such Qualifying Change in Law, the QCiL Operating Savings less the QCiL Operating Costs;

“QCiL Net Savings” means, where QCiL Savings in respect of a Qualifying Change in Law exceed the QCiL Costs in respect of such Qualifying Change in Law, the QCiL Savings less the QCiL Costs;

“QCiL Notice” means a CfD Counterparty QCiL Notice or a Generator QCiL Notice;

“QCiL Operating Costs” means any QCiL Costs classified as operating costs under IFRS, including in particular IAS 16 (Property Plant and Equipment) and IAS 11 (Construction Contracts);

“QCiL Operating Savings” means any QCiL Savings classified as operating savings under IFRS, including in particular IAS 16 (Property Plant and Equipment) and IAS 11 (Construction Contracts);

“QCiL Operations Cessation Payment” has the meaning given to that term in Clause 24.1(D);

“QCiL Response Information” means, in relation to a Generator QCiL Response Notice, the evidence, information and documentation specified in Clauses 23.2(C) to (H) (inclusive);

“QCiL Savings” means, in relation to a Qualifying Change in Law, all savings and increases in revenue which will or are reasonably likely to be made by the Generator arising directly from such Qualifying Change in Law, including any Tax reliefs, insurance proceeds and compensation directly attributable to or arising as a reasonably foreseeable consequence of the Qualifying Change in Law, in each case if and to the extent that such savings or increases in revenue would have been realised by a generator acting to a Reasonable and Prudent Standard as a result of or in anticipation of such Qualifying Change in Law being implemented, occurring or becoming effective;

“QCiL Supporting Information” means:

- (A) in relation to a CfD Counterparty QCiL Notice, the evidence, information and documentation specified in Clauses 23.1(C) to (F) (inclusive); and
- (B) in relation to a Generator QCiL Notice, the evidence, information and documentation specified in Clauses 23.5(C) to (I) (inclusive);

“Qualifying Change in Law” means:

- (A) a Discriminatory Change in Law;
- (B) a Specific Change in Law; or
- (C) an Other Change in Law,

which, in each case, is not a Foreseeable Change in Law, and provided that no decision by the European Commission or other Competent Authority in connection with the application of the State Aid Rules to this Agreement or FiT Contracts for Difference (including the annulment, invalidation, suspension, revocation, modification or replacement of any prior decision pursuant to such rules) shall constitute a Qualifying Change in Law;

“Reduced Output Period” means a period of reduced generation output by the Facility occurring during the Term as a direct result of a Qualifying Change in Law;

“Risk Free Rate” means [●],⁶³

“ROP Estimate” means a good faith estimate of the Reduced Output Period that will, or is reasonably likely to, result from a Qualifying Change in Law; and

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

- (A) generating facilities which deploy the same Generation Technology as the Facility Generation Technology, or the generation from, or generation related processes carried out at, such generating facilities, and not to other generating facilities, or any generation related processes carried out at, other generating facilities;
- (B) generating facilities the generation output of which is subject to a FiT Contract for Difference, or the generation from or any generation related processes carried out at, such generating facilities, and not in respect of any generating facilities which are not subject to a FiT Contract for Difference or the generation

⁶³ Note to Generator: The appropriate metric for this is currently being developed.

from, or generation related processes carried out at, any such generating facilities;

- (C) generating facilities which deploy the same Generation Technology as the Facility Generation Technology and the generation output of which is subject to a FiT Contract for Difference, or the generation from or any generation related processes carried out at, such generating facilities, and not to any generating facilities which are not of the same or similar type to the Facility but which are subject to a FiT Contract for Difference or to any generation processes carried out at such other generating facilities; or
- (D) the holding of shares in companies, the membership of partnerships, limited partnerships or limited liability partnerships, the participation in joint ventures (whether or not incorporated) or the holding of any other economic interest in an undertaking whose main business is the development, construction, operation and maintenance of generating facilities referred to in paragraphs (A), (B) or (C) above and not other generating facilities.

Interpretation

22.2 Any QCiL Construction Costs, QCiL Costs (including QCiL Lost Revenues) or QCiL Savings required to be agreed or determined pursuant to this Part 11 (*Changes in Law*) in connection with any Notified Change in Law shall be calculated on the basis that the Generator:

- (A) has complied, and will comply, with the QCiL Mitigation Obligation, irrespective of whether the Generator has in fact complied, or will comply, with such obligation; and
- (B) has complied with, and will comply with, the Reasonable and Prudent Standard, irrespective of whether the Generator has in fact complied, or will comply, with the Reasonable and Prudent Standard.

Any notification by the Generator to the CfD Counterparty of the mitigating steps that the Generator has taken, or proposes to take, to maximise any QCiL Savings or minimise any QCiL Construction Costs or QCiL Costs (including QCiL Lost Revenues), in purported compliance with the QCiL Mitigation Obligation or in relation to compliance with the Reasonable and Prudent Standard, shall be of indicative value only and, as such, shall not be determinative of whether the Generator has complied, or will comply, with the QCiL Mitigation Obligation or the Reasonable and Prudent Standard.

23. QUALIFYING CHANGE IN LAW

CfD Counterparty QCiL Notice

23.1 If the CfD Counterparty considers that a Qualifying Change in Law has occurred or is shortly to occur, it may give a notice to the Generator (a "**CfD Counterparty QCiL Notice**"). A CfD Counterparty QCiL Notice shall:

- (A) be substantially in the form set out in Part H of Annex 2 (*Notices*);

- (B) specify that it is a CfD Counterparty QCiL Notice;
- (C) include evidence, in reasonable detail, of, and information and documentation in relation to, the Qualifying Change in Law which the CfD Counterparty considers has occurred or is shortly to occur;
- (D) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (E) include either:
 - (i) a statement that the CfD Counterparty does not consider that the Qualifying Change in Law will result in a Reduced Output Period; or
 - (ii) the CfD Counterparty's ROP Estimate, if the CfD Counterparty considers it to be reasonably practicable to do so;
- (F) include an explanation, in reasonable detail, of why the CfD Counterparty considers the Change in Law constitutes, or will constitute, a Qualifying Change in Law, including:
 - (i) a description of the type of Change in Law (including whether the Change in Law relates to a Law, a Directive, an Industry Document or a Required Authorisation or a change to the interpretation or application of one or more of the foregoing); and
 - (ii) whether the CfD Counterparty considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law.

Generator QCiL Response Notice

23.2 If the CfD Counterparty gives a CfD Counterparty QCiL Notice to the Generator, the Generator shall as soon as reasonably practicable, and in any event within 40 Business Days after receipt of such CfD Counterparty QCiL Notice, give a notice to the CfD Counterparty (a "**Generator QCiL Response Notice**"). A Generator QCiL Response Notice shall:

- (A) be substantially in the form set out in Part I of Annex 2 (*Notices*);
- (B) specify that it is a Generator QCiL Response Notice;
- (C) specify whether the Generator considers that the Notified Change in Law is, or will be, a Qualifying Change in Law and, if the Generator does not consider that the Notified Change in Law is, or will be, a Qualifying Change in Law, include the evidence, in reasonable detail, which the Generator considers to be supportive of that conclusion;
- (D) either:

- (i) if the Generator agrees with the QCiL Effective Date or the Expected QCiL Effective Date specified in the CfD Counterparty QCiL Notice, state that fact; or
 - (ii) if the Generator does not agree with the QCiL Effective Date or the Expected QCiL Effective Date specified in the CfD Counterparty QCiL Notice, state an alternative QCiL Effective Date or Expected QCiL Effective Date;
- (E) either:
- (i) if the CfD Counterparty QCiL Notice included a statement that the CfD Counterparty does not consider that the Notified Change in Law will result in a Reduced Output Period:
 - (a) include a confirmation that the Generator agrees with such statement; or
 - (b) state that the Generator does not agree with such statement and include the Generator's ROP Estimate, if the Generator considers it to be reasonably practicable to do so; or
 - (ii) if the CfD Counterparty QCiL Notice contained an ROP Estimate, either:
 - (a) include a confirmation that the Generator agrees with such ROP Estimate; or
 - (b) include the Generator's alternative ROP Estimate, if the Generator considers it to be reasonably practicable to do so; or
 - (iii) if Clause 23.2(E)(i) does not apply but the CfD Counterparty QCiL Notice did not contain the CfD Counterparty's ROP Estimate, include the Generator's ROP Estimate, if the Generator considers it to be reasonably practicable to do so;
- (F) include:
- (i) the Generator's good faith estimate, together with evidence, information and documentation in reasonable detail, of the QCiL Costs and the QCiL Savings;
 - (ii) the Generator's good faith estimate, together with evidence, information and documentation in reasonable detail, as to the profile of the incurrence of such QCiL Costs and the making of such QCiL Savings; and
 - (iii) (if the Generator considers that the Notified Change in Law will or is reasonably likely to result in a Reduced Output Period):
 - (a) the Generator's good faith estimate as to:

- (1) the date on which such Reduced Output Period will commence and end;
 - (2) the forecast output of the Facility during such Reduced Output Period; and
 - (3) the forecast output of the Facility during such Reduced Output Period if the Notified Change in Law were not to occur, be implemented or become effective; and
- (b) the Generator's good faith estimate of any other compensation received or to be received by the Generator in connection with the restricted generation in respect of such Reduced Output Period from sources other than the CfD Counterparty,
- (together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);
- (iv) if the Notified Change in Law will prevent the construction of the Facility, the Generator's good faith estimate of the QCiL Construction Costs (together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);
 - (v) if the Expected QCiL Effective Date or QCiL Effective Date (as appropriate) occurs on or after the Start Date and the Notified Change in Law will prevent the operation of the Facility on a permanent basis, the Generator's good faith estimate of the [●]⁶⁴ *[for the period from the Expected QCiL Effective Date or the QCiL Effective Date (as appropriate) to the end of the Term (together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);]*
- (G) if applicable, state:
- (i) whether the Qualifying Change in Law will result, or is reasonably expected by the Generator to result, in QCiL Net Savings or QCiL Net Costs; and
 - (ii) the amount of the QCiL Net Savings or QCiL Net Costs (as appropriate); and
- (H) include an explanation, in reasonable detail, of the steps that the Generator has taken and/or proposes to take to comply with the QCiL Mitigation Obligation.

⁶⁴ Note to Generator: DECC is giving further consideration to the scope of compensation which is to be payable in the event that a Qualifying Change in Law permanently prevents the operation of the Facility.

- 23.3 If the Generator, in a Generator QCiL Response Notice, indicates pursuant to Clause 23.2(C) above that it does not consider the Notified Change in Law to be a Qualifying Change in Law, it shall provide the QCiL Supporting Information referred to in Clauses 23.2(D) to 23.2(H) (inclusive) above on the basis of an assumption that the Change in Law is a Qualifying Change in Law.
- 23.4 Any Generator QCiL Response Notice shall be accompanied by a Directors' Certificate:
- (A) certifying that in the opinion of the Generator:
 - (i) the QCiL Response Information:
 - (a) is true, complete and accurate in all material respects; and
 - (b) is not misleading; and
 - (ii) (where the Generator has stated in the Generator QCiL Response Notice that the Qualifying Change in Law will result, or is reasonably expected by the Generator to result, in QCiL Net Costs) certifying that, in the opinion of the Generator, the QCiL Net Costs are Material⁶⁵; and
 - (B) stating (without prejudice to the generality of the certification required pursuant to Clause 23.4(A)(i) above) whether, in the opinion of the Generator, having made all due and careful enquiry, the Change in Law identified in the CfD Counterparty QCiL Notice is, or will be, a Qualifying Change in Law.

Generator QCiL Notice

- 23.5 If the Generator, acting in accordance with the Reasonable and Prudent Standard, considers that a Qualifying Change in Law has occurred or is shortly to occur, it may give a notice to the CfD Counterparty (a "**Generator QCiL Notice**"). A Generator QCiL Notice shall:
- (A) be substantially in the form set out in Part J of Annex 2 (*Notices*);
 - (B) specify that it is a Generator QCiL Notice;
 - (C) include evidence, in reasonable detail, of, and information and documentation in relation to, the Qualifying Change in Law which the Generator considers has occurred or is shortly to occur;
 - (D) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);

⁶⁵ Note to Generator: See footnote 19.

- (E) include either:
- (i) a statement that the Generator does not consider that the Qualifying Change in Law will result in a Reduced Output Period; or
 - (ii) the Generator's ROP Estimate, if the Generator considers it to be reasonably practicable to do so;
- (F) include an explanation, in reasonable detail, why the Generator considers the Change in Law constitutes, or will constitute, a Qualifying Change in Law, including:
- (i) a description of the type of Change in Law (including whether the Change in Law relates to a Law, a Directive, an Industry Document or a Required Authorisation or a change to the interpretation or application of one or more of the foregoing); and
 - (ii) whether the Generator considers the Qualifying Change in Law to be a Discriminatory Change in Law, a Specific Change in Law or an Other Change in Law;
- (G) include:
- (i) the Generator's good faith estimate, together with evidence, in reasonable detail, of, and information and documentation in relation to, the QCiL Costs and the QCiL Savings; and
 - (ii) the Generator's good faith estimate, together with evidence, in reasonable detail, of, and information and documentation in relation to, the profile of the incurrence of such QCiL Costs or the making of such QCiL Savings; or
 - (iii) if the Generator considers that the Notified Change in Law will or is reasonably likely to result in a Reduced Output Period, include:
 - (a) the Generator's good faith estimates as to:
 - (1) the date on which such Reduced Output Period will commence and end;
 - (2) the forecast output of the Facility during such Reduced Output Period;
 - (3) the forecast output of the Facility during such Reduced Output Period if the Notified Change in Law were not to be implemented or become effective; and
 - (b) the Generator's good faith estimate of any other compensation received or to be received by the Generator in connection with

the restricted generation in respect of such Reduced Output Period from sources other than the CfD Counterparty,

(together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);

(iv) if the Notified Change in Law will prevent the construction of the Facility, the Generator's good faith estimate of the QCiL Construction Costs (together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);

(v) if the Expected QCiL Effective Date or QCiL Effective Date (as appropriate) occurs on or after the Start Date and the Notified Change in Law will prevent the operation of the Facility on a permanent basis, the Generator's good faith estimate of the [●] for the period from the Expected QCiL Effective Date or the QCiL Effective Date (as appropriate) to the end of the Term (together with such evidence, information and documentation as the Generator considers to be relevant to the foregoing);

(H) if applicable, state:

(i) whether the Qualifying Change in Law will result, or is reasonably expected by the Generator to result, in QCiL Net Savings or QCiL Net Costs; and

(ii) the amount of the QCiL Net Savings or QCiL Net Costs (as appropriate); and

(I) include an explanation, in reasonable detail, of the steps that the Generator has taken and/or proposes to take to comply with the QCiL Mitigation Obligation.

23.6 Any Generator QCiL Notice shall be accompanied by a Directors' Certificate certifying that:

(A) the QCiL Supporting Information:

(i) is true, complete and accurate in all material respects; and

(ii) is not misleading; and

(B) (where the Generator has stated in the Generator QCiL Notice that the Qualifying Change in Law will result, or is reasonably expected by the Generator to result, in QCiL Net Costs) the QCiL Net Costs are Material.⁶⁶

⁶⁶ Note to Generator: See footnote 19.

Receipt of all information

23.7 The CfD Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL Notice unless and until the Generator shall have provided the CfD Counterparty with all of the QCiL Supporting Information, and the QCiL Directors' Certificate, in respect of such Generator QCiL Notice.

Agreement between the Parties in respect of a Qualifying Change in Law

23.8 As soon as reasonably practicable, and in any event within [●] Business Days of either:

- (A) the Generator giving a Generator QCiL Notice (and the associated QCiL Directors' Certificate) to the CfD Counterparty; or
- (B) the Generator giving a Generator QCiL Response (and the associated QCiL Directors' Certificate) to the CfD Counterparty,

with respect to a Notified Change in Law, the Parties shall meet to discuss and, in good faith, seek to agree:

- (i) whether the Notified Change in Law is or will be a Qualifying Change in Law;
- (ii) in the case of a Qualifying Change in Law:
 - (a) the QCiL Effective Date or the Expected QCiL Effective Date;
 - (b) whether the Notified Change in Law will, or is reasonably expected to, result in a Reduced Output Period (and, if so, the duration or reasonably expected duration of the Reduced Output Period);
 - (c) the amounts, forecasts and estimates applicable to that Qualifying Change in Law provided pursuant to Clauses 23.2(F) and (G) or 23.5(G) and (H) (as the context requires);
 - (d) whether the amount of the QCiL Net Costs or QCiL Net Savings is Material;⁶⁷
 - (e) whether the Generator will incur QCiL Lost Revenues which are Material;⁶⁸
 - (f) the amount of QCiL Operating Costs and QCiL Capital Costs comprised within the QCiL Costs;⁶⁹

⁶⁷ Note to Generator: See footnote 19.

⁶⁸ Note to Generator: See footnote 19.

- (g) the amount of QCiL Operating Savings and QCiL Capital Savings comprised within the QCiL Savings; and
 - (h) the steps or additional steps, as the case may be, which the Generator should take to comply with the QCiL Mitigation Obligation; and
- (C) where a Qualifying Change in Law will give rise to compensation pursuant to Clauses 24.1(A), (B), (C) or (D) whether either:
- (i) a change to the Strike Price should be made as a result of such Qualifying Change in Law and, if so:
 - (a) the revised Strike Price which is (subject to any subsequent adjustments to the Strike Price required to be made pursuant to this Agreement) to apply for the remainder of the Term; and
 - (b) the date from which the revised Strike Price is to be effective,

(any such change being: (1) calculated in accordance with, and applicable in the circumstances described in, Clause 24 (*Qualifying Change in Law Compensation*); and (2) subject to the provisions of Clause 25 (*Effective Date of Qualifying Change in Law Compensation*));

 or
 - (ii) deemed output payments or other compensatory payments should be made and, if so:
 - (a) the amount of such payments;
 - (b) the frequency of such payments; and
 - (c) the date on which the first of such payments is to become due and payable,

(any such payments being: (1) calculated in accordance with, and applicable in the circumstances described in, Clause 24 (*Qualifying Change in Law Compensation*); and (2) subject to the provisions of Clause 25 (*Effective Date of Qualifying Change in Law Compensation*)).

⁶⁹ Note to Generator: The treatment of QCiL Lost Revenues in respect of Qualifying Change in Law events with capital expenditure implications, and the associated interaction between the QCiL Net Costs / Saving Adjustment and the QCiL Lost Revenues Adjustment, is subject to further consideration by DECC.

24. QUALIFYING CHANGE IN LAW COMPENSATION

Categories of Qualifying Change in Law compensation

24.1 Compensation in respect of a Qualifying Change in Law shall be calculated as follows:

- (A) if the QCiL Net Costs or QCiL Net Savings arising from that Qualifying Change in Law are Material, there shall be a Strike Price adjustment, such adjustment to be calculated in accordance with Clauses 24.3 to 24.8 (a “**QCIL Net Costs/Savings Adjustment**”);
- (B) if the QCiL Lost Revenues are Material, there shall be a Strike Price adjustment, such adjustment to be calculated in accordance with Clause 24.9 (a “**QCIL Lost Revenues Adjustment**”);⁷⁰
- (C) if the Qualifying Change in Law will prevent completion of the construction of the Facility, the CfD Counterparty shall pay to the Generator an amount calculated in accordance with Clauses 24.10 and 24.11 (a “**QCIL Construction Payment**”); or
- (D) if the Qualifying Change in Law will prevent operation of the Facility on a permanent basis the CfD Counterparty shall pay to the Generator an amount calculated in accordance with Clauses 24.12 and 24.13 (a “**QCIL Operations Cessation Payment**”).

24.2 Any compensation (including by way of Strike Price adjustment) to be calculated and paid in accordance with Clause 24.1 shall be subject to Clauses 25 (*Effective Date of Qualifying Change in Law Compensation*) and 26 (*Additional Change in Law requirements*).

QCIL Net Costs/Savings Adjustment⁷¹

24.3 There shall be no QCiL Net Costs/Savings Adjustment pursuant to Clause 24.1(A) unless the QCiL Net Costs or QCiL Net Savings (as appropriate) are Material, even if one or more of the QCiL Operating Costs, QCiL Operating Savings, QCiL Capital Costs or QCiL Capital Savings is Material (the “**QCIL Hurdle Requirement**”). If the QCiL Hurdle Requirement is satisfied, discrete adjustments to the Strike Price shall be made:

- (A) in respect of QCiL Net Operating Costs or QCiL Net Operating Savings (as appropriate) in accordance with Clauses 24.5 and 24.6; and

⁷⁰ Note to Generator: See footnote 69.

⁷¹ Note to Generator: DECC is giving further consideration to the QCiL Net Costs/Savings Adjustment being effected, at the option of the CfD Counterparty, through a lump sum payment(s) rather than a Strike Price adjustment.

- (B) in respect of QCiL Net Capital Costs or QCiL Net Capital Savings (as appropriate) in accordance with Clauses 24.7 and 24.8.
- 24.4 The QCiL Net Costs/Savings Adjustment shall be the net Strike Price adjustment to be made in respect of:
- (A) QCiL Net Operating Costs or QCiL Net Operating Savings (as appropriate); and
- (B) QCiL Net Capital Costs or QCiL Net Capital Savings (as appropriate).
- 24.5 In respect of a QCiL Net Costs/Savings Adjustment, the Strike Price shall be:
- (A) increased if there are QCiL Net Operating Costs; or
- (B) decreased if there are QCiL Net Operating Savings.
- 24.6 The Strike Price adjustment referred to in Clause 24.5 shall be by an amount expressed in pounds per MWh equal to the net present value as at the QCiL Compensation Date (applying the Discount Rate) of the QCiL Net Operating Costs or QCiL Net Operating Savings, as applicable, in the period from and including the QCiL Compensation Date to the end of the Term, divided by the Effective Projected Generation as at that date.
- 24.7 In respect of a QCiL Net Costs/Savings Adjustment, the Strike Price shall be:
- (A) increased if there are any QCiL Net Capital Costs; or
- (B) decreased if there are any QCiL Net Capital Savings.
- 24.8 The Strike Price adjustment referred to in Clause 24.7 shall be an amount expressed in pounds per MWh equal to:
- (A) if the QCiL Capital Costs and QCiL Capital Savings are incurred on or prior to the [12th]⁷² anniversary of the Start Date, the net present value as at the QCiL Compensation Date (applying the Discount Rate) of the QCiL Net Capital Costs or QCiL Net Capital Savings, as applicable, in the period from and including the QCiL Compensation Date to the end of the Term, divided by the Effective Projected Generation as at that date; and
- (B) if the QCiL Capital Costs and QCiL Capital Savings are incurred after the [12th]⁷³ anniversary of the Start Date but prior to the end of the Term, the net present value at the QCiL Compensation Date (applying the Discount Rate) of C_E ,

⁷² Note to Generator: This 12 year term will be used for CfDs with a Term of 15 years but will be amended accordingly for CfDs with other terms. See footnote 30.

⁷³ Note to Generator: See footnote 72.

where C_E is calculated in accordance with the formula below, divided by the Effective Projected Generation as at that date.

For the purpose of this Clause 24.8(B), C_E shall be calculated in accordance with the following formula:

$$C_E = \frac{(L - X)}{(L - N)} \times CapEx$$

where:

- L is the Term in years, expressed as an integer;
- X is the number of days that have passed or will have passed from and including the Start Date to the QCiL Compensation Date divided by 365 (or, if such number would be a negative number, 0);
- N is [12];⁷⁴ and
- CapEx is QCiL Net Capital Costs less QCiL Net Capital Savings.

QCIL Lost Revenues Adjustment⁷⁵

24.9 If a Qualifying Change in Law causes the Generator to incur QCiL Lost Revenue, the Generator shall be entitled to a compensation payment (the “**ROP Compensation**”) expressed in pounds and calculated in accordance with the following formula:⁷⁶

$$ROP \text{ Compensation} = (ROV \times SP) - ADJ$$

where:

ROV is the reduction in output in MWh arising from the Qualifying Change in Law event in respect of the Reduced Output Period, being the lower of:

- (A) the difference between:

⁷⁴ Note to Generator: See footnote 72.

⁷⁵ Note to Generator: DECC is giving further consideration to: (i) the QCiL Lost Revenues Adjustment being effected, at the CfD Counterparty’s option, through a lump sum payment(s) rather than a Strike Price adjustment; (ii) the calculation of QCiL Lost Revenues; and (iii) a mechanism for compensating the CFD Counterparty for any increases in revenue received by the Generator.

⁷⁶ Note to Generator: This formula is subject to further development by DECC.

- (i) the forecast [*low carbon output*]⁷⁷ of the Facility for the Reduced Output Period taking into account the Qualifying Change in Law event; and
 - (ii) the forecast [*low carbon output*] of the Facility for the Reduced Output Period derived from the Assumed Load Factor; and
- (B) the difference between:
- (i) the forecast [*low carbon output*] of the Facility for the Reduced Output Period, had the Qualifying Change in Law event not taken place; and
 - (ii) the forecast [*low carbon output*] of the Facility for the Reduced Output Period taking into account the Qualifying Change in Law event,
- in each case taking into account scheduled maintenance and other scheduled reductions in output;
- SP is the Strike Price in pounds per MWh, as applicable immediately prior to the QCiL Compensation Date; and
- ADJ is the net present value at the QCiL Compensation Date applying the Discount Rate in pounds of the sum of:
- (A) any QCiL Savings that directly result from the Qualifying Change in Law event; and
 - (B) any other form of compensation received or to be received by the Generator in connection with the restricted generation from sources other than the CfD Counterparty.

Qualifying Change in Law event prevents the completion of construction; QCiL Construction Payment⁷⁸

24.10 If a Qualifying Change in Law is implemented, occurs or becomes effective before the Start Date and prevents the completion of the construction of the Facility by the Generator acting in accordance with the Reasonable Prudent Standard, then the CfD Counterparty shall pay to the Generator the net present value as at the QCiL Compensation Date (applying the Risk Free Rate) of the QCiL Construction Costs through any one of the following means (the choice of such means to be in the CfD

⁷⁷ Note to Generator: This term is still to be defined.

⁷⁸ Note to Generator: DECC is giving further consideration to the trigger point for this compensation mechanism and the associated compensation methodology.

Counterparty's sole and absolute discretion provided that the net present value of each such amount is the same):

- (A) by way of a lump sum payment on a date agreed by the Parties; or
- (B) by way of a series of regular payments during the remaining Term.

24.11 Where compensation is payable under Clause 24.10, it shall not be payable under any other provision of this Clause 24 (*Qualifying Change in Law Compensation*).

Qualifying Change in Law event prevents operation of the Facility on a permanent basis; QCiL Operations Cessation Payment⁷⁹

24.12 If a Qualifying Change in Law is implemented, occurs or becomes effective on or after the Start Date and prevents the operation of the Facility on a permanent basis, then the CfD Counterparty shall pay to the Generator an amount equal to the net present value as at the QCiL Compensation Event (applying the Discount Rate) of [●]⁸⁰ from the QCiL Compensation Date to the end of the Term through any one of the following means (the choice of such means to be in the CfD Counterparty's sole and absolute discretion provided that the net present value of each such amount is the same):

- (A) by way of a lump sum payment on a date agreed by the Parties; or
- (B) by way of a series of monthly or annual payments during the remaining Term.

24.13 Where compensation is payable under Clause 24.12 it shall not be payable under any other provision of this Clause 24 (*Qualifying Change in Law Compensation*).

Effective Projected Generation

24.14 The Effective Projected Generation from a QCiL Compensation Date shall be calculated in accordance with the formula below:⁸¹

$$\text{Effective Projected Generation} = \sum_{i=1}^n \frac{\text{Generation}_i}{(1 + R_s)^i}$$

where:

⁷⁹ Note to Generator: DECC is giving further consideration to the trigger point for this compensation mechanism and the associated compensation methodology.

⁸⁰ Note to Generator: DECC is giving further consideration to the scope of compensation which is to be payable in the event that a Qualifying Change in Law permanently prevents the operation of the Facility.

⁸¹ Note to Generator: DECC is giving further consideration to the calculation of the Effective Projected Generation.

- $i = 1$ covers the period from the QCiL Compensation Date to 31 December in the same year;
- $2 \leq i < n$ are consecutive periods of one calendar year length each;
- $i = n$ is the period starting on 1 January in the year in which the QCiL Compensation Date occurs and ending on the QCiL Compensation Date;
- R_s is the Discount Rate; and
- Generation_{*i*} is the projected generation in period (i) between the QCiL Compensation Date and the end of the Term based on the Assumed Load Factor multiplied by:
- (a) the Installed Capacity;*[and]*
 - (b) the number of hours in period (i)*[.] [; and]*
 - (c) *the Renewable Qualifying Multiplier*,⁸²
- as adjusted for transmission losses in accordance with Section T of the Balancing and Settlement Code.

25. EFFECTIVE DATE OF QUALIFYING CHANGE IN LAW COMPENSATION

- 25.1 A QCiL Net Costs/Savings Adjustment, QCiL Lost Revenues Adjustment, QCiL Construction Payment or QCiL Operations Cessation Payment shall be calculated at and be effective from the QCiL Compensation Date.
- 25.2 Subject to Clause 44 (*Limited recourse*), any payment in relation to a Qualifying Change in Law required to be made by the CfD Counterparty pursuant to Clause 24 (*Qualifying Change in Law Compensation*) shall be made by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the CfD Counterparty pursuant to Clause 16.1(B) within *[•]* Business Days of the quantum of such payment having been finally determined.

26. ADDITIONAL CHANGE IN LAW REQUIREMENTS

General

- 26.1 Where the Strike Price is to be increased as a result of a Qualifying Change in Law event, the CfD Counterparty shall be entitled in its sole and absolute discretion to

⁸² Note to Generator: This limb of the calculation will only be used for generators to whom the Renewable Qualifying Multiplier applies

compensate the Generator instead by way of a discounted lump sum payment made in one or more instalments, provided that the net present value of such lump sum payment(s) (applying the *[Designated Return as the discount rate]*) is equivalent to the Strike Price increase which would otherwise be made.

Mitigation and Costs

- 26.2 The Generator shall promptly take all reasonable steps, acting to a Reasonable and Prudent Standard, to minimise any costs and lost revenues, and to maximise any cost savings and increased revenues, in each case arising from a Qualifying Change in Law (including by recommencing generation as soon as reasonably practicable) provided that this obligation to mitigate shall not be construed as relieving the Generator from complying in full with the Qualifying Change in Law.
- 26.3 The Generator shall give notice promptly to 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.
- 26.4 The Generator shall, promptly on demand from time to time, indemnify the CfD Counterparty against any and all out-of-pocket costs and expenses (including professional fees) properly incurred by the CfD Counterparty and which would not have been incurred but for a QCiL Notice having been given (by either Party).

No double recovery

- 26.5 Where the Generator is at any time entitled to recover from some other person any sum as a consequence of a Change in Law (whether under a power purchase agreement, an electricity sale contract, insurance policy or otherwise), the Generator shall take all necessary steps to enforce such recovery. If the Generator shall recover any amount from such other person:
- (A) such amount shall be taken into account in the calculation of compensation under this Part 11 (*Changes in Law*);
 - (B) no claim shall be made by the Generator under this Part 11 (*Changes in Law*) in respect of the amounts so recovered; and
 - (C) if the Generator had previously received compensation in relation to a Change in Law pursuant to this Agreement, it shall pay to the CfD Counterparty the lesser of: (i) the amount so recovered; and (ii) the amount so previously received.

Excluded Change in Law

- 26.6 There shall be no amendment to this Agreement, adjustment to the Strike Price or other compensation in respect of or on account of any Excluded Change in Law other than pursuant to the Change Control Procedure.

Part 12
Termination

27. TERMINATION

Definitions

27.1 In this Clause 27 (*Termination*):

“**Default Termination Notice**” has the meaning given to that term in Clause 27.5;

“**Designated Termination Date**” has the meaning given to that term in Clause 27.6(B)(ii);

“**Pre-Start Date Termination Date**” has the meaning given to that term in Clause 27.3(B)(ii); and

“**Pre-Start Date Termination Notice**” has the meaning given to that term in Clause 27.2.

Pre-Start Date Termination

27.2 If:

- (A) the Generator fails to:
 - (i) deliver the Milestone Notice by the Milestone Delivery Date; or
 - (ii) evidence that the Milestone has been met within [●] Business Days after the Milestone Delivery Date in accordance with Clause 4.4(B);
- (B) at any time prior to the Start Date, a Termination Event occurs and is continuing;
- (C) any of the Initial Conditions Precedent are not fulfilled by the Generator or waived by the CfD Counterparty within [●] Business Days of the Agreement Date; or
- (D) any of the Further Conditions Precedent are not fulfilled by the Generator or waived by the CfD Counterparty by the Longstop Date,

then the CfD Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating this Agreement (a “**Pre-Start Date Termination Notice**”).

27.3 A Pre-Start Date Termination Notice shall:

- (A) be substantially in the form set out in Part K of Annex 2 (*Notices*); and
- (B) specify:
 - (i) that it is a Pre-Start Date Termination Notice;

- (ii) the date (on or following the date of the Pre-Start Date Termination Notice) on which termination of this Agreement is designated by the CfD Counterparty to take effect (the date so designated being a “**Pre-Start Date Termination Date**”); and
- (iii) in the case of termination pursuant to Clause 27.2(B), the Termination Event which has occurred.

27.4 If the CfD Counterparty gives a Pre-Start Date Termination Notice, this Agreement shall terminate on the Pre-Start Date Termination Date even if (as the context requires):

- (A) the Milestone has been fulfilled prior to such date;
- (B) the Termination Event is no longer continuing as at such date; or
- (C) the Conditions Precedent remaining to be fulfilled when the Pre-Start Date Termination Notice was given have been fulfilled.

Default termination

27.5 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, to give notice to the Generator terminating this Agreement (a “**Default Termination Notice**”).

27.6 A Default Termination Notice shall:

- (A) be substantially in the form set out in Part L of Annex 2 (*Notices*); and
- (B) specify:
 - (i) that it is a Default Termination Notice;
 - (ii) the date (on or following the date of the Default Termination Notice) on which termination of this Agreement is designated by the CfD Counterparty to take effect (the date so designated being a “**Designated Termination Date**”); and
 - (iii) the Termination Event which has occurred.

27.7 If the CfD Counterparty gives a Default Termination Notice to the Generator, this Agreement shall terminate on the Designated Termination Date even if the Termination Event is no longer continuing on the Designated Termination Date.

Qualifying Change in Law termination

27.8 If a Qualifying Change in Law is implemented, occurs or becomes effective and Clause 24.10 or 24.12 applies, the CfD Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating this Agreement (a “**QCIL Termination Notice**”).

27.9 A QCiL Termination Notice shall:

- (A) be substantially in the form set out in Part N of Annex 2 (*Notices*) and
- (B) specify:
 - (i) that it is a QCiL Termination Notice; and
 - (ii) the date (on or following the date of the QCiL Termination Notice) on which termination of this Agreement is designated by the CfD Counterparty to take effect (the date so designated being a “**QCiL Termination Date**”).

No other termination rights

27.10 The termination rights in this Clause 27 (*Termination*) are the only rights that either Party has to terminate this Agreement.

28. CONSEQUENCES OF TERMINATION

Definitions

28.1 In this Clause 28 (*Consequences of Termination*), “**Termination Payment Notice**” has the meaning given to that term in Clause 28.3(B).

Consequences of Pre-Start Date termination

28.2 If the CfD Counterparty terminates this Agreement pursuant to Clause 27.2:

- (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 this Agreement in consequence of such termination (but without prejudice to accrued rights and rights arising as a result of: (i) the event which gave rise to such termination; (ii) any antecedent breach of any provision of this Agreement; and (iii) any breach of any provisions which survive).

Consequences of Default termination

28.3 If the CfD Counterparty terminates this Agreement pursuant to Clause 27.5, the CfD Counterparty shall:

- (A) calculate the Termination Payment; and
- (B) give a notice to the Generator (a “**Termination Payment Notice**”). A Termination Payment Notice shall:
 - (i) be substantially in the form set out in Part N of Annex 2 (Notices);

- (ii) specify that it is a Termination Payment Notice; and
- (iii) specify the amount of the Termination Payment along with the principal inputs used by the CfD Counterparty to calculate such Termination Payment.

28.4 The Generator shall within 30 Business Days of notification of the amount of the Termination Payment, pay to the CfD Counterparty (or such person as the CfD Counterparty may direct) the Termination Payment and no dispute by the Generator as to the amount of the Termination Payment shall relieve it of its obligation under this Clause 28.4.

28.5 Save as set out in Clause 28.4:

- (A) no payment shall be payable by either Party to the other Party as a consequence of termination pursuant to Clause 27.5; and
- (B) neither Party shall be entitled to make any claim against the other Party under this Agreement in consequence of such termination (but without prejudice to accrued rights and rights arising as a result of: (i) the Termination Event giving rise to termination; (ii) any antecedent breach of any provision of this Agreement; or (iii) any breach of any provisions which survive).

Consequences of Qualifying Change in Law termination

28.6 If the CfD Counterparty terminates this Agreement pursuant to Clause 27.8:

- (A) such termination shall be without prejudice to the CfD Counterparty's obligations to pay the QCiL Construction Payment or the QCiL Operations Cessation Payment (as the context requires);
- (B) subject to Clause 28.6(A), no payment shall be payable by either Party to the other Party as a consequence of termination under Clause 27.8; and
- (C) neither Party shall be entitled to make any claim against the other Party under this Agreement in consequence of such termination (but without prejudice to accrued rights and rights arising as a result of: (i) any antecedent breach of any provision of this Agreement; and (ii) any breach of any provisions which survive).

29. TERMINATION EVENTS

Definitions

29.1 In this Clause 29 (*Termination Events*):

“**Non-NPA Payment Cure Period**” has the meaning given to that term in Clause 29.2(B)(ii); and

“**NPA Payment Cure Period**” has the meaning given to that term in Clause 29.2(B)(i).

Termination Events

29.2 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 (other than pursuant to a solvent consolidation, amalgamation or merger) or becomes insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (ii) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger); or
 - (iii) 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 in Clauses 29.2(A)(i) or 29.2(A)(ii).
- (B) *Non-payment*: The Generator fails to pay:
- (i) any Net Payable Amount on the due date under this Agreement at the place at and in the currency in which it is expressed to be payable and that failure is not remedied on or before the fifth (5th) Business Day after the CfD Counterparty gives the Generator notice of that failure (the “**NPA Payment Cure Period**”) unless the failure is caused by a Payment Disruption Event in which case the NPA Payment Cure Period shall be extended day for day for each day in which the Payment Disruption Event continues; or
 - (ii) any amount other than a Net Payable Amount on the due date under this Agreement at the place at and in the currency in which it is expressed to be payable and that failure is not remedied on or before the twentieth (20th) Business Day after the CfD Counterparty gives the Generator notice of that failure (the “**Non-NPA Payment Cure Period**”) unless the failure is caused by a Payment Disruption Event in which case the Non-NPA Payment Cure Period shall be extended day for day for each day in which the Payment Disruption Event continues.
- (C) *Breach of key obligations*: The Generator:
- (i) is in breach of Clause 46 (*Transfers*) or of Clause 21.2(E); or
 - (ii) or any director, officer or other senior manager of the Generator aids, abets, counsels, procures or commits fraud (and fraud is in fact committed) in relation to this Agreement or any other CfD Document.

- (D) *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 this Agreement and such breach is not remedied within five Business Days, unless compliance is prevented or hindered by a Payment Disruption Event in which case there shall not be deemed to be a breach for so long as the Payment Disruption Event continues.
 - (ii) Other than in accordance with its terms or the terms of this Agreement or with the prior written consent of the CfD Counterparty, any credit support document required under the terms of this Agreement expires or terminates or fails or ceases to be in full force and effect for the purpose of this Agreement prior to the satisfaction of all obligations of the Generator under this Agreement and a replacement credit support document which complies with the terms of this Agreement is not provided within five Business Days, unless such replacement is prevented or hindered by a Payment Disruption Event in which case there shall not be deemed to be a breach for so long as the Payment Disruption Event continues.
 - (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.
- (E) *Metering:* The Generator is in breach of its obligations under Clause 17 (*Metering*) by reason of the Generator's fault or negligence or that of its Representatives and such breach has not been remedied in accordance with, and on the expiry of the relevant period set out in, BSC Procedure 27.

30. SURVIVAL

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

- (A) save to the extent taken into account in the calculation of the Termination Payment (if any), the provisions of the Agreement as they relate to the payment of any sum due by one Party to the other under the Agreement; and
- (B) the continued existence and validity of, and the rights and obligations of the Parties under Clause 1 (*Definitions and interpretation*), Clauses 11 (*Billing Statements*) to 16 (*Accounts and payments*), Clauses 24.10 and 24.12 and Clauses 27 (*Termination*) to 55 (*Language*).

Part 13
Credit support

31. ACCEPTABLE COLLATERAL⁸³

Definitions

31.1 In this Clause 31 (*Acceptable collateral*):

“**Cover Period**” shall have the meaning given to that term in Clause 31.2;

“**Required Sum**” shall have the meaning given to that term in Clause 31.2; and

“**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 *[Baseload Market Reference Price][Intermittent Market 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 this Agreement.

Credit cover requirement

31.2 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 31 (*Acceptable collateral*) in an amount *[to be determined]* (the “**Required Sum**”) and for the *[look forward period to be determined]* during which the CfD Counterparty reasonably considers that the *[Baseload Market Reference Price][Intermittent Market Reference Price]* is likely to be greater than the Strike Price and in consequence of which the Generator may be liable to make Difference Amount payments to the CfD Counterparty under the Agreement (the “**Cover Period**”).

Provision of collateral

31.3 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.

⁸³ Note to Generator: DECC is considering appropriate collateral mechanisms including the period of coverage, quality, permitted types and treatment of collateral. The integration of this Part 13 (*Credit support*) with the termination provisions will be done once Part 13 (*Credit support*) is more developed.

- 31.4 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 that 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.
- 31.5 If the Generator provides a letter of credit to satisfy its obligations under this Clause 31 (*Acceptable collateral*), 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]*.
- 31.6 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]*.

Making a demand

- 31.7 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 Clauses 31.4 or 31.6, in an amount of the letter of credit.

Payment Disruption Event

- 31.8 The Generator shall not be in breach of its obligations under Clauses 31.2 to 31.6 if and to the extent that it is prevented from or hindered in complying with its obligations thereunder by a Payment Disruption Event in which case there shall not be deemed to be a breach for so long as the Payment Disruption Event continues.

Part 14
Confidentiality, announcements and Freedom of Information

32. CONFIDENTIALITY

Definitions

32.1 In this Clause 32 (*Confidentiality*):

“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 this Agreement) which the Generator (or its Representatives) receives or has received from the CfD Counterparty (or its Representatives) or any third party who receives or has received such Information from the CfD Counterparty (or its Representatives) in connection with this Agreement (including all such Information which the Generator prepares which contains or reflects or is generated from such Information);
- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any Strike Price adjustment, or compensation in respect of a Qualifying Change in Law, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any Strike Price adjustment or compensation in respect of a Qualifying Change in Law; and
- (C) all Information which is confidential and relates to or arises from negotiations, discussions and correspondence in connection with this Agreement,

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 this Agreement, any other CfD Document or any FiT Contract for Difference;
- (B) complying with the CfD Counterparty's responsibilities and obligations under or by virtue of the EA 2013; and
- (C) reporting on the establishment, performance or operation of, or compliance with, the arrangements contemplated by this Agreement and FiT Contracts for Difference;

“Excluded Information” means Information:

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

“Generator Confidential Information” means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Generator, the Facility or the Project which the CfD Counterparty (or its Representatives) receives or has received from the Generator (or its Representatives) or any third party who receives or has received such Information from the Generator (or its Representatives) in connection with this Agreement (including all such Information which the CfD Counterparty prepares which contains or reflects or is generated from such Information);
- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any Strike Price adjustment or compensation in respect of a Qualifying Change in Law, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such Strike Price adjustment, or compensation in respect of a Qualifying Change in Law; and
- (C) all Information which is confidential and relates to or arises from negotiations, discussions and correspondence in connection with this Agreement; and

“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 this Agreement or any other CfD Document.

Confidentiality restrictions: application to the terms of this Agreement

32.2 Subject to Clause 33 (*Announcements*), the Parties agree that the provisions of this Agreement shall not be treated as Confidential Information and may be disclosed without restriction.

Generator Confidential Information: obligations of the CfD Counterparty

32.3 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 Clause 32.5.

32.4 The CfD Counterparty shall use Generator Confidential Information only for the CfD Counterparty Permitted Purposes, except with the prior written consent of the Generator.

32.5 Clause 32.3 shall not prevent the disclosure of Generator Confidential Information by the CfD Counterparty:

- (A) on a confidential basis:
 - (i) to its Representatives;
 - (ii) to any person engaged in providing services to the CfD Counterparty to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
 - (iii) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the CfD Counterparty considers such disclosure is required to enable or assist:
 - (a) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or
 - (b) the relevant Government Entity to fulfil any of its functions arising out of or in connection with this Agreement or FiT Contracts for Difference;
 - (iv) to the Transmission System Operator or any Licensed Distributor, the CfD Settlement Agent or the Delivery Body (or to their respective Representatives) but only to the extent that the CfD Counterparty considers such disclosure is necessary or expedient to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or
 - (v) where the CfD Counterparty considers that such disclosure is required to enable or assist it to fulfil any CfD Counterparty Permitted Purpose,
- provided that:
- (a) the CfD Counterparty shall use reasonable endeavours to inform the recipient of the Generator Confidential Information of the CfD Counterparty's obligations under Clauses 32.3 and 32.4; and
 - (b) in the case of disclosure of Generator Confidential Information pursuant to Clause 32.5(A)(i) or 32.5(A)(ii), the CfD Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Clauses 32.3 and 32.4;
- (B) to enable a Dispute to be instigated, progressed, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure;
 - (C) to enable a Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the Balancing and Settlement Code;

- (D) to Parliament or to any Parliamentary committee, but only if and to the extent that the CfD Counterparty considers such disclosure is required or expedient to enable or assist it to fulfil any CfD Counterparty Permitted Purpose;
- (E) to the Secretary of State to enable or assist the Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but (without prejudice to Clause 32.6) only if and to the extent that the Secretary of State has notified the CfD Counterparty that such disclosure is required or expedient to enable or assist the Secretary of State to fulfil its functions;
- (F) to the Secretary of State to enable or assist the Secretary of State 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 expedient in connection with the application of the State Aid Rules or in connection with any European Commission decision relating to those rules;
- (G) 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 or in connection with any European Commission decision relating to those rules;
- (H) which is required:
 - (i) by the FoIA;
 - (ii) by the EIR; or
 - (iii) to comply 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, or would be in the best interests of, the CfD Counterparty;
- (I) to which the Generator has agreed in writing in advance; or
- (J) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of this Agreement.

32.6 Prior to any disclosure of Generator Confidential Information by the CfD Counterparty pursuant to Clause 32.5(D), 32.5(E), 32.5(F), 32.5(G) or 32.5(H)(iii), the CfD Counterparty shall use reasonable endeavours to give notice to the Generator of the Generator Confidential Information to be disclosed, provided that:

- (A) it is lawful and reasonably practicable in the circumstances to do so; and
- (B) in the case of any disclosure pursuant to Clause 32.5(D) or 32.5(E), it is not inconsistent with Parliamentary convention.

- 32.7 The disclosure of Generator Confidential Information by the CfD Counterparty in reliance on the exception set out in Clause 32.5(H)(i) or 32.5(H)(ii) shall be subject to the provisions of Clause 34 (*Freedom of Information*).

CfD Counterparty: liability for Representatives and service providers

- 32.8 The CfD Counterparty shall be responsible for any failure by its Representatives, or any person to whom Generator Confidential Information is disclosed pursuant to Clause 32.5(A)(ii) to comply with the terms of this Clause 32 (*Confidentiality*) as if they were subject to it.

CfD Counterparty Confidential Information: obligations of the Generator

- 32.9 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 Clause 32.11.

- 32.10 The Generator shall not make use of any CfD Counterparty Confidential Information otherwise than to fulfil the Generator Permitted Purpose, except with the prior written consent of the CfD Counterparty.

- 32.11 Clause 32.9 shall not apply to any disclosure of CfD Counterparty Confidential Information by the Generator:

- (A) on a confidential basis:
- (i) to its Representatives;
 - (ii) to any person engaged in providing services to the Generator to enable or assist the Generator to fulfil the Generator Permitted Purpose;
 - (iii) to providers or prospective providers to the Generator of debt financing or refinancing and their professional advisers to assess the financing or refinancing;
 - (iv) to the Transmission System Operator or any Licensed Distributor, the CfD Settlement Agent or the Delivery Body (or to their respective Representatives) but only to the extent that such disclosure is necessary to enable or assist the Generator to fulfil the Generator Permitted Purpose; or
 - (v) for the purposes of:
 - (a) the examination and certification of the Generator's accounts; or
 - (b) complying with a proper request from the Generator's insurance adviser or insurer on placing or renewing any insurance policies,

provided that:

- (1) the Generator shall inform any person to whom it discloses CfD Counterparty Confidential Information of the Generator's obligations under this Clause 32 (*Confidentiality*); and
 - (2) in the case of disclosure of CfD Counterparty Confidential Information pursuant to Clause 32.11(A)(i), 32.11(A)(ii) or 32.11(A)(iii), the Generator shall ensure that the recipient of the CfD Counterparty Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in this Clause 32.11;
- (B) to enable a Dispute to be instigated, progressed, 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);
 - (C) to enable a Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the Balancing and Settlement Code;
 - (D) 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;
 - (E) to which the CfD Counterparty has agreed in writing in advance; or
 - (F) that is otherwise expressly permitted under the terms, or required for the operation or fulfilment, of this Agreement.

32.12 Prior to any disclosure of CfD Counterparty Confidential Information by the Generator pursuant to Clause 32.11(D), the Generator shall use reasonable endeavours to give notice to 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.

Generator: liability for Representatives and service providers

32.13 The Generator shall be responsible for any failure by its Representatives, or any person to whom CfD Counterparty Confidential Information is disclosed pursuant to Clause 32.11(A)(ii) or 32.11(A)(iii), to comply with the terms of this Clause 32 (*Confidentiality*) as if they were subject to it.

No licence

32.14 No right or licence is granted to any person in relation to any Confidential Information save as explicitly set out in this Clause 32 (*Confidentiality*).

33. ANNOUNCEMENTS

No announcements

33.1 The Generator shall not, and shall ensure its Representatives do not, make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any other CfD Document 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).

Generator permitted announcements

33.2 Notwithstanding Clause 33.1, the Generator (or its Representatives) may make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any other CfD Document 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 (or its Representatives) 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).

CfD Counterparty permitted announcements

33.3 The CfD Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any other CfD Document 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, issue or release of such announcement or public statement does not breach Clause 32 (*Confidentiality*).

34. FREEDOM OF INFORMATION

Definitions

34.1 In this Clause 34 (*Freedom of Information*), “**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.

Generator acknowledgements and undertakings

34.2 The Generator acknowledges that:

- (A) the CfD Counterparty:

- (i) is subject to the requirements of the FoIA and the EIR;
 - (ii) 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 the EIR), be obliged under the FoIA or the EIR to disclose Information unless an exemption applies;
 - (iii) 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; and
 - (iv) shall be responsible for determining in its sole and absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether the Information it holds (or that is held on its behalf) that is the subject of a Request for Information:
 - (a) is exempt or excepted from disclosure under the FoIA or the EIR, as appropriate; and
 - (b) is to be disclosed in response to a Request for Information,

and any notification to the CfD Counterparty which identifies Generator Confidential Information is of indicative value only and the CfD Counterparty may nevertheless be obliged to disclose Generator Confidential Information in accordance with the requirements of the FoIA and the EIR; and
- (B) 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.

34.3 The Generator undertakes to assist and co-operate with the CfD Counterparty, at the Generator's expense, to enable the CfD Counterparty to comply with its disclosure obligations under the FoIA and the EIR.

Requests for Information: procedure

- 34.4 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 requests as soon as reasonably practicable and in any event within five Business Days of the CfD Counterparty's request or such other period as the CfD Counterparty may specify; and

- (B) provide all assistance 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.
- 34.5 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.
- 34.6 If the Generator receives a Request for Information in relation to the CfD Counterparty or in connection with this Agreement, the Generator shall forward such Request for Information to the CfD Counterparty as soon as reasonably practicable after receipt and in any event within two Business Days, and the provisions of this Clause 34 (*Freedom of Information*) shall apply as if the Request for Information had been received by the CfD Counterparty.

Publication schemes

- 34.7 Nothing in this Clause 34 (*Freedom of Information*) 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 such Generator Confidential Information would be exempt from disclosure under the FoIA.

Part 15
Intellectual Property Rights

35. INTELLECTUAL PROPERTY RIGHTS

Definitions

35.1 In this Clause 35 (*Intellectual Property Rights*), “**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).

Retention of Intellectual Property Rights

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

Licence of Intellectual Property Rights

35.3 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 this 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 this Agreement shall:

- (A) be exclusive (save for the Generator’s right to use such Intellectual Property Rights for the purposes of this 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 this Agreement.

Indemnity for infringement of Intellectual Property Rights

35.4 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

36. DISPUTE RESOLUTION PROCEDURE

Definitions

36.1 In this Clause 36 (*Dispute Resolution Procedure*):

“**Arbitral Tribunal**” has the meaning given to that term in the LCIA Arbitration Rules;

“**Arbitration Dispute**” means any Dispute other than an Expert Dispute;

“**Arbitration Procedure**” means the rules, obligations and procedures set out in Clauses 36.21 to 36.27;

“**Arbitrator**” means any person to whom a Dispute is referred for resolution by arbitration in accordance with the Arbitration Procedure;

“**Claimant**” has the meaning given to that term in Clause 36.12(A);

“**Connected Dispute**” means, in relation to a Dispute, a dispute under another FiT Contract for Difference:

- (A) which raises issues which are substantially the same as the issues raised in that Dispute and are capable of being resolved in the same dispute resolution process as that Dispute ;
- (B) in respect of which the dispute resolution process under that other FiT Contract for Difference has commenced; and
- (C) consolidation of which with that Dispute would not materially affect the timetable for its resolution or the resolution of that Dispute;

“**Consolidation Notice**” has the meaning given to that term in Clause 36.28;

“**Dispute Notice**” has the meaning given to that term in Clause 36.4;

“**Expert**” means any person appointed in accordance with the Expert Determination Procedure to determine an Expert Dispute;

“**Expert Appointment Date**” means the date on which an Expert is appointed to determine an Expert Dispute by means of an appointment letter entered into by such Expert and each of the Parties;

“**Expert Determination Notice**” has the meaning given to that term in Clause 36.10;

“**Expert Determination Procedure**” means the rules, obligations and procedures set out in Clauses 36.10 to 36.20;

“**Expert Dispute**” means a Dispute which is referred for determination by an Expert in accordance with the Expert Determination Procedure;

“**Expert Referral Date**” has the meaning given to that term in Clause 36.15(A);

“**First Submission**” has the meaning given to that term in Clause 36.15(B);

“**First Submission Deadline**” has the meaning given to that term in Clause 36.15(B);

“**LCIA**” means the London Court of International Arbitration;

“**LCIA Arbitration Rules**” means the arbitration rules published under that name by the LCIA;

“**Mutual Appointment Decision**” has the meaning given to that term in Clause 36.23;

“**Resolution Period**” has the meaning given to that term in Clause 36.6(A);

“**Respondent**” has the meaning given to that term in Clause 36.12;

“**Response Submission**” has the meaning given to that term in Clause 36.15(C);

“**Senior Representative**” means a senior employee or officer selected by a Party to represent it in relation to Clauses 36.6 to 36.8;

“**Senior Representatives Settlement**” has the meaning given to that term in Clause 36.6(A); and

“**Third Party Consolidation Notice**” a consolidation notice served on the Generator under the equivalent of Clause 36.28 of any other FiD Contract for Difference.

Objective for resolution of Disputes

36.2 Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve any Disputes through negotiation.

Performance of obligations during a Dispute

36.3 The Generator and the CfD Counterparty shall continue to observe and perform all of their respective duties, responsibilities and obligations under this Agreement notwithstanding any Dispute which falls to be resolved in accordance with this Clause 36 (*Dispute Resolution Procedure*).

Outline of Dispute Resolution Procedure

36.4 Except as otherwise expressly provided in this Agreement, if a Dispute arises either Party may give a notice to the other Party to initiate the Dispute Resolution Procedure (a “**Dispute Notice**”). A Dispute Notice shall:

(A) be substantially in the form set out in Part O of Annex 2 (*Notices*);

- (B) specify that it is a Dispute Notice;
- (C) include a description of the subject matter of the Dispute and the issues to be resolved;
- (D) include a statement identifying the Clause to which the Dispute relates or under which the Dispute arises;
- (E) include a description of the position the referring Party believes is correct and the referring Party's reasons for that position;
- (F) include details of any other dispute or claims relating to or arising out of another FiT Contract for Difference which the referring Party considers should be consolidated or joined to the Dispute;
- (G) include copies of any documents on which the referring Party intends to rely;
- (H) include a statement outlining the relief, determination, remedy or recourse which the referring Party seeks in relation to the Dispute;
- (I) include a statement as to whether the referring Party considers that the Dispute should (in the absence of a Senior Representatives Settlement being reached) be referred for determination in accordance with the Expert Determination Procedure or resolution in accordance with the Arbitration Procedure; and
- (J) include the identity of the referring Party's Senior Representative.

36.5 Following the service by either Party of a Dispute Notice:

- (A) the Parties shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties in accordance with Clause 36.6; and
- (B) if the Senior Representatives are unable to settle, compromise or resolve the Dispute in accordance with Clause 36.6, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree within the Resolution Period (or such longer period as they may agree) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure.

Resolution by the Senior Representatives

36.6 The Parties shall procure that their respective Senior Representatives shall meet within 10 Business Days of the date of service of the Dispute Notice. If the Senior Representatives of the Parties:

- (A) are able to resolve the Dispute within 30 Business Days of the date of service of the Dispute Notice (or within such longer period as the Senior Representatives of the Parties may agree in writing) (the "**Resolution Period**"), the terms of the agreement, compromise, resolution or settlement reached between the Senior

Representatives in respect of the Dispute (a “**Senior Representatives Settlement**”) shall be documented in writing and shall be signed by the Senior Representative of each Party; or

- (B) are unable to resolve the Dispute within the Resolution Period, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree within the Resolution Period (or such longer period as they may agree) that such Dispute is amenable to determination by an Expert, by referral to an Expert for determination in accordance with the Expert Determination Procedure.
- 36.7 If, at any time during the Resolution Period, both Parties agree in writing that the Senior Representatives of the Parties will not be able to resolve the Dispute, then:
- (A) either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree within the Resolution Period (or such longer period as they may agree) that such Dispute is amenable to determination by an Expert, refer the Dispute to an Expert for determination in accordance with the Expert Determination Procedure; and
 - (B) there shall be no requirement for the Parties to wait until the expiry of the Resolution Period before making any such reference.
- 36.8 Neither Party may commence the Expert Determination Procedure or the Arbitration Procedure prior to the expiry of the Resolution Period except in the circumstances specified in Clause 36.7.
- 36.9 Any statement, concession, waiver or agreement (other than a Senior Representative Settlement) made by a Party in the course of discussions and meetings pursuant to Clause 36.6 shall be “without prejudice” to the Dispute unless expressly stated to be “without prejudice save as to costs” and the details of the discussions and any meetings, minutes and/or statements relating to such meetings shall be inadmissible in any Proceedings that may follow (including pursuant to the Expert Determination Procedure or the Arbitration Procedure), except that those expressly stated to be “without prejudice save as to costs” shall be admissible for the purposes of Clauses 36.20 and 36.22.

Expert Determination Procedure

- 36.10 Either Party may, if the Parties have agreed that a Dispute is amenable to determination by an Expert pursuant to Clause 36.6(B) or 36.7(A), refer such Expert Dispute to be determined by an Expert by giving a notice (an “**Expert Determination Notice**”) to the other Party. An Expert Determination Notice shall:
- (A) be substantially in the form set out in Part P of Annex 2 (*Notices*);
 - (B) specify that it is an Expert Determination Notice;
 - (C) include the information required to be included in a Dispute Notice pursuant to Clauses 36.4(C) to 36.4(H); and

- (D) include a proposal as to the identity, and terms of appointment, of the Expert and the relevant expertise that the referring Party considers qualifies him to determine the relevant Expert Dispute.
- 36.11 The Parties agree that any Expert appointed to determine any Expert Dispute shall be required to have an appropriate level of experience in relation to matters of the same general description as the matter in Dispute.
- 36.12 The Party receiving the Expert Determination Notice (the “**Respondent**”) shall, within 10 Business Days of service of the Expert Determination Notice, either:
- (A) give notice to the other Party (the “**Claimant**”) in writing that it is willing to appoint the Expert proposed by the Claimant; or
 - (B) give notice to the Claimant in writing that it is not willing to appoint the Expert proposed by the Claimant, in which case, the Respondent must, in such notice, propose an alternative Expert for consideration by the Claimant.
- 36.13 If the Parties have failed to agree on the identity of the Expert within 20 Business Days of the date of service of the Expert Determination Notice, either Party may request that the Expert be nominated by the LCIA, which shall be requested to choose a suitably qualified and experienced Expert for the Expert Dispute in question. The LCIA’s nomination shall be binding on the Parties.
- 36.14 The Parties shall:
- (A) use reasonable endeavours to procure that within 10 Business Days of the Parties agreeing the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with Clause 36.13):
 - (i) the Expert confirms in writing to the Parties that:
 - (a) he is willing and available to act in relation to the Expert Dispute; and
 - (b) he has no conflict of interest which prevents him from determining the Expert Dispute; and
 - (ii) the terms of appointment of the Expert are agreed between the Parties and the Expert (and an appointment letter entered into among them), such terms:
 - (a) to include an undertaking that the Expert shall not disclose to any person any information or documentation disclosed or delivered by a Party to the Expert in consequence of, or in connection with, his appointment as the Expert; and
 - (b) to exempt the Expert (and any employee, agent or adviser of or to the Expert) from liability for anything done or omitted in the discharge or purported discharge of the Expert’s functions,

unless such act or omission is fraudulent, negligent or in bad faith;

- (B) instruct the Expert:
- (i) to act fairly and impartially;
 - (ii) to take the initiative in ascertaining the facts and the law, including by:
 - (a) considering any written representations, statements and experts' reports submitted to him by the Parties;
 - (b) instructing an expert and/or taking Counsel's opinion as to any matter raised in the expert determination, provided that the Expert shall not be entitled to delegate any decision to such expert or Counsel;
 - (c) requiring the Parties to produce any information, evidence, supporting documentation or explanations in written or documentary form (save any documents which would be privileged from production in court proceedings); and
 - (d) opening up, reviewing and revising any opinion, assessment, certificate, instruction, determination or decision of whatsoever nature given or made under this Agreement provided that he may not in so doing purport to decide any matter excluded from this Dispute Resolution Procedure;
 - (iii) to reach his decision in accordance with the applicable laws in relation to the Expert Dispute referred to him; and
 - (iv) if requested by either Party in writing, to provide reasons for his decision, which shall be communicated to the Parties;
- (C) afford the Expert the discretion to establish the procedure (including the timetable) for the determination of the Expert Dispute, it being agreed by the Parties that:
- (i) the Expert shall be requested to confirm to the Parties the proposed procedure for the relevant Expert Dispute as soon as reasonably practicable after the Expert Appointment Date and, in any event, within 10 Business Days of such date and, in so doing, the Parties agree that:
 - (a) the Expert shall be requested to afford the Parties the opportunity to address him in a meeting at which both Parties shall have the right to be present, either where a Party requests such a meeting in writing or the Expert otherwise considers it to be necessary or desirable to reach a determination in respect of the relevant Expert Dispute, with the format and procedure

applicable to any such meeting being a matter for the Expert to decide in his sole and absolute discretion; and

- (b) the Expert may (without limitation) modify the time periods provided for in Clause 36.15 and otherwise modify the procedure contemplated by such Clause;
- (ii) all submissions made by a Party to the Expert (including all information, evidence, supporting documentation and explanations provided to him) shall be provided to the other Party contemporaneously with such submissions being made to the Expert; and
- (iii) the Parties shall (without prejudice to Clause 36.14(C)(i)) request the Expert to determine the Expert Dispute within 30 Business Days of the earlier of:
 - (a) the date on which a Response Submission has been provided by each Party; and
 - (b) the date falling 30 Business Days after the First Submission Deadline; and
- (D) afford the Expert all information, evidence, supporting documentation, explanations and assistance which the Expert requires to determine the Expert Dispute (and, if a Party fails to produce any such information, evidence, supporting documentation, explanation or assistance, the Expert may continue the determination process in the absence of that information, evidence, supporting documentation, explanation or assistance).

36.15 Subject to Clause 36.14(C):

- (A) the Claimant shall provide the Expert with a copy of the Expert Determination Notice no later than 10 Business Days after the Expert Appointment Date (the date on which the Expert receives the copy of the Expert Determination Notice being the “**Expert Referral Date**”);
- (B) each Party may, but is not obliged to, provide a written statement of its case to the Expert (the “**First Submission**”) within 20 Business Days of the Expert Referral Date (the “**First Submission Deadline**”) and, without limitation, the First Submission may cover any of the matters required to be contained in the relevant Dispute Notice pursuant to Clauses 36.4(C) to (H) (inclusive) and a copy of such First Submission shall be provided to the other Party at the same time as it is provided to the Expert; and
- (C) each Party may submit a reply to the other Party’s First Submission (a “**Response Submission**”) within 30 Business Days of receipt of the First Submission.

36.16 No Expert determination shall have the effect of amending this Agreement.

- 36.17 The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or his determination or the procedure by which he reaches his determination.
- 36.18 If the Expert is at any time unable or unwilling to act, either Party may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served. The provisions of the Expert Determination Procedure shall apply *mutatis mutandis* to any replacement Expert and the replacement Expert shall be authorised to determine any Expert Dispute which was submitted to his predecessor but which his predecessor had not determined at the time when his predecessor became unable or unwilling to act.
- 36.19 The Expert's decision shall be final and binding upon the Parties.
- 36.20 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 Procedure. Without 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.

Arbitration

- 36.21 Either Party may refer an Arbitration Dispute to arbitration if the Arbitration Dispute has not been resolved by the Parties' Senior Representatives in accordance with Clause 36.6. Any Arbitration Dispute so 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 36.21.
- 36.22 The Arbitral Tribunal shall make its award in writing (the "**Arbitral Award**") and the Parties agree that all Arbitral Awards shall be binding on the Parties save that no Arbitral Award shall have the effect of amending this Agreement.
- 36.23 The Arbitral Tribunal shall consist of three Arbitrators except where the Parties have agreed in writing that the Arbitral Tribunal shall consist of one Arbitrator (the "**Mutual Appointment Decision**").
- 36.24 Where the Arbitral Tribunal consists of three Arbitrators, each Party shall nominate one Arbitrator to be appointed by the LCIA as contemplated by the LCIA Arbitration Rules and the third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chairman.
- 36.25 Where the Arbitral Tribunal consists of one Arbitrator, the Parties shall use reasonable endeavours to agree on the identity of the Arbitrator within 10 Business Days of the Mutual Appointment Decision failing which the Arbitrator shall be appointed by the LCIA as contemplated by the LCIA Arbitration Rules.
- 36.26 The seat, or legal place, of any arbitration shall be London.
- 36.27 The language to be used in any arbitral proceedings shall be English.

Consolidation of Connected Disputes

- 36.28 If the Parties agree that they wish to consolidate a Dispute with one or more Connected Disputes, the CfD Counterparty shall give notice to each of the generators which are party to the Connected Disputes (a “**Consolidation Notice**”). A Consolidation Notice shall:
- (A) be substantially in the form set out in Part Q of Annex 2 (*Notices*);
 - (B) specify that it is a Consolidation Notice;
 - (C) include a description of the subject matter of the Dispute;
 - (D) include a description of the Connected Disputes to which the Dispute is connected;
 - (E) include the reasons why the CfD Counterparty believes the Dispute should be consolidated with the Connected Disputes; and
 - (F) request that each generator to which it is given respond within [●] Business Days of receipt, stating whether it agrees to consolidate the Dispute with the Connected Dispute to which it is party.
- 36.29 Within [●] Business Days following receipt of a Third Party Consolidation Notice relating to any Dispute the Generator shall notify the CfD Counterparty whether it agrees that the Connected Dispute referred to in that Third Party Consolidation Notice should be consolidated with that Dispute.
- 36.30 Where in response to a Consolidation Notice or Third Party Consolidation Notice the Generator and one or more other generators party to Connected Disputes agree that the Dispute should be consolidated with those Connected Disputes, then (subject to Clause 36.31) the Dispute shall be consolidated with the Connected Disputes to which those generators are party.
- 36.31 Where in response to a Consolidation Notice or Third Party Consolidation Notice relating to a Dispute not less than [50] per cent. (50%) in number of generators (including the Generator) in receipt of such Consolidation Notice or Third Party Consolidation Notice agree that the Dispute should be consolidated with the Connected Disputes to which that Consolidation Notice or Third Party Consolidation Notice relates, then the Dispute shall be consolidated with all the Connected Disputes to which such Consolidation Notice or Third Party Consolidation Notice relates.
- 36.32 If different Experts or Arbitrators have been appointed in respect of any Dispute and its Connected Disputes prior to their being consolidated in accordance with the Dispute Resolution Procedure the CfD Counterparty shall (acting reasonably) determine which of the Experts or Arbitrator(s) shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes.

No other Proceedings

36.33 Subject to Clauses 36.34 and 37 (*Metering Disputes*), any Dispute is to be finally resolved in accordance with the Dispute Resolution Procedure, and neither Party shall commence any Proceedings in connection with a Dispute other than in accordance with the Dispute Resolution Procedure. If either Party commences any Proceedings in breach of the Dispute Resolution Procedure, it shall not oppose an application for strike-out, termination, discontinuance or stay of such Proceedings.

36.34 Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time:

- (A) commence or prosecute Proceedings against the other Party in the courts of England and Wales for:
 - (i) an order to obtain urgent injunctive or other equitable relief, including specific performance; or
 - (ii) judgment to enforce a Senior Representative Settlement, the decision of an Expert, or an Arbitral Award; and/or
- (B) give a notice of arbitration to the other Party so as to prevent the expiry of any applicable period of limitation or prescription, or the application of the equitable doctrine of laches.

37. METERING DISPUTES

Metering Disputes shall be resolved solely in accordance with Section W of the Balancing and Settlement Code and neither the Arbitration Procedure nor the Expert Determination Procedure shall apply to any such Disputes.

Part 17
General provisions regarding liabilities, remedies and waivers

38. EXCLUDED LOSSES AND LIABILITIES

General limitation on liability

38.1 Subject to Clauses 38.2 and 38.3, neither Party shall be liable to the other Party under or pursuant to this Agreement or in tort (including negligence and/or breach of statutory duty) or otherwise at law for:

- (A) 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 Agreement Date as the probable result of such breach; or
- (B) any special, indirect or consequential loss including any such loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue,

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

38.2 Clause 38.1 shall not operate so as to prejudice or override the express terms of any obligation to pay, or indemnity or costs reimbursement provision contained within this Agreement.

38.3 Clause 38.1 shall not apply with respect to the calculation of the Termination Payment, or the obligation of the Generator to make the Termination Payment, in each case in accordance with Clause 28.4, it being agreed 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 this Agreement.

38.4 The Generator waives the right to contest the Termination Payment as a penalty.

Transmission System Operator or Licensed Distributor actions

38.5 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 (as such term is defined in the Transmission Licence),

shall not be calculated or made under the terms of this Agreement, and the CfD Counterparty shall have no liability under this Agreement to pay or compensate the Generator in respect of any resulting lost output.⁸⁴

39. NO WAIVER

- 39.1 No waiver by either Party of any breach by the other Party of this Agreement shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.
- 39.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or under or pursuant to this Agreement shall:
- (A) affect that right, power or remedy; or
 - (B) operate as a waiver of it.
- 39.3 The single or partial exercise by either Party of any right, power or remedy provided by law or under or pursuant to this 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.

40. CONSENTS

- 40.1 Any consents, approvals, waivers or agreements to be given by the CfD Counterparty pursuant to this Agreement:
- (A) shall be effective only if given in writing; and
 - (B) may be given or withheld by the CfD Counterparty in 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 and absolute discretion determine.
- 40.2 The exercise of discretion by the CfD Counterparty (including with respect to the grant or withholding of any consent, approval, waiver or agreement) 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 this Agreement.

⁸⁴ Note to Generator: DECC are currently considering the treatment of curtailment under the CfD. See the "EMR Contract for Difference: Contract and Allocation Overview" for further information.

41. ENTIRE AGREEMENT

Definitions

41.1 In this Clause 41 (*Entire agreement*), “**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 this Agreement made or given by or on behalf of either Party, the Secretary of State or the Delivery Body at any time prior to the Agreement Date.

Entire agreement

41.2 This Agreement, together with the other CfD Documents, constitutes the entire agreement, understanding and representations 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 this Agreement.

41.3 Each Party acknowledges that in entering into this 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 this Agreement or another CfD Document.

41.4 Nothing in this Clause 41 (*Entire agreement*) shall limit or exclude liability for fraud.

42. FORCE MAJEURE

Definitions

42.1 In this Clause 42 (*Force Majeure*), “**Non-affected Party**” has the meaning given to that term in Clause 42.4(A).

Relief due to Force Majeure

42.2 Subject to the provisions of this Clause 42 (*Force Majeure*) and save as set out in Clause 42.3, a Party affected by Force Majeure (an “**FM Affected Party**”) shall be relieved from liability and deemed not to be in breach of this Agreement nor liable for any failure or delay in the performance of any of its obligations under this Agreement to the extent arising from or attributable to that Force Majeure.

42.3 Nothing in this Clause 42 (*Force Majeure*) shall relieve the Generator from any obligation to pay any sum due and payable to the CfD Counterparty under this Agreement or any other CfD Document.

Conditions to Force Majeure relief

42.4 The FM Affected Party’s relief from liability under Clause 42.2 is subject to and conditional upon:

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

Provision of Force Majeure information

42.5 In addition to its notification obligation under Clause 42.4, the FM Affected Party shall give notice promptly to the Non-affected Party (to the extent that such information is available) of:

- (A) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement;
- (B) the anticipated date of resumption of performance of its obligations under this Agreement; and
- (C) 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 available at the time a notice is given, the FM Affected Party shall provide such information to the Non-affected Party as soon as it becomes available.

42.6 The FM Affected Party shall give notice to the Non-affected Party every [●]⁸⁵ weeks of any update to the information provided under Clause 42.5 and shall give notice promptly to the Non-affected Party upon it becoming aware of any material developments or additional material information relating to the Force Majeure and its effects.

43. SEVERABILITY

If any provision or part of a provision of this 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 this Agreement; or
- (B) the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

⁸⁵ Note to Generator: Frequency of updates is being considered.

44. LIMITED RECOURSE

Definitions

44.1 In this Clause 44 (*Limited recourse*), “**Supplier Obligation**” has the meaning given to that term in the EA 2013 Regulations.

Sufficient funds

44.2 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 this Agreement.

44.3 Notwithstanding any other provision of this Agreement:

- (A) the liability of the CfD Counterparty under or in respect of this Agreement shall not exceed the amount from time to time received and held by the CfD Counterparty under the Supplier Obligation and allocated to this Agreement in accordance with the EA 2013 Regulations; and
- (B) the CfD Counterparty shall not be in default under this 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 [●] Business Days) after and to the extent of its receipt of such corresponding and allocated amount.

Part 18
Miscellaneous

45. RELATIONSHIP BETWEEN THE GENERATOR AND THE CFD COUNTERPARTY

Generator co-operation

- 45.1 If the CfD Counterparty notifies the Generator that there is an issue relating to the operation or the mechanics of this 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 co-operate with the CfD Counterparty and other relevant generators (including participating in joint working group sessions) to agree 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 reasonably practicable.
- 45.2 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 this Agreement and that decision has not been annulled, the CfD Counterparty shall give notice promptly to the Generator of the sums to be repaid and any other actions necessary to ensure compliance with the European Commission or other Competent Authority's decision and the Generator shall repay or procure the repayment of the relevant sums so notified to the CfD Counterparty or as the CfD Counterparty directs and take any other necessary actions so notified without delay.
- 45.3 The Generator shall, on reasonable notice and at its own cost, 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 pursuant to the State Aid Rules in respect of this Agreement and/or FiT Contracts for Difference.

No partnership

- 45.4 Nothing in this Agreement or any other CfD Document and no action taken by the Parties under this Agreement or any other CfD Document shall constitute a partnership, joint venture or agency relationship between the Parties.

Generator responsibility for advice and appraisal

- 45.5 The Generator acknowledges and agrees that neither the CfD Counterparty, the Secretary of State nor the Delivery Body (nor any of their respective Representatives):
- (A) 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; or
- (B) shall have any responsibility or liability to the Generator with respect thereto.

CfD Counterparty contracting as principal

45.6 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:

- (A) it shall not have or bring any claim or action against the Secretary of State or the Delivery Body (or their respective Representatives), or the Representatives of the CfD Counterparty, in respect of this Agreement;
- (B) nothing in this 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 this Agreement); and
- (C) 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.

46. TRANSFERS***Definitions***

46.1 In this Clause 46 (*Transfers*):

“**Direct Agreement**” means an agreement in substantially the form set out in Annex 5 (*Direct Agreement*);

“**Transfer**” has the meaning given to that term in Clause 46.2; and

“**Transferring Rights and Obligations**” has the meaning given to that term in Clause 46.4(A).

Restriction on Transfers

46.2 Subject to Clauses 46.3 and 46.5, neither Party may:

- (A) assign to any person all or any of its rights or benefits under this Agreement;
- (B) 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 this Agreement; or
- (C) 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 this Agreement,

(each, a “**Transfer**”, and “**Transferee**” shall be construed accordingly), without the prior written consent of the other Party.

Permitted Transfers by the CfD Counterparty

46.3 Notwithstanding Clause 46.2, the CfD Counterparty shall not require the consent of the Generator to:

- (A) effect a Transfer to any person:
 - (i) pursuant to a transfer scheme in accordance with the EA 2013; or
 - (ii) designated as a CfD Counterparty in accordance with the EA 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 this Agreement also transfer to the same person;
- (B) assign to any person (including to the CfD Settlement Agent) all or any of its rights or benefits under this Agreement; or
- (C) 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 this Agreement provided that the CfD Counterparty shall not be relieved of any of its obligations under this Agreement and shall be liable for the acts and omissions of any person to whom it sub-contracts or delegates or with whom it enters into an arrangement to perform any or all of its obligations under this Agreement,

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

46.4 If the CfD Counterparty effects a transfer pursuant to Clause 46.3(A):

- (A) the CfD Counterparty shall give the Generator no less than 10 Business Days prior written notice specifying the identity of the Transferee and the rights, benefits or obligations that are to be the subject of the Transfer (the **"Transferring Rights and Obligations"**); and
- (B) the Generator shall enter into such further agreements and do all such other things as are necessary to substitute the relevant Transferee for the CfD Counterparty in respect of the Transferring Rights and Obligations and to give effect to any consequential amendments to this Agreement that are necessary to give effect thereto.

Permitted assignment by the Generator

46.5 Notwithstanding Clause 46.2, no consent of the CfD Counterparty shall be required for the Generator to assign all (but not part) of its rights and benefits under this 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. The Generator shall give the CfD Counterparty not less than 10 Business Days' written notice prior to effecting an assignment pursuant to this Clause 46.5 and shall specify in such notice the identity of the assignee and provide

such details in relation to such assignee as the CfD Counterparty may reasonably require having received such notification.

- 46.6 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 this Agreement in accordance with Clause 46.5, the CfD Counterparty shall enter into a Direct Agreement with such person.

Other Transfers by the Generator; Stapling obligation

- 46.7 If the CfD Counterparty consents to the transfer by the Generator of all or substantially all of its rights, benefits and obligations under this Agreement to a Transferee, the Generator shall transfer ownership of the Facility to the same Transferee contemporaneously with the Transfer. Any Transfer effected, or purported to be effected, in breach of this Clause 46.7 shall be ineffective and void.

47. NOTICES

Definitions

- 47.1 In this Clause 47 (*Notices*), "**Working Hours**" means 9:00 a.m. to 5:00 p.m. on a Business Day.

Form of notices

- 47.2 Any notice to be given under this Agreement shall be effective only if it is in writing and is in English. Faxes are not permitted. Unless otherwise stated, emails are not permitted.

Notice details

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

- (A) in the case of the Generator, that identified with its name below:

[insert relevant contact details]; and

- (B) in the case of the CfD Counterparty, that identified with its name below:

[insert relevant contact details].

Changes to notice details

- 47.4 A Party may change its notice details on giving notice to the other Party in accordance with this Clause 47 (*Notices*). Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three Business Days after the date of delivery or deemed delivery of such notice); or

- (B) (if no date is specified in such notice or the date specified is fewer than three Business Days after the date of delivery or deemed delivery of such notice) the date falling three Business Days after the notification has been received.

Deemed delivery

47.5 Any notice given under this Agreement shall, without evidence of earlier receipt, be deemed to have been received:

- (A) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (B) if sent by first class post within the United Kingdom, on the third Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth Business Day after the day of posting; or
- (D) if sent by email (where such notice is expressly permitted by email), when sent (provided that an email shall be deemed not to have been sent if the sender receives a delivery failure notification),

provided that any notice given outside Working Hours in the place to which it is addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

Notice requirements

47.6 Each notice given by the CfD Counterparty to the Generator, or by the Generator to the CfD Counterparty, must be duly signed:

- (A) in the manner, and by the person, specified in the relevant Clause; or
- (B) (where no such requirement is specified) by an authorised signatory of the relevant Party.

Disapplication of notice provisions

47.7 The provisions of this Clause 47 (*Notices*) shall not apply in relation to:

- (A) the delivery of any Billing Statement; or
- (B) any document relating to service of process (including with respect to the service of Service Documents).

48. COSTS

48.1 Except as otherwise explicitly stated in this Agreement and subject to Clause 48.2, each Party shall bear its own legal costs and other costs associated with the entry into this Agreement and any other CfD Document, including any costs incidental to the

negotiation, preparation and execution of this Agreement and any such other CfD Document.

- 48.2 Where it is explicitly stated in this Agreement or any other CfD Document that the Generator shall bear the costs of the CfD Counterparty, such costs shall include all out-of-pocket costs and expenses reasonably and properly incurred by the CfD Counterparty in relation to the relevant matter. Where such costs of the CfD Counterparty are required to be apportioned between the Generator and one or more other generators, the CfD Counterparty shall apportion such costs between the Generator and such other generators in such proportion as the CfD Counterparty deems fair and equitable.

49. 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 this Agreement and any other CfD Documents.

50. NO THIRD PARTY RIGHTS

Definitions

- 50.1 In this Clause 50 (*No third party rights*):

“**C(RTP) Act**” means the Contracts (Rights of Third Parties) Act 1999;

“**Third Party**” has the meaning given to that term in Clause 50.2; and

“**Third Party Provisions**” has the meaning given to that term in Clause 50.2.

Third Party Provisions

- 50.2 Clauses 32 (*Confidentiality*), 45.5 and 45.6 confer benefits on certain persons named therein who are not a party to this Agreement (each, a “**Third Party**”) (such Clauses being “**Third Party Provisions**”).
- 50.3 Subject to the remaining provisions of this Clause 50 (*No third party rights*), the Third Party Provisions are intended to be enforceable by the Third Parties by virtue of the C(RTP) Act.
- 50.4 The Parties do not intend that any term of this Agreement, other than the Third Party Provisions, should be enforceable, by virtue of the C(RTP) Act, by any person who is not a party to this Agreement.
- 50.5 Notwithstanding the provisions of this Clause 50 (*No third party rights*), this Agreement may be varied in any way and at any time by the Parties without the consent of any Third Party.

51. NO VARIATION

Subject to the Change Control Procedure, no variation to the provisions of this Agreement shall be valid unless it is in writing and signed by each Party.

52. COUNTERPARTS

This 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.

53. GOVERNING LAW AND JURISDICTION

53.1 This Agreement and any matter, claim or dispute arising out of or in connection with it (including any Dispute) shall be governed by and construed in accordance with English law.

53.2 Any Dispute shall be finally determined or resolved in accordance with the Dispute Resolution Procedure.

54. [AGENT FOR SERVICE OF PROCESS]⁸⁶**Definitions**

54.1 *[In this Clause 54 ([Agent for service of process]), “Service Agent” has the meaning given to that term in Clause 54.2.*

Service Agent

54.2 *The Generator irrevocably appoints [•] of [•] to be its agent for the receipt of Service Documents (“Service Agent”). It agrees that any Service Document may be effectively served on it in connection with Proceedings in England and Wales by service on its Service Agent effected in any manner permitted by the Civil Procedure Rules.*

Replacement

54.3 *If the Service Agent at any time ceases for any reason to act as such, the Generator shall appoint a replacement agent for the receipt of Service Documents having an address for service in England or Wales and shall notify the CfD Counterparty of the name and address of the replacement agent. Failing such appointment and notification, the CfD Counterparty shall be entitled by notice to the Generator to appoint a replacement agent to act on behalf of the Generator for the receipt of Service*

⁸⁶ Note to Generator: This provision is only applicable 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.

Documents. The provisions of this Clause 54 ([Agent for service of process]) applying to service on a Service Agent apply equally to service on a replacement agent.

Service of process

54.4 *A copy of any Service Document served on an agent shall be sent by post to the Generator. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.]*

55. LANGUAGE

English language

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

Translations

55.2 In the case of any information which is translated into English, prior to its being delivered to the CfD Counterparty pursuant to this Agreement or any other CfD Document, 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.

Translation costs

55.3 Any agreement by the CfD Counterparty under Clause 55.1 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
(Conditions Precedent)

Part A
(Initial Conditions Precedent)

Delivery to the CfD Counterparty of the following:

- (A) a legal opinion addressed to the CfD Counterparty, in form and content reasonably satisfactory to the CfD Counterparty, from the legal advisers to the Generator confirming that the Generator:
 - (i) is validly incorporated under the laws of the jurisdiction in which it is incorporated; and
 - (ii) has the capacity and authority to enter into this Agreement and the other CfD Documents and to perform the transactions contemplated hereby;*[and]*

- (B) *[if the Generator is incorporated in a jurisdiction other than England and Wales, evidence of appointment of an agent for service of process by such Generator in England and Wales in accordance with the requirements of Clause 54 ([Agent for service of process]); and][.]]⁸⁷*

- (C) [a duly completed [FMS Questionnaire].]⁸⁸

⁸⁷ Note to Generator: See footnote 86.

⁸⁸ Note to Generator: This Initial Condition Precedent will be applicable only to those FiT Contracts for Difference in respect of which the Facility Generation Technology is a Fuel with Variable Content Facility. It is expected that the FMS Questionnaire will be in a standardised form.

Part B
(Further Conditions Precedent)

Delivery to the CfD Counterparty of the following:

- (A) *[evidence, in form and content reasonably satisfactory to the CfD Counterparty, of compliance with the Eligibility Criteria;]*
- (B) *[a certified copy of the Interim Operational Notification issued by the Transmission System Operator under the Grid Code]⁸⁹ [(i) written confirmation from the relevant Licensed Distributor or, if no such confirmation is applicable, evidence (in form and content reasonably satisfactory to the CfD Counterparty) that the Distribution Code compliance process for connection to and export to the Distribution System has been satisfied; and (ii) if applicable and depending on the size and location of the connection, the Interim Operational Notification issued by the Transmission System Operator under the Grid Code;]⁹⁰*
- (C) written confirmation from the CfD Settlement Agent that:
 - (i) it has received the CfD Settlement Required Information which is required from the Generator prior to the Start Date;
 - (ii) the Generator has in place the systems and processes which are necessary for the continued provision of the CfD Settlement Required Information, in each case including with respect to the calculation, invoicing, reconciliation and settlement of payments under this Agreement;
- (D) evidence, in form and content reasonably satisfactory to the CfD Counterparty, that the Facility has been Commissioned and has an Installed Capacity of not less than [●] per cent. ([●]%) of the Installed Eligible Capacity Estimate;
- (E) evidence, in form and content reasonably satisfactory to the CfD Counterparty, that any collateral required to be in place as at the Start Date under Clause 31 (*Acceptable collateral*) has been provided by the Generator;
- (F) evidence, in form and content reasonably satisfactory to the CfD Counterparty, that the Relevant Metering Equipment meets all applicable rules and standards provided for in the Balancing and Settlement Code, including Section K and Section L of the BSC;
- (G) evidence, in form and content reasonably satisfactory to the CfD Counterparty, that the Relevant Metering Equipment is registered under the Balancing and Settlement Code

⁸⁹ Note to Generator: This will apply to FiT Contracts for Difference in respect of which the relevant facility is connected directly to the Transmission System.

⁹⁰ Note to Generator: This will apply to FiT Contracts for Difference in respect of which the relevant facility is not connected directly to the Transmission System.

in respect of the Facility such that the BM Unit Metered Volume of that BM Unit or Supplier BM Unit (as applicable) shall comprise:

- (i) all output electricity generated by the Facility (excluding, if the Facility is an Existing Scheme Facility, all output electricity to which the Existing Scheme relates);
 - (ii) all input electricity used by the Facility (excluding, if the Facility is an Existing Scheme Facility, all input electricity utilised in the production of output electricity to which the Existing Scheme relates); and
 - (iii) no other electrical output or input save for that referred to in (i) and (ii) above;⁹¹
- (H) a copy of the electrical schematic diagram, showing the Metering Points associated with all relevant assets owned and used by the Facility, including details on the type of BSC-approved metering and information technology systems installed, as required by Annex 4 (*Metering Points*);
- (I) evidence, in form and content reasonably satisfactory to the CfD Counterparty, that all information technology systems relating to Relevant Metering Equipment are satisfactorily installed, commissioned, configured, operational, maintained, tested and fully compliant with Section L of the BSC[.]; and]
- (J) *[an executed copy of the FMS Agreement in form and content reasonably satisfactory to the CfD Counterparty.]*⁹²

⁹¹ Note to Generator: If the Facility is an Existing Scheme Facility, additional metering requirements may be required to ensure that the electricity generated by the Facility is appropriately apportioned between the Existing Scheme and this Agreement. The provisions relating to this are currently being finalised.

⁹² Note to Generator: This Further Condition Precedent will be applicable only to those FIT Contracts for Difference in respect of which the Facility Generation Technology is a Fuel with Variable Content Facility. It is expected that the FMS Agreement will be in a standardised form and appended to the CfD.

Schedule 2
(Target Commissioning Window and Longstop Date)⁹³

In this Schedule 2 (*Target Commissioning Window and Longstop Date*), “Advanced Conversion Technology with CHP”, “Advanced Conversion Technology without CHP”, “Anaerobic Digestion with CHP”, “Anaerobic Digestion without CHP”, “Biomass Conversion”, “Dedicated Biomass with CHP”, “Energy From Waste with CHP”, “Fuel with Variable Renewable Content Facility”, “Geothermal with CHP”, “Geothermal without CHP”, “Hydroelectricity”, “Landfill Gas”, “Offshore Wind”, “Onshore Wind”, “Sewage Gas”, “Solar PV”, “Tidal Barrage”, “Tidal Lagoon”, “Tidal Range”, “Tidal Stream” and “Wave” shall each have the meanings given to such terms in the EA 2013 Regulations.

<u>Technology</u>	<u>Target Commissioning Window</u>	<u>Longstop Date</u>
Advanced Conversion Technology with CHP ⁹⁴	1 year	1 year
Advanced Conversion Technology without CHP ⁹⁵	1 year	1 year
Anaerobic Digestion with CHP	1 year	1 year
Anaerobic Digestion without CHP	1 year	1 year
Biomass Conversion	1 year	1 year
Dedicated Biomass with CHP	1 year	1 year
Energy from Waste with CHP	1 year	1 year

⁹³ Note to Generator: Provisions for CCS and nuclear are being developed. For further information, see the “EMR Contract for Difference: Contract and Allocation Overview”.

⁹⁴ Standard and advanced gasification and pyrolysis, including advanced bioliquids

⁹⁵ Standard and advanced gasification and pyrolysis, including advanced bioliquids

<u>Technology</u>	<u>Target Commissioning Window</u>	<u>Longstop Date</u>
Geothermal with CHP	1 year	1 year
Geothermal without CHP	1 year	1 year
Hydroelectricity	1 year	1 year
Landfill Gas	6 months	6 months
Offshore Wind	1 year	2 years
Onshore Wind	1 year	1 year
Sewage Gas	1 year	1 year
Solar PV	3 month	1 year
Tidal Barrage	1 year	2 years
Tidal Lagoon	1 year	2 years
Tidal Stream	1 year	2 years
Wave	1 year	2 years

**Schedule 3
(Termination Payment)**

Definitions

In this Schedule 3 (*Termination Payment*):

“**Energy and Emissions Projections**” means the regular updated projections of energy demand, supply and greenhouse gas emissions produced and published by DECC; and

“**The Green Book**” means “The Green Book: Appraisal and Evaluation in Central Government” published by HM Treasury, as updated or reissued from time to time.

Termination Payment calculation

1.1 The “**Termination Payment**” shall be calculated in accordance with the following formula:

$$\text{Termination Payment} = \text{MAX} \left[0, \sum_{i=1}^n \left\{ (RP_i - SP) \times \frac{Gen_i}{(1+d)^i} \right\} \right]$$

where:

$i = 1$ covers the period from the Termination Date to 31 December in the year of termination;

$2 \leq i < n$ are consecutive periods of one calendar year length each;

$i = n$ is the period starting on 1 January in the year in which the last day of the Term falls and ending on the last day of the Term;

RP_i is the estimate (in £/MWh) of the power prices for period (i) determined by the CfD Counterparty as at the Termination Date, having regard to the matters set out in paragraph 1.2 of this Schedule 3 (*Termination Payment*);

SP is the Strike Price as at the Termination Date;

Gen_i is the Assumed Load Factor multiplied by:

- (A) the Installed Capacity; *[and]*
- (B) the number of hours in the period (i); *[and]*

(C) the Renewable Qualifying Multiplier]⁹⁶,

as adjusted for transmission losses in accordance with Section T of the Balancing and Settlement Code.

d is the discount rate calculated in accordance with The Green Book.

1.2 Without prejudice to its right to determine RPi the CfD Counterparty shall, when determining RPi, have regard to:

- (A) the market price for power in the system into which electricity is delivered by the Facility;
- (B) whether the Facility deploys baseload Generation Technologies or intermittent Generation Technologies;
- (C) the liquidity of the market referred to in paragraph 1.2(A) above;
- (D) the level of quoted wholesale power prices on the Termination Date for delivery for a period of up to two years following the Termination Date;
- (E) the wholesale electricity price projections corresponding to the central scenario of DECC's most recently issued Energy and Emissions Projections (or equivalent) if available; and
- (F) any recent changes or announced changes in the electricity market which are reasonably likely to have a material effect on the estimate of the wholesale market power prices.

⁹⁶ Note to Generator: This limb of the calculation will only be used for generators to whom the Renewable Qualifying Multiplier applies.

Annex 1
(The Facility)

[To be inserted for each FiT Contract for Difference using information to be provided as part of the FiT Contract for Difference application process].

**Annex 2
(Notices)**

**Part A⁹⁷
(CP Fulfilment Notice)**

To: [●] (the “Generator”)
[Unique reference number: [●]]

From: [●] (the “CfD Counterparty”)
[Address]

Dated:

CONTRACT FOR DIFFERENCE – CP FULFILMENT NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 3.11 of the Agreement.
3. This is a CP Fulfilment Notice.
4. We hereby confirm to you that the Further Conditions Precedent specified in Part B of Schedule 1 (*Conditions Precedent*) to the Agreement are hereby fulfilled [with the exception of [●] which [has][have] been waived].

Yours faithfully,

.....
For and on behalf of
the **CfD Counterparty**

⁹⁷ Note to Generator: The notices set out in this Annex 2 have been included for discussion purposes with generators. The CfD Counterparty may retain the discretion to stipulate the form of notices outside the terms of the CfD.

Part B
(Start Date Notice)

To: [●] (the “CfD Counterparty”)
[Address]

From: [●] (the “Generator”)
[Unique reference number: [●]]

Dated:

CONTRACT FOR DIFFERENCE – START DATE NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 3.12 of the Agreement.
3. This is a Start Date Notice.
4. We hereby give notice to you that the Start Date for the purposes of the Agreement shall be: [insert date].

Yours faithfully,

.....
For and on behalf of
the **Generator**

Part C
(Milestone Notice)

To: [●] (the “CfD Counterparty”)
[Address]

From: [●] (the “Generator”)
[Unique reference number: [●]]

Dated: [●]

CONTRACT FOR DIFFERENCE – MILESTONE NOTICE

Dear Sirs,

1. We refer to the agreement dated [●] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 4.2 of the Agreement.
3. This is a Milestone Notice.
4. We enclose a Directors’ Certificate certifying that the Substantial Financial Commitment has been complied with in respect of the Project.
5. In evidence of compliance with the Substantial Financial Commitment, we include: [●].
- [6. *As we have been notified in advance by you that it is required, we enclose a report prepared by [●] confirming that the Substantial Financial Commitment has been complied with in respect of the Project.*]

Yours faithfully,

.....

For and on behalf of
the **Generator**

Part D
(Milestone Assessment Response Notice)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – MILESTONE ASSESSMENT RESPONSE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We refer you to Clause 4.3 of the Agreement.
3. This is a Milestone Assessment Response Notice.
4. *[We consider that the Milestone has [not] been met.][We have not been provided with sufficient evidence to determine whether the Milestone has been met. We require the following Requested Milestone Supporting Information to determine whether or not the Milestone has been met: [•].]*

Yours faithfully,

.....

For and on behalf of
the CfD Counterparty

Part E
(Relevant Geological Issue Notice)

To: [•] (the “CfD Counterparty”)
[Address]

From: [•] (the “Generator”)
[Unique reference number: [•]]

Dated: [•]

CONTRACT FOR DIFFERENCE – RELEVANT GEOLOGICAL ISSUE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 5.2 of the Agreement.
3. This is a Relevant Geological Issue Notice.
4. We enclose the following evidence as evidence of the occurrence of a Relevant Geological Issue: [•].
5. We further enclose an explanation, in reasonable detail, as to why we consider it would be uneconomic for us (operating in accordance with the Reasonable and Prudent Standard) to meet the Installed Eligible Capacity Estimate as a consequence of the occurrence of such Relevant Geological Issue.
6. The amount by which the Installed Eligible Capacity Estimate should be adjusted is [•] and the Alternate Installed Eligible Capacity Estimate is [•].

Yours faithfully,

.....

For and on behalf of
the **Generator**

Part F
(Relevant Geological Issue Response Notice)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – RELEVANT GEOLOGICAL ISSUE RESPONSE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We refer you to Clause 5.3 of the Agreement.
3. This is a Relevant Geological Issue Response Notice.
4. *[We consider that the notified Relevant Geological Issue is a Relevant Geological Issue and has occurred. [We confirm that we agree with the Alternate Installed Eligible Capacity Estimate specified in the Relevant Geological Issue Notice.][We do not agree with the Alternate Installed Eligible Capacity Estimate specified in the Relevant Geological Issue Notice.]]*

[We do not consider that you have provided us with sufficient evidence to determine whether a Relevant Geological Issue has occurred, and we therefore request the following RGI Supporting Information: [•]]

[[We do not consider that the notified Relevant Geological Issue is a Relevant Geological Issue.][We do not consider that a Relevant Geological Issue has occurred] and include evidence, in reasonable detail, that we consider to be supportive of that decision.]

Yours faithfully,

.....
For and on behalf of
the **CfD Counterparty**

Part G
(Billing Statement Dispute Notice)

To: [•]

From: [•]

Dated: [•]

CONTRACT FOR DIFFERENCE – BILLING STATEMENT DISPUTE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between [•] as the CfD Counterparty and [•] as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 11.12 of the Agreement.
3. This is a Billing Statement Dispute Notice. The Billing Statement to which the Dispute relates is [•].
4. Our [name][unique identifier] is [•].
5. The Facility is [•].
6. The Billing Statement items to which the dispute relates are [•].
7. The amount in dispute is [•]. The apportionment of this amount in relation to the relevant Billing Statement items is [•].
8. We believe the correct position is [•]. Our reasons for believing this is the correct position are [•].
9. The person responsible for resolving the dispute on behalf of the [•] is [•]. [He][She] can be contacted using the following details: [•].
10. We enclose the following supporting documentation in relation to the dispute: [•].

Yours faithfully,

.....
For and on behalf of
[•]

Part H
(CfD Counterparty QCiL Notice)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – CFD COUNTERPARTY QCIL NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 23.1 of the Agreement.
3. This is a CfD Counterparty QCiL Notice.
4. We enclose supporting evidence, in reasonable detail, of the Qualifying Change in Law which we consider *[has occurred][is shortly to occur]*.
5. The *[QCIL Effective Date][Expected QCIL Effective Date]* is [•].
6. *[We do not consider that the Qualifying Change in Law will result in a Reduced Output Period.]*

[As we consider it to be reasonably practicable to do so, we include our ROP Estimate of [•].]

7. We believe the Change in Law *[constitutes][will constitute]* a Qualifying Change in Law for the following reasons: [•]. We believe the Change in Law relates to *[a change to the [interpretation][application] of][a Law][a Directive][an Industry Document][a Required Authorisation]*. We consider the Qualifying Change in Law to be a *[Discriminatory][Specific][Other]* Change in Law.

Yours faithfully,

.....
For and on behalf of
the **CfD Counterparty**

Part I
(Generator QCiL Response Notice)

To: [•] (the “CfD Counterparty”)
[Address]

From: [•] (the “Generator”)
[Unique reference number: [•]]

Dated: [•]

CONTRACT FOR DIFFERENCE – GENERATOR QCIL RESPONSE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 23.2 of the Agreement.
3. This is a Generator QCiL Response Notice in response to the CfD Counterparty QCiL Notice dated [•].
4. *[We consider that the Notified Change in Law [is][will be] a Qualifying Change in Law.]*

[We do not consider that the Notified Change in Law [is][will be] a Qualifying Change in Law and enclose the evidence, in reasonable detail, which we consider to be supportive of that conclusion.]
5. *[We agree with the [QCIL Effective Date][Expected QCIL Effective Date] specified in the CfD Counterparty QCiL Notice.]*

[We do not agree with the [QCIL Effective Date][Expected QCIL Effective Date] specified in the CfD Counterparty QCiL Notice and we consider the [QCIL Effective Date][Expected QCIL Effective Date] to be [•].]
6. *[We note that the CfD Counterparty QCiL Notice included a statement that the CfD Counterparty does not consider that the Notified Change in Law will result in a Reduced Output Period. [We agree with this statement.][We disagree with this statement [and as we consider it reasonably practicable to provide a ROP Estimate, we consider the ROP Estimate to be [•].]]*
7. *[As the CfD Counterparty QCiL Notice contained a ROP Estimate, [we agree with the ROP Estimate][we include our alternative ROP Estimate: [•].]*
8. *[We note that the CfD Counterparty QCiL Notice did not include a statement that the CfD Counterparty does not consider that the Notified Change in Law will result in a Reduced Output Period and the CfD Counterparty QCiL Notice did not contain the CfD*

Counterparty's ROP Estimate. We include our ROP estimate as we consider it reasonably practicable to do so, being [•].]

9. Our good faith estimate of the QCiL Costs is [•] and the QCiL Savings is [•]. We enclose supporting evidence of these in reasonable detail.
10. Our good faith expectations, as to the profile of the incurrence of such QCiL Costs and the making of such QCiL Savings are [•]. We enclose supporting evidence of these in reasonable detail.
11. *[We consider that the Notified Change in Law will or is reasonably likely to result in a Reduced Output Period.*

(A) *Our good faith expectation:*

- (i) *as to the date on which such Reduced Output Period will commence is [•] and end is [•];*
- (ii) *of the forecast output of the Facility during such Reduced Output Period is [•];*
- (iii) *of the forecast output of the Facility during such Reduced Output Period if the Notified Change in Law were not to occur, be implemented or become effective; is [•]; and*

(B) *Our good faith estimate of any other compensation received or to be received by us in connection with the restricted generation in respect of such Reduced Output Period from sources other than the CfD Counterparty is [•].*

We enclose such explanations, information, statements and supporting evidence as we consider to be relevant to the foregoing.]

12. *[As the Notified Change in Law will prevent the construction of the Facility, our good faith estimate of the QCiL Construction Costs is [•]. We enclose such explanations, information, statements and supporting evidence as we consider to be relevant to the foregoing.]*
13. *[As the [Expected QCiL Effective Date][QCiL Effective Date] occurs on or after the Start Date and the Notified Change in Law will prevent the operation of the Facility on a permanent basis, our good faith estimate of [•] for the period from the [Expected QCiL Effective Date][QCiL Effective Date] to the end of the Term is [•]. We enclose such explanations, information, statements and supporting evidence as we consider to be relevant to the foregoing).]*
14. *[The Qualifying Change in Law will result, or is reasonably expected by us to result, in [QCiL Net Savings of [•]][QCiL Net Costs of [•]].]*
15. We enclose an explanation, in reasonable detail, of the steps that we *[have taken][and][propose to take]* to comply with the QCiL Mitigation Obligation.

Yours faithfully,

.....

For and on behalf of
the **Generator**

Part J
(Generator QCiL Notice)

To: [•] (the “CfD Counterparty”)
[Address]

From: [•] (the “Generator”)
[Unique reference number: [•]]

Dated: [•]

CONTRACT FOR DIFFERENCE – GENERATOR QCIL NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the CfD Counterparty and us as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 23.5 of the Agreement.
3. This is a Generator QCiL Notice.
4. We enclose the following supporting evidence, in reasonable detail, of the Qualifying Change in Law which we consider *[has occurred][is shortly to occur]*: [•].
5. The *[QCIL Effective Date][Expected QCIL Effective Date]* is [•].
6. *[We do not consider that the Qualifying Change in Law will result in a Reduced Output Period.][We consider it is reasonably practicable to provide our ROP Estimate, being [•].]*
7. We believe the Change in Law *[constitutes][will constitute]* a Qualifying Change in Law for the following reasons: [•]. We believe the Change in Law relates to *[a change to the [interpretation][application] of][a Law][a Directive][an Industry Document][a Required Authorisation]*. We consider the Qualifying Change in Law to be a *[Discriminatory][Specific][Other]* Change in Law.
8. Our good faith estimate of the QCiL Costs is [•] and the QCiL Savings is [•]. We include the following supporting evidence, in reasonable detail: [•].
9. Our good faith expectations as to the profile of *[the incurrence of such QCiL Costs is [•]][the making of such QCiL Savings is [•]]*. We include the following supporting evidence, in reasonable detail: [•].
10. *[We consider that the Notified Change in Law [will][is reasonably likely to result] in a Reduced Output Period.*

(A) Our good faith expectation:

- (i) as to the date on which such Reduced Output Period will commence is [•] and end is [•].
- (i) of the forecast output of the Facility during such Reduced Output Period is [•].
- (ii) of the forecast output of the Facility during such Reduced Output Period if the Notified Change in Law were not to be implemented or become effective is [•].

(B) Our good faith estimate of any other compensation [received][to be received] by us in connection with the restricted generation in respect of such Reduced Output Period from sources other than you is [•].

We enclose the following [explanations][information][statements][supporting evidence] we consider relevant to the foregoing: [•].]

11. [As the Notified Change in Law will prevent the construction of the Facility, our good faith estimate of the QCiL Construction Costs is [•]. We include the following [explanations][information][statements][supporting evidence] we consider relevant to the foregoing: [•].]

[As the [Expected QCiL Effective Date][QCiL Effective Date] occurs on or after the Start Date and the Notified Change in Law will prevent the operation of the Facility on a permanent basis, our good faith estimate of [•] for the period from the [Expected QCiL Effective Date][the QCiL Effective Date] to the end of the Term is [•]. We enclose the following [explanations][information][statements][supporting evidence] we consider relevant to the foregoing: [•].]

12. [The Qualifying Change in Law [will result][is reasonably expected by us] to result in [QCiL Net Savings of [•]][QCiL Net Costs of [•]]. We enclose an explanation, in reasonable detail, of the steps we [have taken][propose to take] to comply with the QCiL Mitigation Obligation.]

13. We enclose an explanation, in reasonable detail, of the steps we [have taken][propose to take] to comply with the QCiL Mitigation Obligation.

14. We enclose a Directors' Certificate including the information specified in Clause 23.6 of the Agreement.

Yours faithfully,

.....

For and on behalf of
the **Generator**

Part K
(Pre-Start Date Termination Notice)

To: [•] (the “**Generator**”)
[Unique reference number: [•]]

From: [•] (the “**CfD Counterparty**”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – PRE-START DATE TERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 27.2 of the Agreement.
3. This is a Pre-Start Date Termination Notice.
4. [The following Termination Event has occurred: [•].]
5. [The date on which termination of this Agreement is designated by us to take effect is [•]. [The Pre-Start Date Termination Date is [•].]

Yours faithfully,

.....

For and on behalf of
the **CfD Counterparty**

Part L
(Default Termination Notice)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – DEFAULT TERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 27.5 of the Agreement.
3. This is a Default Termination Notice.
4. The following Termination Event has occurred: [•].
5. *[The date on which termination of this Agreement is designated by us to take effect is [•].][The Designated Termination Date is [•].]*

Yours faithfully,

.....

For and on behalf of
the **CfD Counterparty**

Part M
(QCiL Termination Notice)

To: [•] (the “**Generator**”)
[*Unique reference number: [•]*]

From: [•] (the “**CfD Counterparty**”)
[*Address*]

Dated: [•]

CONTRACT FOR DIFFERENCE – QCIL TERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 27.8 of the Agreement.
3. This is a QCiL Termination Notice.
4. [*The date on which termination of this Agreement is designated by us to take effect is [•]. [The QCiL Termination Date is [•].]*]

Yours faithfully,

.....

For and on behalf of
the **CfD Counterparty**

Part N
(Termination Payment Notice)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – TERMINATION PAYMENT NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 28.3 of the Agreement.
3. This is a Termination Payment Notice.
4. The principal inputs used by the CfD Counterparty to calculate such Termination Payment were [•].
5. The amount of the Termination Payment is [•].

Yours faithfully,

.....
For and on behalf of
the **CfD Counterparty**

**Part O
(Dispute Notice)**

WITHOUT PREJUDICE

To: [•]

From: [•]

Dated: [•]

CONTRACT FOR DIFFERENCE – DISPUTE NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between [•] as the CfD Counterparty and [•] as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 36.4 of the Agreement.
3. This is a Dispute Notice.
4. The subject matter of the Dispute is [•]. The issues to be resolved are [•].
5. The relevant Clause to which the Dispute relates is [•].
6. We believe the correct position is [•]. Our reasons for believing this is the correct position are [•].
7. *[We consider that the following claims relating to another FiT Contract for Difference should be [consolidated with][joined to] this Dispute: [•].]*
8. *[We intend to rely on the following documents, copies of which are provided: [•].]*
9. The *[relief][determination][remedy][recourse]* which we seek in relation to the Dispute is [•].
10. We *[do not]* believe the Dispute should (in the absence of a Senior Representatives Settlement being reached) be referred for *[determination in accordance with the Expert Determination Procedure][resolution in accordance with the Arbitration Procedure]*.
11. Our Senior Representative is [•].

Yours faithfully,

.....

For and on behalf of
[•]

Part P
(Expert Determination Notice)

WITHOUT PREJUDICE

To: [•]

From: [•]

Dated: [•]

CONTRACT FOR DIFFERENCE – EXPERT DETERMINATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between [•] as the CfD Counterparty and [•] as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 36.10 of the Agreement.
3. This is an Expert Determination Notice. The subject matter of the Dispute is [•].
4. The issues to be resolved are [•].
5. The relevant Clause to which the Dispute relates is [•].
6. We believe the correct position is [•]. Our reasons for believing this is the correct position are [•].
7. *[We consider that the following claims relating to another FiT Contract for Difference should be [consolidated with][joined to] this Dispute: [•].]*
8. *[We intend to rely on the following documents, copies of which are provided: [•].]*
9. The [relief][determination][remedy][recourse] which we seek in relation to the Dispute is [•].
10. We propose that the Expert appointed is [•]. We propose that [s]he be appointed on the following terms: [•]. We believe that the proposed Expert has the relevant expertise which qualifies [him][her] to determine the relevant Expert Dispute for the following reasons: [•].

Yours faithfully,

.....
For and on behalf of
[]

**Part Q
(Consolidation Notice)**

WITHOUT PREJUDICE

To: [•]⁹⁸

From: [•]

Dated: [•]

CONTRACT FOR DIFFERENCE – CONSOLIDATION NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between [•] as the CfD Counterparty and [•] as the Generator (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to Clause 36.28 of the Agreement.
3. This is a Consolidation Notice.
4. The subject matter of the Dispute is [•].
5. We believe that the following dispute[s]/[is]/[are] Connected Dispute[s]: [•].
6. Our reasons for believing that the dispute[s] described at paragraph 5 above should be consolidated with the Connected Dispute[s] are [•].
7. *[We intend to rely on the following documents, copies of which are provided: [•].]*
8. This notice *[is being][will be]* provided to the *[Expert][Arbitrator(s)]* of the Connected Dispute[s]*[forthwith upon appointment of the [Expert][Arbitrator(s)]]*.

Yours faithfully,

.....

For and on behalf of
[•]

⁹⁸ Note: To be served on all the parties to a Connected Dispute.

Annex 3 (Change Control Procedure)

Definitions

1.1 In this Annex 3 (Change Control Procedure):

“Amendment Notification” has the meaning given to that term in paragraph 2.1;

“CCP Affected Parties” means, with respect to a General Amendment, the generators which are party to those FiT Contracts for Difference to which the General Amendment is proposed to be made;

“Classification Objection” has the meaning given to that term in paragraph 2.7(B)(ii)(a);

“General Amendment” means any Proposed Amendment which:

- (A) is a Technical Amendment; and
- (B) the CfD Counterparty proposes be effected with respect to either:
 - (i) all FiT Contracts for Difference to which the CfD Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given; or
 - (ii) all FiT Contracts for Difference of a particular category to which the CfD Counterparty is a party at the time of the Amendment Notification in respect of the Proposed Amendment is given;

“Material Amendment” means any Proposed Amendment which would (taking into account, in the case of a Proposed Amendment providing for more than one amendment, the net aggregate effect of all the Proposed Amendments contained within the relevant Amendment Notification) have an effect on:

- (A) the revenues and/or costs of the Generator under this Agreement; or
- (B) the overall balance of risks, benefits and liabilities of the Generator under this Agreement;

“Material Amendment Agreement” has the meaning given to that term in paragraph 2.6;

“Material Amendment Response Notification” has the meaning given to that term in paragraph 2.3(B);

“Material Amendment Response Period” has the meaning given to that term in paragraph 2.3;

“**Proposed Amendment**” has the meaning given to that term in paragraph 2.2(C);

“**Proposed Amendment Effective Date**” has the meaning given to that term in paragraph 2.2(D);

“**Technical Amendment**” means any Proposed Amendment which is:

- (A) not a Material Amendment; or
- (B) required to correct a manifest error;

“**Technical Amendment Agreement**” has the meaning given to that term in paragraph 2.11;

“**Technical Amendment Response Notification**” has the meaning given to that term in paragraph 2.7(B)(ii); and

“**Technical Amendment Response Period**” has the meaning given to that term in paragraph 2.7.

Interpretation

1.2 In this Annex 3 (Change Control Procedure), any reference to an “amendment” (or grammatical variation thereof or any analogous term) with respect to any Proposed Amendment shall be deemed to include any change, replacement, deletion or supplement to or of any provision of:

- (A) this Agreement;
- (B) FiT Contracts for Difference; or
- (C) FiT Contracts for Difference of a particular category.

2. CHANGE CONTROL PROCEDURE

Amendment Notifications

2.1 The CfD Counterparty may at any time give a notice to the Generator proposing an amendment to this Agreement (an “**Amendment Notification**”).

2.2 Each Amendment Notification shall:

- (A) be substantially in the form set out in Part A of this Annex 3 (*Change Control Procedure*);
- (B) specify that it is an Amendment Notification;
- (C) set out the proposed amendment(s) (the “**Proposed Amendment**”);

- (D) specify the date on which the Proposed Amendment is proposed to become effective (the “**Proposed Amendment Effective Date**”);
- (E) state whether the CfD Counterparty considers the Proposed Amendment to be a Material Amendment or a Technical Amendment;
- (F) if the CfD Counterparty considers the Proposed Amendment to be a Technical Amendment, state whether the Proposed Amendment is a General Amendment;
- (G) if the Proposed Amendment is a General Amendment, state whether it applies to all FiT Contracts for Difference or only to those of a specified category or categories and, if the latter, set out those categories; and
- (H) contain such explanatory and supporting material as the CfD Counterparty considers necessary to enable the Generator to evaluate the Proposed Amendment.

Material Amendments: process

2.3 If the Amendment Notification specifies that the Proposed Amendment is a Material Amendment, the Generator shall, within 10 Business Days of the Amendment Notification having been given to it by the CfD Counterparty (the “**Material Amendment Response Period**”), either:

- (A) confirm by notice in writing to the CfD Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
- (B) specify, by notice in writing to the CfD Counterparty (a “**Material Amendment Response Notification**”), any objections which the Generator has to:
 - (i) the Proposed Amendment, any such notification to include details of:
 - (a) any proposal by the Generator to address the matters identified in the Amendment Notification by means of an alternative amendment; and
 - (b) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
 - (c) the Proposed Amendment Effective Date.

2.4 Any Material Amendment Response Notification shall also include such explanatory and supporting material as the Generator considers necessary to enable the CfD Counterparty to evaluate the matters covered in such notification.

2.5 Within 10 Business Days of receipt by the CfD Counterparty of a Material Amendment Response Notification, the Parties shall meet and negotiate in good faith with a view to agreeing:

- (A) whether to effect the Proposed Amendment;
- (B) the date on which the Proposed Amendment should become effective (which need not be the Proposed Amendment Effective Date); and
- (C) if effected:
 - (i) the terms of the Proposed Amendment; and
 - (ii) what, if any consequential amendments need to be made to this Agreement.

Material Amendments: implementation

2.6 A Material Amendment shall not become effective unless and until documented in writing and signed by each Party (a “**Material Amendment Agreement**”). Any Material Amendment Agreement shall:

- (A) set out the amendment which is to be effected;
- (B) state the effective date of the amendment; and
- (C) detail any consequential amendments to be made (whether or not identified in the Amendment Notification).

Technical Amendments (bilateral Proposed Amendments): process

2.7 If an Amendment Notification:

- (A) specifies that the Proposed Amendment is a Technical Amendment; and
- (B) does not specify that it is a General Amendment,

the Generator shall, within 10 Business Days of the Amendment Notification having been given to it by the CfD Counterparty (the “**Technical Amendment Response Period**”), either:

- (i) confirm by notice in writing to the CfD Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
- (ii) specify, by notice in writing to the CfD Counterparty (a “**Technical Amendment Response Notification**”), any objections which the Generator has to:
 - (a) the classification of the Proposed Amendment as a Technical Amendment (including reasonable details of the Generator’s reasons for such objections) (a “**Classification Objection**”);
 - (b) the Proposed Amendment, any such notification to include details of:

- (1) any proposal by the Generator to address the matter identified in the Amendment Notification by means of an alternative amendment; and
 - (2) any consequential matters arising from the Proposed Amendment which the Generator considers have not been identified in the Amendment Notification; or
- (c) the Proposed Amendment Effective Date.
- 2.8 Any Technical Amendment Response Notification shall also include such explanatory and supporting material as the Generator considers necessary to enable the CfD Counterparty to evaluate the matters covered in such notification.
- 2.9 If the Generator:
- (A) does not give the CfD Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, the Proposed Amendment shall be binding on the Parties with effect from the Proposed Amendment Effective Date; or
 - (B) gives the CfD Counterparty a Technical Amendment Response Notification within the Technical Amendment Response Period, then the following provisions shall apply:
 - (i) If the Technical Amendment Response Notification included a Classification Objection, then:
 - (a) the Technical Amendment Response Notification shall constitute a Dispute Notice and the resulting Dispute shall be subject to agreement, determination or resolution in accordance with the Dispute Resolution Procedure; and
 - (b) if, pursuant to the Dispute Resolution Procedure, either the Parties agree (whether by means of a Senior Representatives Settlement or otherwise) that the Proposed Amendment is a Material Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Material Amendment, then the Proposed Amendment shall not become effective between the Parties unless and until a Material Amendment Agreement is entered into.
 - (ii) If either:
 - (a) the Technical Amendment Response Notification did not include a Classification Objection; or
 - (b) (pursuant to the Dispute Resolution Procedure) the Parties agree (whether by means of a Senior Representatives

Settlement or otherwise) that the Proposed Amendment is a Technical Amendment or it is otherwise determined or resolved pursuant to the Dispute Resolution Procedure that the Proposed Amendment is a Technical Amendment,

then:

- (i) the CfD Counterparty shall consider the objections of the Generator set out in the Technical Amendment Response Notification and may make such amendments to the Proposed Amendment as it deems appropriate having regard to such objections; and
- (iii) the Proposed Amendment (as amended if the CfD Counterparty elects to so amend pursuant to paragraph 2.8(B)(ii)(ii)) shall become binding on the Parties with effect from the Proposed Effective Date.

Technical Amendments (General Amendments): process

2.10 If an Amendment Notification specifies that the Proposed Amendment is a Technical Amendment and is a General Amendment, then paragraphs 2.7 to 2.9 shall be applied, *mutatis mutandis*, on the following basis:

- (A) the confirmation provided for in paragraph 2.7(B)(i) shall be deemed to have been given by the Generator, and the Proposed Amendment shall (subject to paragraph (C) below) be binding on the Generator with effect from the Proposed Amendment Effective Date, unless seventy-five per cent. (75%) in number of all CCP Affected Parties give a Technical Amendment Response Notification to the CfD Counterparty within the Technical Amendment Response Period;
- (B) if more than seventy-five per cent. (75%) in number of the CCP Affected Parties deliver a Technical Amendment Response Notification within the Technical Amendment Response Period then the procedure provided for in paragraph 2.9(B) shall be applied; and
- (C) if the Generator gives a Technical Amendment Response Notification within the Technical Amendment Response Period which includes a Classification Objection, then the Proposed Amendment shall only become binding on the Generator in accordance with the provisions of paragraphs 2.9(B)(i) and 2.9(B)(ii)(b).

Technical Amendments: implementation

2.11 Where any Technical Amendment is to take effect in accordance with this Change Control Procedure, the Generator shall, if requested by the CfD Counterparty, promptly sign an agreement (a “**Technical Amendment Agreement**”) which:

- (A) sets out the amendment which is to be effected;

- (B) states the effective date of the amendment; and
- (C) details any consequential amendments to be made which were not identified in the Amendment Notification,

in each case as agreed, determined or resolved in accordance with the relevant provisions of paragraphs 2.7 to 2.10 (inclusive).

- 2.12 Any failure or refusal by the Generator to sign a Technical Amendment Agreement shall not operate so as to prevent the relevant Technical Amendment being binding on the Parties with effect from the relevant Proposed Effective Date in accordance with the provisions of paragraph 2.9(B)(ii) or 2.10(A) (as appropriate).

Miscellaneous

- 2.13 The categorisation of any Proposed Amendment as a Technical Amendment (irrespective of whether it is a General Amendment) or a Material Amendment shall not operate so as to prevent the provisions of Clauses 36.28 to 36.32 applying to any Dispute arising in respect of that Proposed Amendment.

Part A

(Amendment Notification)

To: [•] (the “Generator”)
[Unique reference number: [•]]

From: [•] (the “CfD Counterparty”)
[Address]

Dated: [•]

CONTRACT FOR DIFFERENCE – AMENDMENT NOTIFICATION

Dear Sirs,

1. We refer to the agreement dated [•] between you as the Generator and us as the CfD Counterparty (the “**Agreement**”). Terms and expressions defined in the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Annex 3 (*Change Control Procedure*) of the Agreement.
3. This is an Amendment Notification.
4. The Proposed Amendment is [•].
5. The Proposed Amendment Effective Date is [•].
6. We consider the Proposed Amendment to be a [Material Amendment][Technical Amendment].
7. [We consider the Proposed Amendment to be a Technical Amendment and we [do not] believe the Proposed Amendment is a General Amendment.]

[We consider the Proposed Amendment to be a General Amendment and we [do not] believe it applies to all FiT Contracts for Difference [and believe it relates only to those of [a specified category][specified categories], being [•].]
8. We enclose the following explanatory and supporting material we consider necessary to enable you to evaluate the Proposed Amendment: [•].

Yours faithfully,

.....

For and on behalf of
the **CfD Counterparty**

Annex 4
(Metering Points)

[This Schedule will set out the metering schematic of the Facility, including the type of Meters and IT system installed, and the Metering Points associated with the Facility.]

Annex 5
(Direct Agreement)

[Note to Generator: It is currently anticipated that a draft of the Direct Agreement will be published in December 2013]

**Annex 6
(Billing Statement)**

[Note to Generator: It is currently anticipated that the form of the Billing Statement will be published in December 2013]

**Annex 7
(FMS Agreement)**

[Note to Generator: It is currently anticipated that the form of the FMS Agreement will be published in December 2013]

EXECUTION PAGE

The GENERATOR

SIGNED BY)
)
 [] for and on behalf of)
 [])

The CfD COUNTERPARTY

SIGNED BY)
)
 [] for and on behalf of)
 [])