

# Net Zero Teesside Project (EN010103 / IP Ref: 20029846)

## Deadline 2 submission

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### **Written Representation and response to Applicant's Deadline 1 comments on ClientEarth's relevant representation RR-004**

1. In its Deadline 1 comments (REP1-045), the Applicant has rejected the need for provisions being included in the DCO that secure the capture and storage of carbon dioxide produced by the generating station. It has done so primarily on the basis that these would be unnecessary as they would overlap with obligations included in the relevant Environmental Permit, Dispatchable Power Agreement (DPA), carbon dioxide storage licence and carbon dioxide pipeline consent.
2. Having considered the Applicant's comments, ClientEarth maintains the need for the DCO to secure these aspects of the proposed development and makes the following points in response:
  - a. With respect to the Environmental Permit, ClientEarth is not aware of any indication, much less assurance, that the proposed development's Environmental Permit will require that the generating station is operated only when the project's carbon capture infrastructure is also in operation – at a particular capture rate or otherwise. The Applicant has also not cited any evidence in support of this proposition.
  - b. In respect of any future DPA:
    - i. The government's latest draft DPA terms – included for reference at **Annex C** to this document – are currently subject to consultation. They are also expressly subject to the disclaimer included in the consultation document (**Annex D**) that they:

1. “remain subject to further development by the government in consultation with relevant regulators and the devolved administrations as well as subject to Parliamentary approval of any necessary legislative amendments and to ensure consistency with subsidy control principles”;
  2. “do not therefore constitute an offer by government and do not create a basis for any form of expectation or reliance”; while
  3. “BEIS reserves the right to review and amend these square bracketed provisions, and all other provisions set out in the DPA”.<sup>1</sup>
- ii. It is inherently uncertain that any DPA will be entered into with the Applicant, on the current draft terms or otherwise – or that such contracts will remain in place over the life of the development. Indeed, the consultation disclaimer emphasises that even as a general matter “[t]he draft DPA does not indicate any willingness or agreement on the part of the BEIS to enter into, or arrange the entry into, the DPA.”<sup>2</sup>
  - iii. The draft DPA terms only require a monthly average capture rate of 70%, with significant grace periods for lower capture rates (see, e.g., the definition of “*minimum CO2 capture rate*” at p. 41 of **Annex C** and the consequences of failure to comply with minimum CO2 capture rate set out at pp 138-141 of **Annex C**). Higher rates may indeed be “*incentivised*” by the DPA as the Applicant suggests – to the extent that a DPA is entered into in the current form or at all – but clearly they are not required or ensured.
- c. In respect of the storage of captured carbon dioxide:
- i. The Applicant has referred to the current draft Requirements Schedule including a requirement for a carbon dioxide storage licence to be in place before the proposed development can commence construction, and the Applicant now proposes to include a similar requirement in respect of the offshore carbon dioxide transport pipeline. However, neither of these provisions would require that the carbon dioxide captured from the generating station be supplied to the carbon dioxide gathering network for onward permanent storage offshore, as assumed in the environmental statement.
  - ii. The Applicant has also suggested that requiring the captured carbon dioxide to be stored offshore could “*stifle innovation*” regarding the possible use of the carbon dioxide without its eventual emission into the atmosphere. However, this is not the

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<sup>1</sup> **Annex D**, p. 12: “The proposed terms, in this consultation and the associated draft DPA (includes DPA Front End Agreement, DPA Terms and Conditions, and DPA Gain Share Schedule) will be reviewed in light of this consultation but also remain subject to further development by the government in consultation with relevant regulators and the devolved administrations as well as subject to Parliamentary approval of any necessary legislative amendments and to ensure consistency with subsidy control principles. The proposals, as set out in this consultation document, do not therefore constitute an offer by government and do not create a basis for any form of expectation or reliance. The draft DPA does not constitute definitive drafting of the DPA’s terms. A number of the provisions and terms which require particular consideration and development have been square bracketed (with footnotes) in the DPA. BEIS reserves the right to review and amend these square bracketed provisions, and all other provisions set out in the DPA. The draft DPA does not indicate any willingness or agreement on the part of the BEIS to enter into, or arrange the entry into, the DPA. The DPA does not constitute an offer and is not capable of acceptance.”

<sup>2</sup> **Annex D**, p. 12.

basis upon which the proposed development has been assessed in the environmental statement, and any environmental harms and risks involved in any such usage of the carbon dioxide should be identified and assessed before being permitted by the terms of the DCO. ClientEarth would also welcome clarification from the Applicant as to whether it has identified any approaches to using any carbon dioxide captured from the generating station in this way.

3. In view of the above, ClientEarth maintains that there is a need for the draft DCO to include provisions that secure the capture and storage of carbon dioxide produced by the generating station in line with the assumptions in the environmental statement.<sup>3</sup> These aspects of the proposed development are fundamental to its planning merits and are the basis upon which the application is currently being assessed. In particular, there are currently no provisions in the draft DCO to require that, subject to reasonable operating exceptions:
  - a. the generating station will only be operated commercially with carbon capture;
  - b. a minimum carbon dioxide capture rate of 90% will be achieved during commercial operation of the generating station; and
  - c. all captured carbon dioxide will be supplied to the carbon dioxide gathering network for onward permanent storage offshore.
4. To assist the Examining Authority's consideration of the issue, ClientEarth has set out in **Annex A** illustrative drafting of provisions that could be inserted into the Requirements Schedule to secure the above aspects of the proposed development.
5. In the pending DCO process for the proposed Keadby 3 carbon capture gas power station, the applicant in that examination has proposed a number of changes to the definitions of its preferred DCO to secure these aspects of the development and to address the same fundamental concerns raised by ClientEarth. These are shown in track changes in **Annex B**. ClientEarth would also be content with this approach being taken in respect of this DCO, provided that the scope of any such changes are sufficient to impose the same overall obligations on the Applicant / undertaker as under the Keadby 3 applicant's preferred DCO.
6. ClientEarth would be happy to provide any additional information or clarification if it would assist the Examining Authority.

Sam Hunter Jones

Senior Lawyer



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<sup>3</sup> See, e.g. paras 21.1.2-3, 21.3.40 and 21.3.53, APP-103.

**ANNEX A – ILLUSTRATIVE DRAFTING FOR INSERTION IN REQUIREMENTS SCHEDULE**

*(1) Work No. 1A may not be brought into commercial use without Work No. 1C, Work No. 6 and Work No. 7 also being brought into commercial use.*

*(2) The undertaker must ensure a minimum carbon dioxide capture rate of at least 90% at all times during commercial use of Work No. 1A, as assumed in the environmental statement, subject to any specified operating exceptions or lower capture rates in the environmental permit in place for the authorised development. The undertaker must report any failure to meet this condition to the relevant planning authority as soon as is reasonably practicable.*

*(3) The undertaker must supply all of the carbon dioxide captured during commercial use of the authorised development to the carbon dioxide gathering network for the purpose of onwards permanent geological storage, except to the extent that in the undertaker's reasonable opinion it would be unsafe to do so."*



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ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

## ANNEX B

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STATUTORY INSTRUMENTS

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**202[X] No. \*\*\*\***

**INFRASTRUCTURE PLANNING**

**The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]**

*Made* - - - - - \*\*\*  
*Coming into force* - - - - - \*\*\*

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An application under section 37 of the Planning Act 2008(a) (“the 2008 Act”) has been made to the Secretary of State for an order granting development consent.

[The application has been examined by the Examining Authority appointed by the Secretary of State pursuant to Chapter 2 of Part 6 of the 2008 Act. The examination was carried out in accordance with Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(b). The Examining Authority has submitted a report and recommendation to the Secretary of State under section 74 of the 2008 Act.]

[The Secretary of State has considered the report and recommendations of the Examining Authority, has considered the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulation 2017(c) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.]

[The Secretary of State, having decided the application, has determined to make an order giving effect to the proposals comprised in the application on terms that in the opinion of the Secretary of State are not materially different from those proposed in the application.]

[Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120 of the 2008 Act, makes the following Order—]

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(a) 2008 c 29 Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c 20) Part 7 was amended by S I 2017/16  
 (b) S I 2010/103 amended by S I 2012/635  
 (c) S I 2017/572 amended by S I 2018/695, S I 2018/942



PART 1  
PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] and comes into force on [XXXX].

**Interpretation**

2. ~~(1)~~<sup>(a)</sup> In this Order—

- “the 1961 Act” means the Land Compensation Act 1961(a);
- “the 1965 Act” means the Compulsory Purchase Act 1965(b);
- “the 1980 Act” means the Highways Act 1980(c);
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);
- “the 1984 Act” means the Road Traffic Regulation Act 1984(e);
- “the 1990 Act” means the Town and Country Planning Act 1990(f);
- “the 1991 Act” means the New Roads and Street Works Act 1991(g);
- “the 2008 Act” means the Planning Act 2008(h);
- “the 2009 Act” means the Marine and Coastal Access Act 2009(i)
- “access and rights of way plans” means the plans of that name identified in the Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the access and rights of way plans for the purposes of this Order;
- “address” includes any number or address used for the purposes of electronic transmission;
- “AOD” means above ordnance datum;
- “AGL” means above ground level;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act except that it further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity cables, telecommunications equipment and electricity cabinets;
- “application guide” means the document of that name identified in the Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the application guide for the purposes of this Order;
- “authorised development” means the development and associated development described in Schedule 1 (authorised development) which is development within the meaning of section 32 of the 2008 Act;
- “book of reference” means the document of that name identified in the table in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the book of reference for the purposes of this Order;
- “building” includes any structure or erection or any part of a building, structure or erection;
- “canal” means the Stainforth and Keadby Canal;

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- (a) 1961 c 33
  - (b) 1965 c 56
  - (c) 1980 c 66
  - (d) 1981 c 66
  - (e) 1984 c 27
  - (f) 1990 c 8
  - (g) 1991 c 22
  - (h) 2008 c 29
  - (i) 2009 c 23

“Canal and River Trust” means the body of that name which is a company limited by guarantee (company no. 07807276) and a registered charity (charity commission No 146792) whose registered office is at First Floor, North Station House, 550 Elder Gate, Milton Keynes, MK9 1BB;

“carbon capture and compression plant” means the building and associated works comprised in Work No. 1C and Work No. 7 shown on the works plans and which are designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load;

“carriageway” has the same meaning as in the 1980 Act;

“combined heat and power assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order;

“commence” means carry out a material operation, as defined in section 155 of the 2008 Act (which explains when development begins) comprised in or for the purposes of the authorised development other than the permitted preliminary works (except where stated to the contrary) and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“commercial use” means the export of electricity, and of captured compressed carbon dioxide emissions, from the authorised development on a commercial basis, following the completion of commissioning of the authorised development and the first occupation of the authorised development by the undertaker;

“commissioning” means the process of testing all systems and components of the authorised development (including the carbon capture and compression plant and systems and components which are not yet installed but the installation of which is near to completion) in order to verify that they function in accordance with the design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions, in relation to the authorised development are to be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“construction working site” means a construction site associated with the works including hard standings, lay down and storage areas for materials, equipment, areas for spoil, areas for vehicle parking, areas for welfare facilities including offices, canteen and washroom facilities, workshop facilities temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“deemed marine licence” means a licence as set out in Schedule 13 and deemed by article 39 to have been granted under Part 4 of the 2009 Act by virtue of section 149A of the 2008 Act;

“design principles” means the document of that name (being Appendix 1 of the design and access statement) identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the design principles for the purposes of this Order;

“Electricity Act” means the Electricity Act 1989(a);

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“environmental statement” means the document of that name identified in Schedule 12 and which is certified by the Secretary of State as the environmental statement for the purposes of this Order;

“flood risk assessment” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

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(a) 1989 c 29

“framework construction environmental management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction environmental management plan for the purposes of this Order;

“framework construction traffic management plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction framework management plan for the purposes of this Order;

“framework construction workers travel plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the framework construction workers travel plan for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“haul road plans” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the haul road plans for the purposes of this Order;

“haul road” means the temporary haul road constructed pursuant to the haul road planning permission (together with such alterations pursuant to Work No. 10a);

“haul road planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2019/1595, dated 15 November 2019 as varied by planning permission referenced PA/2021/188 dated 1 April 2021, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“indicative landscaping and biodiversity management and enhancement plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative landscaping and biodiversity management and enhancement plan for the purposes of this Order;

“indicative lighting strategy” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative lighting strategy for the purposes of this Order;

“indicative surface water drainage plan” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the indicative surface water drainage plan for the purposes of this Order;

“group company” means in relation to the undertaker company, that company and any company which is from time to time a holding company of that company or a subsidiary or subsidiary undertaking of that company or of such holding company;

“land plans” means the plans of that name identified in the table in Schedule 12 (documents and plans to be certified) and which are certified by the Secretary of State as the land plans for the purposes of this Order;

“licence conditions” means the conditions set out in respect of the deemed marine licence in Schedule 13;

“limits of deviation” means the limits of deviation for each of the works as comprised in the works plans;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“NGC” means National Grid Carbon Limited (Company Registration Number 03932833) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“National Grid Carbon Gathering Network” means the proposed network of high pressure carbon dioxide pipelines to be developed by NGC to transport carbon dioxide from power and industrial carbon dioxide emitters to compression facilities for onwards geological storage;

“NGET” means National Grid Electricity Transmission plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London, WC2N 5EH;

“NGG” means National Grid Gas plc (Company Registration Number 02366977) whose registered office is at 1 to 3 Strand, London WC2N 5EH;

“Northern Powergrid (Yorkshire) plc” means the company of the same name (Company Registration Number 04112320) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF;

“Order land” means the land delineated and marked as such on the land plans;

“Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

“outline written scheme of investigation” means the document of that name identified in Schedule 12 (documents and plans to be certified) and which is certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“permitted preliminary works” means all or any of—

- (c) environmental surveys, geotechnical surveys, intrusive archaeological surveys and other investigations for the purpose of assessing ground conditions, and removal of plant, structures and machinery;
- (d) above ground site preparation for temporary facilities for the use of contractors;
- (e) the provision of temporary means of enclosure and site security for construction;
- (f) the temporary display of site notices or advertisements;
- (g) site clearance (including vegetation removal);

“Pilfrey laydown plans” means the document of that name identified in the Schedule 12 (documents and plans to be certified) approved as part of the Pilfrey laydown planning permission and which is certified by the Secretary of State as the Pilfrey laydown plans for the purposes of this Order;

“Pilfrey laydown planning permission” means the conditional planning permission with North Lincolnshire Council reference PA/2018/1950, dated 23 November 2018, and any other variations thereto (which shall include for the avoidance of doubt any variations pursuant to Section 73 of the 1990 Act);

“Planning Acts” means the Town and Country Planning Act 1947(b), the Town and Country Planning Act 1962(c), the Town and Country Planning Act 1971(d), and the 1990 Act;

“plot(s)” means each of the plots listed in the book of reference and shown on the land plans;

“relevant planning authority” means the district planning authority for the area in which the land to which the provisions of this Order apply is situated;

“Requirements” means those matters set out in Schedule 2 (Requirements) and “Requirement” means any one of the Requirements;

“river” means the River Trent;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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(a) 1981 c 67 This Act was amended by the Planning and Compulsory Purchase Act 1991 (c 34)

(b) 1947 c 51 This Act was repealed by the Planning (Consequential Provision) Act 1990 (c 11)

(c) 1962 c 38 This Act was repealed by the Planning (Consequential Provision) Act 1990

(d) 1971 c 78 This Act was repealed by the Planning (Consequential Provision) Act 1990

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“street works” means the works listed in article ~~9)a)9(+)~~;

“Upper Tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means, subject to article 7(2) (consent to transfer the benefit of the Order), the person who has the benefit of this Order in accordance with article 6 being Keadby Generation Limited;

“watercourse” includes every river, stream, creek, ditch, drain, canal, cut, culvert, dyke, sluice, sewer and passage through which water flows except a public sewer or drain;

“works plans” means the plans (which show limits of deviation for each numbered work) of that name identified in Schedule 12 and which are certified by the Secretary of State as the works plans for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject and references to the creation or acquisition of new rights include the imposition of restrictive covenants which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or over which rights are created and acquired under this Order or is otherwise comprised in this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access rights of way plans are to be taken to be measured along that work.

(4) Where any definitions in paragraph ~~a)(+)~~ are duplicated or similar to definitions within the interpretation sections of Schedule 13 (deemed marine licence under Part 4 (Marine Licensing) of the Marine and Coastal Access Act 2009/Deemed MMO provisions) then (unless expressly stated otherwise in Schedule 13) defined terms in this article 2 shall not apply to Schedule 13.

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference in this Order to a work designated by a number, or by a combination of letters and numbers (for example, “Work No. 1A” or “numbered work 1A”), is a reference to the work so designated in that Schedule and a reference to “Work No. 1” or “numbered work 1” means numbered works 1A to 1E inclusive and the same principle applies to such numbered works that contain letters.

(6) In this Order, the expression “includes” is to be construed without limitation.

(7) In this Order, references to any statutory body include that body’s successor bodies.

(8) All areas described in square metres in the book of reference are approximate.

(9) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

## PART 2

### PRINCIPAL POWERS

#### Development consent etc. granted by the Order

3.—~~(1)a)~~ Subject to the provisions of this Order and to the Requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

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(2) Each numbered work may be situated only within the corresponding numbered area shown on the works plans.

#### Maintenance of authorised development

4.—~~(1)~~a) The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

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#### Operation of authorised development

5.—~~(1)~~a) The undertaker is authorised to use and operate the generating station comprised in the authorised development.

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(2) This article does not relieve the undertaker of any other requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of a generating station.

#### Benefit of the Order

6. Subject to article 7 (consent to transfer the benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker save for:

- (a) Work No. 2A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGG;
- (b) Work No. 3A in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGET;
- (c) Work No 3B in relation to which the provisions of this Order have effect for the benefit of the undertaker or Northern Powergrid (Yorkshire) Plc; and
- (d) Work No. 7B (and any associated works described in Work No. 7(c)) in relation to which the provisions of this Order have effect for the benefit of the undertaker or NGC.

#### Consent to transfer benefit of the Order

7.—a) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order which resides for the time being in the undertaker (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) Where a transfer or grant has been made in accordance with paragraph ~~a)(1)~~ references in this Order to the undertaker, except in paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph ~~a)(1)~~ is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to a transferee or lessee any or all of the benefit of the provisions of this Order and such release of statutory rights as may be so agreed.

(5) The consent of the Secretary of State is required for the exercise of the powers of paragraph ~~a)(1)~~ except where—

- (a) the transferee or lessee is—
  - (i) the holder of a licence under section 6 of the Electricity Act 1989<sup>(a)</sup>;
  - (ii) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(b)</sup>;
  - (iii) in relation to a transfer or lease of any works within a highway, a highway authority responsible for the highways within the Order land; or
  - (iv) is a company within a group company.
- (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all such claims that no compensation is payable.

(6) Where the consent of the Secretary of State is not required under paragraph (5), the undertaker must notify the Secretary of State in writing before transferring or granting a benefit referred to in paragraph ~~a~~(4).

(7) The notification referred to in paragraph (5) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (8), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(8) The date specified under paragraph (7)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(9) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

#### **Application and modification of statutory provisions**

**8.—**(a) The provisions of the Neighbourhood Planning Act 2017<sup>(c)</sup> insofar as they relate to temporary possession of land under articles 27 (temporary use of land for carrying out the authorised development) and 28 (temporary use of land for maintaining the authorised development) do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

(2) As from the date on which the authorised development (including the permitted preliminary works) is commenced any approval, grant, permission, authorisation or agreement made under the Planning Acts or Electricity Act prior to that date will cease to have effect but only insofar as such approval, grant, permission, authorisation or agreement is inconsistent with the authorised development or anything approved under the Requirements to be carried out within the Order limits.

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(a) 1989 c 29 Section 6 was amended by Section 30 of the Utilities Act 2000 (c 27), Sections 89, 136, 145 of, and Schedules 19 and 23 to, the Energy Act 2004 (c 29), paragraph 2 of Schedule 8 to the Climate Change Act 2008 (c 27), regulation 19 of S I 2011/2704 and articles 6 and 21 of S I 2012/2400

(b) 1986 c 44 (as amended)

(c) 2017 c 20

(3) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a); and
- (b) any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991.

## PART 3 STREETS

### Street works

9.—~~(1)a~~ The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) construct a bridge over the street; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d) and (e).

(2) The authority given by paragraph ~~a)(1)~~ is a statutory right or licence for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph ~~a)(1)~~.

### Power to alter layout, etc., of streets

10.—~~(1)a~~ The undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Schedule 4 (streets subject to permanent alteration of layout) in the manner specified in relation to that street in column (3).

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(2) Without prejudice to the specific powers conferred by paragraph ~~a)(1)~~ but subject to paragraph (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development, alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

(3) The powers conferred by paragraph (2) may not be exercised without the consent of the street authority.

(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

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(a) 1991 c 59



(5) If within 28 days of receiving an application for approval under paragraph (3) a highway authority fails to notify the undertaker of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

#### Construction and maintenance of new or altered means of access

11.—~~(1)a~~ Those parts of each means of access specified in Schedule 5 (those parts of the access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from their completion and from the expiry of that period (and following an inspection by the highway authority and it being satisfied with the standard of the highway works including for the avoidance of doubt any remedial works carried out by the undertaker) by and at the expense of the highway authority.

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(2) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (2), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

(4) Nothing in this article—

- (a) prejudices the operation of section 87 of the 1991 Act (prospectively maintainable highways) and the undertaker is not by reason of any duty under that section to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which Part 3 of the 1991 Act apply.

#### Access to works

12.—~~(1)a~~ The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the permanent means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to permanent alteration of layout);
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

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(2) If a highway authority fails to notify the undertaker of its decision within 28 days of receiving an application under paragraph ~~a)(1)~~ or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

#### Agreements with street authorities

13. ~~(1)a)~~ A street authority and the undertaker may enter into agreements with respect to—

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- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge or tunnel carrying a street;
- (d) any stopping up, prohibition, restriction, alteration or diversion of a street authorised by this Order;
- (e) the undertaking in the street of any of the works referred to in article ~~11)a)(1)~~ (construction and maintenance of new or altered means of access); or
- (f) the adoption by a street authority which is the highway authority of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway.

(2) If such an agreement provides that the street authority must undertake works on behalf of the undertaker the agreement may, without prejudice to the generality of paragraph ~~a)(1)~~—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) specify a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

14. ~~(1)a)~~ The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

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(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph 14(1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

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(a) 1991 c 56 This Section was amended by Sections 35 and 43(2) of, and paragraph 1 of Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c 43), Sections 36 and 99 of the Water Act 2003 (c 37) and paragraph 16 of Schedule 3 to the Flood and Water Management Act 2010 (c 29)

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river other than in accordance with a consent granted by the Environment Agency.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016(a).

(8) If a person who receives an application for consent under paragraph (3) as approved under paragraph (4)(a) fails to notify the Undertaker of a decision within 28 days of receiving an application, that person is deemed to have granted consent or given approval as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(b) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(c) have the same meaning as in that Act.

#### Authority to survey and investigate the land

15. ~~(1)~~(a) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development or upon which entry is required in order to carry out monitoring or surveys in respect of the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

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(a) S I 2016/1154  
(b) 1964 c 40  
(c) 1991 c 57

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of, land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

#### Temporary interference with canal and public rights of navigation

16.—~~(1)a~~ The undertaker may in connection with the construction of the authorised development (and subject to Part 2 of Schedule 10 (protective provisions))—

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- (a) temporarily interfere with the waterway, by constructing or maintaining temporary works at any point within the Order limits as it considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the river or the canal;
- (c) temporarily close any part of the canal within the Order limits to navigation; and
- (d) load or unload into and from such barges, other vessels or craft equipment, machinery, soil and any other materials within the Order limits in connection with the construction of the authorised development.

(2) The power conferred by paragraph (1)(c) must be exercised in a way which secures—

- (a) that no more of the canal is closed to navigation at any time than is necessary in the circumstances; and
- (b) that if complete closure of a part of the canal to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

(3) Any person who, as a result of the exercise of powers conferred by this article, suffers loss by reason of the interference with any private right of navigation is entitled to compensation to be paid by the undertaker to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### Use of Private roads for construction

17.—~~(1)a~~ The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with the construction of the authorised works.

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(2) The undertaker must compensate the person liable for the repair of a road to which paragraph ~~a~~(1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph ~~a~~(1)

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined under Part 1 of the 1961 Act

## PART 5

### POWERS OF ACQUISITION

#### Compulsory acquisition of land

18.—~~(1)a~~ The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it, and may use any land so

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acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil or airspace only), article 27 (temporary use of land for carrying out the authorised development), article 28 (temporary use of land for maintaining the authorised development) and article 32 (Crown rights).

(4) This article does not apply in relation to any right of apparatus to which section 138 of the 2008 Act (extinguishment of right, and removal, of apparatus of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

#### Statutory authority to override easements and other rights

19.—~~(1)a~~ The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

authorised by virtue of this Order and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

#### Time limit for exercise of authority to acquire land compulsorily

20.—~~(1)a~~ After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act (execution of declaration) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961).

(2) The authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph ~~a~~(1), except that nothing in this paragraph is to prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### Compulsory acquisition of rights etc.

21.—a) Subject to paragraphs (2) and (3), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under

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article 18 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 6 (land in which only new rights etc. may be acquired) the undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column (2) of that Schedule.

(3) Following approval by the relevant planning authority of the details for Work No. 4 pursuant to Requirement 5(4) the undertaker shall:

- (a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or
- (b) if Works No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Following approval by the relevant planning authority of the details for Work No. 3B pursuant to Requirement 5(3) the undertaker shall serve written notice on those with interests in plots not required for the approved Work No. 3B confirming the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(5) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph a)(+) or (2), the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(7) In any case where the acquisition of new rights under paragraph a)(+) or (2) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights to the statutory undertaker in question.

(8) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (7) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(9) This article is subject to article 32 (Crown Rights).

#### Private rights

22.—~~(1)a)~~ Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

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- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker within the Order land are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(7) Paragraphs ~~a)(1)~~ to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land, the acquisition of rights over the land or the creation of rights over the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it;
 that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested or belongs.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

#### Application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961

23.—~~(1)a)~~ The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph ~~a)(1)~~, has effect with the following modifications.

(3) In section 1 (application of act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute—

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“section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X].”

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

“(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,”

(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act and as modified by article 25 (modification of Part 1 of the Compulsory Purchase Act 1965).

(11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

#### Acquisition of subsoil or airspace only

24.—a) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil or of airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph ~~a)(4)~~ in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### Modification of Part 1 of the Compulsory Purchase Act 1965

25.—~~(4)a)~~ Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]”.

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- (3) In section 11A (powers of entry: further notices of entry)—
- (a) in subsection (1)(a) after “land” insert “under that provision”; and
  - (b) in subsection (2) after “land” insert “under that provision”.
- (4) In section 20(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
    - “(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X], which excludes the acquisition of subsoil or airspace only from this Schedule.”;
  - (b) after paragraph 29 insert—

## “PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 27 (temporary use of land for carrying out the authorised development) or article 28 (temporary use of land for maintaining the authorised development) or article 34 (protective works to buildings) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X].”

### Rights under or over streets

26.—~~(1)a~~ The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph ~~a)(1)~~ in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph ~~a)(1)~~ is exercised without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### Temporary use of land for carrying out the authorised development

27.—~~(1)a~~ The undertaker may, in connection with the carrying out of the authorised development—

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- (a) enter on and take temporary possession of—

- (i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);
  - (b) remove any buildings, fences, debris and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct any works specified in relation to that land in column (2) of the table in Schedule 8 (land of which temporary possession may be taken), or any mitigation works.
- (2) Paragraph a)(+) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken; or
  - (b) in the case of land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession.
- (5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building or debris removed under this article.
- (6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (10) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights over any part of the Order land identified in Schedule 6 (New Rights) under article 21 (compulsory acquisition of rights etc.); or
  - (b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 24 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

### **Temporary use of land for maintaining the authorised development**

**28.**—a) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph ~~a~~(+) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty-eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article “the maintenance period” means the period of five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where “the maintenance period” means such period as set out in the landscape and biodiversity strategy which is approved by the

relevant planning authority pursuant to Requirement 6 of Schedule 2 beginning with the date on which that part of the landscaping is completed.

### **Statutory undertakers**

29. Subject to Schedule 10 (protective provisions), the undertaker may—
- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
  - (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under or within the Order land; and
  - (c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

### **Apparatus and rights of statutory undertakers in streets**

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (access to works) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 10 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

31.—a) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph ~~a~~(4) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

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(a) 2003 c 21

PART 6  
OPERATIONS

**Crown Rights**

32.—~~(1)a~~ Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee—

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- (a) to use, enter on or in any manner interfere with any land or rights of any description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in section 227 of the 2008 Act) that is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined that section).

(2) Consent under paragraph ~~a)(1)~~ may be given unconditionally or subject to terms and conditions, and is deemed to have been given in writing where it is sent electronically.

**Felling or lopping of trees and removal of hedgerows**

33.—~~(1)a~~ The undertaker may fell or lop any tree or shrub adjoining the authorised development or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the passage of abnormal indivisible load vehicles to the extent necessary for the purposes of construction of the authorised development.

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(2) In carrying out any activity authorised by paragraph ~~a)(1)~~ the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development subject to paragraph (2) remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development.

(5) The undertaker may not pursuant to paragraph ~~a)(1)~~ or (4) fell or lop a tree or remove hedgerows within the extent of the publicly maintainable highway without the prior consent of the highway authority.

(6) In this article "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

**Protective works to buildings**

34.—~~(1)a~~ Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

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(a) S I 1997/1160

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised development is first brought into operational use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph ~~a)(+)~~ and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph ~~a)(+)~~ to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(b), (5)(c), (5)(d) the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the date of completion of the part of the authorised development carried out in the vicinity of the building it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

PART 7  
MISCELLANEOUS AND GENERAL

**Protective provisions**

35. Schedule 10 (protective provisions) has effect.

**Restoration Works**

36. ~~(1)a~~ If the authorised works have not been commenced within the period specified in Requirement 2 the undertaker will within 6 months from the expiry of such period—

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- (a) submit to the relevant planning authority for its written approval a scheme for the removal of the haul road, including its road bridges and associated infrastructure and restoration of the land, including the incorporation of biodiversity enhancements and a timetable for implementation; and
- (b) submit to the relevant planning authority for its written approval a scheme for the restoration of the land described in the Palfrey laydown plans to its former condition.

(2) Both schemes shall be implemented by the undertaker as approved unless agreed otherwise with the relevant planning authority.

**Application of landlord and tenant law**

37. ~~(1)a~~ This article applies to—

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- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Operational land for purposes of the 1990 Act**

38. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3) of the 1990 Act (cases in which land is to be treated as operational land).

**Deemed marine licence under the Marine and Coast Access Act 2009**

39. The undertaker is deemed to have been granted the licence under Part 4 of the 2009 Act contained in Schedule 13 to this Order, to carry out the works and make deposits described in that

licence, and subject to the licence conditions which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

#### Defence to proceedings in respect of statutory nuisance

40.—~~(1)a~~ Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by persons aggrieved by statutory nuisances) in relation to a nuisance falling within paragraph (b), (c), (d), (e), (f), (fb), (g) or (h) of section 79(1) of that Act (statutory nuisances and inspections therefor) no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

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- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(b); or
- (b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

#### Certification of plans etc.

41.—~~(1)a~~ The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans listed in the table in Schedule 12 (documents and plans to be certified) for certification that they are true copies of the documents referred to in this Order.

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(2) A plan or document so certified is to be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

#### Service of notices

42.—~~(1)a~~ A notice or other document required or authorised to be served for the purposes of this Order may be served—

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- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(a) 1990 c 43 This Section was amended by Section 103 of the Clean Neighbourhoods and Environment Act 2005 (c 16)

(b) 1974 c 40 Words in this Section were repealed by Section 133(2) of, and Schedule 7 to, the Building Act 1984 (c 55) and by Section 120(3) of, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c 25) and inserted by Section 162(1) of, and paragraph 15(3) of Schedule 15 to, that Act



(3) For the purposes of section 7 of the Interpretation Act 1978(a) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph ~~a)(1)~~ is, if that person has given an address for service, that address and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at that time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by the description of “owner”, or as the case may be “occupier” of the land (describing it); and
- (b) either leaving it in the hands of the person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

#### Procedure in relation to certain approvals etc.

~~43. (1)a) Where an application is made to or request is made of any authority or body named in any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.~~

(2) Schedule 9 (procedure for discharge) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to any provision of this Order.

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(a) 1978 c 30

## Arbitration

44.—~~(1)a~~ Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State or a person appointed by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under the provisions of this Order shall not be subject to arbitration pursuant to this article 44 (arbitration).

## Guarantees in respect of payment of compensation

45.—a) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or
- (b) an alternative form of security, the form and amount of which has been approved by the Secretary of State (or a person appointed by the Secretary of State) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph .

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 21 (compulsory acquisition of rights etc.);
- (c) article 22 (private rights);
- (d) article 26 (rights under or over streets);
- (e) article 27 (temporary use of land for carrying out the authorised development);
- (f) article 28 (temporary use of land for maintaining the authorised development); and
- (g) article 29 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Business Energy and Industrial Strategy

	<i>Name</i>
Address	Head of Infrastructure and Planning
Date	Department for Business Energy and Industrial Strategy

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## SCHEDULE 1

Article 3

### AUTHORISED DEVELOPMENT

In the Borough of North Lincolnshire, a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act and associated development, comprising—

**Work No. 1** – a carbon capture enabled electricity generating station located on land at the Keadby Power Station site, west of Scunthorpe, gas fuelled, and with a gross output capacity of up to 910 megawatts (MWe) at ISO standard reference conditions comprising—

- (a) **Work No. 1A** – a combined cycle gas turbine plant, comprising—
  - (i) a combined cycle gas turbine;
  - (ii) a steam turbine;
  - (iii) gas turbine hall and steam turbine hall;
  - (iv) heat recovery steam generator;
  - (v) gas turbine air intake filters;
  - (vi) emissions stack;
  - (vii) transformers;
  - (viii) deaerator and feed water pump house buildings;
  - (ix) nitrogen oxide emissions control equipment and chemical storage;
  - (x) chemical sampling / dosing plants; and
  - (xi) continuous emissions monitoring system.
- (b) **Work No. 1B** – combined cycle gas turbine plant cooling infrastructure, comprising—
  - (i) hybrid cooling towers;
  - (ii) cooling water pumps, plant and buildings; and
  - (iii) cooling water dosing and sampling plant and buildings
- (c) **Work No. 1C** – carbon dioxide capture plant, comprising—
  - (i) flue gas pre-treatment plant, including cooling and scrubbing plant and flue gas blower;
  - (ii) carbon dioxide absorber unit(s) and associated stack(s);
  - (iii) carbon dioxide stripper and solvent regenerator;
  - (iv) carbon dioxide conditioning and compression plant; and
  - (v) ancillary equipment, including air compressors, pumps, heat exchangers, water treatment plant and pipework.
- (d) **Work No. 1D** – natural gas reception facility, comprising—
  - (i) above and below ground valves, flanges and pipework;
  - (ii) gas supply pipeline connection works;
  - (iii) gas receiving area;
  - (iv) gas de-compression equipment and maintenance building and pipeline internal gauge launcher;
  - (v) an above or below ground isolation valve;
  - (vi) gas vents;
  - (vii) gas metering, dehydration and pressure reduction equipment;
  - (viii) instrumentation and electrical kiosk(s);
  - (ix) telemetry equipment kiosk(s); and

- (x) standby generator sockets.
- (e) **Work No. 1E** - generating station supporting uses, comprising—
  - (i) administration and control buildings;
  - (ii) raw water storage tank(s);
  - (iii) demineralised water treatment plant, including storage tanks; and
  - (iv) permanent plant laydown area(s) for operation and maintenance activities
- (f) In connection with and in addition to Work Nos. 1A, 1B, 1C, 1D and 1E—
  - (i) administration and control buildings;
  - (ii) auxiliary plant, buildings, enclosures and structures;
  - (iii) auxiliary boiler;
  - (iv) emergency diesel generators and banded diesel storage tank(s);
  - (v) chemical storage facilities;
  - (vi) demineralised water treatment plant, including storage tank;
  - (vii) firefighting equipment and building;
  - (viii) fire storage tank(s);
  - (ix) fire water retention basin;
  - (x) gatehouses;
  - (xi) mechanical, electrical, gas, telecommunications and water networks, pipework, pipe runs, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos 2, 3, 4, 5, 6, 7 and 8, and parts of Work Nos. 1A, 1B, 1C, 1D and 1E;
  - (xii) permanent plant laydown area(s) for operation and maintenance activities;
  - (xiii) waste water treatment facilities; and
  - (xiv) workshop and stores building.

and associated development within the meaning of section 115(2) of the 2008 Act in connection with the nationally significant infrastructure project referred to in Work No. 1, comprising—

**Work No. 2** – a high pressure gas supply pipeline for the transport of natural gas to Work No. 1, comprising a high pressure steel pipeline of up to 800 millimetres (nominal bore) in diameter and approximately 0.3km in length, including cathodic protection posts and marker posts, running within the Keadby Power Station site between Work No. 1D and Work No. 2B, and above ground installation comprising—

- (a) **Work No. 2A** – a compound for National Grid Gas’s apparatus, comprising—
  - (i) an offtake connection from the National Transmission System;
  - (ii) above and below ground valves, flanges and pipework;
  - (iii) an above or below ground remotely operated valve;
  - (iv) an above or below ground remotely operated valve bypass;
  - (v) an above or below ground pressurisation bridle;
  - (vi) instrumentation and electrical kiosks;
  - (vii) pipeline inspection gauge receiving facility; and
  - (viii) telemetry equipment kiosks and communications equipment,
- (b) **Work No. 2B** – a compound for the undertaker’s apparatus, comprising—
  - (i) above and below ground valves, flanges and pipework;
  - (ii) an above or below ground isolation valve;
  - (iii) an above or below ground pipeline inline gauge launching facility;
  - (iv) instrumentation and electrical kiosks; and

- (v) telemetry equipment kiosks and communications equipment,
- (c) in connection with Work Nos. 2A and 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

**Work No. 3** – electrical connection works for the export and import of electricity to national electricity transmission networks and the import of electricity from district electricity transmission networks, comprising—

- (a) **Work No. 3A** – up to 400 kilovolt overground and/or underground electrical cables and control systems cables running from Work No. 1A to the existing National Grid Electricity Transmission substation located west of Chapel Lane, including works within the substation; and
- (b) **Work No. 3B** – up to 132 kilovolt underground electrical cables running from Work No. 1A to the existing Northern Powergrid 132kV substation located at Chapel Lane, including above ground infrastructure works within the substation.

**Work No. 4** – water supply connection works to provide cooling and make-up water to Work No. 1, comprising—

- (a) either
  - (i) **Work No. 4A** – underground and/or overground water supply pipeline running between Work No. 1E and the canal including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipeline, plant, buildings, enclosures, intake structures screens and other structures, cable, temporary moorings, temporary repositioning of existing moorings, access works, vehicle parking, screening, lighting, and signage; or
  - (ii) **Work No. 4B** – works to the existing cooling water supply pipelines running between Works No. 1E and the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, enclosures, intake structures, cable placement of material, temporary moorings, installation and repositioning of existing hazard dolphins, access works, screening, lighting, and signage.

**Work No. 5** – works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent including, as necessary new, upgraded or replacement pipelines, plant, enclosures, outfall structures and other structures and cable.

**Work No. 6** – towns water connection to supply towns water to Work No.1 from the supply point east of Chapel Lane including works to the existing towns water pipelines, replacement and new pipelines, plant, enclosures and structures.

**Work No. 7** – a high pressure carbon dioxide pipeline for the export of carbon dioxide from Work No. 1C to the National Grid Carbon Gathering Network and above ground carbon dioxide compression and export infrastructure on land at Keadby Power Station, comprising—

- (a) **Work No. 7A** – compressor station comprising deoxygenation, dehydration, and staged compression facilities, and outlet metering and electrical connection; and
- (b) **Work No. 7B** – National Grid above ground infrastructure compound, comprising export connection to the National Grid Carbon Gathering Network, above and below ground valves, flanges and pipework, above or below ground remotely operated valve, above or below ground remotely operated valve bypass, compression facilities, instrumentation and electrical kiosks, electrical connection, inlet metering and telemetry equipment kiosks and communications equipment;
- (c) in connection with Work Nos. 7A and 7B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, and closed circuit television cameras and columns.

**Work No. 8** – new permanent accesses to Work Nos. 1, 2 and 7 comprising—

- (a) **Work No. 8A** – access route comprising the maintenance and improvement of an existing private track running between Work Nos. 1 and 2 including private bridge and the existing junction with the A18 nearby to the west of Palfrey Farm, comprising surfacing works and signage, and creation of on and off-slips;
- (b) **Work No. 8B** – installation of laybys and gatehouse building nearby to the north of the junction with the A18, barriers, enclosures, drainage and lighting;
- (c) **Work No. 8C** - emergency access route comprising the installation of a bridge crossing of an existing drainage channel, the maintenance and improvement of an existing private track running between Work No. 1 and Chapel Lane, Keadby, surfacing and strengthening works, drainage, enclosures and lighting.

**Work No. 9** – temporary construction and laydown areas and temporary and permanent accesses, comprising—

- (a) **Work No. 9A** – temporary construction and laydown areas comprising hard standing, earthworks and levelling, laydown and open storage areas, contractor compounds and construction staff welfare facilities, surface water drainage and gatehouse and weighbridge.
- (b) **Work No. 9B** – the maintenance and improvement of the existing private tracks connecting the existing junctions with the A18 to the west of Palfrey Farm with Work No. 9A via two existing private bridge crossings of the Hatfield Waste Drain, including the replacement, widening, improvement and maintenance of the westernmost existing private bridge crossing, surfacing, drainage and strengthening works, barriers and enclosures.
- (c) **Work No. 9C** - temporary construction and laydown area in association with the replacement of the private bridge in Work No. 9B , comprising laydown and open storage areas, hard standing, and the placement of mobile cranes.

**Work No. 10** – temporary haulage route and waterborne transport offloading facilities on land east of the Keadby Power Station site and at the River Trent comprising—

- (a) **Work No. 10A** – the maintenance and improvement of the existing temporary paved haulage route and ditch crossings and their subsequent removal;
- (b) **Work No. 10B** – the inspection and repair of the existing jetty, and temporary placement of mobile cranes including the temporary oversailing of crane arms above the river; and
- (c) **Work No. 10C** – use of river bed of the River Trent for the mooring of vessels and craft at the waterborne transport offloading area at lower tide.

**Work No. 11** – landscaping and planting and boundary treatment comprising—

- (a) **Works 11A** -soft landscaping including planting and biodiversity enhancement measures; and
- (b) **Works 11B** - security fencing, gates, boundary treatment and other means of enclosure;

In connection with and in addition to Works Nos. 1 to 11, further associated development including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including channelling and culverting and works to existing drainage systems;
- (b) electrical, gas, potable water supply, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of such services and utilities connections;
- (c) hard standings and hard landscaping;
- (d) soft landscaping, including bunds, embankments and planting;
- (e) biodiversity enhancement measures;

- (f) fencing, gates, boundary treatment and means of enclosure;
- (g) external lighting, including lighting columns;
- (h) gatehouses and weighbridges;
- (i) closed circuit television cameras and columns and other security measures;
- (j) site establishment and preparation works, including site clearance (including vegetation removal, demolition of existing buildings and structures); earthworks (including soil stripping and storage and site levelling and formation of embankments) and excavations; the creation of temporary construction access points; the alteration of the position of services and utilities; and works for the protection of buildings and land;
- (k) temporary construction laydown areas and contractor facilities, including materials and plant storage and laydown areas; generators; concrete batching facilities; vehicle and cycle parking facilities; pedestrian and cycle routes and facilities; offices and staff welfare facilities; security fencing and gates; external lighting; roadways and haul routes; wheel wash facilities; and signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes;
- (n) tunnelling, boring and drilling works;
- (o) demolition
- (p) temporary works associated with the maintenance of the authorised development including laydown for outages, contractor facilities, offices and staff welfare facilities; security fencing and gates; external lighting; wheel wash facilities; and signage;
- (q) and, to the extent that it does not form part of such works, further associated development comprising such other works (i) as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and (ii) which fall within the scope of the works assessed in the environmental statement.

## SCHEDULE 2 REQUIREMENTS

Article 3

### Interpretation

#### 1. In this schedule—

“bank holiday” means Easter Monday, the first and last Monday in May, 26 December if it is not a Sunday and 27 December in a year in which 25 or 26 December is a Sunday.

“Development Consent” means a consent granted pursuant to Sections 114, 115 and 120 of the 2008 Act (as may be amended or replaced from time to time);

“Carbon Dioxide Storage Licence” means any carbon dioxide storage licence required by S17 of the Energy Act 2008 or such other licence, authorisation or consent as may replace it.

“Environment Agency” means the non-departmental public body of that name created by section 1 of the Environment Act 1995;

“Environmental Permit” means a permit granted pursuant to the Environmental Permitting (England and Wales) Regulations 2016 (or any such licence, authorisation or consent as may replace it);

“lead local flood authority” means the body designated as such, for the area in which the authorised development is located, pursuant to section 6(7) of the Flood and Water Management Act 2010;

“means of enclosure” means fencing, walls or other means of boundary treatment and enclosure;

“a part” of the authorised development means any part of Works Nos. 1-11;

“relevant internal drainage board” means the Isle of Axholme and North Nottinghamshire Water Level Management Board of Wellington House, Manby Park, Manby, Louth, Lincolnshire;

“shut-down period” means a period after construction works have finished during which activities including changing out of work wear, the departure of workers, post works briefings and closing and securing the site take place;

“start-up period” means a period prior to physical construction works starting for the day during which activities including the opening up of the site, the arrival of workers, changing in to work wear and pre-works briefings take place.

### Commencement of the authorised development

2.—~~(1)~~<sup>a</sup> The authorised development must not be commenced after the expiration of 7 (seven) years from the date this Order comes into force.

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(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days’ notice of its intention to commence the authorised development.

### Notice of commencement and completion of commissioning

3.—~~(1)~~<sup>a</sup> Notice of the intended start of commissioning of Work No. 1 must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commissioning is started.

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(2) Notice of the intended completion of commissioning of the authorised development must be given to the relevant planning authority where practicable prior to such completion and in any event within seven days from the date that commissioning is completed.



#### Notice of commencement of commercial use

4. Notice of the intended start of commercial use of the authorised development must be given to the relevant planning authority where practicable prior to such start and in any event within fourteen days from the date that commercial use is started.

#### Detailed design

5. ~~(1)~~<sup>(a)</sup> In relation to any part of the authorised development comprised in Work No. 1 no part may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) the height of any stack above ordnance datum which must be at a level at which the environmental effects will be no worse than those identified in chapter 8 of the environmental statement;
- (d) hard standings; and
- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(2) No part of the authorised development comprised in Work No. 2 (gas supply pipeline and above ground installation works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) temporary construction laydown and open storage areas, including contractor compounds;
- (b) temporary construction accesses;
- (c) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;
- (d) the method of connecting the gas supply pipeline to the National Transmission System No. 7 Feeder Eastoft/Keadby Power Station pipeline;
- (e) the approximate number and location of cathodic protection posts and marker posts;
- (f) surface water drainage;
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (h) hard standings; and
- (i) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(3) No part of the authorised development comprised in Work No. 3 (electricity grid connection works) may commence, save for the permitted preliminary works, may commence until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the 400-kilovolt overground and/or underground electrical cables and control system cables running from Work No. 1A to the existing National Grid substation located adjacent to Keadby Power Station;
- (b) the route and method of installation of the underground electrical cables and control system cables running from Work No. 1A to the existing Northern Powergrid substation located at Chapel Lane;
- (c) the connections within the existing National Grid substation, including the overground and/or underground electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and

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- (d) the connections and above ground infrastructure within the existing Northern Powergrid substation, including the underground electrical cables, connections to the existing busbars, step up transformer if required and new, upgraded or replacement equipment or alternatively a statement confirming that the works within the existing Northern Powergrid substation are not to be developed.

(4) No part of the authorised development comprised in Work No. 4 (cooling and make-up water supply connection works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (and the Canal and River Trust shall be consulted in relation to any details submitted to the relevant planning authority in relation to Works No.4A) —

- (a) written confirmation of whether Work 4A (works to connect to Stainforth and Keadby Canal) or Work 4B (works to connect to River Trent) is to be developed;
- (b) the route and method of construction of the work identified in (a);
- (c) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009(a) and any ancillary plant, buildings, enclosures or structures, angle of flow; and
- (d) the method and timing of installation and removal of any cofferdams at the intake and outfall points, their phasing, and the extent to which each extends into the waterway and shall be consulted in relation to any such works which take place in the Stainforth and Keadby canal

(5) No part of the authorised development comprised in Work No. 5 (works to discharge used cooling water and treated wastewater) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of construction; and
- (b) the method of construction, siting, layout, scale and external appearance of any new, upgraded or replacement intake structures within the waterway, including the screens to be installed to those structures in accordance with the Eel (England and Wales) Regulations 2009 and any ancillary plant, buildings, enclosures or structures.

(6) No part of the authorised development comprised in Work No. 6 (towns water connection works) may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) the route and method of installation of the new and replacement towns water connections; and
- (b) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, enclosures and structures.

(7) No part of the authorised development comprised in Work No. 7 (above ground carbon dioxide compression and export infrastructure) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with National Grid Carbon Limited, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;
- (b) the route and method of installation of the high-pressure carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;
- (c) the method of connecting the carbon dioxide export pipeline to the National Grid Carbon Gathering Network pipeline;
- (d) hard standings;

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- (e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities;
- (f) external lighting; and
- (g) surface water drainage.

(8) No part of the authorised development comprised in Work No. 8 (new permanent access works to Work No. 1) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority—

- (a) visibility splays and construction specification of the improvement to the A18 junction including strengthening, surfacing, existing and proposed levels, culverts and crossings;
- (b) on- and off- slips, and new and modified highways signage, markings, verges, islands and barriers at the A18;
- (c) details of surfacing and signage works to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of the proposed emergency access bridge crossing of the existing drainage channel;
- (e) surface water drainage;
- (f) means of enclosure, vehicle control barriers, and security; and
- (g) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (h) finished floor levels;
- (i) vehicle loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(9) No part of the authorised development comprised in Work No. 9 (temporary construction and laydown area works and temporary and permanent accesses) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) hard standings, laydown and open storage areas;
- (b) contractor compounds and construction staff welfare facilities;
- (c) details of surfacing, existing and proposed levels, culverts and crossings, barriers and enclosures for the improvements to the private track;
- (d) construction specification, vertical and horizontal levels, and deck, parapet and foundation design of any replacement or improvement of the existing private bridges over the Hatfield Waste Drain;
- (e) gatehouse and weighbridge;
- (f) lighting;
- (g) means of enclosure and security; and
- (h) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian facilities and routes.

(10) No part of the authorised development comprised in Work No. 10 (temporary haulage route and waterborne transport offloading facility works) may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority—

- (a) Construction specification of any maintenance, resurfacing, and improvement works to the temporary haulage route;
- (b) laydown and open storage areas;
- (c) means of enclosure, vehicle control barriers, and security;
- (d) the siting, maximum vertical and horizontal dimensions, working radius, and maximum oversailing of river bed, of mobile crane(s) to be placed temporarily, and the

specifications of inspections and repairs to the jetty that may be carried out in connection with the placing of the cranes; and

- (e) the internal vehicular access and circulation roads, loading and unloading, and vehicle parking and turning facilities.

(11) Work Nos. 1 and 8B must be carried out in accordance with the design parameters in Schedule 11 and the design parameters are the “relevant parameters” for the purposes of this Requirement.

(12) Work Nos 1 and 8B must be carried out in accordance with the design principles statement.

(13) Work Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 must be carried out and thereafter maintained in accordance with the approved details unless otherwise agreed with the relevant planning authority.

#### Landscaping and biodiversity protection management and enhancement

6. ~~(1)~~ (a) No part of the authorised development may commence until a landscaping and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority.

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(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of and a timetable for implementation of—

- (a) further survey work carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part, and, where a protected species is shown to be present, a scheme of protection and mitigation measures;
- (b) measures to protect existing shrub and tree planting that is to be retained; and
- (c) biodiversity and habitat mitigation and impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be commissioned until a landscaping and biodiversity management and enhancement plan for that part has been submitted to and approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) implementation and management of all new shrub and tree planting;
- (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
- (c) measures to enhance biodiversity and habitats within Order Land or land within the Borough of North Lincolnshire that is under the control of the undertaker or other land within the Borough of North Lincolnshire provided it is accompanied by detailed implementation proposals incorporating an implementation timetable;
- (d) an implementation timetable and responsibilities for implementation by third parties where appropriate; and
- (e) annual landscaping and biodiversity management and maintenance.

(6) Any shrub or tree planted within Works Nos. 1-11 as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and at least of the size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plan submitted and approved pursuant to sub-paragraph (4) must be in accordance with the principles of the indicative landscaping and biodiversity management and enhancement plan and must be accompanied by a statement explaining how any planting proposed adjoining the Order limits has been subject to consultation with Keadby Parish Council along with the regard had to feedback received subject to the principles of the indicative landscaping and biodiversity management and enhancement plan.

(8) The plan must be implemented and maintained as approved during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

#### External lighting

7.—~~(1)~~<sup>(a)</sup> No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority and shall thereafter be implemented upon commencement of development and maintained during construction and commissioning.

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(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of Requirement 34) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this Requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions during the construction, commissioning and operation of the authorised development.

(4) The scheme approved pursuant to paragraph (2) must be implemented prior to commercial use and thereafter maintained as approved unless otherwise agreed with the relevant planning authority.

#### Highway accesses

8.—~~(1)~~<sup>(a)</sup> No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays, culverts and crossings, and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

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(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details prior to the start of construction of the relevant part of the authorised development (other than the accesses), and reinstated prior to the authorised development being brought into commercial use, unless otherwise agreed with the relevant planning authority.

#### Means of enclosure

9.—~~(1)~~<sup>(a)</sup> No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority.

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(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and such temporary means of enclosure must thereafter be removed in accordance with the details approved pursuant to sub-paragraph (1).

(3) No part of the authorised development may be brought into commercial use until details of any proposed permanent means of enclosure, have, for that part, been submitted to and approved by the relevant planning authority.

(4) No part of the authorised development may be brought into commercial use until the permanent means of enclosure approved pursuant to sub-paragraph (3) have been implemented in full.

(5) The permanent means of enclosure approved pursuant to sub-paragraph (3) must be maintained unless otherwise agreed with the relevant planning authority.

#### Site security

10. ~~(1)a~~ No part of the authorised development may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

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(2) The approved scheme must be implemented and maintained throughout the operation of authorised development.

#### Fire prevention

11. ~~(1)a~~ No part of Work Nos. 1 or 8 may commence until details of the specification and location of accesses for the use of all fire appliances in all of the major building structures and storage areas within the authorised development has, for that part, been submitted to and approved by the relevant planning authority.

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(2) The authorised development must be implemented in accordance with the approved details and all relevant accesses must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the authorised development.

#### Surface water drainage

12. ~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and approved by the relevant planning authority.

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(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water drainage systems, including a timetable for their implementation, must be submitted to, and after consultation with the lead local flood authority and relevant internal drainage board, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraph (3) of this Requirement must be in accordance with the indicative surface water drainage plan.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

#### Foul water drainage

13. ~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary foul water drainage systems, including means of pollution control in accordance with the framework construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with Severn Trent Water, approved by the relevant planning authority.

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(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent foul water drainage systems, including a programme for their implementation, must be submitted to, and after consultation with the Environment Agency and Severn Trent Water, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

#### Flood risk mitigation

14. ~~(1)~~ a No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction and the creation of a suitable development platform for the generating station, has been submitted to, and after consultation with the lead local flood authority and approved by the relevant planning authority.

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(2) The scheme submitted and approved pursuant to sub-paragraph (1) must provide a minimum finished ground level for Works Nos. 1A and 1C of 2.8m AOD and must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, Canal and River Trust, lead local flood authority, and the relevant internal drainage board, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to paragraphs (1) and (3) of this Requirement must be in accordance with the flood risk assessment.

(5) The scheme submitted and approved under sub-paragraph (3) must provide for all critical operational infrastructure assets as defined in the flood risk assessment to be elevated to a minimum of 3.60m AOD, and must further provide for the same critical operational infrastructure assets to be elevated to 4.40m AOD where reasonably practicable to do so.

(6) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(7) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the lead local flood authority, approved by the relevant planning authority.

(8) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the authorised development unless otherwise agreed with the relevant planning authority.

#### Contaminated land and groundwater

15. ~~(1)~~ a No part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

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(2) The scheme submitted and approved must be in accordance with the environmental statement and must be included in the construction environmental management plan submitted pursuant to Requirement 17.

(3) The scheme must include a risk assessment, supported by site investigation data, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose which sets out long-term measures with respect to any contaminants remaining on the site.

(4) The authorised development, including any remediation, must be implemented and maintained in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

#### Archaeology

16. ~~(1a)~~ No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the County archaeologist, approved by the relevant planning authority.

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(2) The scheme submitted and approved must be in accordance with the outline written scheme of investigation.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority.

#### Construction environmental management plan

17. ~~(1a)~~ No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

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(2) The plan submitted and approved for that part must be in accordance with the framework construction environment management plan and incorporate—

- (a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;
- (b) a scheme for the control of any emissions to air;
- (c) a soil management plan;
- (d) a site waste management plan;
- (e) a sediment control plan;
- (f) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;
- (g) a scheme for the notification of any significant construction impacts on local residents and for handling any complaints received from local residents relating to such impacts during the construction of the authorised development;
- (h) the contaminated land scheme for that part containing the matters under Requirement 15; and
- (i) a fish management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

#### Protection of highway surfaces

18. ~~(1a)~~ No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which

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are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

#### Temporary haul road (traffic management and protection)

19.—~~(1)a~~ The authorised development comprised in Work No. 10A shall be retained and maintained in accordance with the haul road plans.

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(2) No part of the authorised development comprised in Work No. 10A shall be brought into use for the purposes of transporting abnormal loads until:

- (a) appropriate traffic management measures have been put in place to allow vehicles to safely access the existing jetty comprised in Work No. 10B and cross Trent Side; and
- (b) appropriate protection measures have been put in place to the Trent Side access points adjacent to the road crossing.

(3) The traffic management and protection measures in (2) shall be in place at times when loads are utilising the haul road, unless otherwise agreed with the relevant planning authority.

#### Temporary haul road (biodiversity protection)

20.—~~(1)a~~ The authorised development comprised in Work No. 10A shall be carried out in accordance with the biodiversity measures contained in appendices C and D of the framework construction environmental management plan, unless otherwise agreed with the relevant planning authority.

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(2) Prior to the completion of the authorised development comprised in Work No. 10A, a report must be submitted to the relevant planning authority by a suitably qualified ecologist confirming conformity with (1).

#### Temporary haul road (removal and restoration)

21.—~~(1)a~~ No later than 28 days following the completion of commissioning the authorised development comprised in Work No. 10A shall be excavated, dismantled and removed.

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(2) No later than three months following the completion of the works authorised in (1) the site shall be restored in accordance with the restoration scheme approved under Requirement 22.

#### Temporary haul road (prior approval of restoration scheme)

22.—~~(1)a~~ No later than 36 months following commencement of the construction of Work No. 1, a scheme for the removal of the temporary haul road, road bridges and associated infrastructure and restoration of Work No. 10A including the incorporation of biodiversity enhancements and a timetable for implementation, shall be submitted to and approved in writing by the relevant planning authority.

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(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

#### Pilfrey laydown (design)

23. The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be retained and maintained in accordance with the Pilfrey laydown plans unless otherwise agreed with the relevant planning authority.

#### Pilfrey laydown (removal and restoration)

24. ~~(1)a~~ The authorised development comprised in Work No. 9A and located within the area described in the Pilfrey laydown plans shall be removed and the land restored to its former condition no later than 3 months following the completion of commissioning in accordance with a scheme of work submitted to and approved by the relevant planning authority.

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(2) The scheme authorised under (1) must be implemented in full unless otherwise agreed with the relevant planning authority.

#### Construction traffic management plan

25. ~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan has been submitted to and, after consultation with National Highways, the highway authority (and in relation to paragraph (3)(c) below the Canal and River Trust), approved by the relevant planning authority.

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(2) The plan submitted and approved must be in accordance with the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including measures to be taken to use water transport where feasible, agreed routes, and anticipated numbers of abnormal loads to be delivered on each route;
- (c) a wharf management plan which includes provision for advance notification to the Canal and River Trust of abnormal load deliveries and a procedure to minimise the risk of deliveries outside of the notified hours;
- (d) the construction programme; and
- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The approved plan must be implemented within 3 months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

#### Construction worker travel plan

26. ~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan has been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

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(2) The plan submitted and approved must be in accordance with the framework construction workers travel plan.

(3) The plan submitted and approved must include—

- (a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;
- (b) provision as to the responsibility for, and timescales of, the implementation of those measures;
- (c) details of parking for construction personnel within the construction sites; and
- (d) a monitoring and review regime.

(4) The approved plan must be implemented within three months of commencement of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

#### Construction hours

27.—~~(1a)~~ Construction work relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(2) Delivery or removal of materials, plant and machinery must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0800 to 1800 hours on Monday to Friday; and
- (b) 0800 to 1300 hours on a Saturday.

(3) The restrictions in sub-paragraphs (1) and (2) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with Requirement 28(1);
- (b) are carried out with the prior approval of the relevant planning authority; or
- (c) are associated with an emergency.

(4) The restrictions in sub-paragraph (2) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority.

(5) Sub-paragraph (1) does not preclude—

- (a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or
- (b) maintenance at any time of plant and machinery engaged in the construction of the authorised development.

(6) In this Requirement “emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that in the reasonable opinion of the undertaker would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

#### Control of noise and vibration - construction

28.—~~(1a)~~ No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise and vibration during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;

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- (c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;
  - (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
  - (e) the noise control measures to be employed.
- (3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

#### Control of noise - operation

29. ~~(1)a~~ No part of the authorised development may be brought into commercial use until a scheme for management and monitoring of noise during operation of the authorised development has been submitted to and approved by the relevant planning authority.

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(2) The scheme submitted pursuant to sub-paragraph (1) must include the results of daytime and night time baseline noise monitoring that has been carried out by the undertaker for the purposes of this requirement as agreed with the relevant planning authority

(3) Noise (in terms of the BS4142:2014+A1:2019 rating level) from the operation of the authorised development must be no greater than +3dB higher than the defined representative background sound level during each of the daytime and the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(4) The scheme must be implemented as approved unless in an emergency or otherwise agreed with the relevant planning authority.

(5) Any complaint to the undertaker ~~in breach of the thresholds agreed pursuant to paragraph (3) above~~ in relation to operational noise must include contact details for the complainant and the date, time and nature of the noise and must then be:

- (a) acknowledged by the undertaker within 3 working days of receipt of complaint;
- (b) investigated within 7 working days of the date of acknowledgement referred to in sub-paragraph (a); and
- (c) a response provided within 7 working days of the date of completion of period for the investigations referred to in sub-paragraph (b) by reference to the threshold in paragraph (3) above.

(6) In this Requirement—

- (a) “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700; and
- (b) “defined representative background sound level” means the sound level measured during the monitoring secured by sub-paragraph (2).

#### Piling and penetrative foundation design

30. ~~(1)a~~ No part of the authorised development comprised within Works Nos. 1, 2, 4A, 4B, 7, 8B or 9B may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment, for that part, has been submitted to and, after consultation with the Environment Agency, approved by the relevant planning authority.

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(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

### Restoration of land used temporarily for construction

31.—~~(1)a~~ The authorised development must not be brought into commercial use until a scheme for the restoration of any land within the Order limits which has been used temporarily for construction has been submitted to and approved by the relevant planning authority.

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(2) The land must be restored within three years of the authorised development being brought into commercial use (or such other period as the relevant planning authority may approve), in accordance with—

- (a) the restoration scheme approved in accordance with sub-paragraph (1); and
- (b) the landscaping and biodiversity management and enhancement plan approved in accordance with Requirement 6(1).

### Combined heat and power

32.—~~(1)a~~ The authorised development must not be brought into commercial use until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space and routes within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

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(2) The undertaker must maintain such space and routes during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after the authorised development is first brought into commercial use, the undertaker must submit to the relevant planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

- (a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission; and
- (b) include a list of actions (if any) that the undertaker is reasonably able to take to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of the authorised development that is five years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

### Carbon capture and compression plant

33.—~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works and Work No.9B and Work No.9C, until details of the following have been submitted to and approved by the relevant planning authority—

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- (a) evidence that Development Consent is in place for the construction of the National Grid Carbon Gathering Network;
- (b) evidence that a Carbon Dioxide Storage Licence for the intended storage site for the National Grid Carbon Gathering Network is in place;
- (c) evidence that an Environmental Permit is in place for Work No. 1; and
- (d) evidence of any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not (save where the benefit of the Order has been transferred pursuant to article 6) without the consent of the Secretary of State—

- (a) dispose of any interest in the land required for Work No. 1C or Work No. 7; or
- (b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and Work No. 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work No. 1C and Work No. 7A also being brought into commercial use.

#### Aviation warning lighting

34. ~~(1a)~~ No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the timetable for construction and retention of tall structures or the placement and retention of mobile cranes and the specification and installation timetable for aviation warning lighting for that part during construction and operation have been submitted to and, after consultation with the Civil Aviation Authority and Ministry of Defence Safeguarding, approved by the relevant planning authority.

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(2) The aviation warning lighting approved pursuant to paragraph (1) must be installed, maintained and operated in accordance with the approved details.

#### Air safety

35. No part of the authorised development comprised within Work No. 1 or Work No. 10B may commence, save for the permitted preliminary works, until details of the heights of structures and temporary cranes and other information that is required by Civil Aviation Authority Airspace Regulation and the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

#### Local liaison committee

36. ~~(1a)~~ No part of the authorised development may commence, save for the permitted preliminary works and Works Nos. 9B and 9C, until the undertaker has established a committee to liaise with local residents and organisations to keep them informed on matters relating to the construction and commissioning of the authorised development (a 'local liaison committee').

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(2) The undertaker must invite the relevant planning authority, all parish councils within close proximity to the authorised development, and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison committee.

(3) The undertaker must provide a full secretariat service and supply an appropriate venue (which may include online conferencing with telephone dial in) for the local liaison committee meetings to take place.

(4) The local liaison committee must—

- (a) include representatives of the undertaker;
- (b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of construction, testing and commissioning works unless otherwise agreed by the majority of the members of the local liaison committee; and
- (c) during the operation of the authorised development meet once a year unless otherwise agreed by the majority of the members of the local liaison committee.

### Employment, skills and training plan

37.—~~(1)a~~ No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote and monitor employment, skills and training development opportunities for residents of the borough of North Lincolnshire during construction and employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

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(2) The approved plan must be implemented and maintained during the construction and operation of the authorised development unless otherwise agreed by the relevant planning authority.

### Decommissioning

38.—~~(1)a~~ Within 12 months of the date that the undertaker decides to decommission the authorised development, the undertaker must submit to the relevant planning authority for its approval a decommissioning environmental management plan.

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(2) No decommissioning works must be carried out until the relevant planning authority has approved the plan.

(3) The plan submitted and approved must include measures to address any significant environmental effects.

(4) The plan submitted and approved must include details of—

- (a) the buildings to be demolished;
- (b) the means of removal of the materials resulting from the decommissioning works;
- (c) the phasing of the demolition and removal works;
- (d) any restoration works to restore the land to a condition agreed with the relevant planning authority;
- (e) the phasing of any restoration works; and
- (f) a timetable for the implementation of the plan.

(5) The plan must be implemented and maintained for the duration of the decommissioning of the authorised development as approved unless otherwise agreed with the relevant planning authority.

### Requirement for written approval

39. Where under any of the above Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

### Approved details and amendments to them

40.—a) All details submitted for the approval of the relevant planning authority under these Requirements must be in accordance with the parameters of the environmental statement and reflect the principles set out in the documents certified under article 41 (Certification of plans etc.).

(2) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

### Amendments agreed by the relevant planning authority

41.—~~(1)a~~ Where the words “unless otherwise agreed by the relevant planning authority” appear in the above Requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that

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the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the Requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.



**SCHEDULE 3**  
**STREETS SUBJECT TO STREET WORKS**

Article 9

**Table 1**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the Borough of North Lincolnshire	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading and re-surfacing of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan
	Chapel Lane	Works for installation and maintenance of Works No. 3B, 4A, 4B and 5 in those areas marked G, H, I and J on sheet 3 of the access and rights of way plans

SCHEDULE 4

Article 10 and 12

STREETS SUBJECT TO PERMANENT ALTERATIONS OF LAYOUT

**Table 2**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Streets subject to alternation of layout</i>	<i>(3)</i> <i>Description of alteration</i>
	A18	Widening and improvement works to two accesses on the A18 marked at reference points A and C on the access and rights of way plan and re-grading, re-surfacing and layout alterations of carriageway between the points marked E and F on sheet 1 on the access and rights of way plan

SCHEDULE 5

Article 13 and 11

ACCESS - THOSE PARTS OF THE ACCESS TO BE MAINTAINED  
AT THE PUBLIC EXPENSE

**Table 3**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of relevant part of access</i>
In the Borough of North Lincolnshire	A18	That part of each of the two accesses hatched blue and referenced at points marked A and C on sheet 1 of the access and rights of way plan

**SCHEDULE 6**  
**NEW RIGHTS**

Article 21

**Interpretation**

**1. In this Schedule—**

“Work Nos. 3A and 3B infrastructure” means any work or development comprised within Work Nos. 3A and 3B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 3A and 3B on the works plans.

“Work Nos. 4A and 4B infrastructure” means any work or development comprised within Work Nos. 4A and 4B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 4A and 4B on the works plans.

“Work No. 5 infrastructure” means any work or development comprised within Work No. 5 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans.

“Work No. 6 infrastructure” means any work or development comprised within Work No. 6 in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans.

“Work No. 8C infrastructure” means any work or development comprised within Work No. 8C in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 8C on the works plans.”

“Work Nos. 8A and 8B infrastructure” means any work or development comprised within Work No. 8A and 8B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work Nos. 8A and 8B on the works plans.

“Work No. 9B infrastructure” means any work or development comprised within Work No. 9B in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 9B on the works plans.

“Work No. 11A infrastructure planting” means any work or development comprised within Work No. 11A in Schedule 1, ancillary apparatus and including any other necessary works or development permitted within the area delineated as Work No. 11A on the works plans.

**Table 4**

(1)	(2)
<i>Number of plot shown on the land plans</i>	<i>Rights etc. which may be acquired</i>
34a, 35, 40a, 41, 42, <u>43</u> , 44, 45, 55a, 55b, <u>56</u> , 56a, <u>59</u> , 60, 64, 65, 66, 69, 70, 73, 86, 88, 94, 106, 107, 108, 109, 110, 166, 167, 168	For and in connection with the Work Nos. 3A and 3B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work Nos. 3A and 3B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 3A and 3B infrastructure, or interfere with or

<p>16, 34a, 35, 36, 52, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 82, 83, 84, 85, 89, 90, 91, 92, 93, 95, 96, 97, 98, 99, 100, 101, 103, 105, 113, 114, 114, 115, 116, 117, 118, 122, 123, 126, 137, 138, 139, 148, 150, 151, 157, 159, 160, 164, 165, 166, 168, 169,</p>	<p>obstruct access from and to the Work Nos. 3A and 3B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p> <p>For and in connection with the Work Nos. 4A and 4B infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work Nos. 4A and 4B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 4A and 4B infrastructure, or interfere with or obstruct access from and to the Work Nos. 4A and 4B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p>
<p>34a, 35, 69, 70, 73, 82, 83, 84, 85, 87, 89, 90, 99, 103, 102, 105, 111, 112, 113, 114, 115, 120, 121, 122, 123, 124, 125, 127, 128, 129, 130, 132, 133, 134, 140, 141, 142, 143, 147, 152, 153, 158, 161, 162, 163, 168, 166, 169, 171,</p>	<p>For and in connection with the Work No. 5 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work No. 5 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.</p>
<p>34a, 35, 36, 64, 69, 70, 73, 74, 82, 99, 102, 103, 105, 113, 166, 168, 169, 171,</p>	<p>For and in connection with the Work No. 6 infrastructure the right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work No. 6 infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6</p>

infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

40, 40a, 41, 44, 45, 55a, 55b, [56](#), 56a, 60

For and in connection with the Work No. 8C infrastructure the right to improve access roads and for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work No. 8C infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8C infrastructure, or interfere with or obstruct access from and to the Work No. 8C infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

3, 12, 18, 19, 20, 22, 24, 27, 28, 29, 30, 33, 37, 38, 39

For and in connection with the Work Nos. 8A and 8B the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work Nos. 8A and 8B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work Nos. 8A and 8B infrastructure, or interfere with or obstruct access from and to the Work Nos. 8A and 8B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

For and in connection with Work No. 8B planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the

3, 19

Work No. 8B planting together with the right to protect, retain, maintain, inspect and replant Work No. 8B, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 8B planting or existing planting. For and in connection with the Work No 9B infrastructure the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery for all purposes in connection with the laying, installation, use and maintenance of Work No. 9B infrastructure, and a right of support for it and the right to the free flow of water, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 9B infrastructure, or interfere with or obstruct access from and to the Work No. 9B infrastructure, including the right to prevent or remove the whole of any fixed or movable structure, tree, shrub, plant or other things and the right to prevent or remove any works or uses which alter the surface level, ground cover, or composition of the land.

18, 20, 21

For and in connection with Work No. 11A infrastructure planting, a right for the undertaker and all persons authorised on its behalf to enter, pass, and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with improvement, reinstatement, installation, implementation, retention, removal, relocation and maintenance of the Work No. 11A infrastructure planting together with the right to protect, retain, maintain, inspect and replant Work No. 11A along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the Work No. 11A infrastructure planting or existing planting.

**MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS**

**Compensation enactments**

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—~~(1)a~~ Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

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(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 5—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

3.—~~(1)a~~ Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

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(2) In section 5A(5A) (relevant valuation date), omit the words after “if—” and substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X];
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X]) to acquire an interest in the land; and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”

**Application of Part 1 of the 1965 Act**

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the acquisition of land under article 17 (compulsory acquisition of land) and as modified by article 24 (modification of Part 1 of the 1965 Act), applies to the compulsory acquisition of a right by the creation of a new right under article 21 (compulsory acquisition of rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—~~(1)a~~ The modifications referred to in paragraph 4(a) are as follows—

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(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) 1973 c 26



- (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable.

(3) For section 7 of the 1965 Act (measure of compensation in case of severance) substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 of the 1965 Act (powers of entry) is modified to secure that, where the acquiring authority has served notice to treat in respect of any right or restriction, as well as the notice of entry required by subsection (1) of that section (as it applied to compulsory acquisition under article 8), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(6) Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 of the 1965 Act (interests omitted from purchase) as modified by article 24(3) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, or enforce the restriction imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A

Ref

### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

#### Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 23 (application of the Compulsory Purchase (Vesting

Declarations) Act 1981) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X].

(2) But see article 24 (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 202[X] which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

#### **Counter-notice requiring purchase of land**

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of twenty-eight days beginning with the day on which the notice to treat was served.

#### **Response to counter-notice**

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat;
- (b) accept the counter-notice; or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

#### **Determination by Upper Tribunal**

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account-

- (a) the effect of the acquisition of the right or the imposition of the covenant;
- (b) the use to be made of the right or covenant proposed to be acquired or imposed; and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 8

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 5

<i>(1)</i> <i>Number of plots shown on the land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be take</i>	<i>(3)</i> <i>Relevant part of the authorised development</i>
47	Access and construction worksite	Work No. 2A
<a href="#">43</a> , <a href="#">56</a> , 58, <a href="#">59</a> , 40b	Access and construction worksite.	Work No. 3B
32a	Access and construction worksite	Work No. 6
1, 2, 4, 5, 6, 7, 8, 9, 10, 26	Access and construction worksite.	Work No. 8A
40b, 55, <a href="#">56</a> , 58, <a href="#">59</a> , 67	Access and construction worksite.	Work No. 8C
1, 2, 3, 4, 10, 11, 12, 16a, 17, 17a, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 32a, 33, 34, 37, 38, 39, 49, 50a, 50, 51, 61, 62, 63, 72a	Access and construction worksite, use of the land for temporary laydown areas including any ancillary works necessary to facilitate the use of that land, storage, placing of temporary cranes and works associated with the re-instatement of the land. Works compound and welfare facilities, storage, laydown areas, and re-instatement of laydown areas.	Work Nos. 9A, 9B and 9C
13, 14, 16, 16a, 17a, 17b, 31, 32a, 46, 47, 48, 49a, 50a, 50, 50a, 51, 53, 54, 62, 63, 72, 72a, 73, 74, 78, 79, 93, 95, 101, 119, 131, 135, 136, 144, 145, 165, 165a 170	Access and construction worksite, including temporary haul road and any ancillary works necessary to facilitate the use of that land as a temporary haul road and re-instatement of the land.	Work No. 10A
136, 146, 149, 154, 155, 156	Access, inspection and repair, construction worksite and placing of temporary cranes.	Work No. 10B
68	Access and construction worksite.	Work No. 11A

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

## 1. In this Schedule—

“business day” means a day other than a Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971(a);

“requirement consultee” means any body named in a Requirement as a body to be consulted by the relevant planning authority in discharging that Requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

**Applications made under Requirements**

2.—~~(1)~~<sup>(a)</sup> Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority; or
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3,

or such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and has notified the undertaker of this in writing within 21 business days from receipt of such report,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

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(a) 1971 c 80

### Further information and consultation

3.—~~(1)a~~ In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

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(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within 21 business days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five business days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five business days of receipt of such a request and in any event within 21 days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

### Fees

4.—~~(1)a~~ Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

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(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within nine weeks from the relevant date in paragraph 1 unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

### Appeals

5.—~~(1)a~~ The undertaker may appeal in the event that—

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- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(4);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional

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information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and the requirement consultee;
- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and the requirement consultee (if applicable) must submit written representations to the appointed person in respect of the appeal within ten business days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within ten business days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 business days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five business days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the undertaker to the appointed person, the relevant planning authority and the requirement consultee on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within ten business days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to him in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals and award costs published on 20 December 2016 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.



## SCHEDULE 10

Article 35

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

##### Application

1. ~~(1)~~<sup>(a)</sup> For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

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(2) Subject to sub-paragraph (3) or to the extent otherwise agreed in writing between the undertaker and National Grid, where the benefit of this Order is transferred or granted to another person under article 7 (consent to transfer benefit of the Order) –

- (a) any agreement of the type mentioned in subparagraph (1) has effect as if it had been made between National Grid and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to National Grid on or before the date of that transfer or grant

(3) Sub-paragraph (2) does not apply where the benefit of the Order is transferred or granted to National Grid.

##### Interpretation

2. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than: (i) “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings; and “A3” if the rating is assigned by Moody’s Investors Services Inc.;

“acceptable insurance” means a third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £100,000,000 (one hundred million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the construction period of the authorised works which constitute specified works and arranged with an internationally recognised insurer of repute operating in the London and worldwide insurance market underwriters whose security/credit rating meets the same requirements as an “acceptable credit provider”, such policy shall include (but without limitation):

- (a) National Grid Electricity Transmission Plc and National Grid Gas Plc as a Co-Insured;
- (b) a cross liabilities clause; and
- (c) contractors’ pollution liability for third party property damage and third party bodily damage arising from a pollution/contamination event with cover of £10,000,000.00 (ten million pounds) per event or £20,000,000.00 (twenty million pounds) in aggregate;

“acceptable security” means either:

- (a) a parent company guarantee from a parent company in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker’s liability to National Grid Electricity Transmission Plc and National Grid Gas Plc to a total liability cap of £100,000,000.00 (hundred million pounds) (in a form reasonably satisfactory to National Grid and where required by National Grid, accompanied with a legal opinion confirming

the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee); or

- (b) a bank bond or letter of credit from an acceptable credit provider in favour of National Grid Electricity Transmission Plc and National Grid Gas Plc to cover the undertaker's liability to National Grid Electricity Transmission Plc and National Grid Gas Plc for an amount of not less than £10,000,000.00 (ten million pounds) per asset per event up to a total liability cap of £100,000,000.00 (one hundred million pounds) (in a form reasonably satisfactory to the National Grid);

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means

- (a) any electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid;
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid's approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means:

- (a) National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) National Grid Gas plc (Company Number 02006000) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“undertaker” means the undertaker as defined in article 2(1) of this Order;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which:

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22 and/or activity that is referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”).

### **On Street Apparatus**

3. Except for paragraphs 8 (*retained apparatus protection*) and 9 (*retained apparatus protection*), 10 (*expenses*) and 11 (*indemnity*) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

### **Protective works to buildings**

4.—a) The undertaker, in the case of the powers conferred by article 34 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity by National Grid is caused, the undertaker must bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

## Acquisition of land

5. ~~(1)a~~ Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not (a) appropriate or acquire ~~or take temporary possession of any land or~~ apparatus or ((b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

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(2) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between National Grid and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Grid or affect the provisions of any enactment or agreement regulating the relations between National Grid and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Grid reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Grid and the undertaker acting reasonably and which must be no less favourable on the whole to National Grid or the undertaker unless otherwise agreed by National Grid and/or the undertaker (as applicable), and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid and/or other enactments relied upon by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(4) Any agreement or consent granted by National Grid under paragraph 8 or 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## Removal of apparatus

6. ~~(1)a~~ If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraph (2) to (5).

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(2) If, for the purpose of executing any authorised works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its reasonable satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to

that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

#### Facilities and rights for alternative apparatus

7. ~~(1)~~ Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

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(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 14 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### Retained apparatus: protection of electricity undertaker

8. ~~(1)~~ Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

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(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers,

the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and
- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraphs (4)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and,
- (b) must not be unreasonably withheld or delayed.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where under sub-paragraph (6) National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National

Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

#### Retained apparatus: protection of gas undertaker

9. ~~(1)~~<sup>(a)</sup> Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

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(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (4) or (6); and,
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) or (2) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (4) or (6) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Grid in accordance with sub-paragraphs (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1, 2 and 5 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub paragraph (10) at all times;

(11) At all times when carrying out any works authorised under the Order National Grid must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 9.

#### Expenses

10. ~~(1a)~~ Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works including without limitation—

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- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid;
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—



- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

#### Indemnity

11.—~~(1a)~~ Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid and including Network Code Claims other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

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(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of-

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 7 (consent to transfer benefit of the order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 11.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant.

(7) The undertaker must not commence construction (and not to permit the commencement of such construction) of the authorised works on any land owned by National Grid or in respect of which National Grid has an easement or wayleave for its apparatus or any other interest or to carry out any works within 15 metres of National Grid's apparatus until the following conditions are satisfied:

- (a) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has first provided the acceptable security (and provided evidence that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same to the undertaker in writing; and
- (b) unless and until National Grid is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has procured acceptable insurance (and provided evidence to National Grid that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and National Grid has confirmed the same in writing to the undertaker.

(8) In the event that the undertaker fails to comply with 11(6) of this Part of this Schedule, nothing in this Part of this Schedule shall prevent National Grid from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

#### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### Co-operation

13. ~~(1a)~~ Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 62) or National Grid makes requirements for the protection or alteration of apparatus under paragraph (9) or (10), the undertaker shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

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(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### Access

14. If in consequence of the agreement reached in accordance with paragraph 5(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### Arbitration

15. Any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 44 (arbitration).

### Notices

16. Notwithstanding article 42 (service of notices), any plans submitted to National Grid by the undertaker pursuant to this Part must be sent to National Grid Plant Protection at [plantprotection@nationalgrid.com](mailto:plantprotection@nationalgrid.com) or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PART 2

### FOR THE PROTECTION OF CANAL AND RIVER TRUST

### Interpretation

17. ~~(1a)~~ For the protection of the Canal and River Trust the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Canal and River Trust .

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(2) In this Part of this Schedule—

“Code of Practice” means the Code of Practice for Works Affecting the Canal and River Trust (April 2021) or any updates or amendments thereto;

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work; and “construct” and “constructed” have corresponding meanings;

“Canal and River Trust's network” means the Canal and River Trust's network of waterways;

“detriment” means any damage to the waterway or any other property of the Canal and River Trust caused by the presence of the authorised development and, without prejudice to the generality of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water thereto, or drainage of water therefrom;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Canal and River Trust’s network);
- (g) any interference with the exercise by any person of rights over Canal and River Trust’s network; “the engineer” means an engineer appointed by the Canal and River Trust for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” is to be construed accordingly;

“protective work” means a work constructed under paragraph 22(3)(a);

“specified work” means so much of Work Nos. 4A, 8A, 9A, 9B, 10B and 11A as is situated upon, across, under, over or within 15 metres of, or may in any way affect the waterway;

“the waterway” means each and every part of the Stainforth and Keadby Canal within the order limits, and any works, lands or premises belonging to the Canal and River Trust, or under its management or control, and held or used by the Canal and River Trust in connection with that canal in connection with its statutory functions.

(3) Where the Code of Practice applies to any works or matter that are part of the authorised development or that form part of the protective works and there is an inconsistency between these protective provisions and the Code of Practice, the part of the Code of Practice that is inconsistent with these protective provisions will not apply and these protective provisions will apply.

#### **Powers requiring the Canal and River Trust’s consent**

18. ~~(1)a~~ The undertaker must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Canal and River Trust.

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(2) The undertaker must not exercise any power conferred by this Order to discharge water into the waterway under article 14 (discharge of water) or in any way interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Canal and River Trust, save as to surface water discharge which will not require the consent of the Canal and River Trust.

(3) The undertaker must not exercise the powers conferred by article 15 (authority to survey and investigate the land) or section 11(3) of the 1965 Act, in relation to the waterway unless such exercise is with the consent of the Canal and River Trust.

(4) The undertaker must not exercise the powers conferred by this Order to temporarily interfere with the waterway under article 16 (temporary interference with canal and public rights of navigation) so as to divert any right of access to or any right of navigation along the waterway but such right of access may be diverted with the consent of the Canal and River Trust .

(5) The consent of the Canal and River Trust pursuant to sub-paragraphs (1) to (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

#### Fencing

19. Where so required by the Canal and River Trust's engineer ("the engineer") the undertaker must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis or both.

#### Survey of waterway

20.—~~(1)a~~ Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the undertaker must bear the reasonable and proper cost of the carrying out by a qualified engineer (the "surveyor"), to be approved by the Canal and River Trust and the undertaker, of a survey including a dip-survey to measure the depth of the waterway ("the survey") of so much of the waterway and of any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works.

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(2) For the purposes of the survey the undertaker must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the undertaker which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require and which the undertaker holds with regard to such existing works of the undertaker and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part will apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the survey must be provided to both the Canal and River Trust and the undertaker at no cost to the Canal and River Trust .

#### Approval of plans, protective works etc.

21.—~~(1)a~~ The undertaker must before commencing construction of any specified work including any temporary works supply to the Canal and River Trust proper and sufficient plans of that work, on the Canal and River Trust forms, having regard to the Canal and River Trust's Code of Practice and such further particulars available to it as the Canal and River Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

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(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 35 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been received by the Canal and River Trust the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify on land held or controlled by the Canal and River Trust or the undertaker and subject to such works being authorised by the order or being development permitted by an Act of Parliament or general development order made under the 1990 Act—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment; and such protective works must be constructed by the undertaker or by the Canal and River Trust at the undertaker's request with all reasonable dispatch and the undertaker must not commence the construction of a specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction such consent not to be unreasonably withheld or delayed.

(4) The undertaker must pay to the Canal and River Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3) above, and of carrying out any additional dredging of the waterway reasonably necessitated by the exercise of any of the powers under this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

(5) In the event that the undertaker fails to complete the construction of, or part of, the specified works the Canal and River Trust may, if it is reasonably required in order to avoid detriment, serve on the undertaker a notice in writing requesting that construction be completed. Any notice served under this sub-paragraph must state the works that are to be completed by the undertaker and lay out a reasonable timetable for the works' completion. If the undertaker fails to comply with this notice within 35 days, the Canal and River Trust may construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works or make such works and the undertaker must reimburse the Canal and River Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

#### Design of works

22.—~~(1)a~~ Without prejudice to its obligations under the foregoing provisions of this Part of this Schedule the undertaker must consult, collaborate and respond constructively to any reasonable approach, suggestion, proposal or initiative made by the Canal and River Trust on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of those works; and must have regard to such views as may be expressed by the Canal and River Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Canal and River Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995(a) and to the interest of the Canal and River Trust in preserving and enhancing the environment of its waterways.

#### Notice of works

23. The undertaker must give to the engineer 30 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, CRT may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Canal and River Trust's network

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### Lighting

24. The undertaker must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

### Construction of specified works

25. ~~(1)a~~ Any specified works or protective works must, when commenced, be constructed—

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- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any specifications made under paragraph 22 and paragraph 23 of this Part;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Canal and River Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Canal and River Trust;
- (e) in such a manner as to ensure that no materials are discharged or deposited into the waterway otherwise than in accordance with article 14 (Discharge of water); and
- (f) in compliance with the Code of Practice (where appropriate and where consistent with the exercise of powers pursuant to this Order and for the timely, safe, economic and efficient delivery of the Authorised Works)

(2) Nothing in this Order authorises the undertaker to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any vessel which is of a kind (as to its dimensions) for which the Canal and River Trust is required by section 105(1)(b) and (2) of the Transport Act 1968(a) to maintain the waterway.

(3) Following the completion of the construction of the specified works the undertaker must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works unless otherwise agreed between the undertaker and the Canal and River Trust.

(4) In assessing whether the condition of the waterway is no less satisfactory than immediately prior to the works pursuant to sub-paragraph (3), the Canal and River Trust and the undertaker must take account of any survey issued pursuant to paragraph 21 and any other information agreed between them pursuant to this Part.

### Prevention of pollution

26. The undertaker must not in the course of constructing a specified work or a protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the waterway or the deposit of materials therein and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

### Access to work – provision of information

27. ~~(1)a~~ The undertaker on being given reasonable notice must—

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- (a) at all reasonable times allow reasonable facilities to the engineer for access to a specified work during its construction; and

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(a) 1968 c 73 Sections 1 and 2 were amended by paragraph 39 of Schedule 2 to S I 2012/1659

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Canal and River Trust on being given reasonable notice must—
- (a) at all reasonable times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the Canal and River Trust under this Part during their construction; and
  - (b) supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them and the undertaker must reimburse the Canal and River Trust's reasonable costs in relation to the supply of such information.

#### Alterations to the waterway

28.—~~(1)a~~ If during the construction of a specified work or a protective work or during a period of twenty four (24) months after the completion of those works any alterations or additions, either permanent or temporary, to the waterway are reasonably necessary in consequence of the construction of the specified work or the protective work in order to avoid detriment, and the Canal and River Trust gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to the Canal and River Trust the reasonable costs of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Canal and River Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

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(2) If the cost of maintaining, working or renewing the waterway is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to the Canal and River Trust under this paragraph.

#### Maintenance of works

29. If at any time after the completion of a specified work or a protective work, not being a work vested in the Canal and River Trust, the Canal and River Trust gives notice to the undertaker informing it that it reasonably considers that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

#### Repayment of the Canal and River Trust's fees, etc.

30.—~~(1)a~~ The undertaker must repay to the Canal and River trust in accordance with the Code of Practice all fees, costs, charges and expenses reasonably incurred by the Canal and River Trust—

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- (a) in constructing any protective works under the provisions of paragraph 22(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Canal and River Trust's network.
- (e) in constructing and/or carrying out any measures related to any specified works or protective works which are reasonably required by the Canal and River Trust to ensure



the safe navigation of the waterway save that nothing is to require the Canal and River Trust to construct and/or carry out any measures.

(2) If the Canal and River Trust considers that a fee, charge, cost or expense will be payable by the undertaker pursuant to sub-paragraph (1), the Canal and River Trust will first provide an estimate of that fee, charge, cost or expense and supporting information in relation to the estimate to the undertaker along with a proposed timescale for payment for consideration and the undertaker may, within a period of twenty-one days—

- (a) provide confirmation to the Canal and River Trust that the estimate is agreed and pay to the Canal and River Trust, by the date stipulated, that fee, charge, cost or expense; or
- (b) provide confirmation to the Canal and River Trust that the estimate is not accepted along with a revised estimate and a proposal as to how or why the undertaker considers that the estimate can be reduced and or paid at a later date.

(3) The Canal and River Trust must take in to account any representations made by the undertaker in accordance with this paragraph 31 and must, within twenty-one days of receipt of the information pursuant to sub-paragraph (1), confirm the amount of the fee, charge, cost or expense to be paid by the undertaker (if any) and the date by which this is to be paid.

(4) The Canal and River Trust must, when estimating and incurring any charge, cost or expense pursuant this paragraph 31, do so with a view to being reasonably economic and acting as if the Canal and River Trust were itself to fund the relevant fee, charge, cost or expense.

#### **Making good of detriment; compensation and indemnity, etc.**

31. ~~(1)a~~ If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the undertaker, the undertaker (if so required by the Canal and River Trust) must make good such detriment and must pay to the Canal and River Trust all reasonable expenses incurred by the Canal and River Trust, and compensation for any loss sustained by the Canal and River Trust, in making good or otherwise by reason of the detriment.

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(2) The undertaker must be responsible for and make good to the Canal and River Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part which may be occasioned to and reasonably incurred by the Canal and River Trust —

- (a) by reason of the construction of a specified work or a protective work or the failure of such a work; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction of a specified work or protective work; and subject to sub-paragraph (4) the undertaker must effectively indemnify and hold harmless the Canal and River Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in sub-paragraphs (a) and (b) (provided that the Canal and River Trust is not entitled to recover from the undertaker any consequential losses which are not reasonably foreseeable).

(3) The fact that any act or thing may have been done by the Canal and River Trust on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator is not to (if it was done without negligence on the part of the Canal and River Trust or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(4) Nothing in sub-paragraph (2) imposes any liability on the undertaker with respect to any detriment, damage, loss or interruption to the extent that it is attributable to the act, neglect or default of the Canal and River Trust, its officers, servants, contractors or agents.

(5) The Canal and River Trust must give the undertaker reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(6) The aggregate cap of the undertaker's gross liability for consequential losses shall be limited to £15,000,000 (fifteen million pounds) for any one occurrence or all occurrences of a series arising out of the one original cause.

#### **Arbitration**

32. Any difference arising between the undertaker and the Canal and River Trust under this Part (other than a difference as to the meaning or construction of this Part) must be referred to and settled by arbitration in accordance with article 44 (arbitration) of this Order.

#### **Capitalised sums**

33. Any capitalised sum which is required to be paid under this Part must be calculated by multiplying the cost of the maintenance or renewal works to the waterway necessitated as a result of the operation of the authorised development by the number of times that the maintenance or renewal works will be required during the operation of the authorised development.

### **PART 3**

#### **FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS**

34. For the protection of the utility undertakers referred to in this part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned.

35. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(a)</sup>), belonging to or maintained by that utility undertaker;
- (b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a utility undertaker within paragraph (c) of the definition of that term—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991<sup>(b)</sup>;
- (d) in the case of a utility undertaker within paragraph (d) of the definition of that term—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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(a) 1989 c 29

(b) 1991 c 56

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

36. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

37. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

38. ~~(1a)~~ If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

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(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in

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(a) 1986 c 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c 45) and was further amended by the Utilities Act 2000 (c 27)

sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

39.—a) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

40.—~~(1)a~~ Not less than twenty-eight days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

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(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty-one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than twenty-eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

41. ~~(1)a~~ Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated after removal.

(3) If in accordance with the provisions of this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

42. ~~(1)a~~ Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

43. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PART 4

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

44. ~~(1)a~~ For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

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(2) In this Part—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as set out in paragraph 5 of the electronic communications code;

“the electronic communications code” has the same meaning as set out in sections 106 to 119 and Schedule 3A of the 2003 Act(b);

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

“network” means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(5) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide;

“operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act and who is an operator of a network;

45. The exercise of the powers of article 29 (statutory undertakers) is subject to Part 10 of Schedule 3A of the 2003 Act.

46. ~~(1)a~~ Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

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(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(a) 2003 c 21 as amended by the Digital Economy Act 2017 (c 30)

(b) Added by Schedule 1 of the Digital Economy Act 2017 (c 30)

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this part of this Schedule must be referred to and settled by arbitration under article 44 (arbitration).

**47.** This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**48.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

SCHEDULE 11

Requirement 5

DESIGN PARAMETERS

1. Maximum parameters for buildings and structures are set out at table 6.
2. The finished ground level in respect of Work No. 1A, Work No. 1C and Work No. 1E may be higher than 2.8 metres above ordinance datum (AOD) but in all cases the maximum heights measured AOD shall not exceed the measurement in column 5 of table 6.
3. Maximum parameters of the A18 Gatehouse building (Work No. 8B) are set out in table 7.
4. Maximum parameters for length (m), width (m) or diameter (m) exclude external support structures such as (but not limited to) ladders, platforms, external piping and structural supports.

**Table 6**

(1) <i>Component</i>	(2) <i>Length (m)</i>	(3) <i>Width (m) or diameter (m)</i>	(4) <i>Height (m) above ground level (AGL) (in the case that the finished ground level is 2.8m AOD)</i>	(5) <i>Height (M) AOD (in all cases)</i>
Gas Turbine Hall (Work No. 1A)	22	50	31.8	34.6
Steam Turbine Hall (Work No. 1A)	50	40	34.8	37.6
HRSG Building (Work No. 1A)	28	50	55.8	58.6
Absorber (Work No. 1C) (in the case that a single absorber is developed)	16 (Note 4)	43 (Note 4)	98.8	101.6
Absorber Stack (Work No. 1C) (in the case that a single absorber is developed)	-	6.7	104.8	107.6
Twin Absorbers (Work No. 1C) (in the case that two absorbers are developed)	-	19.0 (Note 4)	80	82.8
Twin Absorber Stacks (Work No. 1C) (in the case that two absorbers are developed)	-	6.7	95.5	98.3
HRSG Stack (Work No. 1A)	-	8.0	84.8	87.6



Carbon Dioxide stripper (Work No. 1C)	-	15.0 (Note 4)	63	65.8
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**Table 7**

<i>(1)</i> <i>Component</i>	<i>(2)</i> <i>Length (m)</i>	<i>(3)</i> <i>Width (m)</i>	<i>(4)</i> <i>Height (m)</i> <i>above ground</i> <i>level (AGL)</i>	<i>(5)</i> <i>Height (m) AOD</i>
A18 Gatehouse (Work No. 8B)	6	7	4	5.5

**SCHEDULE 12**  
**DOCUMENTS AND PLANS TO BE CERTIFIED**

Article 41

**Table 8**

<i>(1) Document Name</i>	<i>(2) Document Reference</i>
Access and rights of way plans	4.4
Book of reference	3.1
Land plans	4.2
Works plans	4.3
Combined heat and power assessment	5.7
Environmental statement	6.0
Design principles statement (appendix 1 of the design and access statement)	5.6 (appendix 1)
Flood risk assessment	6.3.20
Outline written scheme of investigation	7.4
Indicative landscaping and biodiversity	4.15
Management and enhancement plan	5.10
Indicative surface water drainage plan	4.13
Framework construction environmental management plan	7.1
Framework construction traffic management plan	7.2
Framework construction workers travel plan	7.3
Indicative lighting strategy	5.11
Haul road plans	4.19
Pilfrey laydown plans	4.20
Application guide	1.2

## SCHEDULE 13

Article 39

### DEEMED MARINE LICENCE UNDER PART 4 (MARINE LICENSING) OF THE MARINE AND COASTAL ACCESS ACT 2009 / DEEMED MMO LICENCE PROVISIONS

#### PART 1

##### INTRODUCTION

1.—a) In this licence the definitions in article 2 shall apply save where amended—

“2009 Act” means the Marine and Coastal Access Act 2009;

“ABP Humber” means Associated British Ports, Humber Estuary Services located at Port Office, Cleethorpe Road, Grimsby, North East Lincolnshire;

“authorised deposits” means the substances specified in paragraph 2(2)4 of Part 2 of this licence;

“the authorised development” has the meaning given in paragraph 2(2) of Part 2 of this licence;

“business day” means a day other than a Saturday or Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“CEMP” means the construction and environmental management plan;

“commence” for the purposes of this Schedule means the first carrying out of any licensed activities, save for pre-construction surveys approved under this licence and “commenced” and “commencement” shall be construed accordingly;

“condition” means a condition under Part 3 of this licence;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“licensed activities” means the activities specified in Part 2 of this licence;

“licensable marine activities” means any activity licensable under section 66 of the 2009 Act;

“local enforcement office” means the Marine Management Office (Local Enforcement Office) as further detailed in paragraph 5(b) below;

“maintain” includes inspect, repair, alter, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, ~~the authorised development an existing structure or asset wholly within its existing three dimensional boundaries provided that any such activities do not give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement~~ and “maintenance” and “maintaining” are to be construed accordingly;

“~~m~~Marine area” has the meaning given to ‘UK marine area’ in section 42 of the 2009 Act;

“Marine Management Organisation” means the body created under the 2009 Act which is responsible for the regulation of this licence or any successor of that function and “MMO” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency, the executive agency for the Department for Transport;

“mean high water springs” or “MHWS” means the average of high water heights occurring at the time of spring tides;

"office hours" means the period from 0900 until 1700 on any business day;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out, whose grid co-ordinates seaward of MHWS are set out in paragraph 6 of Part 2 of this licence;

"river" has the same meaning as defined in Article ~~2(a)~~<sup>2(4)</sup> and should be construed accordingly;

"TH" means the corporation of Trinity House of Deptford Strond;

"undertaker" means the undertaker Keadby Generation Limited (company registration number 02729513), and any agent, contractor or sub-contractor acting on its behalf or any person who has the benefit of this Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order);

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on, under or over water and which is at the time in, on, under or over water, whether or not self-propelled;

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purpose of this licence is [marine.consents@marinemangement.org.uk](mailto:marine.consents@marinemangement.org.uk) or where contact to the local MMO office is required is

(5) Unless otherwise stated or agreed with the MMO, all notifications must be sent by the undertaker to the MMO must be sent using the MMO's Marine Casement Management System (MCMS) web portal. Except where otherwise notified in writing by the relevant organisation, the addresses for postal correspondence for the purposes of this Schedule are—

- (a) Marine Management Organisation (Marine Licensing Team)  
Lancaster House,  
Hampshire Court,  
Newcastle Business Park,  
Newcastle Upon Tyne  
NE4 7YH  
Tel: 0300 123 1032;
- (b) Marine Management Organisation (Local Enforcement Office)  
Beverley office  
Room 13, Ground Floor  
Crosskill House,  
Mill Lane  
Beverley  
HU17 9JB  
Tel: 0208 026 0519
- (c) Trinity House  
Tower Hill

Field Code Changed

- London  
EC3N 4DH  
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office  
Admiralty Way,  
Somerset  
TA1 2DN  
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency (Navigation Safety Branch)  
Bay 2/20, Spring Place,  
105 Commercial Road,  
Southampton  
SO15 1EG  
Tel: 020 3817 2418;
- (f) Natural England  
Sterling House,  
Dix's Field,  
Exeter  
EX1 1QA  
Tel: 0300 060 39000;
- (g) Historic England  
Cannon Bridge House,  
25 Dowgate Hill,  
London  
EC4R 2YA  
Tel: 020 7973 370;
- (h) Centre for Environment, Fisheries and Aquaculture Science ('Cefas')  
Pakefield Road,  
Lowestoft,  
Suffolk,  
NR33 0HT,  
Tel: 01502 562 244;

## PART 2

### DETAILS OF LICENSED MARINE ACTIVITIES

**2.** Subject to the conditions, this licence authorises the undertaker to carry out any licensable marine activities under section 66(1) of the 2009 Act which—

- (a) form part of, or are related to, the authorised development; and
- (b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

**3.** Licensed activities are authorised in relation to the construction, maintenance and operation of—

- (a) Work No. 4B – River Water Abstraction Option—

Works to the existing cooling water supply pipelines running from Work No. 1A to the existing intake structures within the River Trent, including, as necessary, a temporary cofferdam structure, new, upgraded or replacement pipelines, plant, buildings, enclosures, structures and cable;

(b) Work No. 5 – Water Discharge Corridor—

Works to discharge used cooling water and treated wastewater comprising works to the existing cooling water discharge pipeline(s) running from Work No. 1B to the existing outfall structures within the River Trent, including, as necessary, new, upgraded or replacement pipelines, plant, buildings, enclosures, outfall structure, screens and other structures, and cable; and

(c) any such work, further associated development listed in Schedule 1 ancillary to Work Nos. 4B and 5.

4. The substances or articles authorised for deposit associated with the completion of the construction, maintenance and operational activities described in item 3, sub paragraph (1) (a) and (b) above include—

- (a) Silt, algal growth and biota;
- (b) Stone, rock and concrete;
- (c) Grout and sealant material; and
- (d) any other material of substance to the extent its effects have been considered within the environmental statement.

5. The undertaker may engage in the licensed activities—

~~(a) in the area bounded by the coordinates set out in Table 1 in this paragraph to the extent that they fall below MHWS at the time the licensed activities are carried out; and~~

~~(b)(a) if there is a change in mean high water springs during the construction, maintenance and operation of the licensed activities, the area bounded by the coordinates set out in Table 1 in this paragraph to the extent that they fall below mean high water spring tide at the time the licensed activities are carried out.~~

6. The coordinates in Table 9 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

**Table 9**

<i>Works No.</i>	<i>Description</i>	<i>Longitude</i>	<i>Latitude</i>
Works No. 4B	River Water	-0.73879	53.59523
	Abstraction Option – Intake Works	-0.73893	53.5941
		-0.73952	53.59412
		-0.73936	53.59525
		-0.73891	53.59432
		-0.73886	53.59492
Works No. 5	Water Discharge Corridor – Existing	-0.73891	53.59457
		-0.73769	53.59966
	Outfall Option	-0.73732	53.60015
		-0.73702	53.60006
		-0.73709	53.6
		-0.73736	53.59997
		-0.73742	53.59989
		-0.73735	53.59978
		-0.73739	53.59973
		-0.73731	53.59968
	-0.73731	53.59964	

~~7. The provisions of section 72 of the 2009 Act shall apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 7 (Consent to transfer benefit of this Order).~~

### PART 3 CONDITIONS

#### General

~~8.7.~~ Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours of being identified in accordance with the following—

- (a) within office hours: 0300 200 2024;
- (b) outside office hours: 07770 977 825; or
- (c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemangement.org.uk

#### Notifications and Inspections

~~9.8. (1)a~~ The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
  - (i) all agents and contractors notified to the MMO in accordance with condition ~~132~~ and
  - (ii) the masters ~~and transport managers~~ responsible for the vessels notified to the MMO in accordance with condition ~~143~~;
- (2) Only those persons and vessels notified to the MMO in accordance with condition ~~132~~ and ~~134~~ are permitted to carry out the licensed activities.
- (3) Copies of this licence must also be available for inspection at the following locations—
  - (a) the undertaker's registered address;
  - (b) any site office located at or adjacent to the construction site and used by the licence holder or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
  - (c) on board each vessel or at the office with responsibility for vessels from which authorised deposits or removals are to be made.
- (4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an ~~authorised~~ enforcement officer at the locations set out in sub-paragraph (3)(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.
- (6) A notice to mariners must be issued at least 14 days prior to the commencement of the licensed activities or any part of them advising of the start date of those activities and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO, TH, MCA and United Kingdom Hydrographic Office within 24 hours of issue.
- (7) The undertaker must notify the United Kingdom Hydrographic Office ~~both~~ of the commencement (within ten days), progress and completion of construction (within ten days) of the

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licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO within 24 hours of issue.

#### Pre-construction

~~10.9.~~ Not later than 8 weeks prior to the proposed commencement of licensed activities the undertaker must submit to the ~~MCA Maritime and Coastguard Agency~~ and the MMO for review (and approval in writing by the MMO) ~~a Construction Environmental Management Plan (the 'CEMP')~~ covering the period of construction to include details of—

- (a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;
- (b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised; and
- (c) waste management and disposal arrangements.

The authorised development must be undertaken in accordance with the CEMP, unless otherwise agreed in writing by the MMO.

~~11.10.~~ ~~(1)a~~ The undertaker must submit a marine method statement (MMS) to the MMO no later than 8 weeks prior to the proposed commencement of the licensed activities for its written approval. The MMS is to include details of—

- (a) any proposed refurbishment and/or construction activities;
- (b) if a cofferdam is proposed to be constructed as part of Work No. 4B, the cofferdam installation technique and piling methodology;
- (c) any construction works at the intake, including the level or refurbishment or replacement works required;
- (d) an indicative programme for the completion of the licensed activities; and
- (e) the details of engagement undertaken with ABP Humber, as the appropriate navigational authority. This ~~must shall~~ include the design of the cofferdam and any measures which will be installed around the toe of the cofferdam to manage risk of shoaling, if necessary. It ~~must shall~~ also include details of any specification demarcation or lighting requests, as directed by ABP Humber.

(2) The licensed activities must not commence until written approval of the MMS is provided by the MMO.

(3) All licensed activities must be undertaken in accordance with the approved MMS.

(4) The MMS may be amended from time to time subject to the approval in writing of the MMO.

~~12.11.~~ The undertaker must complete pre-works bathymetry of the areas specified in Part 2, sub paragraph 5, before the commencement of works. The results of pre-works bathymetry ~~shall must~~ be shared with ABP Humber, as the appropriate navigational authority and the MMO.

~~13.12.~~ The undertaker must notify the MMO in writing of any agents, contractors or subcontractors that will carry on any licensed activity listed in this licence on behalf of the undertaker this ~~shall must~~ include the name, address, company number (if applicable) and role. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity and any change to a notified agent, contractor or subcontractors ~~must shall~~ be updated and notified to the MMO accordingly.

~~14.13.~~ The undertaker must notify the MMO in writing of any vessel being used to carry on any licensed activity listed in this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity. Notification must include the master's name, vessel type, vessel IMO number and vessel owner or operating company.

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## During Construction, Operation and Maintenance

~~15.14.~~ The undertaker must ensure that any coatings and treatments used are suitable for use in the marine area and are used in accordance with either guidelines approved by the Health and Safety Executive or the Environment Agency Pollution prevention for businesses guidelines.

~~16.15.~~ The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

16. The undertaker must not discharge waste concrete slurry or wash water from concrete or cement into the river. The undertaker must site concrete and cement mixing and washing areas at least 10 metres from the river or surface water drain to minimise the risk of run off entering the river. If concrete is to be sprayed, suitable protective sheeting must be provided to prevent rebounded or windblown concrete from entering the marine environment. Rebound material must be cleared away before the sheeting is removed.

~~17.~~ During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

17.

18. ~~(1)a)~~ Vibratory piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where drill or vibratory piling has been unsuccessful. If percussive piling is necessary, soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved.

(2) The soft-start duration must be a period of not less than twenty minutes.

(3) Should piling cease for a period greater than ten minutes, then the soft start procedure must be repeated.

19. Piling must not be undertaken between 01 September and 31 November, inclusive, in order to minimize any potential effects on the upstream migration of adult Salmon during their most sensitive migratory period. Piling will be restricted between 0700 to and 1900 hours.

~~20.~~ During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

~~21.20.~~ The undertaker must comply with the lighting, hazard marking and demarcation requirements of ABP Humber, as the appropriate navigational authority.

~~22.21.~~ The undertaker must ensure any rock material used in the construction of the authorised development is from a recognised source, free from contaminants and containing minimal fines.

~~23.22.~~ In the event that any rock or stone material is misplaced or lost below MHWS, the undertaker must report the loss to the Local Enforcement Office within 48 hours of becoming aware and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the MMO must notify the undertaker and the undertaker must use reasonable endeavours to locate the material and recover it. In that event, the undertaker must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

~~24.23. (1)a)~~ The undertaker must report all dropped objects to the MMO using the Marine Licence Dropped Incident Report (MLDIR) as soon as reasonably practicable and in any event within ~~24~~ hours of becoming aware of an incident.

(2) On receipt of the MLDIR, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys directly related to such MLDIR and where there is a need to remedy any effect related to the MLDIR. The undertaker must carry out surveys at its own expense in accordance with the MMO's reasonable requirements and must report the results of such survey results to the MMO.

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(3) On receipt of such survey results the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the riverbed. The undertaker must carry out removal of specific obstructions from the riverbed in accordance with the MMO's reasonable requirements and at its own expense.

#### Post Construction

~~25.24.~~ The undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

~~26.25.~~ The undertaker must ensure that the MMO Local Enforcement Office is notified of the completion of the licensed activities and operations within ten days following the completion of the works.

~~27.26.~~ The undertaker must complete post-works bathymetry of the areas specified in paragraph ~~2(5)~~ of Part 2 of this licence, following the completion of the licensed activities. The results of post-works bathymetry ~~must shall~~ be shared with ABP Humber, as the appropriate navigational authority and with the MMO.

#### Conditions Discharge

~~28.27. (1)a)~~ The MMO ~~shall must~~ determine an application for discharge of a condition as soon as reasonably practicable and in any event within a period of three months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

~~(2) Where the MMO fails to determine an application for discharge of a condition within the period referred to in sub paragraph (1), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO.~~

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order authorises the undertaker (referred to in this Order as the undertaker) to construct, operate and maintain a power generating station and carbon capture and compression plant. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

The Order also grants a deemed marine licence under Part 4 of the Marine and Coast Access Act 2009.

A copy of the Order plans and the book of referenced mentioned in this Order and certified in accordance with Article 41 (certification of plans, etc.) may be inspected free of charge during working hours at [address].

## ANNEX C

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**DPA  
TERMS AND CONDITIONS**

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**DRAFT – Version 1**

**April 2022**

**Note: This document is intended to be read alongside the Dispatchable Power Agreement Business Model Summary and Consultation (April 2022) and is subject to the “Disclaimer” within it.**

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**PRELIMINARY**

The Conditions as applicable to an Eligible Generator are to be read in conjunction with:

- (A) the offer to contract made to the Eligible Generator by the DPA Counterparty pursuant to section 10 of the EA 2013 and the acceptance of that offer by such Eligible Generator;  
and
- (B) the Agreement entered into between the DPA Counterparty and the Eligible Generator.

**Part 1**  
**Introduction**

**1. DEFINITIONS AND INTERPRETATION**

**Definitions**

1.1 In these Conditions:

**"10-TD Gas Sample Period"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD Gas Trade Number Percentage"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD Gas Volume Percentage"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"10-TD UKA Sample Period"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"10-TD UKA Trade Number Percentage"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"10-TD UKA Volume Percentage"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Acceptable Collateral"** has the meaning given to such term in the Schedule (*Gain Share*);<sup>1</sup>

**"Acceptable Grounds of Objection"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Achieved and Declared CO<sub>2</sub> Capture Rate Average"** means the monthly average of: (i) the Achieved CO<sub>2</sub> Capture Rate; and (ii) the Declared CO<sub>2</sub> Capture Rate, in each case during the relevant AP Billing Period and as calculated by the DPA Counterparty for each AP Billing Period in accordance with the following formula:

$$ADLCR = \frac{(ACR_{ph} \times ACR_{ph,Settlement Units}) + \sum(DLCR_i)}{Total_{Settlement Units}}$$

where:

*ADLCR* = Achieved and Declared CO<sub>2</sub> Capture Rate Average  
(expressed as a percentage (%))

*ACR<sub>ph</sub>* = Achieved CO<sub>2</sub> Capture Rate in the relevant AP Billing  
Period (expressed as a percentage (%))

*ACR<sub>ph,Settlement Units</sub>* = Total number of AP Settlement Units where the  
Achieved CO<sub>2</sub> Capture Rate is used as the Availability  
of Capture in the relevant AP Billing Period

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<sup>1</sup> Note to Reader: The inclusion of this definition is subject to whether the gain share schedule applies to the DPA.

$DLCR_i$  = Declared CO<sub>2</sub> Capture Rate for each AP Settlement Unit (i) in the relevant AP Billing Period where the Deemed CO<sub>2</sub> Capture Rate is used as the Availability of Capture for that AP Settlement Unit (*expressed as a percentage (%)*)

$Total_{Settlement\ Units}$  = Total number of AP Settlement Units in the relevant AP Billing Period

**"Achieved CO<sub>2</sub> Capture Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Actual Load Factor"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Actual Net Efficiency"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Adjusted Revenues Period"** means a period during the Term in which one (1) or more of the following is reduced or increased as a direct result of a Qualifying Change in Law:

- (A) the Net Dependable Capacity;
- (B) the Availability of Generation;
- (C) the Availability of Capture; and/or
- (D) the Metered Day Electricity Output;

**"Adjusted Revenues Sub-Period"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Affected Operational CP"** has the meaning given to that term in Condition 3.11 (*Operational Conditions Precedent: General Reporting Obligations*);

**"Affected Person"** means any direct or indirect shareholder of the Generator who is able to evidence to the satisfaction of the DPA Counterparty that if it (or an agent or security trustee on its behalf) has or had the benefit of a Direct Agreement, it is or would be:

- (A) contractually obliged to exercise rights under the relevant Direct Agreement in accordance with the instructions of one (1) or more Lenders (or an agent or security trustee on its or their behalf); or
- (B) party to an agreement regarding the exercise of rights under such Direct Agreement with a person falling within paragraph (A) above;

**"Affiliate"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Agreement"** means the agreement entered into between the DPA Counterparty and the Eligible Generator pursuant to [section 10 of the EA 2013];<sup>2</sup>

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<sup>2</sup> Note to Reader: Relevant legislative reference to be confirmed.

**"Agreement Date"** has the meaning given to that term in the Agreement;

**"Agreement Date Provisions"** means Part 1 (*Introduction*), Part 2 (*Term*), Part 3 (*Conditions Precedent and Milestone Requirement*), Condition 8 (*Definitions: Part 5*), Condition 9.12 (*APR Indexation Adjustment*), Condition 10.15 (*Other Extra Variable Costs Indexation*), Condition 10.19 (*Base Performance Assumptions Adjustments*), Condition 14 (*Default Interest*), Condition 15 (*Set-off*), Condition 16 (*Deductions and withholdings*), Condition 17 (*Payment accounts*), Condition 18 (*Generator representations and warranties*), Condition 19 (*DPA Counterparty representations and warranties*), Condition 20 (*Generator undertakings: General*), Condition 24 (*Generator undertakings: Information provision and no cumulation of Subsidy, State aid and Union Funding*), Condition 25 (*Generator undertaking: Supply Chain Reporting*), Part 9 (*Termination*), Part 10 (*Dispute Resolution*) to Part 13 (*Miscellaneous*) (inclusive), Annex 1 (*Conditions Precedent*), Annex 3 (*Calculation of Default Termination Payment*), Annex 4 (*Change Control Procedure*), Annex 5 (*Form of Direct Agreement*), and Annex 10 (*Pro forma notices*);

**"Alternative T&S Network Review Notice"** has the meaning given to that term in Condition 35.13(B) (*Termination for T&S Prolonged Unavailability Event*);

**"Alternative T&S Network Solution Plan"** means a plan developed by the Generator setting out the required milestones and actions in order to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network [or alternative permanent storage]<sup>3</sup> (either directly by pipeline, or indirectly by other means of transportation), in order to remedy a T&S Prolonged Unavailability Event;

**"Alternative T&S Network Solution Plan Deadline"** means the date which falls eighteen (18) Months from the date of a T&S Prolonged Unavailability Event Notice issued by the DPA Counterparty in accordance with Condition 35.8;

**"Amendment Notification"** has the meaning given to that term in paragraph 2.1 of Annex 4 (*Change Control Procedure*);

**"Annual Adjusted NDC"** has the meaning given to that term in Condition 7.1(E)(i)(b) (*Undertaking: Annual NDC Test*);

**"Annual Adjusted NDC Implementation Date"** has the meaning given to that term in Condition 7.8 (*Revised NDC Effective Date*);

**"Annual NDC Test"** means a test carried out by the Generator pursuant to Condition 7 (*Adjustments to Net Dependable Capacity: Annual NDC Test*) and in accordance with Annex 2 (*Testing Requirements*);

**"Annual NDC Test Access Notice"** has the meaning given to that term in Condition 7.11 (*Annual NDC Test Access Right*);

**"Annual NDC Test Access Right"** has the meaning given to that term in Condition 7.10 (*Annual NDC Test Access Right*);

**"Annual NDC Test Date Adjustment Notice"** has the meaning given to that term in Condition 7.1(C);

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<sup>3</sup> Note to Reader: This Definition is subject to further review by BEIS.

**"Annual NDC Test Notice"** has the meaning given to that term in Condition 7.1(E) (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Notice Deadline"** has the meaning given to that term in Condition 7.1(E) (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Obligation"** has the meaning given to that term in Condition 7.1 (*Undertaking: Annual NDC Test*);

**"Annual NDC Test Report"** means a test report prepared by the Generator in respect of an Annual NDC Test which shall include the Test Report Minimum Technical Requirements;

**"Annual NDC Test Response Notice"** has the meaning given to that term in Condition 7.4 (*DPA Counterparty Response Notification*);

**"Annual NDC Test Supporting Information"** has the meaning given to that term in Condition 7.4(B) (*DPA Counterparty Response Notification*);

**"Annual NDC Test Window"** means the period between 01 June (or, if such date is not a Business Day, the first (1st) Business Day thereafter) and 01 September (or, if such date is not a Business Day, the first (1st) Business Day thereafter) in the year of the relevant Annual NDC Test;

**"AP Billing Period"** means a Month, except that:

- (A) the first AP Billing Period shall commence on the Start Date and end on the last day of the Month in which the DPA Counterparty notifies the Generator pursuant to the OCP Response Notice or the Further OCP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*); and/or
- (B) Condition 3.43 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable) and the last AP Billing Period shall commence on the first day of the last Month of the Term and end on the last day of the Term;

**"AP Calculated CO<sub>2</sub> Generated"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Calculated CO<sub>2</sub> Generated with Capture Outage Relief Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Compensatory Interest"** means the interest that is due and payable at the AP Compensatory Interest Rate in accordance with Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Compensatory Interest Amount"** has the meaning given to that term in Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Compensatory Interest Rate"** has the meaning given to that term in Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Fuel Composition"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Fuel Composition Recalculation Amount"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Metered CO<sub>2</sub> Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Metered CO<sub>2</sub> Output with Capture Outage Relief Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Net Payable Amount"** means, in respect of an AP Billing Period, the amount calculated in accordance with Condition 12.7 (*Calculation of AP Net Payable Amount*);

**"AP Other Metered Data"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Other Metered Data Cut-Off Time"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Other Metered Data Recalculation Amount"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"AP Reconciliation Amounts"** has the meaning given to that term in Condition 12.5 (*Calculation of AP Reconciliation Amounts*);

**"AP Reconciliation Billing Period"** has the meaning given to that term in Condition 12.6 (*Calculation of AP Compensatory Interest Amounts*);

**"AP Settlement Unit"** means each half hour period in a day divided into half hour-long periods for each day after the Start Date that falls during the Term, and starting at 00:00 on each such day;

**"AP Total Metered Fuel Consumption"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Applicable Planning Consents"** has the meaning given to that term in the Contracts for Difference (Allocation) Regulations 2014 (as at the Agreement Date);<sup>4</sup>

**"Approved Alternative T&S Network Solution Plan"** has the meaning given to that term in Condition 35.13(B)(i) (*Termination for T&S Prolonged Unavailability Event*);

**"Approved Capture Rate Breach Rectification Plan"** has the meaning given to that term in Condition 22.5(B)(i) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Approved Performance Test Procedure"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"ARP Estimate"** means a good faith estimate in relation to an Adjusted Revenues Period, including a good faith estimate of: (i) the date on which such Adjusted Revenues Period will commence and end; (ii) the QCiL Adjusted Revenues Payment; and (iii) the impact of the Adjusted Revenues Period on one (1) or more of the following:

- (A) the Net Dependable Capacity;
- (B) the Availability of Generation;
- (C) the Availability of Capture; and/or

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<sup>4</sup> Note to Reader: This definition is subject to further review by BEIS.

(D) the Metered Day Electricity Output;

**"APR Indexation Adjustment"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"APR Indexation Anniversary"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Arbitral Award"** has the meaning given to that term in Condition 42.2 (*Arbitration 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 Condition 42 (*Arbitration Procedure*);

**"Arbitrator"** means any person to whom a Dispute is referred in accordance with the Dispute Resolution Procedure;

**"Assumed CO<sub>2</sub> Capture Rate"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Load Factor"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Net Dependable Capacity"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Assumed Net Efficiency"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Audit Notice"** has the meaning given to that term in Condition 3.18 (*Reporting Obligations Audit Right*);

**"Audit Right"** has the meaning given to that term in Condition 3.17 (*Reporting Obligations Audit Right*);

**"Authority"** means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000;

**"Availability of Capture"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Availability of Generation"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Availability Payment"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Availability Payment Billing Statement"** has the meaning given to that term in Condition 12.1 (*Delivery of Availability Payment Billing Statement*);

**"Availability Payment QCIL Differential"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);



**"Availability Payment Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Average Achieved CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (expressed as a percentage (%)) for the Facility during a Deemed Calculation Period and calculated as follows:

$$AACR_{ph} = \frac{CO2_{exp} - CO2_{expCORE}}{CO2_{gen} - CO2_{genCORE}}$$

where:

$AACR_{ph}$  = Average Achieved CO<sub>2</sub> Capture Rate (expressed as a percentage (%))

$CO2_{exp}$  = Metered CO<sub>2</sub> Output in a Deemed Calculation Period (tCO<sub>2</sub>)

$CO2_{expCORE}$  = Metered CO<sub>2</sub> Output where a Capture Outage Relief Event occurs in a Deemed Calculation Period (tCO<sub>2</sub>)

$CO2_{gen}$  = Calculated CO<sub>2</sub> Generated in a Deemed Calculation Period (tCO<sub>2</sub>)

$CO2_{genCORE}$  = Calculated CO<sub>2</sub> Generated where a Capture Outage Relief Event occurs in a Deemed Calculation Period (tCO<sub>2</sub>)

**"Base Performance Assumptions"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Base Performance Assumptions Adjustments"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Base Rate"** means the rate of interest published from time to time by the Bank of England as its base rate;

**"Base Year"** has the meaning given to that term in the Agreement;

**"Base Year CPI"** means the value of the CPI for October in the calendar year immediately preceding the Base Year;

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

**"Billing Statement Dispute Notice"** has the meaning given to that term in Condition 13.4 (*Billing Statement Disputes*);

**"Billing Statements"** means an Availability Payment Billing Statement and/or a Variable Payment Billing Statement (as applicable);

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

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

**"Calculated CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (expressed in tCO<sub>2</sub>) generated by the Facility during the relevant period, based upon the Total Metered Fuel Consumption and Fuel Composition as applicable for each such period, converted to an equivalent mass

quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EUETS Phase 2" and in accordance with ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"Calculation CMRP Source"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Capture Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(D) (*Declaration Obligations*);

**"Calculation Gas Price Source"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Capture Assets"** has the meaning given to that term in the Agreement;

**"Capture Outage Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Capture Outage Relief Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Capture Rate Breach Deadline"** means the date which falls eighteen (18) Months after the date of a Capture Rate Breach Notice, as such date may be extended day for day for each day that the Generator is delayed in achieving a Capture Rate Breach Rectification by reason of:

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) a T&S Outage Event which directly affects the ability of the Generator to achieve a Capture Rate Breach Rectification;

**"Capture Rate Breach Notice"** has the meaning given to that term in Condition 22.2 (*Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Rectification"** has the meaning given to that term in Condition 22.3(A) (*Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Rectification Plan"** means a plan developed by the Generator and submitted to the DPA Counterparty pursuant to Condition 22.5 (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*) setting out the Generator's proposed actions and milestones (and proposed deadlines for completing such actions and milestones) in order to rectify a breach of the Minimum CO<sub>2</sub> Capture Rate Obligation and achieve a Capture Rate Breach Rectification;

**"Capture Rate Breach Rectification Review Notice"** has the meaning given to that term in Condition 22.5(B) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Breach Response Notice"** has the meaning given to that term in Condition 22.3 (*Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Capture Rate Termination Event"** means an event as set out in Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Carbon Market Reference Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Carbon Market Reference Price Review"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Carbon Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Carbon Support Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"CCP Affected Parties"** means, in respect of a General Amendment, the generators which are party to those CCUS Programme DPAs to which the General Amendment is proposed to be made;

**"CCUS Programme"** means a programme, as such programme may be updated from time to time, to deploy a system comprising the following:

- (A) capturing CO<sub>2</sub> that has been produced by, or in connection with, processes including:
  - (i) commercial electricity generation;
  - (ii) commercial industrial processes; or
  - (iii) commercial hydrogen production;
- (B) transporting such CO<sub>2</sub> that has been captured; and
- (C) disposing of such CO<sub>2</sub> that has been captured, by way of permanent storage;

**"CCUS Programme DPA"** means each DPA issued pursuant to [section 10 EA 2013];<sup>5</sup>

**"Change Control Procedure"** means the rules, obligations and procedures set out in Annex 4 (*Change Control Procedure*);

**"Change in Applicable Law"** means:

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

**"Change in Law"** means:

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

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

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<sup>5</sup> Note to Reader: Relevant legislative reference to be confirmed.

- (i) 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) 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) represents no more than a continuous improvement or development of good practice which would be complied with in respect of a generating facility deploying CO<sub>2</sub> Capture Technology by a generator acting in accordance with the Reasonable and Prudent Standard;

**"CiAL Dispute"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Generator"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Notice"** has the meaning given to that term in Condition 33.1 (*Procedure for raising a Dispute*);

**"CiAL Dispute Threshold Criterion"** has the meaning given to that term in Condition 33.9 (*CiAL Dispute Threshold Criterion*);

**"CiAL Dispute Validity Notice"** has the meaning given to that term in Condition 33.3 (*Validity of CiAL Dispute Notices*);

**"CiAL Request Criterion"** has the meaning given to that term in Condition 32.3 (*Requirement to undertake a CiAL Review*);

**"CiAL Request Notice"** has the meaning given to that term in Condition 32.2 (*Requirement to undertake a CiAL Review*);

**"CiAL Request Validity Notice"** has the meaning given to that term in Condition 32.5 (*Validity of CiAL Dispute Notices*);

**"CiAL Review"** means a review conducted by the DPA Counterparty pursuant to Condition 32.1 (*CiAL Review*) as to whether:

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

**"CiAL Review Notice"** has the meaning given to that term in Condition 32.6 (*Notification of CiAL Review*);

**"CiAL Review Outcome Notice"** has the meaning given to that term in Condition 32.9 (*Notification of outcome of CiAL Review*);

**"CiAL Review Response Deadline"** has the meaning given to that term in Condition 32.6(B) (*Notification of CiAL Review*);

**"CiAL Review Response Notice"** has the meaning given to that term in Condition 32.7 (*Notification of CiAL Review*);

**"CiAL Review Trigger"** has the meaning given to that term in Condition 32.1 (*Requirement to undertake a CiAL Review*);

**"Civil Procedure Rules"** means the Civil Procedure Rules 1998;

**"CJA"** means the Criminal Justice Act 1993;

**"Claimant"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Classification Objection"** has the meaning given to that term in paragraph 2.6(B)(ii)(a) of Annex 4 (*Change Control Procedure*);

**"CMRP Dispute"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Fallback Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"CMRP Inclusion Criteria"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 11 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Quality Criteria"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Review Calculation Period"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Source"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"CMRP Source Live Day"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"CMRP Trading Day"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"CO<sub>2</sub>"** means carbon dioxide;

**"CO<sub>2</sub> Capture Rate Estimate"** has the meaning given to that term in the Agreement;

**"CO<sub>2</sub> Capture Rate Test"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"CO<sub>2</sub> Capture Rate Test Report"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"CO<sub>2</sub> Capture Technology"** means technology which is installed or implemented pursuant to the CCUS Programme and which:<sup>6</sup>

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<sup>6</sup> Note to Reader: This definition is subject to further review by BEIS.

- (A) captures some or all of the CO<sub>2</sub> or any substance consisting primarily of CO<sub>2</sub>; and
- (B) temporarily stores, processes and exports CO<sub>2</sub> (or any substance consisting primarily of CO<sub>2</sub>) [for permanent storage];<sup>7</sup> or
- (C) carries out any other process which is preparatory or ancillary to limbs (A) and (B) of this definition;

**"CO<sub>2</sub> Cost Differential"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"CO<sub>2</sub> Delivery Point(s)"** means the point(s) of connection of the Facility to the T&S Network [or where CO<sub>2</sub> is transported from the Facility to the T&S Network other than by pipeline, the point(s) of connection where such CO<sub>2</sub> first enters the T&S Network];<sup>8</sup>

**"CO<sub>2</sub> Metering Dispute"** has the meaning given to that term in Condition 13.9 (*CO<sub>2</sub> Metering Dispute*);

**"CO<sub>2</sub> Metering Equipment"** means the metering equipment which is required pursuant to the CO<sub>2</sub> Metering Specification to meter the Metered CO<sub>2</sub> Output which may include flow meters, composition analysers, associated communications equipment, and any other necessary ancillary equipment and infrastructure;

**"CO<sub>2</sub> Metering Obligation"** has the meaning given to that term in Condition 21.2 (*Undertakings: CO<sub>2</sub> Metering Obligation*);

**"CO<sub>2</sub> Metering Specification"** means [●];<sup>9</sup>

**"Cold Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

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

**"Commissioning Tests"** means all of the procedures and tests (including performance tests) considered to be satisfactory by the DPA Counterparty and which, in accordance with the Reasonable and Prudent Standard, and in compliance with industry guidelines, practices and standards, are:

- (A) relevant to generating and CO<sub>2</sub> capture facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology and/or the Facility Capture Technology);
- (B) required to be completed, followed or passed (as appropriate): (i) in order for a generating facility to generate and export electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation;

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<sup>7</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops and in relation to non-pipeline transportation (NPT) arrangements.

<sup>8</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops and in relation to non-pipeline transportation (NPT) arrangements.

<sup>9</sup> Note to Reader: The specific CO<sub>2</sub> metering standards are to be determined

(C) required to be completed, followed or passed (as appropriate): (i) in order for a capturing facility to capture and export CO<sub>2</sub>; or (ii) to demonstrate that a capturing facility is fit for commercial operation; and

(D) required to be carried out in accordance with Annex 2 (*Testing Requirements*);

**"Compensatory Interest"** means any AP Compensatory Interest and/or VP Compensatory Interest (as applicable);

**"Compensatory Interest Amount"** means an AP Compensatory Interest Amount and/or a VP Compensatory Interest Amount (as applicable);

**"Competent Authority"** means:

(A) any national, federal, regional, state, local, or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;

(B) any private body to the extent it carries out one (1) or more public functions; or

(C) any other body which has jurisdiction in respect of the Facility, the Project, the DPA and/or any other DPA Document,

and includes the Authority, the Economic Regulator, the Environment Agencies and the Secretary of State but excludes the DPA Counterparty;

**"Conditions"** means these terms and conditions;

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

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

**"Connected Dispute"** has the meaning given to that term in Condition 43.1(A) (*Consolidation of Connected Disputes*);

**"Consolidation Request"** has the meaning given to that term in Condition 43.2 (*Consolidation of Connected Disputes*);

**"Contractor"** means any contractor, sub-contractor, consultant or adviser of or to the Generator but excludes any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor;

**"Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"CPI"** means:

(A) the all items index of consumer price inflation published each Month by the Office for National Statistics;

(B) if that index is no longer being published, such index as the DPA Counterparty may reasonably determine to be appropriate in the circumstances; or



(C) if there is a material change to the basis of that index, such other index as the DPA Counterparty may from time to time reasonably determine to be appropriate in the circumstances;

**"Crown Body"** means any department, office or agency of the Crown;

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

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

**"Daily Discount Rate"** has the meaning given to that term in Condition 27.34 (*QCIL Operations Cessation Event Payment*);

**"Declaration Obligations"** has the meaning given to that term in Condition 23.1(G) (*Declaration Obligations*);

**"Declaration Access Right"** has the meaning given to that term in Condition 23.9 (*Undertaking: Access to and test of Facility*);

**"Declaration Access Termination Event"** has the meaning given to that term in Condition 23.15 (*Failure to provide Declaration Access Right*);

**"Declaration Inspection Notice"** has the meaning given to that term in Condition 23.10 (*Undertaking: Access to and test of Facility*);

**"Declaration Capacity Data"** means the Generation Declaration Capacity Data, the Declared CO<sub>2</sub> Capture Rate and/or the Capture Declaration Capacity Data (as applicable);

**"Declared CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (expressed as a percentage (%)) of the Facility assuming that a T&S Network is available to enable the Facility to export all captured CO<sub>2</sub> to such T&S Network;

**"Deemed Calculation Period"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Deemed CO<sub>2</sub> Capture Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Deemed Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Default"** means: (i) a Termination Event; or (ii) an event or a circumstance which would (with the passage of time, the giving of notice, the making of any determination pursuant to the DPA or any combination of any of the foregoing) be a Termination Event;

**"Default Interest"** has the meaning given to that term in Condition 14.1 (*Default Interest*);

**"Default Termination Date"** has the meaning given to that term in Condition 35.26(A) (*Default termination*);

**"Default Termination Notice"** has the meaning given to that term in Condition 35.26 (*Default termination*);

**"Default Termination Payment"** means the amount (expressed in pounds) calculated in accordance with the formula set out in paragraph 1.1 of Annex 3 (*Calculation of Default Termination Payment*);

**"Default Termination Payment Notice"** has the meaning given to that term in Condition 36.9(B) (*Consequences of Default termination*);

**"Delivery CO<sub>2</sub> Quality Standards"** means the compositional limits (minimum percentage of CO<sub>2</sub> and maximum levels of a range of impurities) that are permissible for entry to a T&S Network, together with the maximum and minimum entry pressure and maximum and minimum entry temperature, as specified by the relevant T&S Operator;<sup>10</sup>

**"Devolved Legislation"** means any: (i) Act of the Scottish Parliament; (ii) Act or Measure of Senedd Cymru; (iii) Scottish statutory instrument within the meaning of section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010; or (iv) Welsh subordinate legislation within the meaning of s.3(2) of the Legislation (Wales) Act 2019;

**"Direct Agreement"** means an agreement in substantially the form set out in Annex 5 (*Form of Direct Agreement*), or in such other form as may be agreed by the DPA Counterparty (in its sole discretion);

**"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, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of the Generator) in accordance with the Reasonable and Prudent Standard; and
- (B) in circumstances in which the Generator is seeking to invoke the provisions of Part 8 (*Changes in Law*) with which the Generator does in fact comply;

**"Directors' Certificate"** means a certificate signed by two (2) directors of the Generator or one (1) director of the Generator in the presence of a witness who attests the signature, such directors or director (as applicable) having made, and confirmed in the certificate as having made, all due and careful enquiries in relation to the information set out in such certificate (or set out in the notice, or enclosures or appendices to the notice, which such certificate is accompanying) and certifying that such information is in all material respects true, complete, accurate and not misleading, in each case by reference to the facts and circumstances then existing, provided that where any such information is provided by a third party that is not a holding company or subsidiary of the Generator or a Representative of any such party or the Generator and is marked as such, the certification of the director or directors (as applicable) of that information shall only extend to the certification that that information is in all material respects true, complete, accurate and not misleading to the best of their knowledge and belief having made all due and careful enquiries;

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

- (A) the Project and not to the design, development, construction, completion, testing, commissioning, operation, maintenance and decommissioning of any other project;

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<sup>10</sup> Note to Reader: This definition is subject to the development of the T&S business model.

- (B) the Facility and not to any other generating assets or capture assets; or
- (C) the Generator and not to any other person;

**"Dispute"** means any dispute or claim in any way relating to or arising out of the DPA or any other DPA Document, whether contractual or non-contractual (and including any dispute or claim regarding: (i) their existence, negotiation, validity or enforceability; (ii) the performance or non-performance of a Party's obligations pursuant to them; or (iii) breach or termination of any of them), but excluding any Electricity Metering Dispute;

**"Dispute Information"** has the meaning given to that term in Condition 39.7 (*Outline of Dispute Resolution Procedure*);

**"Dispute Notice"** has the meaning given to that term in Condition 39.3 (*Outline of Dispute Resolution Procedure*);

**"Dispute Resolution Procedure"** means the rules, obligations and procedures set out in Part 10 (*Dispute Resolution*) including the Arbitration Procedure and the Expert Determination Procedure, but excluding the provisions of Condition 45.1 and 45.2 (*Metering Disputes*);

**"Distribution Connection and Use of System Agreement"** means the agreement that an Electricity 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 an Electricity Distribution Licence;

**"DPA"** means the Agreement which incorporates these Conditions;

**"DPA Counterparty"** has the meaning given to that term in the Agreement;

**"DPA Counterparty Confidential Information"** means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the DPA Counterparty or a Government Entity (including any such Information relating to the policy of Her Majesty's Government of the United Kingdom with respect to matters pertinent to CCUS Programme DPAs or the DPA) which the Generator (or its Representatives) receives or has received from:
  - (i) the DPA Counterparty (or its Representatives); or
  - (ii) from any third party who receives or has received such Information from the DPA Counterparty (or its Representatives) in respect of the DPA,

in each case including any Information which the Generator prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable;

- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment; and
- (C) all Information which relates to or arises from negotiations, discussions and correspondence in connection with the DPA,

but excluding in each case all Excluded Information;

**"DPA Counterparty Declaration Breach Notice"** has the meaning given to that term in Condition 23.3 (*Notification by DPA Counterparty of Declaration Obligation breach*);

**"DPA Counterparty Permitted Purposes"** means:

- (A) complying with the DPA Counterparty's responsibilities and obligations, and exercising the DPA Counterparty's rights, powers and discretions, under or in connection with the DPA, any other DPA Document or any other CCUS Programme DPA;
- (B) complying with the DPA Counterparty's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;
- (C) reporting on the establishment, administration, performance or operation of, or compliance or non-compliance with, the obligations and arrangements contemplated by, or provided for in, the DPA and/or CCUS Programme DPAs; and
- (D) reporting to the Secretary of State on the performance, operation, and DPA Settlement Activities of the Project to enable or assist the Secretary of State to fulfil its functions in connection with the CCUS Programme DPA and/or CCUS Programme. The Secretary of State's functions include:
  - (i) the development of the CCUS Programme DPA;
  - (ii) the development of the CCUS Programme; and
  - (iii) any examination of the performance, efficiency, and effectiveness of the Project;

**"DPA Counterparty QCiL Notice"** has the meaning given to that term in Condition 26.1 (*DPA Counterparty QCiL Notice*);

**"DPA Counterparty QCiL True-Up Notice"** has the meaning given to that term in Condition 29.1 (*DPA Counterparty QCiL True-Up Notice*);

**"DPA Counterparty Restricted Purposes"** means:

- (A) complying with the DPA Counterparty's responsibilities and obligations, and exercising the DPA Counterparty's rights, powers and discretions, under or in connection with the DPA, any other DPA Document or any other CCUS Programme DPA; and
- (B) complying with the DPA Counterparty's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;

**"DPA Documents"** means the DPA and each of the agreements entered into between the Parties pursuant to it and **"DPA Document"** shall be construed accordingly;

**"DPA Generators"** means, at the relevant time, all parties (other than the DPA Counterparty) to CCUS Programme DPAs, provided that, where there are two (2) or more parties to any CCUS Programme DPA other than the DPA Counterparty, only one (1) of them shall be counted for the purposes of this definition;

**"DPA Payment Information"** means the following information relating to the Payments:

- (A) the Initial Net Dependable Capacity Estimate;
- (B) the Net Dependable Capacity;
- (C) the CO<sub>2</sub> Capture Rate Estimate;

- (D) the Achieved and Declared CO<sub>2</sub> Capture Rate Average;
- (E) the Average Achieved CO<sub>2</sub> Capture Rate;
- (F) the Plant Net Efficiency Estimate;
- (G) the Start Up Times Estimates;
- (H) the Initial Availability Payment Rate;
- (I) the Availability Payment Rate;
- (J) the Initial Other Extra Variable Costs;
- (K) the Other Extra Variable Costs;
- (L) the Initial Reference Plant CO<sub>2</sub> Emissions;
- (M) the Reference Plant CO<sub>2</sub> Emissions;
- (N) the Initial Reference Plant Gas Consumption;
- (O) the Reference Plant Gas Consumption;
- (P) the Facility CO<sub>2</sub> Emissions;
- (Q) the Facility Gas Consumption;
- (R) the Gas Price Sources; and
- (S) the CMRP Sources;

**"DPA Register Information"** means the following information to be included and updated in the DPA Counterparty's register:

- (A) name of Facility;
- (B) unique identifier assigned to the Facility by the DPA Counterparty;;
- (C) Start Date (including the Generator's expected Start Date);
- (D) Agreement Date;
- (E) the Facility's generation technology and capture technology types;
- (F) if applicable, whether the Facility is a Dual Scheme Facility;
- (G) the Target Commissioning Date;
- (H) the Target Commissioning Window start date;
- (I) the DPA Payment Information;
- (J) the Generator's name, company registered address and company registration number;
- (K) the unique geographical coordinates of the Facility;

- (L) DPA agreement type;
- (M) version name and number of the terms and conditions;
- (N) if applicable, the reference number and date of any modification agreement entered into between the Generator and the DPA Counterparty;
- (O) detail of the type of electricity connection (partial, direct or islanded);
- (P) detail of whether the Facility has a transmission or distribution electricity connection; and
- (Q) if applicable, the termination date of the DPA;

**"DPA Reserved T&S Capacity"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"DPA Reserved T&S Size of Connection"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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

**"DPA Settlement Required Information"** means all the Information required by the DPA Counterparty, or the DPA Settlement Services Provider on its behalf, relating to the DPA and required by it to carry out the DPA Settlement Activities;

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

**"Dual Scheme Facility"** means a Facility that forms part of a Generating Station which includes one (1) or more other Generating Units which are not part of the Facility;

**"EA 1989"** means the Electricity Act 1989;

**"EA 2013"** means the Energy Act 2013;

**"EA 2013 Regulations"** means any statutory instruments made pursuant to any of chapters 2, 4 and 5 (including the associated schedules to any of those chapters) of Part 2 of the EA 2013;

**"Economic Regulator"** means the independent economic regulator of the economic regulatory regime for the T&S Network;

**"EIR"** means the Environmental Information Regulations 2004, together with (where the context requires) any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

**"Electricity Delivery Points"** means the point(s) of connection of the Facility to the Electricity Transmission System or the Electricity Distribution System, as applicable (being the Boundary Point);

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

**"Electricity Distribution Licence"** means a licence granted or treated as granted pursuant to section 6(1)(c) of the EA 1989;

**"Electricity Distribution System"** has the meaning given to that term in section 4(4) of the EA 1989;

**"Electricity Licensed Distributor"** means a person who is authorised pursuant to an Electricity Distribution Licence to distribute electricity, acting in that capacity;

**"Electricity Metering Dispute"** has the meaning given to that term in Condition 13.6 (*Electricity Metering Dispute*);

**"Electricity Metering Equipment"** means: (i) the "Metering Equipment" as defined in, and registered pursuant to, the BSC to measure the flows at the Electricity Delivery Points of electricity with the Facility, its Metering System, and its associated BM Unit(s); and (ii) in the case of a Dual Scheme Facility, the "Metering Equipment" as defined in, and registered pursuant to, the BSC to measure the Imported Input Electricity of the Generating Station;

**"Electricity Metering Obligation"** has the meaning give to that term in Condition 21.1 (*Undertakings: Electricity Metering Obligation*);

**"Electricity Storage"**, in the electricity system, is the conversion of electrical energy into a form of energy which can be stored, the storing of that energy, and the subsequent reconversion of that energy back into electrical energy;

**"Electricity Storage Facility"** means a facility where Electricity Storage occurs or can occur and includes all assets performing or contributing to any such Electricity Storage;

**"Electricity Supplier"** has the meaning given to that term in section 9(10) of the EA 2013;

**"Electricity 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 participate in the transmission of electricity;

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

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

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

**"Eligible Generator"** has the meaning given to that term in the EA 2013 Regulations;

**"Energy Consultant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Appointment Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Information Request"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Energy Consultant Minimum Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Environment Agencies"** means: (i) the Environment Agency in England; (ii) Natural Resources Wales; and (iii) the Scottish Environment Protection Agency;

**"Estimated Fuel Billing Period"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Fuel Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Metered Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Output Billing Period"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Output Billing Statement"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Estimated Output Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"European Union"** or **"EU"** means the European Union, established by the Treaty of the European Union signed at Maastricht on 7 February 1992 (as amended, supplemented or replaced by any later Treaty);

**"EU(W)A 2018"** means the European Union (Withdrawal) Act 2018;

**"Ex-Ante"** means that the relevant QCiL Compensation will be calculated and paid in advance of the corresponding QCiL Costs, QCiL Savings and/or Adjusted Revenues Period arising;

**"Ex-Post"** means that the relevant QCiL Compensation will be calculated and paid in arrears of the corresponding QCiL Costs, QCiL Savings and/or Adjusted Revenues Period arising;

**"Excluded Change in Law"** means a Change in Law which is not a Qualifying Change in Law;

**"Excluded Information"** means Information:

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

**"Expected Facility Data"** means the Generator's estimate, for each year (from 1 April to 31 March inclusive) of the remainder of the Term, of:

- (A) the total electricity output of the Facility (*expressed in MWh*), which is as it will be measured by the Electricity Metering Equipment;



- (B) the expected CO<sub>2</sub> capture rate of the Facility (*expressed as a percentage (%)*) which is as it will be measured by the CO<sub>2</sub> Metering Equipment;
- (C) the net generating capacity of the Facility (*expressed in MW*);
- (D) the availability of the Facility to capture CO<sub>2</sub> (*expressed as a percentage (%)*);
- (E) [*any other information to be determined*];<sup>11</sup>
- (F) in relation to the estimates referred to at paragraphs (A) – [●], an explanation of the underlying assumptions and key uncertainties provided in a format to be determined by the DPA Counterparty (acting reasonably); and
- (G) where a submission of the estimates or data referred to in paragraphs (A) – [●] has been made by the Generator to the DPA Counterparty, and where such estimates or data has changed significantly since the last submission, the reasons for those changes;

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

**"Expert"** means any person appointed to determine a Dispute in accordance with Condition 41 (*Expert Determination Procedure*);

**"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 Appointment Threshold"** has the meaning given to that term in Condition 33.7 (*Expert Appointment Threshold*);

**"Expert Determination Notice"** has the meaning given to that term in Condition 41.1 (*Expert Determination Procedure*);

**"Expert Determination Procedure"** means the rules, obligations and procedures set out in Condition 41 (*Expert Determination Procedure*);

**"Expert Determination Response Notice"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Expert Dispute"** means a Dispute which, pursuant to the terms of the DPA, is to be referred for determination in accordance with the Expert Determination Procedure;

**"Expert Referral Date"** has the meaning given to that term in Condition 41.6(A) (*Expert Determination Procedure*);

**"Facility"** has the meaning given to that term in the Agreement;

**"Facility Capture Technology"** means, in respect of the Facility, the capture technology deployed by the Facility, as specified in the Agreement;

**"Facility CO<sub>2</sub> Emissions"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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<sup>11</sup> Note to Reader: This definition is subject to further review by BEIS.

**"Facility Connection Points"** means the CO<sub>2</sub> Delivery Points, the Gas Supply Points and/or the Electricity Delivery Points (as applicable);

**"Facility Fuel"** means the fuel used by the Facility, as specified in the Agreement;

**"Facility Gas Consumption"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Facility Generation Technology"** means, in respect of the Facility, the generation technology deployed by the Facility, as specified in the Agreement;

**"Facility Heat and Material Balance Diagram"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Facility Metering Equipment"** means the Electricity Metering Equipment, the CO<sub>2</sub> Metering Equipment and/or the Gas Supply Metering Equipment (as applicable);

**"Facility Shutdown"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"First Submission"** has the meaning given to that term in Condition 41.6(B) (*Expert Determination Procedure*);

**"First Submission Deadline"** has the meaning given to that term in Condition 41.6(B) (*Expert Determination Procedure*);

**"FM Affected Party"** has the meaning given to that term in Condition 51.1 (*Relief due to Force Majeure*);

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

**"FoIA Information"** means any information of whatever nature, however conveyed, and in whatever form, including written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form);

**"Force Majeure"** means any event or circumstance including:

- (A) any Change in Law (which expression, for the purposes of this definition, shall not include any Foreseeable Change in Law, and, in the period to the Start Date, shall include any change after the Agreement Date in the policy or guidance of any Competent Authority); and
- (B) any event or circumstance resulting from any action or omission by or of any DPA Settlement Services Provider, any BSC Agent or a BSC Company,<sup>12</sup>

provided that such event or circumstance:

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<sup>12</sup> Note to Reader: This definition is subject to the further consideration by BEIS in terms of whether an equivalent CO<sub>2</sub> entity is referenced here.

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

provided always that:

- (a) neither non-availability of funds nor the lack of funds shall ever constitute Force Majeure; and
- (b) no event or circumstance which has occurred before the Agreement Date of which, at or before the Agreement Date, the Generator or any of its Representatives either was aware, or (if it or they had made all due and careful enquiries and acted to the Reasonable and Prudent Standard) could be expected to have been aware, shall constitute a Force Majeure;

**"Forecast Data"** has the meaning given to that term in Condition 24.2 (*Forecast Data*);

**"Foreseeable Change in Law"** means, in respect of a Change in Law, that the relevant change:

- (A) was published on or after 01 January 2000 but before the Agreement Date:
  - (i) in a draft Bill;
  - (ii) in a Bill;
  - (iii) in an Act of Parliament which had been enacted but which had not (in whole or in part) come into effect;
  - (iv) in Devolved Legislation which had not (as regards that Change in Law) come into effect;
  - (v) in draft subordinate legislation;
  - (vi) in draft Devolved Legislation;
  - (vii) in subordinate legislation which had not (as regards that Change in Law) come into effect;
  - (viii) 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;
  - (ix) 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;
  - (x) in a draft Treaty or other international agreement in relation to which Her Majesty's Government of the United Kingdom had made a public statement

(from which it had not prior to the Agreement Date publicly resiled) that it would be a signatory; or

- (xi) in a Treaty or other international agreement to which the United Kingdom was a signatory but which had not (as regards that Change in Law) come into effect,

but only to the extent that the change has substantially the same effect as that which was contemplated in such publication and provided that the change shall not be deemed not to have substantially the same effect solely because it is enacted or brought into effect after the Agreement Date in a different form, or by a different person or Competent Authority, than when published before the Agreement Date;

- (B) is contemplated in a proposal or option(s) which was (or were) published on or after 01 January 2000 but before the Agreement Date:

- (i) in a consultation document of a Competent Authority and which is the stated preferred proposal (or, if only one (1) proposal was made, that proposal) of the Competent Authority (whether or not the Competent Authority is at the Agreement Date consulting (or has completed consulting) or considering (or has considered any) responses to the consultation), unless that proposal has been superseded by another stated preferred proposal or formally withdrawn, or the Competent Authority has formally indicated that it does not intend to proceed with it; or

- (ii) in a final modification report in respect of a relevant Industry Document,

but only to the extent that the change has substantially the same effect as that which was contemplated in such publication and provided that the change shall not be deemed not to have substantially the same effect solely because it is enacted or brought into effect after the Agreement Date in a different form, or by a different person or Competent Authority, than when published before the Agreement Date;

- (C) results from the enactment and implementation of any part of chapters 2, 4 and 5 (including the associated schedules to any of those chapters) of part 2 of the EA 2013;

- (D) 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) a document setting out the nature of such amendment, supplement, termination, repeal, replacement or withdrawal (whether or not in draft) had been published on or before the Agreement Date; and

- (ii) such amendment, supplement, termination, repeal, replacement or withdrawal has substantially the same effect as that so published;

- (E) constitutes the re-enactment, re-making or similar of (in whole or in part) any Law, Directive, Industry Document or Required Authorisation, provided that the re-enacted, re-made or similar Law, Directive, Industry Document or Required Authorisation, as the case may be, has substantially the same effect as that of which it is a re-enactment, re-making or similar;

- (F) implements or gives effect to (the whole or part of) any Treaty which has been published on or after 01 January 2000 but before the Agreement Date (and notwithstanding that implementation proposals and/or related sanctions for any part of the United Kingdom

have not been published or have not (in whole or in part) come into effect on the Agreement Date), provided that the implementation proposals and/or related sanctions which come into effect in the United Kingdom (or relevant part thereof) have substantially the same application as the provision in the Treaty which it implements;

- (G) results from any Required Authorisation or Directive obtained or made pursuant to or for the purposes of another Required Authorisation or Directive which has been made prior to 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) results from any exercise of the Royal Prerogative where such exercise has the same, or substantially the same effect, as that which was proposed on or after 01 January 2000 but before the Agreement Date;
- (I) constitutes a change in the interpretation or application of a 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 published on or after 01 January 2000 but before the Agreement Date and the change has substantially the same effect as that which was proposed in the document;
- (J) results from legal proceedings:
  - (i) commenced;
  - (ii) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or
  - (iii) threatened (by issue of a formal written notice before action or similar),
 against the Generator on or prior to the Agreement Date; or
- (K) results from legal proceedings against the Facility (including legal proceedings against a Competent Authority in relation to a Required Authorisation) where, on or prior to the Agreement Date:
  - (i) notice of such proceedings had been published by the court, arbitral, or other tribunal, administrative or regulatory body, or, as the case may be, expert, hearing the legal proceedings;
  - (ii) the Generator had been informed of such proceedings by any party to the legal proceedings, or by the court, arbitral or other tribunal, administrative or regulatory body, or, as the case may be, expert hearing the legal proceedings; or
  - (iii) such proceedings were (a) commenced, (b) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert, or (c) threatened (by issue of a formal written notice before action or similar); and, in each case, the Generator was aware, or could reasonably be expected to have become aware of such proceedings; or
- (L) results from an application for judicial review in respect of the grant of any of the Applicable Planning Consents, made:

- (i) within six (6) weeks of the grant of the relevant Applicable Planning Consent, in relation to an application to which paragraph 5 of Rule 54.5 of the Civil Procedure Rules applies; or
- (ii) within three (3) Months of the grant of the relevant Applicable Planning Consent, in relation to all other applications,

provided always that a Change in Law which imposes a requirement that the Facility permanently ceases operation shall not be a Foreseeable Change in Law;

**"FSMA"** means the Financial Services and Markets Act 2000;

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

**"Full Capture Outage Event"** means an event where the Capture Assets are fully unavailable;

**"Full Load Operation"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full Load Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full Load Test Performance Outputs"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Full T&S Outage Event"** means an event or circumstance affecting the relevant T&S Network which does not arise out of or in connection with any act, omission, breach or default by the Generator or its Representatives, and which prevents the Facility from accessing and exporting any CO<sub>2</sub> to such T&S Network;

**"Further Annual NDC Test Response Notice"** has the meaning given to that term in Condition 7.5(C)(ii) (*DPA Counterparty Response Notification*);

**"Further Longstop Date Capacity Response Notice"** has the meaning given to that term in Condition 6.5(B)(ii) (*Longstop Date Capacity Notice*);

**"Further Milestone Assessment Response Notice"** has the meaning given to that term in Condition 4.4(C)(ii) (*Milestone Requirement Notice*);

**"Further OCP Response Notice"** has the meaning given to that term in Condition 3.10(C)(ii) (*Operational Conditions Precedent: General Reporting Obligations*);

**"Further Outage Relief Response Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Further TCDE Response Notice"** has the meaning given to that term in Condition 3.33(C)(ii) (*T&S Connection Confirmation CP Relief*);

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

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

**"Gas Cost Differential"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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

**"Gas GB Day Ahead Contract"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas GB Day Ahead Volume"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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

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

**"Gas Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Gas Price Source"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Gas Reference Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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

**"Gas Supply Metering Dispute"** has the meaning given to that term in Condition 13.10 (*Gas Supply Metering Dispute*);

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

**"Gas Supply Metering Obligation"** has the meaning given to that term in Condition 21.3 (*Undertakings: Gas Supply Metering Obligation*);

**"Gas Supply Points"** means the point(s) of connection of the Facility to the Gas Distribution System to be identified on a plan which is annexed to the Agreement;

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

**"GB System Operator"** means the operator of the GB Transmission System, acting in that capacity;

**"GB Transmission System"** means the system consisting (wholly or mainly) of high voltage electric lines owned by Electricity Transmission Licensees within Great Britain that is used for

the transmission of electricity from one (1) generating station to a substation or to another generating station or between substations or to or from any interconnector;

**"General Amendment"** means any Proposed Amendment which:

- (A) is a Technical Amendment; and
- (B) the DPA Counterparty proposes be effected in respect of either:
  - (i) all CCUS Programme DPAs to which the DPA Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given; or
  - (ii) all CCUS Programme DPAs of a particular category to which the DPA Counterparty is a party at the time the Amendment Notification in respect of the Proposed Amendment is given,

in each case, other than any CCUS Programme DPA to which Annex 4 (*Change Control Procedure*) is expressed not to apply;

**"Generating Station"** means an installation comprising the Facility and one (1) or more other Generating Units (other than an interconnector and even where those Generating Units are situated separately) which the DPA Counterparty considers (acting reasonably) as being managed as, or comprising, one (1) generating station or one (1) generating site;

**"Generating Unit"** means any Apparatus which produces electricity;

**"Generation Assets"** has the meaning given to that term in the Agreement;

**"Generation Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(A) (*Declaration Obligations*);

**"Generation Outage Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Generation Outage Event (AP Settlement Unit) Duration"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Generation Outage Relief Event"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Generation Technology"** means a generation technology deployed by a generating facility;

**"Generator"** has the meaning given to that term in the Agreement;

**"Generator Capture Rate Breach Remediation Notice"** has the meaning given to that term in Condition 22.7(B) (*Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Generator Confidential Information"** means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Generator, the Facility or the Project which the DPA Counterparty (or its Representatives) receives or has received from:
  - (i) the Generator (or its Representatives); or
  - (ii) any third party who receives or has received such Information from the Generator (or its Representatives) in connection with the DPA;



in each case including any Information which the DPA Counterparty prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable;

(B) without prejudice to the generality of paragraph (A) above, all Information relating to:

- (i) any QCiL Compensation or QCiL True-Up Compensation; or
- (ii) any T&S Termination Payment,

including all Information relating to or arising from negotiations, discussions and correspondence in respect of any such QCiL Compensation, QCiL True-Up Compensation or T&S Termination Payment; and

(C) any Information which relates to or arises from negotiations, discussions and correspondence in connection with the DPA,

but excluding in each case all Excluded Information;

**"Generator Declaration Breach Notice"** has the meaning given to that term in Condition 23.4 (*Notification by Generator of Declaration Obligation breach*);

**"Generator Metering Remediation Notice"** has the meaning given to that term in Condition 21.7(C) (*Resolution of Metering Obligation breach*);

**"Generator Metering Remediation Notice Information Request"** has the meaning given to that term in Condition 21.8 (*Resolution of Metering Obligation breach*);

**"Generator Net Payable Amount"** means, in respect of a Billing Period, any amount which is due and payable by the Generator to the DPA Counterparty;

**"Generator Objection Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Generator Permitted Purpose"** means:

- (A) complying with the Generator's responsibilities and obligations, and exercising the Generator's rights, powers and discretions, under or in connection with the DPA or any other DPA Document; and
- (B) complying with the Generator's responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Directive, policy or guidance;

**"Generator QCiL Notice"** has the meaning given to that term in Condition 26.8 (*Generator QCiL Notice*);

**"Generator QCiL Notice Information Request"** has the meaning given to that term in Condition 26.11 (*Generator QCiL Notice*);

**"Generator QCiL Response Notice"** has the meaning given to that term in Condition 26.2 (*Generator QCiL Response Notice*);

**"Generator QCiL Response Notice Information Request"** has the meaning given to that term in Condition 26.6 (*Generator QCiL Response Notice*);

**"Generator QCiL True-Up Notice"** has the meaning given to that term in Condition 29.8 (*Generator QCiL True-Up Notice*);

**"Generator QCiL True-Up Notice Information Request"** has the meaning given to that term in Condition 29.11 (*Generator QCiL True-Up Notice*);

**"Generator QCiL True-Up Response Notice"** has the meaning given to that term in Condition 29.3 (*Generator QCiL True-Up Response Notice*);

**"Generator QCiL True-Up Response Notice Information Request"** has the meaning given to that term in Condition 29.6 (*Generator QCiL True-Up Response Notice*);

**"Generator Repeating Representations"** means each of the representations and warranties set out in Condition 18.1 (other than in Conditions 18.1(G) (*No litigation*) and 18.1(H) (*No requirement to deduct or withhold*));

**"Generator T&S Connection Works"** means the T&S Network connection works that the Generator is required or elects to carry out and complete pursuant to the T&S Construction Agreement;

**"Generator T&S Prolonged Unavailability Remediation Notice"** has the meaning given to that term in Condition 35.15 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*);

**"Generator T&S Prolonged Unavailability Response Deadline"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"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 prepared by the GB System Operator and approved by the Authority pursuant to Standard Condition C14 (*Grid Code*) of the Electricity Transmission Licence;

**"Group"** means, in respect of any Party, its subsidiaries, subsidiary undertakings, associated undertakings and any holding company of the Party and all other subsidiaries, subsidiary undertakings and associated undertakings of any such holding company from time to time;

**"GRP Dispute"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Fallback Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"GRP Inclusion Criteria"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Quality Criteria"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Review Calculation Period"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"GRP Trading Day"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"GCV"** means gross calorific value;

**"Heat and Material Balance Diagram"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Hot Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"ICE Futures Europe Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Imported Input Electricity"** means, in respect of a Generating Station, all electricity (expressed in MWh) imported from the Electricity Transmission System or from an Electricity Distribution System to that Generating Station, as measured at the Boundary Point;

**"Income, Profits or Gains"** includes any income, profits or gains which are deemed to be earned, accrued or received by the Generator for the purposes of any Tax;

**"Incomplete AP Billing Period"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Incomplete AP Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Independent Gas Transporter Network Codes"** means the network codes established and maintained by Gas Licensed Transporters in respect of the Gas Distribution System;<sup>13</sup>

**"Indexation Anniversary"** means an APR Indexation Anniversary and/or a OEVC Indexation Anniversary (as applicable);

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

- (A) the generation, transmission, distribution, supply and trading of electricity in Great Britain, including the Grid Code, the SOTO Code, the BSC, the CUSC, the Master Registration Agreement, any Electricity Distribution Code, any Distribution Connection and Use of System Agreement and/or any other connection or use of system agreement with an Electricity Transmission Licensee or Electricity Licensed Distributor;
- (B) the distribution, supply and trading of Gas in Great Britain, including the Uniform Network Code, the Independent Gas Transporter Network Codes and/or any other connection or use of system agreement with a Gas Licensed Transporter or Gas Licensed Shipper; and
- (C) the capture, temporary storage, permanent storage, distribution, transportation, and trading of CO<sub>2</sub> in the United Kingdom, including any T&S Codes,

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

**"Inflation Factor"** means:

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<sup>13</sup> Note to Reader: This definition is subject to further review.

- (A) in the absence of any re-basing of the CPI which has taken effect prior to the relevant Indexation Anniversary in respect of each Settlement Unit (i):

$$\Pi_i = \frac{CPI_i}{CPI_{base}}$$

where:

- $\Pi_i$  = is the Inflation Factor;
- $CPI_i$  = denotes the CPI for January of the relevant calendar year or, where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, the Reference CPI, which is applicable to the Settlement Unit (i);
- $CPI_{base}$  = denotes the Base Year CPI; or

- (B) if the CPI is re-based and such re-basing has taken effect prior to the Indexation Anniversary, in respect of each Settlement Unit (i):

$$\Pi_i = \frac{CPI_i^{new}}{CPI_{base}^{old}} \times \frac{CPI_b^{old}}{CPI_{base}^{new}}$$

where:

- $\Pi_i$  = is the Inflation Factor;
- $CPI_i^{new}$  = is the CPI applicable to Settlement Unit (i), using the new (re-based) index;
- $CPI_{base}^{old}$  = is the Base Year CPI, using the original index
- $CPI_b^{old}$  = is the CPI in the Month in which the re-basing has occurred using the original index; and
- $CPI_{base}^{new}$  = is the CPI in the Month in which the re-basing has occurred, using the new (re-based) index;

**"Information"** means any 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 the DPA or any other DPA Document, shall be limited to such information that is within the control of that person, and for these purposes information shall be deemed to be within the control of a person if: (i) it is within the possession of such person; (ii) such person has a right to possession of it; or (iii) 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 Availability Payment Rate"** has the meaning given to that term in the Agreement;

**"Initial Base Performance Assumptions"** means the Initial Reference Plant CO<sub>2</sub> Emissions and the Initial Reference Plant Gas Consumption;

**"Initial CMRP Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"Initial Conditions Precedent"** means the conditions precedent set out in Part A of Annex 1 (*Conditions Precedent*) and **"Initial Condition Precedent"** shall be construed accordingly;

**"Initial Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Initial CP Provisions"** means Part 4 (*Adjustments*), Part 8 (*Changes in Law*), Part A (*GRP Review Procedures*) of Annex 6 (*Gas Reference Price Review*), Part A (*CMRP Review Procedures*) of Annex 7 (*Carbon Market Reference Price Review*) and Part A (*Reference Plant Review Procedures*) of Annex 8 (*Reference Plant Review*);

**"Initial GRP Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"Initial Heat and Material Balance Diagram"** has the meaning given to that term in the Agreement;

**"Initial Milestone Delivery Date"** has the meaning given to that term in the Agreement;

**"Initial Net Dependable Capacity Estimate"** has the meaning given to that term in the Agreement;

**"Initial Notified Annual NDC Test Date"** has the meaning given to that term in Condition 7.1(C);

**"Initial Other Extra Variable Costs"** has the meaning given to that term in the Agreement;

**"Initial Reference Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Initial Reference Plant CO<sub>2</sub> Emissions"** has the meaning given to that term in the Agreement;

**"Initial Reference Plant Gas Consumption"** has the meaning given to that term in the Agreement;

**"Initial Target Commissioning Window"** has the meaning given to that term in the Agreement;

**"Inside Information"** means Generator Confidential Information which is "inside information" within the meaning of section 118C of the FSMA or section 56 of the CJA in relation to the Generator or any member of its Group;

**"Intellectual Property Rights"** means:

- (A) all intellectual property rights, including patents, trade marks, rights in designs, know-how, copyrights and database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world; and
- (B) all data and Information (whether or not Confidential Information);

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

**"Law"** means:

- (A) any Act of Parliament, any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;
- (B) any exercise of the Royal Prerogative;
- (C) any provision of Devolved Legislation whose subject matter falls within what was, immediately before IP Completion Day (as defined in s.39 European Union (Withdrawal Agreement) Act 2020), an area of exclusive or shared competence within the meaning of Articles 2, 3, 4 and 6 of the Treaty on the Functioning of the European Union; or
- (D) any retained EU law,  
in each case in (A) to (D) (inclusive) in the United Kingdom (or part thereof), including Scotland and Wales; and
- (E) to the extent directly binding on and/or enforceable by or against private persons within the United Kingdom any obligations arising from or provided for in a Treaty or other international agreement to which the United Kingdom is a signatory;

**"LCIA"** means the London Court of International Arbitration;

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

**"Legal Reservations"** means: (i) the principle that equitable remedies may be granted or refused at the discretion of a court; (ii) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; (iii) the time barring of claims pursuant to applicable limitation laws; (iv) defences of set-off or counterclaim; and (v) similar principles, rights and defences available at law;

**"Lender"** means any bank or financial institution (excluding any direct or indirect shareholder of the Generator) which provides debt financing or refinancing in relation to the Facility;

**"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 Project by reason of:

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor 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 any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (C) the failure of the Gas Licensed Transporter 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 any Gas Licensed Transporter is a party (except

to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or

- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons set out in (B) and/or (C) above:

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

**"Longstop Date Performance Tests"** means the Commissioning Tests to be carried out and completed by the Generator (whether simultaneously with, or subsequent to, the OCP Performance Tests) in order to demonstrate whether the Generator has satisfied the Minimum Longstop Date Commissioning Requirements;

**"Longstop Date Capacity Notice"** has the meaning given to that term in Condition 6.1 (*Longstop Date Capacity Notice*);

**"Longstop Date Capacity Response Notice"** has the meaning given to that term in Condition 6.4 (*Longstop Date Capacity Notice*);

**"Longstop Date Capacity Supporting Information"** has the meaning given to that term in Condition 6.4(B) (*Longstop Date Capacity Notice*);

**"Longstop Period"** has the meaning given to that term in the Agreement;

**"Loss Adjusted Metered Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Master Registration Agreement"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Material Adverse Effect"** means, in respect of any Party, a material adverse effect on the ability of that Party to perform or comply with its obligations under the DPA or any other DPA Document;

**"Material Amendment"** means any Proposed Amendment which would (taking into account, in the case of a Proposed Amendment providing for more than one (1) amendment, the net aggregate effect of all the Proposed Amendments contained within the relevant Amendment Notification) have an adverse effect on: (i) the revenues and/or costs of the Generator which are not fully compensated; or (ii) the overall balance of risks, benefits and liabilities of the Generator, in each case, pursuant to the DPA;



**"Material Amendment Agreement"** has the meaning given to that term in paragraph 2.2(B) of Annex 4 (*Change Control Procedure*);

**"Material Amendment Response Notification"** has the meaning given to that term in paragraph 2.2(B) of Annex 4 (*Change Control Procedure*);

**"Material Change"** means:

- (A) in relation to the Electricity Metering Equipment a "Material Change" as defined in the BSC save that references to "Metering Equipment" within the definition of "Material Change" in the BSC shall be replaced by references to Electricity Metering Equipment;
- (B) in relation to the CO<sub>2</sub> Metering Equipment, a change to the systems and/or processes relating to such equipment which is of such a type or magnitude as to raise the reasonable expectation that the Generator's ability to meet its obligations under the DPA relating to the CO<sub>2</sub> Metering Equipment will be significantly affected; or
- (C) in relation to the Gas Supply Metering Equipment, a change to the systems and/or processes relating to such equipment which is of such a type or magnitude as to raise the reasonable expectation that the Generator's ability to meet its obligations under the DPA relating to the Gas Supply Metering Equipment will be affected;

**"Material Equipment"** has the meaning given to that term in the Agreement;

**"Material Generation Technologies"** means a Generation Technology that accounts from time to time for at least one per cent. (1%) of all installed generation capacity (*expressed in MW*) in the United Kingdom;

**"Maximum CO<sub>2</sub> Flow Rate Estimate"** has the meaning given to that term in the Agreement;

**"Maximum Metered Day Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Maximum Metered Sub-Period Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Maximum T&S Capacity"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Maximum T&S Size of Connection"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Maximum VP Metered CO<sub>2</sub> Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered CO<sub>2</sub> Output"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) entering the T&S Network during the relevant period, as measured at the CO<sub>2</sub> Delivery Point(s) during such period;

**"Metered Day Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered Electricity Output Cut-Off Time"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered Electricity Output Recalculation Amount"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metered Sub-Period Electricity Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Metering Access Right"** has the meaning given to that term in Condition 21.15 (*Undertakings: Access to and testing of meters*);

**"Metering Access Termination Event"** means an event as set out in Condition 21.21 (*Failure to provide Metering Access Right*);

**"Metering Breach Notice"** has the meaning given to that term in Condition 21.4 (*Notification of Metering Obligation breach*);

**"Metering Breach Response Notice"** has the meaning given to that term in Condition 21.5 (*Response to notification of Metering Obligation breach*);

**"Metering Breach Response Notice Period"** has the meaning given to that term in Condition 21.5 (*Response to notification of Metering Obligation breach*);

**"Metering Dispute"** means an Electricity Metering Dispute, a Gas Supply Metering Dispute and/or a CO<sub>2</sub> Metering Dispute (as applicable);

**"Metering Dispute Deadline"** means the date which is twenty (20) Months after the Billing Period in which the disputed Settlement Unit occurred;

**"Metering Inspection Notice"** has the meaning given to that term in Condition 21.16 (*Undertakings: Access to and testing of meters*);

**"Metering Obligations"** means the Electricity Metering Obligations, the CO<sub>2</sub> Metering Obligations and/or the Gas Supply Metering Obligations (as applicable);

**"Metering Remediation Plan"** means a plan developed by the Generator setting out appropriate milestones and actions to be taken to remedy a breach of a Metering Obligation;

**"Metering Schematic Obligation"** has the meaning given to that term in Condition 21.11 (*Undertakings: Metering Schematics*);

**"Metering Schematic Obligation Notice"** has the meaning given to that term in Condition 21.11(A) (*Undertakings: Metering Schematics*);

**"Milestone Assessment Response Notice"** has the meaning given to that term in Condition 4.3 (*Milestone Requirement Notice*);

**"Milestone Delay Notice"** has the meaning given to that term in Condition 4.8 (*Difficulties in achieving the Milestone Requirement*);

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

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor 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 any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or

- (C) the failure of the Gas Licensed Transporter 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 any Gas Licensed Transporter is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons in (B) and/or (C), above:

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

**"Milestone Requirement"** has the meaning given to that term in Condition 4.1 (*Milestone Requirement Notice*);

**"Milestone Requirement Notice"** has the meaning given to that term in Condition 4.1 (*Milestone Requirement Notice*);

**"Milestone Satisfaction Date"** means the date that the Generator has complied with and fulfilled a Milestone Requirement as specified in the Milestone Assessment Response Notice or the Further Milestone Assessment Response Notice (as applicable);

**"Minimum CO<sub>2</sub> Capture Rate"** means an Achieved and Declared CO<sub>2</sub> Capture Rate Average of seventy per cent. (70%);

**"Minimum CO<sub>2</sub> Capture Rate Breach"** has the meaning given to that term in Condition 22.2 (*Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach*);

**"Minimum CO<sub>2</sub> Capture Rate Obligation"** has the meaning given to that term in Condition 22.1 (*Undertaking: Minimum CO<sub>2</sub> Capture Rate*);

**"Minimum Longstop Date Commissioning Requirements"** means that:

- (A) the Net Dependable Capacity demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Net Dependable Capacity;

- (B) the Test Achieved CO<sub>2</sub> Capture Rate demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required CO<sub>2</sub> Capture Rate;
- (C) the Plant Net Efficiency demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Plant Net Efficiency; and
- (D) the Start Up Times demonstrated at the Longstop Date Performance Tests are equal to or lower than the Required Start Up Times;

**"Minimum Longstop Date Termination Notice"** has the meaning given to that term in Condition 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*);

**"Minimum OCP Commissioning Requirements"** means that:

- (A) a Net Dependable Capacity of not less than eighty five per cent. (85%) of the Net Dependable Capacity Estimate has been Commissioned;
- (B) the OCP Required CO<sub>2</sub> Capture Rate has been Commissioned;
- (C) a Plant Net Efficiency of not less than ninety per cent. (90%) of the Plant Net Efficiency Estimate has been Commissioned; and
- (D) the Start Up Times demonstrated at the OCP Performance Tests are equal to or lower than the Required Start Up Times;

**"Minimum Reporting Content Requirements"** means the minimum required content of the report to be provided by the Generator to the DPA Counterparty pursuant to Condition 3.14(A) (*Operational Conditions Precedent: Construction Reporting Requirements*) detailing the Generator's progress in relation to the Pre-Operation Activities which shall include, but shall not be limited to, the following:

- (A) an executive summary;
- (B) a summary of the Pre-Operation Activities carried out to date;
- (C) a schedule for the Project which: (i) compares the initial baseline schedule against actual progress achieved to date; and (ii) sets out forecast and actual key events including both critical and near critical path milestones, in each case in relation to the Pre-Operation Activities;
- (D) a baseline critical path together with any updated versions of the same;
- (E) an updated 'S' curve in relation to the Pre-Operation Activities;
- (F) a summary of the progress in obtaining finance for the Project (including equity, debt and other forms of finance) prior to the Milestone Delivery Date;
- (G) an earned value analysis figure showing progress against the earned value baseline, with commentary on any deviations from such baseline;
- (H) Project Cost Data; and
- (I) a summary of key risks relating to cost and schedule outturn for the Pre-Operation Activities, and the associated potential quantified impact of such risks;

**"Minimum Terms of Reference Requirements"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Misleading Declaration Termination Event"** has the meaning given to that term in Condition 23.8 (*Misleading Declaration Capacity Data*);

**"Month"** means a calendar month;

**"Mutual Appointment Decision"** has the meaning given to that term in Condition 42.4 (*Arbitration Procedure*);

**"NBP UK Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 6 (*Gas Reference Price Review*) (as applicable);

**"NDCE Adjusted Heat and Material Balance Diagram"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"NDCE Adjustment Deadline"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"NDCE Adjustment Notice"** has the meaning given to that term in Condition 5.1 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"Net Available Capacity"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Net Dependable Capacity"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Net Dependable Capacity Estimate"** means the Generator's estimate of the Net Dependable Capacity from time to time, being the Initial Net Dependable Capacity Estimate as may be adjusted pursuant to Condition 5 (*Adjustment to Net Dependable Capacity Estimate*) and/or Condition 7 (*Adjustments to the Net Dependable Capacity: Annual NDC Test*);

**"No Alternative T&S Solution Reason"** has the meaning given to that term in Condition 35.9(A)(iv) (*Termination for T&S Prolonged Unavailability Event*);

**"Non-affected Party"** has the meaning given to that term in Condition 51.4(A) (*Conditions to Force Majeure relief*);

**"Notified Annual NDC Test Date"** means the relevant Initial Notified Annual NDC Test Date, or, if Condition 7.1(C) applies, the relevant Revised Notified Annual NDC Test Date;

**"Notified Change in Law"** means a Change in Law which constitutes a Qualifying Change in Law and to which a DPA Counterparty QCiL Notice, a Generator QCiL Notice or a Generator QCiL Response Notice relates;

**"NPA Payment Cure Period"** has the meaning given to that term in Condition 37.1(B) (*Termination Events*);

**"OCP Non-Compliance Notice"** has the meaning given to that term in Condition 3.11 (*Operational Conditions Precedent: General Reporting Obligations*);

**"OCP Notice"** has the meaning given to that term in Condition 3.7(B) (*Operational Conditions Precedent: General Reporting Obligations*);

**"OCP Performance Tests"** means the Commissioning Tests to be carried out and completed by the Generator pursuant to paragraphs 2(A), 3(B) and 4(C) of Part B of Annex 1 (*Conditions Precedent*) (whether simultaneously with, or prior to, the Longstop Date Performance Tests), in order to demonstrate whether the Generator has satisfied the Minimum OCP Commissioning Requirements;

**"OCP Required CO<sub>2</sub> Capture Rate"** means a Test Achieved CO<sub>2</sub> Capture Rate which is equal to or greater than the higher of: (i) ten (10) percentage points lower than the CO<sub>2</sub> Capture Rate Estimate; and (ii) eighty per cent. (80%);

**"OCP Response Notice"** has the meaning given to that term in Condition 3.9 (*Operational Conditions Precedent: General Reporting Requirements*);

**"OCP Supporting Information"** has the meaning given to that term in Condition 3.9(B) (*Operational Conditions Precedent: General Reporting Obligations*);

**"OEVC Indexation Adjustment"** has the meaning given to that term in Condition 10.15 (*Other Extra Variable Costs indexation*);

**"OEVC Indexation Anniversary"** has the meaning given to that term in Condition 10.16(A) (*Other Extra Variable Costs indexation*);

**"Operational Conditions Precedent"** means the operational conditions precedent set out in Part B of Annex 1 (*Conditions Precedent*) and **"Operational Condition Precedent"** and **"OCP"** shall be construed accordingly;

**"Operational CP Provisions"** means all of the provisions of the DPA other than the Agreement Date Provisions and the Initial CP Provisions;

**"Other CCUS Programme Contract"** means a private law contract entered into with the DPA Counterparty or the Secretary of State in relation to the CCUS Programme (which is not a CCUS Programme DPA);<sup>14</sup>

**"Other Change in Law"** means a Change in Law made by Her Majesty's Government of the United Kingdom or which Her Majesty's Government of the United Kingdom has formally required a Competent Authority to make and which in either such case has an undue (being not objectively justifiable) discriminatory effect on the out-of-pocket costs incurred or saved by the Generator or the Project when compared with the out-of-pocket costs incurred or saved as a result of such Change in Law by:

- (A) all other generators which operate generating facilities deploying CO<sub>2</sub> Capture Technology;
- (B) all generators which operate generating facilities deploying the same or similar generation technology (or combustion process) as the Facility but which do not deploy CO<sub>2</sub> Capture Technology;
- (C) all generators which operate generating facilities deploying one (1) or more Material Generation Technologies; or
- (D) all other generators which operate generating facilities deploying CO<sub>2</sub> Capture Technology other than the Facility's CO<sub>2</sub> Capture Technology,

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<sup>14</sup> Note to Reader: The definition is subject to further review.

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

**"Other Extra Variable Costs"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Other Subsidy"** has the meaning given to that term in Condition 24.13(A)(i) (*Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding*);

**"Outage Relief Event"** means a Generation Outage Relief Event or a Capture Outage Relief Event;

**"Outage Relief Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Outage Relief Response Notice"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Outage Relief Supporting Information"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Party"** means a party to the DPA;

**"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 pursuant to the DPA which the PDE Affected Party (or, if relevant, its Representatives) could not reasonably have overcome and which is not due to the PDE Affected Party's fault or negligence (or that of its Representatives);

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

**"PDE Affected Party"** has the meaning given to that term in Condition 50.1 (*Relief due to Payment Disruption Event*);

**"PDE Obligations"** has the meaning given to that term in Condition 50.1 (*Relief due to Payment Disruption Event*);

**"Performance Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Access Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Access Right"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Date Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Procedure"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Procedure Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Performance Test Report"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Plant Net Efficiency"** means the net efficiency (expressed as a percentage (%)) of the Facility, equal to the PNE Metered Electricity Output divided by PNE Facility Heat Input, as demonstrated by either the OCP Performance Test or the Longstop Date Performance Test (where relevant) in accordance with Annex 2 (*Testing Requirements*);

**"Plant Net Efficiency Estimate"** has the meaning given to that term in the Agreement;

**"PNE Facility Heat Input"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"PNE Metered Electricity Output"** means the BM Unit Metered Volume for the Facility as measured by the Electricity Metering Equipment during a Test;

**"Post-Tax Real Discount Rate"** has the meaning given to that term in the Agreement;

**"Pre-Operation Activities"** means the design, procurement, development, construction, completion, testing, and commissioning of the Facility, and grammatical variations thereof shall be construed accordingly;

**"Pre-Start Date Termination Date"** has the meaning given to that term in Condition 35.1(E)(i) (*Pre-Start Date termination*);

**"Pre-Start Date Termination Notice"** has the meaning given to that term in Condition 35.1 (*Pre-Start Date termination*);

**"Pre-Start Up (Shutdown) Test Conditions"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Previous Subsidy"** has the meaning given to that term in Condition 3.44(A)(i) (*Waiver of Subsidy Control Declaration Operational CP*);

**"Price Source Live Day"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Proceedings"** means any proceeding, suit or action relating to or arising out of a Dispute, the DPA or any other DPA Document but excluding any Electricity Metering Dispute;

**"Pro Forma"** has the meaning given to that term in Condition 62.2 (*Pro forma notices*);

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

**"Project Commitments"** has the meaning given to that term in the Agreement;

**"Project Cost Data"** means details of the following costs incurred by the Generator in respect of the Project:

- (A) pre-development costs;
- (B) regulatory and licensing costs;
- (C) engineering, procurement and construction costs, including:
  - (i) mechanical costs;



- (ii) electrical costs;
- (iii) control and instrument costs;
- (iv) civil and architectural costs; and

(D) infrastructure costs;

**"Project Delay Notice"** has the meaning given to that term in Condition 3.15 (*Operational Conditions Precedent: Construction Reporting Requirements*);

**["Project Gain Share Amount"** has the meaning given to such term in the Schedule (*Gain Share*);]<sup>15</sup>

**"Prolonged FM Event"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Event Notice"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Termination Date"** has the meaning given to that term in Condition 35.6 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Termination Notice"** has the meaning given to that term in Condition 35.6 (*Termination for Prolonged Force Majeure*);

**"Prolonged FM Trigger Date"** has the meaning given to that term in Condition 35.5 (*Termination for Prolonged Force Majeure*);

**"Proposed Amendment"** has the meaning given to that term in paragraph 2.1(A) of Annex 4 (*Change Control Procedure*);

**"Proposed Amendment Effective Date"** has the meaning given to that term in paragraph 2.1(B) of Annex 4 (*Change Control Procedure*);

**"Proposed CiAL Expert"** has the meaning given to that term in Condition 33.3(A) (*Validity of CiAL Dispute Notices*);

**"Proposed CMRP Expert"** has the meaning given to that term in paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*);

**"Proposed Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Proposed Energy Consultant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Energy Consultant Deadline"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Energy Consultant Determination Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

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<sup>15</sup> Note to Reader: The inclusion of this definition is subject to whether the gain share schedule applies to the DPA.

**"Proposed GRP Expert"** has the meaning given to that term in paragraph 1 of Annex 6 (*Gas Reference Price Review*);

**"Proposed Reference Plant Expert"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Proposed Terms of Reference"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"PTP Response Notice"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"QCiL Adjusted Revenues Payment"** has the meaning given to that term in Condition 27.1(C) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Adjusted Revenues Period Adjustment"** means any QCiL Compensation which has been, or will be, made by way of a QCiL Adjusted Revenues Payment;

**"QCiL Capex Payment"** has the meaning given to that term in Condition 27.1(B) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Capex Payment Adjustment Date"** means the date on which eighty per cent. (80%) of the Term has expired;

**"QCiL Capital Costs"** means QCiL Costs that relate to the acquisition, disposal, modification or construction of any asset in respect of the Project (including costs of site preparation, initial delivery and handling costs, installation and assembly costs, costs incurred in testing whether the asset is functioning properly and professional fees, in each case which are directly associated with the acquisition, modification or construction of the relevant asset);

**"QCiL Capital Savings"** means QCiL Savings that relate to the acquisition, disposal, modification or construction of any asset in respect of the Project (including costs of site preparation, initial delivery and handling costs, installation and assembly costs, costs incurred in testing whether the asset is functioning properly and professional fees, in each case which are directly associated with the acquisition, modification or construction of the relevant asset);

**"QCiL Compensation"** means: (i) a QCiL Opex Payment; (ii) a QCiL Capex Payment; (iii) a QCiL Adjusted Revenues Payment; (iv) a QCiL Construction Event Payment; (v) a QCiL Operations Cessation Event Payment; and (vi) any combination of any of the foregoing, as such amounts are calculated in accordance with Condition 27 (*Qualifying Change in Law: Compensation*);

**"QCiL Compensation Date"** has the meaning given to that term in Condition 28.1 (*Qualifying Change in Law: Effective date and payment*);

**"QCiL Compensation Termination Date"** has the meaning given to that term in Condition 35.32 (*QCiL Compensation termination*);

**"QCiL Compensation Termination Notice"** has the meaning given to that term in Condition 35.32 (*QCiL Compensation termination*);

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

**"QCIL Construction Event Costs"** means, in relation to a QCIL Construction Event, all irrecoverable and unavoidable out-of-pocket costs (including QCIL Tax Liabilities) which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from such QCIL Construction Event occurring, if and to the extent that such costs constitute:

- (A) development and pre-development costs in respect of the Facility (including (i) the cost of surveys and environmental impact assessments in respect of the Facility; (ii) costs incurred in satisfying the Secretary of State's assessment with respect to the allocation of the DPA; and (iii) costs incurred in obtaining a planning permission for the Facility);
- (B) decommissioning costs in respect of the Facility;
- (C) break costs associated with the Generator's contractual or financing arrangements in respect of the Project; or
- (D) costs which are wholly attributable to the construction, testing, completion or commissioning of the Facility,

but excluding:

- (E) all other compensation which has been, will be or is reasonably likely to be payable by the Generator in connection with such QCIL Construction Event; and
- (F) all costs associated with the Generator's financing arrangements in respect of the Project (including all interest incurred in respect of such financing arrangements) except where expressly specified in any of paragraphs (A) to (D) above; and

including a negative adjustment that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, reflects (i) the revenue that the Generator is expected to generate (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility is expected to generate from the date on which the QCIL Construction Event occurs to the date on which the Term would have expired but for the occurrence of such QCIL Construction Event, with such revenue calculated:

- (G) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
- (H) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
- (I) based on forecast wholesale electricity market revenues for the day-ahead electricity market, determined in accordance with an operating regime that stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist,

minus (ii) the operating costs that the Generator is expected to incur to generate such electricity;

**"QCIL Construction Event Payment"** has the meaning given to that term in Condition 27.1(D) (*Categories of Qualifying Change in Law compensation*);

**"QCIL Construction Event Savings"** means, in relation to a QCIL Construction Event, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCIL Tax Liability, insurance proceeds and other compensation) which have been, will be or are reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCIL Construction Event occurring;

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

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

**"QCIL Net Capital Costs"** means, if QCIL Capital Costs exceed QCIL Capital Savings in respect of a Qualifying Change in Law, the QCIL Capital Costs less the QCIL Capital Savings;

**"QCIL Net Capital Savings"** means, if QCIL Capital Savings exceed QCIL Capital Costs in respect of a Qualifying Change in Law, the QCIL Capital Savings less the QCIL Capital Costs;

**"QCIL Net Operating Costs"** means, if QCIL Operating Costs exceed QCIL Operating Savings in respect of a Qualifying Change in Law, the QCIL Operating Costs less the QCIL Operating Savings;

**"QCIL Net Operating Savings"** means, if QCIL Operating Savings exceed QCIL Operating Costs in respect of a Qualifying Change in Law, the QCIL Operating Savings less the QCIL Operating Costs;

**"QCIL Operating Costs"** means all QCIL Costs other than QCIL Capital Costs;

**"QCIL Operating Savings"** means all QCIL Savings other than QCIL Capital Savings;

**"QCIL Operations Cessation Event"** means:

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

**"QCIL Operations Cessation Event Costs"** means, in relation to a QCIL Operations Cessation Event, all irrecoverable and unavoidable out-of-pocket costs (including QCIL Tax Liabilities and break costs associated with the Generator's contractual or financing arrangements in respect of the Project) which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from such QCIL Operations Cessation Event occurring, but excluding:

- (A) all other compensation which has been, will be or which is reasonably likely to be payable by the Generator in connection with such QCIL Operations Cessation Event; and

- (B) all costs, other than break costs, associated with the Generator's financing arrangements in respect of the Project (including all interest accrued in respect of such financing arrangements);

**"QCiL Operations Cessation Event Payment"** has the meaning given to that term in Condition 27.1(E) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Operations Cessation Event Savings"** means, in relation to a QCiL Operations Cessation Event, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation and including the cost that the Generator would have incurred in generating the Generator's Revenue (Ex-Ante Basis)) which have been, will be or are reasonably likely to be made or received in respect of the Project by the Generator arising directly from such QCiL Operations Cessation Event occurring;

**"QCiL Opex Payment"** has the meaning given to that term in Condition 27.1(A) (*Categories of Qualifying Change in Law compensation*);

**"QCiL Response Information"** has the meaning given to that term in Condition 26.2 (*Generator QCiL Response Notice*);

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

**"QCiL Supporting Information"** has the meaning given to that term in Condition 26.8 (*Generator QCiL Notice*);

**"QCiL Tax"** means any Tax other than any Tax on gross or net Income, Profits or Gains, save to the extent that the rate at which such Tax on gross or net Income, Profits or Gains is chargeable has been introduced or amended by a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be;

**"QCiL Tax Liability"** means:

- (A) a liability of the Generator to make an actual payment of a QCiL Tax to a tax authority; and
- (B) the loss to the Generator of, or a reduction to the Generator in the amount of, a right to repayment of Tax to which it would otherwise be entitled but for such amount being set off against any liability of the Generator to make an actual payment of QCiL Tax;

**"QCiL Termination Date"** has the meaning given to that term in Condition 35.30 (*Qualifying Change in Law termination*);

**"QCiL Termination Notice"** has the meaning given to that term in Condition 35.30 (*Qualifying Change in Law termination*);

**"QCiL True-Up Adjusted Revenues Period Adjustment"** means any QCiL True-Up Compensation that has been, or will be, made by way of an adjustment to the Net Dependable Capacity, Availability of Generation and/or Availability of Capture;

**"QCiL True-Up Compensation"** means the adjustment to the QCiL Compensation which is necessary to reflect the QCiL True-Up Information;

**"QCiL True-Up Information"** has the meaning given to that term in Condition 29.1 (*DPA Counterparty QCiL True-Up Notice*);

**"QCiL True-Up Response Information"** has the meaning given to that term in Condition 29.3 (*Generator QCiL True-Up Response Notice*);

**"QSE Notice"** has the meaning given to that term in Condition 30.1 (*Qualifying Shutdown Event: Procedure*);

**"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 any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules to the DPA or CCUS Programme DPAs (including the annulment, invalidation, suspension, revocation, modification or replacement of any prior decision pursuant to such rules) shall constitute a Qualifying Change in Law;

**"Qualifying Shutdown Event"** means:

- (A) Her Majesty's Government of the United Kingdom or the Secretary of State or any other Minister of the Crown or any department of Her Majesty's Government of the United Kingdom (each, a **"Government Authority"**): (i) applying, implementing or changing the Law, which is in force from time to time, (ii) applying or exercising its powers under such Law or (iii) applying, implementing and/or changing policy or guidance which has effect from time to time;
- (B) the exercise of powers by a UK Competent Authority, where such exercise of powers was required by a direction made under statutory powers by a Government Authority; or
- (C) the exercise of powers by a UK Competent Authority, where the UK Competent Authority has not acted independently of a Government Authority in such exercise of powers, and for this purpose a UK Competent Authority shall be deemed to have acted independently of a Government Authority unless such exercise of powers was procured by the Government Authority,

other than any application, implementation, change, exercise of powers or other action required by, or necessary for compliance with, international or EU law, policy or guidance (provided such international or EU law, policy or guidance was not promoted by such Government Authority and, in relation to any international or EU law, policy or guidance proposed after the Agreement Date, such Government Authority has used its reasonable endeavours to prevent the adoption of such international or EU law, policy or guidance (such reasonable endeavours not to include an obligation on any Government Authority to take legal proceedings to challenge such adoption)), and which the Generator is able to demonstrate to the satisfaction of an English court of competent jurisdiction: (i) imposes a requirement that permanently prevents the whole of the Facility from operating; or (ii) is the refusal or the failure to give approval, for a period in excess of twenty four (24) Months, to a request for consent to

any re-start of the whole of the Facility, (each, a **"Shutdown Event"**) unless, in any such case, the Shutdown Event was for reasons:

- (i) relating to or in connection with matters of health, safety, security, environment, transport or damage to property (the **"Relevant Matters"**) affecting (directly or indirectly): (1) the Facility or the generation of electricity or the capture of CO<sub>2</sub> therefrom; (2) the Generator; (3) the land on which the Facility is situated; (4) the management of any of (1) to (3); or (5) the generation of electricity using the same Generation Technology as the Facility or the capture of CO<sub>2</sub> using the same CO<sub>2</sub> Capture Technology as the Facility (whether in the UK or elsewhere), but in this case, provided the Relevant Matters also relate or apply to one (1) or more of (1) to (4), where at the time of the Shutdown Event it was justifiable in the circumstances as they related or applied to the relevant one(s) of (1) to (5) to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility;
- (ii) arising out of, in connection with, or resulting from the negligence, breach or fault of, or a failure to act in accordance with the Reasonable and Prudent Standard by, the Generator or any of its Representatives, where at the time of the Shutdown Event it was justifiable in the circumstances to prevent the operation, or refuse to consent to any re-start, of the whole of the Facility; or
- (iii) relating to any decision by any Subsidy Control Competent Authority in respect of the application of the Subsidy Control Rules in the DPA or CCUS Programme DPAs (including the annulment, invalidation, revocation, modification, suspension or replacement of any prior decision pursuant to such rules);

**"Reasonable and Prudent Standard"** means the standard of a person seeking in good faith to comply with its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person 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(s)"** means an AP Reconciliation Amount(s) and/or a VP Reconciliation Amount(s) (as applicable);

**"Reference CPI"** means the most recently published CPI;

**"Reference Plant"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant CO<sub>2</sub> Emissions"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Reference Plant Criteria"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Methodology"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Commencement Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Procedure"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Report"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Criteria Review Year"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Generator"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Threshold Criterion"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Dispute Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Expert Appointment Threshold"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Gas Consumption"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Reference Plant Mechanism Amendment"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Prioritisation"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Request Criterion"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Request Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);



**"Reference Plant Principles Request Validity Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Dispute"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Dispute Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Implementation Date"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Proposals"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Response Deadline"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Response Notice"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Principles Review Trigger"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Review"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Plant Site Conditions"** has the meaning given to that term in paragraph 1 of Annex 8 (*Reference Plant Review*);

**"Reference Rate Methodology"** means the applicable methodology for setting reference rates which applies to or in the United Kingdom from time to time;

**"Reference Site Conditions"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Relief Event AP Billing Period"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Relief Event Settlement Unit"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Relief Recalculation Amount"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Representatives"** means:

(A) in respect of the DPA Counterparty:

- (i) its directors, officials, officers, employees, agents, consultants and advisers; and
  - (ii) the DPA Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers;
- (B) in respect of the Generator:
- (i) its directors, officers or employees;
  - (ii) any of its Contractors, agents, consultants and advisers which are engaged in connection with the Project, the DPA or any other DPA Document; and
  - (iii) the directors, officers, employees, agents, consultants and advisers of any of its Contractors which are engaged in connection with the Project, the DPA or any other DPA Document;
- (C) in respect of any Government Entity, its directors, officials, officers, employees, agents, consultants and advisers; or
- (D) in respect of any other person, its directors, officers, officials, employees, agents, consultants and advisers;

**"Request for Information"** means:

- (A) a request for information (as such term is defined in section 8 of the FoIA);
- (B) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR; or
- (C) any apparent request for information under the FoIA or the EIR;

**"Requested Milestone Supporting Information"** has the meaning given to that term in Condition 4.3(B) (*Milestone Requirement Notice*);

**"Required AP Other Metered Data"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

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

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

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

**"Required CO<sub>2</sub> Capture Rate"** means a Test Achieved CO<sub>2</sub> Capture Rate which is the higher of: (i) five (5) percentage points lower than the CO<sub>2</sub> Capture Rate Estimate; and (ii) eighty five per cent. (85%);

**"Required Correction Curves"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Required Net Dependable Capacity"** means ninety per cent. (90%) of the Net Dependable Capacity Estimate;

**"Required Plant Net Efficiency"** means ninety five per cent. (95%) of the Plant Net Efficiency Estimate;

**"Required Start Up Times"** means one hundred and twenty five per cent. (125%) of the Start Up Time Estimates;

**"Residual Value Adjustment"** means an adjustment that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure reflects:

- (A) the revenue that the Generator is expected to generate (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility is expected to generate from the date on which the DPA terminates as a result of a T&S Prolonged Unavailability Event until the date on which the Term would have expired but for the occurrence of such T&S Prolonged Unavailability Event, with such revenue calculated:
- (i) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
  - (ii) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
  - (iii) based on forecast wholesale electricity market revenues for the day-ahead electricity market, determined in accordance with an operating regime that stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist,
- (B) minus the operating costs that the Generator is expected to incur to generate such electricity;

**"Resolution Period"** has the meaning given to that term in Condition 40.1(A) (*Resolution by Senior Representatives*);

**"Respondent"** has the meaning given to that term in Condition 41.3 (*Expert Determination Procedure*);

**"Response Submission"** has the meaning given to that term in Condition 41.6(C) (*Expert Determination Procedure*);

**"Revised Declaration Capacity Data"** has the meaning given to that term in Condition 23.1(F) (*Declaration Obligations*);

**"Revised Generator QCiL Information"** has the meaning given to that term in Condition 26.10(B) (*Generator QCiL Notice*);

**"Revised Generator QCiL Response Information"** has the meaning given to that term in Condition 26.5(B) (*Generator QCiL Response Notice*);

**"Revised Generator QCiL True-Up Information"** has the meaning given to that term in Condition 29.10(B) (*Generator QCiL True-Up Notice*);

**"Revised Generator QCiL True-Up Response Information"** has the meaning given to that term in Condition 29.5(B) (*Generator QCiL True-Up Response Notice*);

**"Revised NDCE"** has the meaning given to that term in Condition 5.1(A)(ii) (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*);

**"Revised Notified Annual NDC Test Date"** has the meaning given to that term in Condition 7.1(C);

**"SCADA System"** means a Supervisory Control and Data Acquisition system to monitor and control the operation of the Facility and to provide data as required to support the provision of information as required by the Generator and the DPA Counterparty;

**"SCADA Systems Obligation(s)"** has the meaning given to that term in Condition 21.23 (*Undertakings: SCADA Systems*);

**"Season"** means a period of six (6) consecutive Months commencing on either 01 April or 01 October;

**"Secretary of State"** means the Secretary of State for Business, Energy and Industrial Strategy, acting in that capacity, unless otherwise expressly stated or the context otherwise requires;

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

**"Senior Representative"** means a senior employee or officer selected by a Party to represent it in relation to Condition 40 (*Resolution by Senior Representatives*);

**"Senior Representatives Settlement"** has the meaning given to that term in Condition 40.1(A) (*Resolution by Senior Representatives*);

**"Service Agent"** has the meaning given to that term in the Agreement (but only if Condition 69 (*Agent for service of process*) is expressed to apply to the DPA in the Agreement);

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

**"Settlement Unit"** means an AP Settlement Unit or a VP Settlement Unit (as applicable);

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

**"Specific Change in Law"** 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 CO<sub>2</sub> Capture Technology, or CO<sub>2</sub> Capture Technology forming part of such generating facilities, and not to other generating facilities, or the generation from, or generation related processes carried out at, other generating facilities; or

(B) 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, including by way of debt, in each case whether directly or indirectly, in any undertaking whose main business is the development, construction, operation and maintenance of facilities referred to in paragraph (A) above and not to other generating facilities;

**"Specified Expiry Date"** has the meaning given to that term in the Agreement;

**"Start Date"** has the meaning given to that term in Condition 3.23 (*Notification of Start Date*);

**"Start Date Notice"** has the meaning given to that term in Condition 3.22 (*Notification of Start Date*);

**"Start Up (Shutdown) Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Start Up (Shutdown) Test Commencement"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Start Up Times"** means each time taken (expressed in minutes) to start up the Facility from a: (i) Hot Start, (ii) Warm Start and (iii) Cold Start, with the Capture Assets achieving (where applicable): (i) the OCP Required CO<sub>2</sub> Capture Rate, as demonstrated by the OCP Performance Test; or (ii) the Required CO<sub>2</sub> Capture Rate, as demonstrated by either the OCP Performance Test or the Longstop Date Performance Test (where relevant) during the applicable Test Run Period;

**"Start Up Times Estimates"** has the meaning given to that term in the Agreement;

**"Subsidy"** shall have the meaning given to the term "subsidy" in the Subsidy Control Act [2022];

**"Subsidy Control Competent Authority"** has the meaning given to that term in the definition of Subsidy Control Rules;

**"Subsidy Control Declaration Date"** means the date the Generator submits an OCP Notice in respect of the Subsidy Control Declaration Operational CP or, where the DPA Counterparty subsequently agrees to waive the Subsidy Control Declaration Operational CP in accordance with Condition 3.43, the date the Generator requests a waiver of the Subsidy Control Declaration Operational CP;

**"Subsidy Control Declaration Operational CP"** means the Operational Condition Precedent set out in paragraph 5 of Part B of Annex 1 (*Conditions Precedent*);

**"Subsidy Control Rules"** means: (i) any subsidy control provisions in Law or having legally binding effect in the United Kingdom; and (ii) any relevant decisions or judgments of any UK Competent Authority having jurisdiction in the United Kingdom to enforce or administer such subsidy control provisions (a **"Subsidy Control Competent Authority"**);

**"Subsidy Interest Rate"** has the meaning given to that term in Condition 24.11(B) (*Subsidy Interest*);

**"Summer Season"** in any calendar year, means the Season commencing on 01 April in that year;

**"Supplier Obligation Regulations"** means regulations made pursuant to the EA 2013 which make provision for Electricity Suppliers to pay the DPA Counterparty for the purpose of enabling the DPA Counterparty to make payments pursuant to CCUS Programme DPAs;

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

**"Supply Chain Report"** means a report prepared by the Generator and submitted to the DPA Counterparty pursuant to Condition 25.1 (*Supply Chain Report*), which will be substantially in the form attached at Annex 9 (*Form of Supply Chain Report*);

**"Supply Chain Report Fees"** means the following amounts payable by the Generator to the DPA Counterparty pursuant to Condition 25.5 (*Payment of Supply Chain Report Fees*):

- (A) where the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty on the date immediately following a Supply Chain Report Deadline, the sum of one thousand pounds sterling (£1,000);
- (B) where the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty by the date which falls one (1) Month after the date of a Supply Chain Report Deadline, the sum of one thousand pounds sterling (£1,000);
- (C) where the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty by the date which falls two (2) Months after the date of a Supply Chain Report Deadline, the sum of one thousand pounds sterling (£1,000);
- (D) where the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty by the date which falls three (3) Months after the date of a Supply Chain Report Deadline, of the sum of two thousand five hundred pounds sterling (£2,500); and
- (E) where the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty by the date which falls four (4) Months after the date of a Supply Chain Report Deadline (and for each subsequent Month thereafter that the Generator fails to submit a valid Supply Chain Report to the DPA Counterparty), the sum of five thousand pounds sterling (£5,000);

**"Supply Chain Report Deadline"** has the meaning given to that term in Condition 25.1 (*Supply Chain Report*);

**"Supply Chain Report Response Notice"** has the meaning given to that term in Condition 25.3 (*Supply Chain Report*);

**"Suspension CO<sub>2</sub> Capture Rate"** means fifty per cent. (50%);

**"Suspension CO<sub>2</sub> Capture Rate Breach"** has the meaning given to that term in Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*);

**"T&S Availability Notice"** has the meaning given to that term in Condition 3.42(A) (*Waiver of T&S Connection Confirmation CP*);

**"T&S Capacity Fee"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"T&S Capacity Fee Charging Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"T&S Cessation Event"** means the occurrence of any one of the following:

- (A) a notice of discontinuation is issued by the Secretary of State to the T&S Operator pursuant to a discontinuation agreement entered into between the T&S Operator and the Secretary of State;
- (B) the T&S Operator's licence to operate the T&S Network is: (i) revoked; and (ii) is not transferred to a substitute T&S Operator, such that the T&S Network ceases to operate or the Generator is no longer able to connect to the T&S Network; or
- (C) a determination is made by the relevant Competent Authority that the Generator's connection to the T&S network is no longer viable<sup>16</sup> ;

**"T&S Code"** means [●];<sup>17</sup>

**"T&S Commissioning Delay Event"** means an event or circumstance that prevents or delays the development, construction, completion, and/or commissioning of the T&S Network and as a result prevents or delays the Facility from exporting captured CO<sub>2</sub> to the T&S Network (except to the extent that such event or circumstance arises out of or in connection with an act, omission breach or default of the Generator or its Representatives, including any breach by the Generator or its Representatives of an Industry Document). This includes but is not limited to the failure of the relevant T&S Operator to carry out in a timely manner: (A) any connection works specified in the T&S Construction Agreement; or (B) any required works to the T&S Network in order for the Facility to export captured CO<sub>2</sub> to the T&S Network;

**"T&S Commissioning Delay Period"** means, where Condition 3.40 (*Waiver of T&S Connection Confirmation CP*) applies, the period between the Start Date and the earlier of the: (A) fulfilment of the T&S Connection Confirmation Requirement; and (B) T&S Connection Confirmation Deadline;

**"T&S Connection Agreement"** means the agreement between the T&S Operator and the Generator relating to the export of captured CO<sub>2</sub> to a T&S Network by the Generator;

**"T&S Connection Confirmation CP"** has the meaning given to that term in paragraph 3(D) of Part B of Annex 1 (*Conditions Precedent*);

**"T&S Connection Confirmation Deadline"** has the meaning given to that term in Condition 3.42(B) (*Waiver of T&S Connection Confirmation CP*);

**"T&S Connection Confirmation Requirement"** means the evidence, in form and content satisfactory to the DPA Counterparty, that the Facility has connected to the T&S Network in accordance with the T&S Operator's compliance requirements, to be delivered by the Generator to the DPA Counterparty in accordance with Condition 3.42;

**"T&S Construction Agreement"** means the agreement between the T&S Operator and the Generator relating to the construction of infrastructure connecting the Capture Assets to a T&S Network at the CO<sub>2</sub> Delivery Point(s);

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<sup>16</sup> Note to Reader: This definition is subject to further review as the T&S business model develops.

<sup>17</sup> Note to Reader: This definition is subject to further review by BEIS as the T&S business model develops.

**"T&S Fees"** means the T&S Volumetric Payment Charging Rate, the T&S Capacity Fee, and the T&S Residual Fee;

**"T&S Network"** means a network including but not limited to:

- (A) pipelines used for the transportation of CO<sub>2</sub> from one capture plant to a storage facility or to or from any CO<sub>2</sub> pipeline network; and
- (B) storage facilities for the permanent storage of CO<sub>2</sub>,

owned or operated by a T&S Operator within the United Kingdom;<sup>18</sup>

**"T&S Network Availability Date"** has the meaning given to that term in Condition 3.42(A)(i) (*Waiver of T&S Connection Confirmation CP*);

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

**"T&S Outage Event"** means an event or circumstance affecting a T&S Network (excluding a T&S Commissioning Delay Event or a T&S Cessation Event), that prevents the Facility from accessing the full entry capacity to the T&S Network that the Generator has reserved under the T&S Connection Agreement;

**"T&S Prolonged Unavailability Event"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Event Notice"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Further Response Notice"** has the meaning given to that term in Condition 35.12(B) (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Procedure Obligation"** has the meaning given to that term in Condition 35.15 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation Suspension*);

**"T&S Prolonged Unavailability Remediation Deadline"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*) as such deadline may be extended in accordance with Condition 35.25 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Response Notice"** has the meaning given to that term in Condition 35.9 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Review Notice"** has the meaning given to that term in Condition 35.11 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Termination Date"** has the meaning given to that term in Condition 35.8 (*Termination for T&S Prolonged Unavailability Event*);

**"T&S Prolonged Unavailability Termination Notice"** has the meaning given to that term in Condition 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

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<sup>18</sup> Note to Reader: This definition is subject to further review as the T&S business model develops.



**"T&S Residual Fee"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"T&S Residual Fee Charging Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"T&S Termination Costs"** means all irrecoverable and unavoidable out-of-pocket costs which have been, will be or are reasonably likely to be incurred in respect of the Project by the Generator arising directly from a T&S Prolonged Unavailability Event occurring, if and to the extent that such costs constitute:

- (A) development and pre-development costs in respect of the Generation Assets and/or Capture Assets (including: (i) the costs of surveys and environmental impact assessments in respect of the Generation Assets and/or Capture Assets; (ii) costs incurred in respect of the Generator's successful allocation of the DPA; and (iii) costs incurred in obtaining planning permission for the Generation Assets and/or Capture Assets);
- (B) decommissioning costs in respect of the Generation Assets and/or Capture Assets;
- (C) break costs associated with the Generator's contractual or financing arrangements in respect of the Project; or
- (D) costs which are wholly attributable to the construction, installation, testing, completion or commissioning of the Generation Assets and/or Capture Assets,

provided that:

- (i) such costs exclude: (a) all other compensation which will be or which is reasonably likely to be payable by the Generator in connection with such T&S Prolonged Unavailability Event; and (b) all costs associated with the Generator's financing arrangements in respect of the Project (including all interest incurred in respect of such financing arrangements), except where expressly specified in any of paragraphs (A) to (D) above, and
- (ii) the sum of the costs referred to in paragraphs (A), (B) and (D) shall be depreciated on a straight line basis from the Start Date to zero (0) on the Specified Expiry Date, where the T&S Prolonged Unavailability Event occurs following the Start Date;

**"T&S Termination Payment"** means the compensation in respect of a T&S Prolonged Unavailability Event calculated in accordance with Conditions 36.4 to 36.7;

**"T&S Termination Payment Notice"** has the meaning given to that term in Condition 36.3 (*Consequences of T&S Prolonged Unavailability Event termination*);

**"T&S Termination Response Notice"** has the meaning given to that term in Condition 35.22 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*);

**"T&S Termination Savings"** means, all savings (including avoided out-of-pocket costs and insurance proceeds) which have been or will be or are reasonably likely to be made by the Generator in respect of the Project arising directly from the T&S Prolonged Unavailability Event;

**"T&S Volumetric Fee Charging Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"T&S Volumetric Payment Charging Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Target Commissioning Date"** has the meaning given to that term in the Agreement;

**"Target Commissioning Window"** means the Initial Target Commissioning Window for the Facility as specified in the Agreement, as such period may be extended day for day for each day of delay to the Project by reason of:

- (A) a Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 52 (*Force Majeure*) to be entitled to such extension; or
- (B) the failure of the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor 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 any Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (C) the failure of the Gas Licensed Transporter 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 any Gas Licensed Transporter is a party (except to the extent that such failure is due to the fault or negligence of the Generator or its Representatives); or
- (D) a T&S Commissioning Delay Event but only to the extent that the Generator has satisfied the requirements of Conditions 3.37 to 3.39 (*Relief due to T&S Commissioning Delay Event*) to be entitled to such extension,

and provided that in the case of delays caused by the reasons in (B) and/or (C) above:

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

**"Tax"** means any 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 any penalties, charges and interest relating to any of them;

**"TCDE Deadline"** has the meaning given to that term in Condition 3.30 (*T&S Connection Confirmation CP Relief*);

**"TCDE Notice"** has the meaning given to that term in Condition 3.30 (*T&S Connection Confirmation CP Relief*);

**"TCDE Response Notice"** has the meaning given to that term in Condition 3.32 (*T&S Connection Confirmation CP Relief*);

**"TCDE Supporting Information"** has the meaning given to that term in Condition 3.32(D) (*T&S Connection Confirmation CP Relief*);

**"TCDE Termination Notice"** has the meaning given to that term in Condition 35.29 (*Termination for failing to satisfy the T&S Connection Confirmation CP*);

**"Technical Amendment"** means any Proposed Amendment which is: (i) not a Material Amendment; (ii) required to correct a manifest error; or (iii) subject to paragraph 2.13 of Annex 4 (*Change Control Procedure*), required in order to identify a replacement carbon support price to reflect the representative Tax on the CO<sub>2</sub> emissions produced by the Facility including by reference to the consumption of fuel gas, in circumstances where the Carbon Support Price has been or is proposed to be novated or replaced;

**"Technical Amendment Agreement"** has the meaning given to that term in paragraph 2.10 of Annex 4 (*Change Control Procedure*);

**"Technical Amendment Response Notification"** has the meaning given to that term in paragraph 2.6(B)(ii) of Annex 4 (*Change Control Procedure*);

**"Technical Amendment Response Period"** has the meaning given to that term in paragraph 2.6 of Annex 4 (*Change Control Procedure*);

**"Technical Compliance Termination Event"** means an event as set out in Condition 21.10 (*Failure to remedy Metering Obligation breach*);

**"Term"** has the meaning given to that term in Condition 2.1 (*Term and duration*);

**"Termination Event"** has the meaning given to that term in Condition 37.1 (*Termination Events*);

**"Termination Fee Rate"** has the meaning given to that term in paragraph 1.1 of Annex 3 (*Calculation of Default Termination Payment*);

**"Test"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Achieved CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (expressed as a percentage (%)) for the Facility during a Test and calculated as follows:

$$TACR_{ph} = \frac{CO_{2_{exp}}}{CO_{2_{gen}}}$$

where:

$TACR_{ph}$  = Test Achieved CO<sub>2</sub> Capture Rate (expressed as a percentage (%))

$CO_{2_{exp}}$  = Metered CO<sub>2</sub> Output in a Test Run Period (tCO<sub>2</sub>)

$CO_{2_{gen}}$  = Calculated CO<sub>2</sub> Generated in a Test Run Period (tCO<sub>2</sub>)

**"Test Performance Standards"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Test Report"** means the Performance Test Report or the Annual NDC Test Report (as applicable);

**"Test Report Minimum Technical Requirements"** has the meaning given to such term in paragraph 1 of this Annex 2 (*Testing Requirements*);

**"Test Run Period"** means the applicable period of time during which each Test needs to be carried out as specified in Annex 2 (*Testing Requirements*);

**"Third Party"** has the meaning given to that term in Condition 65.1 (*Third party rights*);

**"Third Party Provisions"** has the meaning given to that term in Condition 65.1 (*Third party rights*);

**"Total Metered Fuel Consumption"** means the metered fuel consumption of the Facility during the relevant period, as measured at the Gas Supply Point(s) during such period;

**"Total Project Pre-Commissioning Costs"** has the meaning given to that term in the Agreement;

**"Transfer"** has the meaning given to that term in Condition 61.1 (*Restriction on Transfers*);

**"Transfer Scheme"** means a transfer scheme made under paragraph 1(1) of schedule 1 or paragraph 16 of schedule 2 to the EA 2013;

**"Transferee"** has the meaning given to that term in Condition 61.1 (*Restriction on Transfers*);

**"Transferring Rights and Obligations"** has the meaning given to that term in Condition 61.5(A) (*General provisions relating to permitted transfers*);

**"Treaty"** has the meaning given to that term in Article 2(1)(a) of the Vienna Convention on the law of treaties 1969;

**"Tribunal"** has the meaning given to that term in the FoIA;

**"UK Allowance"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract Trading Price"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures December Contract Trading Volume"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UKA Futures Index"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK Competent Authority"** means a Competent Authority of the United Kingdom;

**"UK Emissions Trading Registry"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK Emissions Trading Scheme"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*) or paragraph 1 of Annex 7 (*Carbon Market Reference Price Review*) (as applicable);

**"UK REMIT"** means the dedicated 'REMIT' section of the [Balancing Mechanism Reporting Service (BMRS) operated by Elexon] pursuant to Regulation (EU) No 1227/2011 as it forms part of domestic law by virtue of the EU(W)A 2018;<sup>19</sup>

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

**"Union Funding"** means any funding from European Union resources (regardless of whether such funding constitutes subsidy or State aid), including funding under the NER 300 and Horizon 2020 programmes;

**"Variable Payment"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"Variable Payment Billing Statement"** has the meaning given to that term in Condition 12.8 (*Delivery of Variable Payment Billing Statement*);

**"Variable Payment Rate"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"VP Billing Period"** means the period starting at 00:00 on a day and ending at 23:59 on the same day;

**"VP Compensatory Interest"** means the interest that is due and payable at the VP Compensatory Interest Rate in accordance with Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Compensatory Interest Amount"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Compensatory Interest Rate"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Metered CO<sub>2</sub> Output"** has the meaning given to that term in Condition 8 (*Definitions: Part 5*) of Part 5 (*Payment Calculations*);

**"VP Net Payable Amount"** has the meaning given to that term in Condition 12.14 (*Calculation of VP Net Payable Amount*);

**"VP Reconciliation Amounts"** has the meaning given to that term in Condition 12.12 (*Calculation of VP Reconciliation Amounts*);

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<sup>19</sup> Note to Reader: This definition is subject to further review by BEIS.

**"VP Reconciliation Billing Period"** has the meaning given to that term in Condition 12.13 (*Calculation of VP Compensatory Interest Amount*);

**"VP Settlement Unit"** means each day occurring during the Term after the Start Date and starting at 00:00 on a day and ending at 23:59 on the same day;

**"Warm Start"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*); and

**"Working Hours"** means 09:00 to 17:00 on a Business Day.

### **BSC definitions**

#### 1.2

- (A) References in these Conditions to **"Apparatus"**, **"BM Unit"**, **"BM Unit Metered Volume"**, **"Boundary Point"**, **"BSC Agent"**, **"BSC Company"**, **"Communications Equipment"**, **"Metering System"**, **"Registrant"**, **"Settlement Run"**, and **"Trading Dispute"** have the meanings given to such terms in the BSC.
- (B) Condition 1.2(A) shall operate without prejudice to the application of Part 8 (*Changes in Law*) to changes in the meaning of those terms under the BSC after the Agreement Date.

### **Interpretation**

#### 1.3 Any reference in the DPA to:

- (A) (save as provided in (C)) a Law, Directive or other similar enactment or instrument (each, an **"enactment"**) includes references to:
  - (i) that enactment as amended, supplemented or applied by or pursuant to any other enactment before, on or after the Agreement Date;
  - (ii) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
  - (iii) any subordinate legislation made (before, on or after the Agreement Date) pursuant to any enactment, including an enactment falling within Condition 1.3(A)(i) or 1.3(A)(ii);
- (B) an Industry Document includes references to such Industry Document as amended, supplemented, restated, novated or replaced from time to time,

except, in each case, for the purposes of Part 8 (*Changes in Law*) or where otherwise expressly specified; or

- (C) a specific European Union instrument shall not include any amendment, supplement, re-enactment, restatement or replacement of such European Union instrument that:
  - (i) is made by a Competent Authority of the European Union; and
  - (ii) is not required to be implemented by, and does not have effect in the United Kingdom by reason of, any Law or otherwise pursuant to an international agreement to which the United Kingdom is a signatory.

#### 1.4 Unless otherwise expressly specified:

- (A) any reference in the DPA or any other DPA Document (or in any certificate or other document made or delivered pursuant to the DPA or any other DPA Document) to:
- (i) these Conditions shall be deemed to include the Annexes;
  - (ii) the DPA shall be deemed to include any schedules or annexes to the Agreement;
  - (iii) a "**company**" shall be construed as including any corporation or other body corporate, wherever and however incorporated or established;
  - (iv) the expressions "**holding company**" and "**subsidiary**" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006, the expressions "**parent undertaking**" and "**subsidiary undertaking**" shall have the meanings respectively ascribed to them by section 1162 of the Companies Act 2006 and the expression "**associated undertaking**" shall have the meaning ascribed to it in Schedule 6 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2013 (but for this purpose ignoring paragraph 19(1)(b) of those regulations);
  - (v) a "**person**" shall be construed as including any individual, firm, company, 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;
  - (vi) a person shall be construed as including its successors, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
  - (vii) an "**agreement**" shall be construed as including any commitment or arrangement, whether legally binding or not, and references to being party to an agreement or having agreed to do anything shall be construed accordingly;
  - (viii) any agreement or document shall be construed as a reference to that agreement or document as amended, supplemented, restated, novated or replaced from time to time;
  - (ix) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as including what most nearly approximates in that jurisdiction to the English legal term;
  - (x) time shall be a reference to time in London, England;
  - (xi) words in the singular shall be interpreted as including the plural and vice versa;
  - (xii) in the definition of Qualifying Shutdown Event, the term EU law shall include any retained EU law other than as that body of law is added to or otherwise modified under the EU(W)A 2018 or other domestic law; and
  - (xiii) the expression "**retained EU law**" shall have the meaning given to that expression in the EU(W)A 2018.
- (B) in construing the DPA or any other DPA Document (or any certificate or other document made or delivered pursuant to the DPA or any other DPA Document):

- (i) the rule of interpretation known as the *ejusdem generis* rule shall not apply and, accordingly, general words introduced by the word **"other"** shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
  - (ii) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (C) any reference in these Conditions to a **"paragraph"**, **"Condition"**, **"Part"** or **"Annex"** or **"Schedule"** is a reference to a paragraph, Condition or Part of, or Annex or Schedule to these Conditions; and
  - (D) any reference in the Agreement to a **"paragraph"**, **"Condition"**, **"Part"**, **"Annex"** or **"Schedule"** is a reference to a paragraph or Condition of, or Annex or Schedule to, the Agreement.
- 1.5 These Conditions form part of the DPA and shall have the same force and effect as if expressly set out in the body of the DPA, and any reference to the DPA shall include the Annexes and the Schedules.
- 1.6 Headings and sub-headings used in the DPA are for ease of reference only and shall not affect the interpretation of the DPA.
- 1.7 If there is a conflict between:
- (A) the main body of these Conditions and any Annex or Schedule, the main body of these Conditions shall prevail; or
  - (B) these Conditions and the Agreement, the Agreement shall prevail.
- 1.8 Condition 1.4(A)(vi) shall apply (without limitation) to any references in the DPA to the Authority, the Economic Regulator, the Environment Agencies and the Secretary of State.

### ***Symbols and currency***

- 1.9 Any reference in these Conditions to **"£"** or **"pounds"** or **"pence"** or **"Sterling"** is to the lawful currency of the United Kingdom.
- 1.10 Any reference in these Conditions to **"MW"** is to megawatts and to **"MWh"** is to megawatt hours.
- 1.11 Any reference in these Conditions to **"tCO<sub>2</sub>"** is to tonnes of carbon dioxide and to **"tCO<sub>2</sub>e"** is to tonnes of carbon dioxide equivalent.
- 1.12 Any reference in these conditions to **"therms"** is to thermal units of natural gas.
- 1.13 Any value referenced in these Conditions as being expressed as a percentage (%) is to be expressed as a decimal fraction for the purposes of any calculations.

### ***No interest in the Facility***

- 1.14 Nothing in the DPA is intended to create, or shall create, a legal or beneficial interest in the Facility, the Generating Station or the Project in favour of any person other than the Generator.



**Part 2**  
**Term**

**2. TERM**

***Term and duration***

2.1

- (A) Subject to Condition 3 (*Conditions Precedent*), the provisions of, and the rights and obligations of the Parties under, the DPA shall become effective and binding on the Agreement Date; and
- (B) (except in circumstances in which the DPA is terminated pursuant to Conditions 35.1 (*Pre-Start Date Termination*), 35.5 (*Termination for Prolonged Force Majeure*), 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.26 (*Default Termination*), 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), 35.30 (*Qualifying Change in Law Termination*) or 35.32 (*QCIL Compensation termination*)), the DPA shall continue in full force and effect until the Specified Expiry Date,

(such period being the "**Term**").

***Consequences of expiry***

2.2 Subject to Condition 2.3: (i) the DPA shall expire automatically on the Specified Expiry Date; and (ii) upon expiry of the DPA:

- (A) no termination payment shall be payable by either Party to the other Party;
- (B) all rights and obligations of the Parties under the DPA shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party pursuant to the DPA.

2.3 The expiry of the DPA:

- (A) shall not affect, and shall be without prejudice to, accrued rights and liabilities and rights and liabilities arising as a result of:
  - (i) any antecedent breach of any provision of the DPA; and
  - (ii) any breach of any provisions of the DPA which are expressed to survive expiry pursuant to Condition 38 (*Survival*); and
- (B) shall be subject to Condition 38 (*Survival*).

**Part 3**  
**Conditions Precedent and Milestone Requirement**

**3. CONDITIONS PRECEDENT**

***Provisions effective and binding from Agreement Date***

- 3.1 The provisions of, and the rights and obligations of the Parties pursuant to, the Agreement Date Provisions shall become effective and binding on the Agreement Date.

***Initial Conditions Precedent***

- 3.2 The provisions of, and the rights and obligations of the Parties pursuant to, the Initial CP Provisions are conditional upon the Initial Conditions Precedent being:

- (A) fulfilled by the Generator; or
- (B) waived by the DPA Counterparty in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*).

- 3.3 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Initial Conditions Precedent as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after the Agreement Date.

- 3.4 The DPA Counterparty shall notify the Generator as soon as reasonably practicable after the DPA Counterparty considers that the Initial Conditions Precedent have been fulfilled or after the DPA Counterparty has decided to waive such conditions in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*).

***Operational Conditions Precedent***

- 3.5 The provisions of, and the rights and obligations of the Parties pursuant to, the Operational CP Provisions are conditional upon the Initial Conditions Precedent and the Operational Conditions Precedent being:

- (A) fulfilled by the Generator; or
- (B) waived by the DPA Counterparty in accordance with Conditions 3.28 (*Waiver of Conditions Precedent and Default*) and/or 3.43 (*Waiver of Subsidy Control Declaration Operational CP*).

- 3.6 The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Operational Conditions Precedent (save for the Subsidy Control Declaration Operational CP) as soon as reasonably practicable, and in any event before the Longstop Date. The Generator shall use reasonable endeavours to fulfil or procure the fulfilment of the Subsidy Control Declaration Operational CP before the Longstop Date.

***Operational Conditions Precedent: General Reporting Obligations***

- 3.7 The Generator shall keep the DPA Counterparty reasonably informed as to progress towards fulfilment of the Operational Conditions Precedent and in particular (but without limitation) shall:

- (A) provide the DPA Counterparty with reports (in form and content reasonably satisfactory to the DPA Counterparty and in accordance with the reasonable requirements of the DPA Counterparty as to the timing and frequency of such reports) of the progress made in or towards fulfilment of the Operational Conditions Precedent; and

- (B) give the DPA Counterparty a notice each time the Generator considers an Operational Condition Precedent has been fulfilled (an "**OCP Notice**"). Each OCP Notice shall:
  - (i) identify the Operational Condition Precedent which the Generator considers to have been fulfilled; and
  - (ii) include such Supporting Information as the Generator considers to be relevant to evidence the fulfilment of the relevant Operational Condition Precedent.
- 3.8 Each OCP Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Notice.
- 3.9 The DPA Counterparty shall, no later than ten (10) Business Days after receipt of an OCP Notice, give a notice to the Generator (an "**OCP Response Notice**"). An OCP Response Notice shall specify whether the DPA Counterparty considers that:
  - (A) the Generator has or has not fulfilled the Operational Condition Precedent to which the OCP Notice relates; or
  - (B) it has not been provided with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent to which the OCP Notice relates and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Generator has fulfilled the Operational Condition Precedent (the "**OCP Supporting Information**").
- 3.10 If the DPA Counterparty states in the OCP Response Notice that:
  - (A) the Generator has fulfilled the Operational Condition Precedent, then the Operational Condition Precedent will be deemed to have been fulfilled for the purposes of the DPA;
  - (B) the Generator has not fulfilled the Operational Condition Precedent, then the Operational Condition Precedent will be deemed not to have been fulfilled for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or
  - (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Generator has fulfilled the Operational Condition Precedent:
    - (i) the Generator shall provide the OCP Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the OCP Response Notice, or such longer period as is specified by the DPA Counterparty; and
    - (ii) upon receipt of the OCP Supporting Information, the DPA Counterparty shall as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of such OCP Supporting Information, give a further OCP Response Notice to the Generator (a "**Further OCP Response Notice**"). A Further OCP Response Notice shall specify whether the DPA Counterparty considers that the Generator has or has not fulfilled the Operational Condition Precedent.
- 3.11 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware:
  - (A) of any fact, matter or circumstance which will or is reasonably likely to prevent any of the Operational Conditions Precedent from being fulfilled by the Longstop Date; or

- (B) that any of the Operational Conditions Precedent which had previously been notified to the DPA Counterparty as fulfilled pursuant to Condition 3.7(B) is no longer fulfilled at any time prior to the Start Date,

(any such notice, an "**OCP Non-Compliance Notice**" and the Operational Condition Precedent referenced in such notice, an "**Affected Operational CP**"). Each such OCP Non-Compliance Notice shall:

- (i) identify the Affected Operational CP;
- (ii) specify the reasons why the Affected Operational CP:
  - (a) will, or is reasonably likely, not to be fulfilled; or
  - (b) is no longer fulfilled;
- (iii) include such Supporting Information as the Generator considers to be relevant to the content of the OCP Non-Compliance Notice; and
- (iv) include details of any remedial action that the Generator is taking or proposes to take,

provided that no OCP Non-Compliance Notice need be given by the Generator to the DPA Counterparty if the Affected Operational CP has been waived by the DPA Counterparty in accordance with Conditions 3.28 (*Waiver of Conditions Precedent and Default*) and/or 3.43 (*Waiver of Subsidy Control Declaration Operational CP*).

- 3.12 Each OCP Non-Compliance Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the OCP Non-Compliance Notice.
- 3.13 Nothing in this Condition 3 (*Conditions Precedent and Milestone Requirement*) shall require the DPA Counterparty to specify in any OCP Response Notice or Further OCP Response Notice that the DPA Counterparty accepts that an Operational Condition Precedent has been fulfilled unless the DPA Counterparty is satisfied of the same.

***Operational Conditions Precedent: Construction Reporting Requirements***

- 3.14 The Generator shall keep the DPA Counterparty fully informed as to the progress in relation to the Pre-Operation Activities from the Agreement Date until the Start Date and in particular (but without limitation) shall, on or prior to every 1 February, 1 May, 1 September and 1 November that fall within such period (or, if such date is a day other than a Business Day, on the next Business Day after that date):
- (A) provide the DPA Counterparty with reports (in a form and content reasonably satisfactory to the DPA Counterparty) detailing the progress in relation to the Pre-Operation Activities. As a minimum, each report shall satisfy the Minimum Reporting Content Requirements; and
  - (B) provide the DPA Counterparty with any Supporting Information provided to the Generator's board of Directors (or an equivalent body or committee, as applicable) relating to the matters referred to in Condition 3.14(A).
- 3.15 The Generator shall notify the DPA Counterparty in writing (a "**Project Delay Notice**"), together with Supporting Information, promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to delay any Pre-Operation Activity, with such notice to include:

- (A) details of the relevant fact, matter or circumstance;
- (B) any remedial action that the Generator is taking or proposes to take in relation to such fact, matter or circumstance;
- (C) a revised Project timetable (by reference to the Target Commissioning Date, the Target Commissioning Window and the Longstop Date); and
- (D) the estimated additional costs to the Project arising as a result of such fact, matter or circumstance.

3.16 Each Project Delay Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Project Delay Notice.

**Reporting Obligations Audit Right**

3.17 With effect from the Agreement Date and until the date which falls thirty (30) calendar days after the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty which the DPA Counterparty considers to be suitably qualified) access in accordance with Conditions 3.18 to 3.20 to:

- (A) (i) the Facility; and (ii) any plant, machinery, property, processing or storage facility associated with the Facility, in each case owned, occupied or controlled by the Generator and to which the Generator can lawfully grant access; and
- (B) the Generator's personnel, systems, books, records and any other information,

in each case as the DPA Counterparty considers reasonably necessary for the DPA Counterparty to assess the Generator's compliance with Conditions 3.7 to 3.16 (the "**Audit Right**").

3.18 If the DPA Counterparty intends to exercise its Audit Right, it shall give written notice to the Generator (an "**Audit Notice**"). An Audit Notice shall:

- (A) specify that the DPA Counterparty (or any suitably qualified persons nominated by it under Condition 3.17) intends to exercise the Audit Right; and
- (B) specify a date and time during regular office hours by which the Generator must, in accordance with Condition 3.17, permit the exercise of the Audit Right.

3.19 On receipt of the Audit Notice, the Generator shall permit the DPA Counterparty to exercise the Audit Right at such time as the DPA Counterparty may nominate provided that it is no earlier than one (1) Business Day after the Generator's receipt of the Audit Notice.

3.20 The Generator shall cooperate and provide, and shall procure that any Representative cooperates and provides, all required access, assistance and information to enable the DPA Counterparty to exercise its Audit Right.

3.21 The Generator shall reimburse the DPA Counterparty for all out-of-pocket costs, expenses and fees incurred by the DPA Counterparty arising out of or in connection with exercising the Audit Right.

**Notification of Start Date**

3.22 The Generator shall after giving the OCP Notice relating to the fulfilment of the final Operational Condition Precedent, and in any event no later than ten (10) Business Days after the OCP Response Notice or the Further OCP Response Notice confirming that the DPA Counterparty

considers such Operational Condition Precedent to have been fulfilled is received, give a notice to the DPA Counterparty (a "**Start Date Notice**").

- 3.23 A Start Date Notice shall specify the date that the Generator proposes to be the Start Date for the purposes of the DPA, such date being:
- (A) no earlier than the date on which the OCP Notice relating to the fulfilment of the final Operational Condition Precedent was given;
  - (B) no earlier than the first (1st) day of the Target Commissioning Window;
  - (C) no later than the Longstop Date; and
  - (D) no earlier than the date of the Start Date Notice,
- (the date so notified being, subject to Condition 3.26, the "**Start Date**").
- 3.24 Each Start Date Notice shall be accompanied by a Directors' Certificate in relation to the Information specified in Condition 3.26(C).
- 3.25 On the Start Date (unless the date of the Start Date Notice is the same as the Start Date), the Generator shall deliver to the DPA Counterparty a Directors' Certificate in relation to the Information specified in Condition 3.26(C).
- 3.26 A Start Date Notice shall be effective in determining the Start Date only if:
- (A) the Generator complies with its obligations pursuant to Conditions 3.24 and 3.25;
  - (B) the DPA Counterparty specifies in an OCP Response Notice or a Further OCP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Conditions 3.28 or 3.43; and
  - (C) 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 Representations are true, accurate and not misleading by reference to the facts and circumstances then existing;
    - (ii) the representations set out in Conditions 18.1(G), 18.1(H) and 18.2 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 DPA Counterparty in accordance with Condition 3.28; and
    - (iv) all Conditions Precedent (except those waived by the DPA Counterparty in accordance with Conditions 3.28 and/or 3.43) continue to be fulfilled.
- 3.27 If the Generator gives a Start Date Notice to the DPA Counterparty and such notice is, pursuant to Condition 3.26, ineffective, this shall not, subject to Part 9 (*Termination*), preclude the Generator from giving a further Start Date Notice to the DPA Counterparty. Conditions 3.22 to 3.26 (inclusive) shall apply, with the necessary modifications, to any such further Start Date Notice.

**Waiver of Conditions Precedent and Default**

- 3.28 Subject to Condition 3.43, the DPA Counterparty may agree by notice to the Generator to waive:
- (A) the fulfilment of any of the Conditions Precedent; and
  - (B) any Default which is continuing unremedied and which would otherwise prevent the Start Date Notice from being effective in determining the Start Date.
- 3.29 Conditions 47 (*No waiver*) and 48 (*Consents*) shall apply to any waiver given by the DPA Counterparty pursuant to Conditions 3.28 and 3.43.

**T&S Connection Confirmation CP Relief**

- 3.30 The Generator may, if it considers that a T&S Commissioning Delay Event has occurred and is still continuing, give a notice to the DPA Counterparty (a "**TCDE Notice**"). A TCDE Notice must be given to the DPA Counterparty no later than the Longstop Date (the "**TCDE Deadline**") and shall:
- (A) specify:
    - (i) the Generator's request for an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date, for any delay to the Project if and to the extent that such delay is directly attributable to the occurrence and continuation of such T&S Commissioning Delay Event; or
    - (ii) the Generator's request for the DPA Counterparty to waive the T&S Connection Confirmation CP in accordance with Condition 3.40 (*Waiver of T&S Connection Confirmation CP*) in order for the Generator to issue a Start Date Notice pursuant to Condition 3.22 (*Notification of Start Date*); and
  - (B) include such Supporting Information as the Generator considers to be relevant to:
    - (i) evidence the occurrence and continuation of a T&S Commissioning Delay Event; and
    - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), evidence that the Generator has fully completed the Generator T&S Connection Works<sup>20</sup>.
- 3.31 Each TCDE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the TCDE Notice.
- 3.32 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of a TCDE Notice, give a notice to the Generator (a "**TCDE Response Notice**"). A TCDE Response Notice shall specify whether the DPA Counterparty considers that:
- (A) a T&S Commissioning Delay Event has or has not occurred; and
  - (B) a T&S Commissioning Delay Event is or is not still continuing;

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<sup>20</sup> Note to Reader: It is expected that a letter from the T&S Operator confirming that the Generator has completed the necessary works will be sufficient evidence.

- (C) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator has or has not fully completed the Generator T&S Connection Works; or
- (D) it has not been provided with sufficient Supporting Information to determine whether:
  - (i) a T&S Commissioning Delay Event has occurred;
  - (ii) a T&S Commissioning Delay Event is still continuing;
  - (iii) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator has or has not fully completed the Generator T&S Connection Works; and/or
  - (iv) any combination of the foregoing,

in which case the DPA Counterparty shall provide details of the additional Supporting Information which the DPA Counterparty requires to determine (as relevant) whether a T&S Commissioning Delay Event has occurred and is still continuing and, if the TCDE Notice relates to Condition 3.30(A)(ii), whether the Generator has fully completed the Generator T&S Connection Works (the "**TCDE Supporting Information**").

3.33 If the DPA Counterparty states in the TCDE Response Notice that it:

- (A) considers that a T&S Commissioning Delay Event has not occurred and/or is not still continuing:
  - (i) if the TCDE Notice relates to Condition 3.30(A)(i), the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date shall remain unadjusted for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; and
  - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), the Generator T&S Connection Works will be deemed not to have been fully completed for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure;
- (B) considers that a T&S Commissioning Delay Event has occurred and is still continuing:
  - (i) if the TCDE Notice relates to Condition 3.30(A)(i), then the TCDE Response Notice shall include a confirmation of the Generator's entitlement to an extension to any of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date pursuant to Condition 3.37 (*Relief due to T&S Commissioning Delay Event*);
  - (ii) if the TCDE Notice relates to Condition 3.30(A)(ii), then (except where the DPA Counterparty has requested TCDE Supporting Information relating to the Generator T&S Connection Works) the TCDE Response Notice shall:
    - (a) confirm that the Generator has fully completed the Generator T&S Connection Works, in which case the Generator T&S Connection Works will be deemed to have been fully completed for the purposes of the DPA; or
    - (b) state that the Generator has not fully completed the Generator T&S Connection Works, then the Generator T&S Connection Works will be deemed not have been fully completed for the purposes of the DPA



unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or

- (C) requires the Generator to provide the TCDE Supporting Information:
- (i) the Generator shall provide the TCDE Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the TCDE Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the TCDE Supporting Information, the DPA Counterparty shall, no later than ten (10) Business Days after receipt of such TCDE Supporting Information, give a further TCDE Response Notice to the Generator (a "**Further TCDE Response Notice**"). A Further TCDE Response Notice shall contain one of the statements set out in Conditions 3.33(A) or 3.33(B).
- 3.34 Nothing in Conditions 3.30 to 3.33 (*T&S Connection Confirmation CP Relief*) shall require the DPA Counterparty to specify in any TCDE Response Notice or Further TCDE Response Notice that a T&S Commissioning Delay Event has occurred, is still continuing or, if the TCDE relates to Condition 3.30(A)(ii), that the DPA Counterparty accepts that the Generator T&S Connection Works have been fully completed, unless and until the DPA Counterparty is satisfied of the same.
- 3.35 Any TCDE Notice shall be irrevocable and, if the T&S Connection Confirmation CP is waived pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*), the Generator may not subsequently issue a TCDE Notice which relates to Condition 3.30(A)(i).
- 3.36 Any TCDE Notice received by the DPA Counterparty after the TCDE Deadline shall be invalid and of no effect.

***Relief due to T&S Commissioning Delay Event***

- 3.37 Subject to Condition 3.38, the Generator shall be entitled to an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date where it is agreed under Condition 3.33(B) or determined pursuant to the Dispute Resolution Procedure that any delay to the Project is directly attributable to the occurrence and continuation of a T&S Commissioning Delay Event, until the T&S Connection Confirmation CP is waived pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*).
- 3.38 The Generator's entitlement to an extension to one (1) or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date pursuant to Condition 3.37 shall be subject to and conditional upon the Generator using reasonable endeavours to:
- (A) mitigate the effects of the T&S Commissioning Delay Event (including the consequential delay to the Project);
  - (B) carry out its obligations under the DPA and each other DPA Document in any way that is reasonably practicable; and
  - (C) resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable.
- 3.39 Nothing in Conditions 3.30 to 3.38 shall affect the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*).

**Waiver of T&S Connection Confirmation CP**

- 3.40 The fulfilment of the T&S Connection Confirmation CP shall be deemed to have been waived where it is agreed under Condition 3.33(B) or determined pursuant to the Dispute Resolution Procedure that: (i) a T&S Commissioning Delay Event has occurred and is still continuing; and (ii) the Generator T&S Connection Works have been fully completed.
- 3.41 If the T&S Connection Confirmation CP is deemed to have been waived in accordance with Condition 3.40 and the T&S Connection Confirmation CP is the final Operational Condition Precedent to be fulfilled by the Generator for the purposes of Condition 3.22:
- (A) the request for a waiver in accordance with Condition 3.30, including the Supporting Information and Directors' Certificate, shall be treated as the OCP Notice, and
  - (B) the waiver shall be treated as the OCP Response Notice.

**T&S Connection Confirmation Requirement**

- 3.42 If the T&S Connection Confirmation CP is deemed to have been waived in accordance with Condition 3.40, the Generator shall:
- (A) notify the DPA Counterparty in writing, together with Supporting Information, promptly upon the Generator becoming aware that the T&S Network is or will be available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network to enable the Generator to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement (a "**T&S Availability Notice**"). A T&S Availability Notice shall specify:
    - (i) the anticipated date of the T&S Network being available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network (a "**T&S Network Availability Date**"); and
    - (ii) the steps being taken by the Generator to carry out its obligations under the DPA (or the relevant DPA Document);
  - (B) [use reasonable endeavours to fulfil or procure the fulfilment of the T&S Connection Confirmation Requirement as soon as reasonably practicable, and in any event before the date that falls three (3) Months after the T&S Network Availability Date, (the "**T&S Connection Confirmation Deadline**").]<sup>21</sup>

**Waiver of Subsidy Control Declaration Operational CP**

- 3.43 The DPA Counterparty shall agree by notice to the Generator to waive the fulfilment of the Subsidy Control Declaration Operational CP if the Generator evidences to the satisfaction of the DPA Counterparty that the grantor(s) of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)), in full or in part. If the Generator seeks a waiver of the Subsidy Control Declaration Operational CP, the Generator shall:

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<sup>21</sup> Note to Reader: BEIS is considering this time period and whether an intermediary step before termination would be appropriate.

- (A) provide the DPA Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment, in accordance with this Condition; and
- (B) provide the DPA Counterparty with such additional Supporting Information as the DPA Counterparty reasonably requires, as soon as reasonably practicable, and in any event no later than ten (10) Business Days following receipt of the DPA Counterparty's request,

in each case accompanied with a Directors' Certificate in respect of such Supporting Information.

3.44 If the DPA Counterparty agrees to waive the Subsidy Control Declaration Operational CP in accordance with Condition 3.43:

- (A) the DPA Counterparty shall also notify the Generator of:
  - (i) the amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) which has not been repaid to the granter as at that date ("**Previous Subsidy**"); and
  - (ii) the Subsidy Interest Rate currently applicable;
- (B) Condition 3.46 shall apply; and
- (C) where the Subsidy Control Declaration Operational CP is the final Operational Condition Precedent to be fulfilled, for the purposes of Condition 3.22:
  - (i) the request for a waiver in accordance with Condition 3.43, including the Supporting Information and Directors' Certificate, shall be treated as the OCP Notice, and
  - (ii) the waiver shall be treated as the OCP Response Notice.

3.45 Nothing in this Condition 3 shall require the DPA Counterparty to waive the Subsidy Control Declaration Operational CP, unless the DPA Counterparty is satisfied that the requirements of Condition 3.43 have been met.

***Set-Off of Previous Subsidy***

3.46 The Previous Subsidy (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) shall be set off against any amounts payable to the Generator under the DPA, so that no payment shall be made to the Generator until such amount has been set off in its entirety.

3.47 Where any provision of the DPA would, but for this Condition 3.47, require:

- (A) the DPA Counterparty to make any payment or otherwise do anything (including without limitation, the making of any adjustment payment under any Initial CP Provision) which would amount to the giving of Subsidy, no such payment or thing shall be required to be made or done unless and until the Subsidy Control Declaration Operational CP has been satisfied or waived; or
- (B) any payment to be made by the DPA Counterparty on a date falling prior to the satisfaction or waiver of the Subsidy Control Declaration Operational CP, such payment shall not fall due for payment until the date falling ten (10) Business Days following the

satisfaction or waiver of the Subsidy Control Declaration Operational CP. No interest shall accrue in respect of any such payment.

- 3.48 Subject to Condition 3.49, not less than three (3) Months before the Generator's intended Start Date, the Generator shall give the DPA Counterparty a written confirmation, in form and content satisfactory to the DPA Counterparty (acting reasonably), of whether any Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project, and, where applicable, details of all such Subsidy, State aid and/or Union Funding, accompanied by a Directors' Certificate in relation to the confirmation and the information accompanying it.
- 3.49 The Generator is not required to give a confirmation to the DPA Counterparty under Condition 3.48 if the Subsidy Control Declaration Operational CP has previously been fulfilled (or waived in accordance with Condition 3.43).

#### 4. **MILESTONE REQUIREMENT**

##### ***Milestone Requirement Notice***

- 4.1 No later than the Milestone Delivery Date, the Generator shall give a notice to the DPA Counterparty (a "**Milestone Requirement Notice**") that the Generator considers that it has complied with and fulfilled a Milestone Requirement. A Milestone Requirement Notice shall include either:
- (A) such invoices, payment receipts and other Supporting Information with respect to the Project as the Generator considers relevant to evidence that it and its direct shareholders have in aggregate spent ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or
  - (B) such Information as is specified, identified or listed as the Project Commitments and such Supporting Information as the Generator considers relevant to evidence compliance with or fulfilment of the Project Commitments (and for this purpose, where the Project Commitments relate to Material Equipment, taking into consideration the need to demonstrate to the DPA Counterparty's satisfaction that contracts, agreements and purchase orders relating to such Material Equipment constitute significant financial commitments that are real, genuine and made in good faith),
- (each, a "**Milestone Requirement**").

For the purposes of paragraph (A) above:

- (i) money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place; and
  - (ii) money spent by the Generator for the purpose of connecting the Facility to any relevant Electricity Transmission System, Electricity Distribution System, Gas Distribution System or T&S Network may be taken into account, notwithstanding that assets comprised or to be comprised within any such Electricity Transmission System, Electricity Distribution System, Gas Distribution System or T&S Network do not form part of the Facility.
- 4.2 A Milestone Requirement Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Milestone Requirement Notice.

- 4.3 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of a Milestone Requirement Notice, give a notice to the Generator (a "**Milestone Assessment Response Notice**"). A Milestone Assessment Response Notice shall specify whether the DPA Counterparty considers that:
- (A) the Generator has or has not complied with and fulfilled a Milestone Requirement; or
  - (B) it has not been provided with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Generator has complied with and fulfilled a Milestone Requirement (the "**Requested Milestone Supporting Information**").
- 4.4 If the DPA Counterparty states in a Milestone Assessment Response Notice that:
- (A) the Generator has complied with and fulfilled a Milestone Requirement, then the Milestone Requirement will be deemed to have been complied with and fulfilled for the purposes of the DPA;
  - (B) the Generator has not complied with and fulfilled a Milestone Requirement, then the Milestone Requirement will be deemed not to have been complied with and fulfilled for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure; or
  - (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled a Milestone Requirement:
    - (i) the Generator shall provide the Requested Milestone Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of a Milestone Assessment Response Notice, or such longer period as is specified by the DPA Counterparty; and
    - (ii) upon receipt of the Requested Milestone Supporting Information, the DPA Counterparty shall as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after receipt of such Requested Milestone Supporting Information, give a further Milestone Assessment Response Notice to the Generator (a "**Further Milestone Assessment Response Notice**"). A Further Milestone Assessment Response Notice shall specify whether the DPA Counterparty considers that the Generator has or has not complied with and fulfilled a Milestone Requirement.
- 4.5 Nothing in this Condition 4 (*Milestone Requirement*) shall require the DPA Counterparty to specify in any Milestone Assessment Response Notice or Further Milestone Assessment Response Notice that the DPA Counterparty accepts that a Milestone Requirement has been complied with and fulfilled unless the DPA Counterparty is satisfied of the same.

**Waiver of Milestone Requirement**

- 4.6 The DPA Counterparty may agree by notice to the Generator to waive the fulfilment of any Milestone Requirement.
- 4.7 Conditions 47 (*No waiver*) and 48 (*Consents*) shall apply to any waiver given by the DPA Counterparty pursuant to Condition 4.6.

***Difficulties in achieving the Milestone Requirement***

- 4.8 The Generator shall give the DPA Counterparty a written notice (a "**Milestone Delay Notice**") promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to prevent the Generator fulfilling the Milestone Requirement by the Milestone Delivery Date.
- 4.9 A Milestone Delay Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, such notice.

***Effectiveness of a Milestone Requirement Notice***

- 4.10 If the Generator gives a Milestone Requirement Notice to the DPA Counterparty and such notice is ineffective, this shall not, subject to Part 9 (*Termination*), preclude the Generator from giving a further Milestone Requirement Notice to the DPA Counterparty.
- 4.11 Without limitation, a Milestone Requirement Notice shall be deemed to be ineffective if:
- (A) it does not include the information specified in any of the following Conditions 4.1(A) or 4.1(B);
  - (B) it is not accompanied by a Directors' Certificate in accordance with Condition 4.2; or
  - (C) the DPA Counterparty states in the Milestone Assessment Response Notice that the Generator has not complied with and fulfilled a Milestone Requirement.

**Part 4**  
**Adjustments**

**5. ADJUSTMENT TO NET DEPENDABLE CAPACITY ESTIMATE: PERMITTED REDUCTION**

5.1 The Generator may, if it considers that the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate, give a notice to the DPA Counterparty (an "**NDCE Adjustment Notice**"). An NDCE Adjustment Notice must be given to the DPA Counterparty no later than the Milestone Delivery Date (the "**NDCE Adjustment Deadline**") and shall:

- (A) specify:
  - (i) the amount by which the Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate; and
  - (ii) the new Net Dependable Capacity Estimate which is to apply to the Facility as a result of such reduction (the "**Revised NDCE**");
- (B) include details of any change in the Facility which will result from the reduction to the Net Dependable Capacity Estimate (which shall include revised details of the assets comprising the Facility and any revised aerial view of the unique geographical location of (a) the Facility, (b) the Facility Metering Equipment, and (c) the Facility Connection Points, as well as any change to the geographical coordinates specified in Annex 1 (*Conditions Precedent*) of the Agreement;
- (C) include such Supporting Information as the Generator considers to be relevant to evidence any changes to the asset comprising the Facility which will result from the reduction to the Net Dependable Capacity Estimate; and
- (D) if there are any changes to the Initial Heat and Material Balance Diagram as a result of such reduction, include the proposed Heat and Material Balance Diagram which will apply for the purposes of the DPA ("**NDCE Adjusted Heat and Material Balance Diagram**") and any Supporting Information as the Generator considers to be relevant to evidence such changes to the Initial Heat and Material Balance Diagram.

5.2 Subject to Condition 5.5, the Revised NDCE shall constitute the Net Dependable Capacity Estimate with effect from the date of the NDCE Adjustment Notice, provided that if an NDCE Adjustment Notice specifies a Revised NDCE which is less than ninety per cent. (90%) of the Initial Net Dependable Capacity Estimate, such NDCE Adjustment Notice shall be invalid and of no effect.

5.3 An NDCE Adjustment Notice shall be irrevocable and the Generator may not subsequently increase the Net Dependable Capacity Estimate.

5.4 The Generator may give an NDCE Adjustment Notice on only one (1) occasion prior to the NDCE Adjustment Deadline. Any NDCE Adjustment Notice given to the DPA Counterparty after the NDCE Adjustment Deadline shall be invalid and of no effect.

5.5 If the NDCE Adjustment Notice includes an NDCE Adjusted Heat and Material Balance Diagram, the DPA Counterparty shall confirm whether it approves such NDCE Adjusted Heat and Material Balance Diagram within twenty (20) Business Days of receipt of the NDCE Adjustment Notice (such approval not to be unreasonably withheld or delayed).

5.6 An NDCE Adjusted Heat and Material Balance Diagram included in an NDCE Adjustment Notice shall constitute the Facility Heat and Material Balance Diagram for the purposes of the DPA, with effect from the date of the DPA Counterparty's approval pursuant to Condition 5.5,

unless further adjusted pursuant to paragraphs 2.1 to 2.5 (*Performance Test Procedure*) of Part A (*Testing Requirements*).

## 6. LONGSTOP DATE CAPACITY NOTICE

6.1 The Generator shall, following the Start Date, and in any event no later than ten (10) Business Days after the Longstop Date, give a notice to the DPA Counterparty (a "**Longstop Date Capacity Notice**"). A Longstop Date Capacity Notice shall:

(A) specify:

- (i) the Net Dependable Capacity;
- (ii) the Test Achieved CO<sub>2</sub> Capture Rate;
- (iii) the Plant Net Efficiency; and
- (iv) the Start Up Times,

demonstrated by the Longstop Date Performance Tests and which have been Commissioned as at the date of such notice;

(B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to demonstrate that the Minimum Longstop Date Commissioning Requirements have been met; and

(C) include a description of the Facility (as prescribed in Annex 1 (*Conditions Precedent*), Part A (*Initial Conditions Precedent*) as at the date of such notice).

6.2 A Longstop Date Capacity Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Longstop Date Capacity Notice.

6.3 The Generator shall not give to the DPA Counterparty more than one (1) Longstop Date Capacity Notice.

6.4 The DPA Counterparty shall, no later than twenty (20) Business Days after receipt of the Longstop Date Capacity Notice, give a notice to the Generator (a "**Longstop Date Capacity Response Notice**"). A Longstop Date Capacity Response Notice shall specify that either:

(A) the DPA Counterparty agrees with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice and considers that the Generator has met the Minimum Longstop Date Commissioning Requirements; or

(B) the DPA Counterparty:

(i) has not been provided with sufficient Supporting Information to: (a) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; (b) determine whether the Generator has met the Minimum Longstop Date Commissioning Requirements; and/or (c) identify the assets comprising the Facility (as prescribed in Annex 1 (*Conditions Precedent*), Part A (*Initial Conditions Precedent*)); and/or

(ii) does not agree with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times which have been Commissioned as specified in the Longstop Date Capacity Notice (giving



reasons), and therefore considers that the Generator has not demonstrated the Minimum Longstop Date Commissioning Requirements,

as at the date of the Longstop Date Capacity Notice, in which case the Longstop Date Capacity Response Notice shall provide details of any additional or revised Supporting Information which the DPA Counterparty requires to: (a) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; (b) determine whether the Minimum Longstop Date Commissioning Requirements have been met; and/or (c) identify the assets comprising the Facility, in each case as at the date of the Longstop Date Capacity Notice (the "**Longstop Date Capacity Supporting Information**").

6.5 If the DPA Counterparty:

- (A) gives a Longstop Date Capacity Response Notice pursuant to Condition 6.4(A), the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times shall be the values so specified in the Longstop Date Capacity Notice with effect from the date of the Longstop Date Capacity Notice; or
- (B) gives a Longstop Date Capacity Response Notice pursuant to Condition 6.4(B):
  - (i) the Generator shall provide the Longstop Date Capacity Supporting Information, and where relevant if Condition 6.4(B)(ii) applies, a response to the reasons for disagreement with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as proposed by the DPA Counterparty as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of the Longstop Date Capacity Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Longstop Date Capacity Supporting Information, and where relevant if Condition 6.4(B)(ii) applies, a response to the reasons for disagreement with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as proposed by the DPA Counterparty, the DPA Counterparty shall, no later than twenty (20) Business Days after receipt of the Longstop Date Capacity Supporting Information, give a further Longstop Date Capacity Response Notice to the Generator (a "**Further Longstop Date Capacity Response Notice**"). A Further Longstop Date Capacity Response Notice shall specify whether the DPA Counterparty agrees with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times as specified in the Longstop Date Capacity Notice and whether the DPA Counterparty considers that the Generator has or has not demonstrated the Minimum Longstop Date Commissioning Requirements.

6.6 Nothing in this Condition 6 (*Longstop Date Capacity Notice*) shall require the DPA Counterparty to specify in any Longstop Date Capacity Response Notice that the DPA Counterparty accepts the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times notified to it by the Generator unless and until the DPA Counterparty is satisfied of the same.

6.7 Without prejudice to the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), if the Generator does not give the DPA Counterparty a Longstop Date Capacity Notice on or prior to the date which is ten (10) Business Days after the later of:

- (A) the Longstop Date; and
- (B) the date which is ten (10) Business Days after the DPA Counterparty has given notice to the Generator (on or at any time after the date falling ten (10) Business Days prior to the Longstop Date) reminding the Generator of the requirement to give a Longstop Date Capacity Notice,

then with effect from the Longstop Date:

- (i) the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Net Dependable Capacity that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to an OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the Net Dependable Capacity Operational Conditions Precedent specified in paragraph 2(A) of Part B (*Operational Conditions Precedent*) of Annex 1 (*Conditions Precedent*) has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary Net Dependable Capacity figure will apply under the DPA, that temporary Net Dependable Capacity; and
- (ii) the Test Achieved CO<sub>2</sub> Capture Rate shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Test Achieved CO<sub>2</sub> Capture Rate that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to a OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the OCP Required CO<sub>2</sub> Capture Rate has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary CO<sub>2</sub> capture rate will apply under the DPA, that temporary CO<sub>2</sub> capture rate.

6.8 Without prejudice to the DPA Counterparty's right to terminate the DPA pursuant to Condition 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), if:

- (A) the Generator does not provide the additional or revised Longstop Date Capacity Supporting Information which is sufficient for the DPA Counterparty to: (i) determine the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times; (ii) determine whether the Generator has demonstrated that the Minimum Longstop Date Commissioning Requirements have been met; and/or (iii) identify the assets comprising the Facility; or
- (B) the Generator fails to: (i) demonstrate the determination of the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and/or the Start Up Times; and/or (ii) fulfil the Minimum Longstop Date Commissioning Requirements to the satisfaction of the DPA Counterparty,

then within ten (10) Business Days after receipt of the Further Longstop Date Capacity Response Notice, or such longer period as is specified by the DPA Counterparty:

- (i) the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Net Dependable Capacity that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to an OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the Net Dependable Capacity Operational Conditions Precedent specified in paragraph 2(A) of Part B (*Operational Conditions Precedent*) of Annex 1 (*Conditions Precedent*) has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary Net Dependable Capacity figure will apply under the DPA, that temporary Net Dependable Capacity; and
- (ii) the Test Achieved CO<sub>2</sub> Capture Rate shall be deemed to be eighty per cent. (80%) of the lower of:
  - (a) the Test Achieved CO<sub>2</sub> Capture Rate that has been Commissioned as stated in the OCP Notice and agreed by the DPA Counterparty pursuant to a OCP Response Notice or a Further OCP Response Notice (as applicable); or
  - (b) if the OCP Required CO<sub>2</sub> Capture Rate has been waived pursuant to Condition 3.28 (*Waiver of Conditions Precedent and Default*), and the DPA Counterparty has agreed that a temporary CO<sub>2</sub> capture rate will apply under the DPA, that temporary CO<sub>2</sub> capture rate.

until such time as the DPA Counterparty agrees that the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times fulfil the Minimum Longstop Date Commissioning Requirements.

## 7. ADJUSTMENTS TO THE NET DEPENDABLE CAPACITY: ANNUAL NDC TEST

### ***Undertaking: Annual NDC Test***

- 7.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:
- (A) conduct an Annual NDC Test during the Annual NDC Test Window in each year during the Term, with the first such test to be carried out in the year after the year in which the Start Date occurs;
  - (B) no later than twenty (20) Business Days prior to the start of an Annual NDC Test Window, give a notice to the DPA Counterparty specifying the date within the Annual NDC Test Window that the Generator intends to carry out the relevant Annual NDC Test (an "**Initial Notified Annual NDC Test Date**");
  - (C) if the Generator proposes to change the date that it will carry out the relevant Annual NDC Test from the Initial Notified Annual NDC Test Date, the Generator shall give a notice to the DPA Counterparty (an "**Annual NDC Test Date Adjustment Notice**"). The Generator shall give such Annual NDC Test Date Adjustment Notice to the DPA Counterparty at least three (3) Business Days prior to carrying out the relevant Annual NDC Test and the Annual NDC Test Date Adjustment Notice shall:

- (i) specify the new date within the Annual NDC Test Window on which the Generator proposes to carry out the relevant Annual NDC Test (the "**Revised Notified Annual NDC Test Date**"); and
  - (ii) include such Supporting Information as the Generator considers to be relevant to evidence the reasons for the change from the Initial Notified Annual NDC Test Date to the Revised Notified Annual NDC Test Date;
- (D) conduct the relevant Annual NDC Test on the Notified Annual NDC Test Date; and
- (E) promptly following an Annual NDC Test and in any event no later than thirty (30) Business Days after the date of such Annual NDC Test (an "**Annual NDC Test Notice Deadline**"), give the DPA Counterparty a notice (an "**Annual NDC Test Notice**"):
  - (i) specifying:
    - (a) the net generating capacity demonstrated at the relevant Annual NDC Test; and
    - (b) the Net Dependable Capacity which reflects such demonstrated capacity which will apply for the purposes of the DPA (an "**Annual Adjusted NDC**"); and
  - (ii) including:
    - (a) the relevant Annual NDC Test Report;
    - (b) such Supporting Information as the Generator considers to be relevant to the Annual NDC Test; and
    - (c) a Directors' Certificate in relation to the information contained in, and enclosed with, the Annual NDC Test Notice,

(each of limbs (A) to (E) an "**Annual NDC Test Obligation**" and together the "**Annual NDC Test Obligations**").

***Suspension of Payments (Annual NDC Test Obligation breach)***

- 7.2 If the Generator is in breach of an Annual NDC Test Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such Annual NDC Test Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 7.3 If the Generator subsequently complies with the relevant Annual NDC Test Obligation(s), then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 7.2. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 7.3.

***DPA Counterparty Response Notification***

- 7.4 The DPA Counterparty shall, no later than thirty (30) Business Days after receipt of an Annual NDC Test Notice, give a notice to the Generator (an "**Annual NDC Test Response Notice**"). An Annual NDC Test Response Notice shall specify whether the DPA Counterparty:

- (A) agrees or does not agree with the Annual Adjusted NDC; or
- (B) has not been provided with sufficient Supporting Information to determine whether to agree with the Annual Adjusted NDC to which the Annual NDC Test Response Notice relates and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether to agree with the Annual Adjusted NDC (the "**Annual NDC Test Supporting Information**").

7.5 If the DPA Counterparty states in an Annual NDC Test Response Notice that the DPA Counterparty:

- (A) does not agree with the Annual Adjusted NDC specified in the Annual NDC Test Notice, then Condition 7.9 shall apply;
- (B) agrees with the Annual Adjusted NDC specified in the Annual NDC Test Notice, then the Annual Adjusted NDC shall constitute the Net Dependable Capacity with the effect from the Annual Adjusted NDC Implementation Date; or
- (C) requires the Generator to provide the Annual NDC Test Supporting Information to determine whether to agree with the Annual Adjusted NDC then:
  - (i) the Generator shall provide the Annual NDC Test Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Annual NDC Test Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Annual NDC Test Supporting Information, the DPA Counterparty shall, as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of such Annual NDC Test Supporting Information, give a further Annual NDC Test Response Notice to the Generator (a "**Further Annual NDC Test Response Notice**"). A Further Annual NDC Test Response Notice shall specify whether the DPA Counterparty agrees or does not agree with the Annual Adjusted NDC.

7.6 Nothing in this Condition 7 (*Adjustments to Net Dependable Capacity: Annual NDC Test*) shall require the DPA Counterparty to specify in any Annual NDC Test Response Notice or Further Annual NDC Test Response Notice that the DPA Counterparty agrees with any Annual Adjusted NDC unless and until the DPA Counterparty is satisfied of the same.

7.7 Any Annual NDC Test Notice shall be irrevocable and the Generator may give an Annual NDC Test Notice on only one (1) occasion in an Annual NDC Test Window.

**Revised NDC Effective Date**

7.8 If the Parties agree an Annual Adjusted NDC in accordance with Conditions 7.4 and 7.5, the Annual Adjusted NDC shall constitute the Net Dependable Capacity for the purposes of calculating the Availability Payment from 01 October in the year that the relevant Annual NDC Test (an "**Annual Adjusted NDC Implementation Date**").

7.9 Without prejudice to the DPA Counterparty's right to suspend payments pursuant to Condition 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), if the Generator fails to obtain the DPA Counterparty's agreement to the Annual Adjusted NDC on or prior to the Annual Adjusted NDC Implementation Date, then with effect from the Annual Adjusted NDC Implementation Date, the Net Dependable Capacity shall be deemed to be eighty per cent. (80%) of the Net Dependable Capacity immediately prior to the Annual Adjusted NDC Implementation Date until such time as the DPA Counterparty agrees pursuant to Condition

7.5(B), or it is determined that, the Annual Adjusted NDC constitutes the Net Dependable Capacity.

***Annual NDC Test Access Right***

- 7.10 With effect from the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility if the DPA Counterparty intends to witness an Annual NDC Test (the "**Annual NDC Test Access Right**").
- 7.11 If the DPA Counterparty intends to exercise the Annual NDC Test Access Right it shall give a notice to the Generator (an "**Annual NDC Test Access Notice**"). An Annual NDC Test Access Notice shall specify that the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) intends to exercise the Annual NDC Test Access Right.
- 7.12 On receipt of an Annual NDC Test Access Notice, the Generator shall permit the DPA Counterparty to exercise the Annual NDC Test Access Right on the date which the Generator notifies the DPA Counterparty the Generator intends to carry out the relevant Annual NDC Test in accordance with Condition 7.1(B) provided that it is no earlier than one (1) Business Day after receipt of the Annual NDC Test Access Notice.

***Suspension of Payments (Annual NDC Test Access Right breach)***

- 7.13 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Annual NDC Test Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 7.14 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Annual NDC Test Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 7.13. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 7.14.

**Part 5**  
**Payment Calculations**

8. **DEFINITIONS: PART 5**

In this Part 5 (*Payment Calculations*):

**"Achieved CO<sub>2</sub> Capture Rate" (ACR<sub>ph</sub>)** means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) for the Facility during each AP Settlement Unit calculated in accordance with the following formula:

$$ACR_{ph} = \frac{CO2_{exp} - CO2_{expCORE}}{CO2_{gen} - CO2_{genCORE}}$$

where:

$ACR_{ph}$	=	Achieved CO <sub>2</sub> Capture Rate (expressed as a percentage (%))
$CO2_{exp}$	=	AP Metered CO <sub>2</sub> Output (tCO <sub>2</sub> )
$CO2_{expCORE}$	=	AP Metered CO <sub>2</sub> Output with Capture Outage Relief Event (tCO <sub>2</sub> )
$CO2_{gen}$	=	AP Calculated CO <sub>2</sub> Generated (tCO <sub>2</sub> )
$CO2_{genCORE}$	=	AP Calculated CO <sub>2</sub> Generated with Capture Outage Relief Event (tCO <sub>2</sub> ),

**"AP Calculated CO<sub>2</sub> Generated"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) generated by the Facility during an AP Billing Period, based upon the AP Total Metered Fuel Consumption and AP Fuel Composition as applicable for each AP Settlement Unit during such period, converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines set out in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EUETS Phase 2" and with the calculation performed as per ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Calculated CO<sub>2</sub> Generated with Capture Outage Relief Event"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) generated by the Facility during periods of Capture Outage Relief Events in an AP Billing Period, based upon the AP Total Metered Fuel Consumption and AP Fuel Composition as applicable for each AP Settlement Unit during such period converted to an equivalent mass quantity of CO<sub>2</sub> based upon an oxidation factor of 1.0 as per the guidelines in "Joint Environmental Programme, Guidance for the Monitoring and Reporting of CO<sub>2</sub> Emissions from Power Stations, EUETS Phase 2" and with the calculation performed as per ASME-PTC-4.4 (or such equivalent standard as agreed between the Parties);

**"AP Fuel Composition"** means the composition of fuel used by the Facility in each AP Settlement Unit during an AP Billing Period, as measured at the Gas Supply Point(s) during such period;

**"AP Fuel Composition Recalculation Amount"** has the meaning given to that term in Condition 9.19 (*Recalculations of Estimated AP Fuel Composition*);

**"AP Metered CO<sub>2</sub> Output"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) entering the T&S Network during an AP Billing Period, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s) during such period;

**"AP Metered CO<sub>2</sub> Output with Capture Outage Relief Event"** means the mass quantity of CO<sub>2</sub> (*expressed in tCO<sub>2</sub>*) entering the T&S Network during periods of Capture Outage Relief Events in an AP Billing Period, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s) during such period;

**"AP Other Metered Data"** means the AP Total Metered Fuel Consumption, and the AP Metered CO<sub>2</sub> Output (as applicable);

**"AP Other Metered Data Cut-Off Time"** means, in relation to each AP Billing Period, 14:00 on the fifth (5th) Business Day following such AP Billing Period;

**"AP Other Metered Data Recalculation Amount"** has the meaning given to that term in Condition 9.17 (*Recalculations of Other Metered Data*);

**"AP Total Metered Fuel Consumption"** means the metered fuel consumption of the Facility in each AP Settlement Unit during an AP Billing Period, as measured by the Gas Supply Metering Equipment at the Gas Supply Point(s) during such period;

**"APR Indexation Adjustment"** has the meaning given to that term in Condition 9.12 (*APR Indexation Adjustment*);

**"APR Indexation Anniversary"** has the meaning given to that term in Condition 9.13 (*APR Indexation Anniversary*);

**"Availability of Capture"** ( $AC_i$ ) means the CO<sub>2</sub> capture rate (*expressed as a percentage (%)*) during each AP Settlement Unit, based on the Achieved CO<sub>2</sub> Capture Rate and Deemed CO<sub>2</sub> Capture Rate during such AP Settlement Unit, calculated in accordance with the following formula:

(A) where a Capture Outage Relief Event occurs during an AP Settlement Unit:

$$AC_i = DCR_i$$

where:

$$DCR_i = \text{Deemed CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

(B) where: (i) no Capture Outage Relief Event occurs during an AP Settlement Unit; and (ii) Metered Electricity Output is equal to or less than zero (0):

$$AC_i = DCR_i$$

where:

$$DCR_i = \text{Deemed CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

(C) where: (i) no Capture Outage Relief Event occurs during an AP Settlement Unit; and (ii) Metered Electricity Output is greater than zero (0):

$$AC_i = ACR_{ph}$$



where:

$$ACR_{ph} = \text{Achieved CO}_2 \text{ Capture Rate (expressed as a percentage (\%))}$$

**"Availability of Generation"** ( $AG_i$ ) means the net generating capacity of the Facility (expressed as a percentage (%)) during an AP Settlement Unit, calculated in accordance with the following formula for each such unit:

(A) where no Generation Outage Event occurs during an AP Settlement Unit:

$$AG_i = 1.00$$

(B) where a Generation Outage Relief Event occurs during an AP Settlement Unit:

$$AG_i = 1.00$$

(C) where a Generation Outage Event either starts, continues or ends during the relevant AP Settlement Unit:

$$AG_i = AG_{OE_n} = 1 - \frac{\sum \left( (NAC_{OE_n} - NAC_j) \times \Delta T_j \right)}{NAC_{OE_n} \times \Delta T_{Settlement Units}}$$

where:

$AE_{OE_n}$  = Availability of Generation during Generation Outage Event n (expressed as a percentage (%))

$NAC_{OE_n}$  = Net Available Capacity immediately preceding the Generation Outage Event (MW)

$NAC_j$  = Net Available Capacity during time segment j (MW)

$\Delta T_j$  = Duration of time segment j of the Generation Outage Event (hours)

$\Delta T_{Settlement Units}$  = Generation Outage Event (AP Settlement Unit) Duration (hours)

**"Availability Payment"** means the payment calculated in accordance with Condition 9.1 (Availability Payment Calculation);

**"Availability Payment Rate"** means the Initial Availability Payment Rate, as adjusted pursuant to Conditions 9.12 to 9.15 (APR Indexation);

**"Base Performance Assumptions"** means:

(A) the Reference Plant CO<sub>2</sub> Emissions; and

(B) the Reference Plant Gas Consumption;

**"Capture Outage Event"** means an event where the Capture Assets are unavailable, curtailed or derated;

**"Capture Outage Relief Event"** means a Capture Outage Event which occurs as a direct result of a T&S Outage Event excluding any T&S Outage Events that arise out of or in

connection with any act, omission, breach or default of the Generator or its Representatives (including any breach by the Generator or its Representatives of an Industry Document);

**"Carbon Price"** means the carbon price (expressed in £/tCO<sub>2</sub>) calculated in accordance with Condition 10.8 (*Carbon Price calculation*);

**"Carbon Market Reference Price"** has the meaning given to that term in Condition 10.9 (*Carbon Price calculation*);

**"Carbon Market Reference Price Review"** means a review of the effective carbon price in the UK carried out by the DPA Counterparty pursuant to Annex 7 (*Carbon Market Reference Price Review*);

**"Carbon Support Price"** means:

- (A) the carbon price support rate as published by HM Treasury (*expressed in £/kWh*) pursuant to the Finance Act 2000 Schedule 6 (Climate Change Levy), converted to an equivalent £/tCO<sub>2e</sub> figure, for the purposes of the DPA using the kg of CO<sub>2e</sub> per kWh (GCV) of Natural Gas conversion factor pursuant to the "UK Government GHG Conversion Factors for Company Reporting" as published from time to time by BEIS; or
- (B) an alternative carbon support price determined by the DPA Counterparty pursuant to Annex 4 (*Change Control Procedure*);

**"CMRP Fallback Settlement Unit"** has the meaning given to that term in Condition 10.9(B) (*Carbon Price calculation*);

**"CMRP Sources"** means the UKA Futures Indices to be used in the calculation of the Carbon Market Reference Price, being the Initial CMRP Index or such other replacement or supplementary UKA Futures Indices which are required to be so used as a result of the operation of the provisions of Annex 7 (*Carbon Market Reference Price Review*), and **"CMRP Source"** shall be construed accordingly;

**"CMRP Trading Day"** means any day on which trading on the market from which the CMRP Sources are derived ordinarily takes place;

**"CO<sub>2</sub> Capture Rate Test"** means a test carried out by the Generator pursuant to Condition 9.4 in accordance with paragraph 6 (*CO<sub>2</sub> Capture Rate Test*) of Annex 2 (*Testing Requirements*);

**"CO<sub>2</sub> Cost Differential" (CC<sub>i</sub>)** means the CO<sub>2</sub> cost differential in respect of the Facility (expressed in £/MWh) for a VP Settlement Unit (i), calculated in accordance with the following formula:

$$CC_i = CP_i \times (CO2E_{CCUS} - CO2E_{Ref})$$

where:

$CC_i$  = CO<sub>2</sub> Cost Differential in VP Settlement Unit (i) (£/MWh)

$CP_i$  = Carbon Price in VP Settlement Unit (i) (£/tCO<sub>2</sub>)

$CO2E_{CCUS}$  = Facility CO<sub>2</sub> Emissions in VP Settlement Unit (i) (tCO<sub>2</sub>/MWh)

$CO2E_{Ref}$  = Reference Plant CO<sub>2</sub> Emissions in VP Settlement Unit (i) (tCO<sub>2</sub>/MWh)

**"Deemed Calculation Period"** means:

- (A) in respect of Condition 9.3(C), the period comprising all AP Billing Periods prior to the relevant AP Settlement Unit, where the Achieved CO<sub>2</sub> Capture Rate has been used to determine the Availability of Capture for at least one (1) AP Settlement Unit within each AP Billing Period; and
- (B) in respect of Condition 9.3(D), the period comprising the most recent twelve (12) AP Billing Periods prior to the relevant AP Settlement Unit, where the Achieved CO<sub>2</sub> Capture Rate has been used to determine the Availability of Capture for at least one (1) AP Settlement Unit within each AP Billing Period;

**"Deemed CO<sub>2</sub> Capture Rate"** means the CO<sub>2</sub> capture rate (expressed as a percentage (%)) for an AP Settlement Unit, determined pursuant to Condition 9.2 (*Determination of Deemed CO<sub>2</sub> Capture Rate*);

**"Deemed Rate"** has the meaning given to that term in Condition 9.3 (*Determination of Deemed CO<sub>2</sub> Capture Rate*);

**"DPA Reserved T&S Capacity"** means the lower of: (i) the Generator's transport and storage CO<sub>2</sub> capacity reserved on the T&S Network in accordance with the [T&S Connection Agreement]; and (ii) the Maximum T&S Capacity Booking;

**"DPA Reserved T&S Size of Connection"** means the lower of: (i) the Generator's transport and storage CO<sub>2</sub> connection reserved on the T&S Network in accordance with the [T&S Construction Agreement]; and (ii) the Maximum T&S Size of Connection;

**"Estimated Fuel Billing Period"** has the meaning given to that term in Condition 9.18 (*Estimates of AP Fuel Composition*);

**"Estimated Fuel Settlement Unit"** has the meaning given to that term in Condition 9.18 (*Estimates of AP Fuel Composition*);

**"Estimated Metered Electricity Output"** has the meaning given to that term in Condition 11.3 (*Estimates of Loss Adjusted Metered Electricity Output*);

**"Estimated Output Settlement Unit"** has the meaning given to that term in Condition 11.2 (*Estimates of Loss Adjusted Metered Electricity Output*);

**"Estimated Output Billing Period"** has the meaning given to that term in Condition 11.2 (*Estimates of Loss Adjusted Metered Electricity Output*);

**"Estimated Output Billing Statement"** has the meaning given to that term in Condition 11.2 (*Estimates of Loss Adjusted Metered Electricity Output*);

**"Facility CO<sub>2</sub> Emissions"** has the meaning given to that term in the Agreement;

**"Facility Gas Consumption"** has the meaning given to that term in the Agreement;

**"Further Outage Relief Response Notice"** has the meaning given to that term in Condition 9.8(C)(ii) (*Outage Relief Events*);

**"Gas Cost Differential" (GC<sub>i</sub>)** means the gas cost differential in respect of the Facility (*expressed in £/MWh*) in VP Settlement Unit (i) calculated in accordance with the following formula:

$$GC_i = \frac{GP_i}{100} \times (GU_{CCUS} - GU_{Ref})$$

where:

$GC_i$  = Gas Cost Differential (£/MWh) in VP Settlement Unit (i)

$GP_i$  = Gas Price (pence/therm) in VP Settlement Unit (i)

$GU_{CCUS}$  = Facility Gas Consumption (therms/MWh)

$GU_{Ref}$  = Reference Plant Gas Consumption (therms/MWh)

**"Gas GB Day Ahead Contract"** means a contract relating to the delivery of a firm volume of Gas between 0:00 and 05:59 of a specified VP Settlement Unit entered into in the preceding GRP Trading Day, or the delivery of a firm volume of Gas between 6:00 and 23:59 of the same VP Settlement Unit entered into on the same GRP Trading Day as such VP Settlement Unit (whether physically or cash settled);

**"Gas GB Day Ahead Index"** means an index of Gas GB Day Ahead Prices or another source of Gas GB Day Ahead Prices and **"Gas GB Day Ahead Indices"** shall be construed accordingly;

**"Gas GB Day Ahead Price"** means the price (expressed in pence/therm) for a Gas GB Day Ahead Contract as reflected in a Gas GB Day Ahead Index or Gas GB Day Ahead Indices (as the context requires);

**"Gas GB Day Ahead Volume"** means the quantity of Gas (expressed in therms) traded for delivery in a VP Settlement Unit via the auction occurring on the previous GRP Trading Day (or, in respect of the last VP Settlement Unit of any day which is also the first (1st) VP Settlement Unit of a GRP Trading Day, occurring on such GRP Trading Day) and conducted by the operator of the relevant Gas Price Source;

**"Gas Price"** means the Gas price (expressed in pence/therm) calculated in accordance with Condition 10.3 (Gas Price) in VP Settlement Unit (i);

**"Gas Price Sources"** means the Gas GB Day Ahead Indices to be used in the calculation of the Gas Reference Price, being the Initial GRP Index or such other replacement or supplementary Gas GB Day Ahead Indices which are required to be so used as a result of the operation of the provisions of Annex 6 (Gas Reference Price Review), and **"Gas Price Source"** shall be construed accordingly;

**"Gas Reference Price"** has the meaning given to that term in Condition 10.4 (Gas Price calculation);

**"Generation Outage Event"** means an event where the Facility is unavailable, curtailed or derated by an amount greater than 1MW, regardless of whether or not the Generator is required to declare such event in accordance with the requirements of UK REMIT;

**"Generation Outage Event (AP Settlement Unit) Duration"** means the total duration of all AP Settlement Units impacted by a Generation Outage Event (expressed in hours);

**"Generation Outage Relief Event"** means a Generation Outage Event which occurs as a direct result of the Facility's connection to:

- (A) the Electricity Distribution System and/or Electricity Transmission System being de-energised, disconnected or disrupted; or
- (B) the Gas Distribution System being disconnected or disrupted,

except to the extent that:

- (i) such de-energisation, disconnection and/or disruption arises out of or in connection with any act, omission, breach or default of the Generator or its Representatives (including any breach by the Generator or its Representatives of an Industry Document, or where the Generator has or its Representatives have entered into an interruptible gas supply agreement); and/or
- (ii) prior to such event occurring, the Generator has declared to the DPA Counterparty that the Facility is unavailable due to a Generation Outage Event which is not related to the events set out in (A) or (B) above and such unavailability is continuing;

**"GRP Fallback Settlement Unit"** has the meaning given to that term in Condition 10.4(B) (*Gas Price calculation*);

**"GRP Trading Day"** means any day on which trading on the market from which the Gas Prices Sources are derived ordinarily takes place;

**"ICE Futures Europe Index"** means the UKA Futures Index reported by ICE Futures Europe;

**"Incomplete AP Billing Period"** has the meaning given to that term in Condition 9.16 (*AP Other Metered Data Fallback*);

**"Incomplete AP Settlement Unit"** has the meaning given to that term in Condition 9.16 (*AP Other Metered Data Fallback*);

**"Initial CMRP Index"** means the ICE Futures Europe Index;

**"Initial GRP Index"** means the NBP UK Index;

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

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

**"Maximum Metered Day Electricity Output"** means the product (*expressed in MWh*) of the Net Dependable Capacity (*expressed in MW*) and the total duration (*expressed in hours*) of all AP Settlement Units (excluding an AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending or continuing) in which the BM Unit Metered Volume for the Facility, as measured by the Electricity Metering Equipment, is greater than zero (0), during each VP Billing Period;

**"Maximum Metered Sub-Period Electricity Output"** means for each sub-period (i) between 0:00 and 05:59 and (ii) between 06:00 and 23:59, falling within each VP Billing Period, the product of the Net Dependable Capacity and the total duration (*expressed in hours*) of all AP Settlement Units (excluding any AP Settlement Unit in which there was a Full Capture Outage

Event and/or a Full T&S Outage Event starting, ending and/or continuing) in which the BM Unit Metered Volume for the Facility, as measured by the Electricity Metering Equipment, is greater than zero (0) for such sub-period;

**"Maximum T&S Capacity"** has the meaning given to that term in the Agreement;

**"Maximum T&S Size of Connection"** has the meaning given to that term in the Agreement;

**"Maximum VP Metered CO<sub>2</sub> Output"** means the product (*expressed in tCO<sub>2</sub>*) of the Maximum CO<sub>2</sub> Flow Rate Estimate (*expressed in tCO<sub>2</sub>/h*) and the total duration (*expressed in hours*) of all half hour-long periods in which the mass quantity of CO<sub>2</sub> entering the T&S Network from the Facility, as measured by the CO<sub>2</sub> Metering Equipment at the CO<sub>2</sub> Delivery Point(s), is greater than zero (0), during each VP Billing Period;

**"Metered Day Electricity Output"** means, in a VP Billing Period, the Loss Adjusted Metered Electricity Output (*expressed in MWh*) as reported by a BSC Company or BSC Agent to the DPA Counterparty for such period, adjusted to disregard all Loss Adjusted Metered Electricity Output in any AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending or continuing. If the actual Metered Day Electricity Output is greater than an amount equal to the Maximum Metered Day Electricity Output, the Metered Day Electricity Output for such VP Billing Period shall be deemed to be equal to the Maximum Metered Day Electricity Output;

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

**"Metered Electricity Output Cut-Off Time"** means, in relation to each Billing Period, 14:00 on the sixth (6th) Business Day following such Billing Period;

**"Metered Electricity Output Recalculation Amount"** has the meaning given to that term in Condition 11.4(B)(ii) (*Recalculations of Estimated Metered Electricity Output*);

**"Metered Sub-Period Electricity Output"** means, in a VP Billing Period, the Loss Adjusted Metered Electricity Output (*expressed in MWh*) as reported by a BSC Company or BSC Agent to the DPA Counterparty for the sub-periods; (i) between 0:00 and 05:59; and (ii) between 06:00 and 23:59, adjusted to disregard all Loss Adjusted Metered Electricity Output in any AP Settlement Unit in which there was a Full Capture Outage Event and/or a Full T&S Outage Event starting, ending and/or continuing. If the actual Metered Sub-Period Electricity Output for either sub-period (i) or (ii) is greater than an amount equal to the Maximum Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii), the Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii) be deemed to be equal to the Maximum Metered Sub-Period Electricity Output for the relevant sub-period (i) or (ii);

**"NBP UK Index"** means the National Balancing Point (NBP) Virtual Trading Point as published on ICE Futures Europe;

**"Net Available Capacity"** means, subject to Condition 9.5 (*Outage Relief Events*), the declared available generating capacity (*expressed in MW*) of the Facility by the Generator in relation to any Generation Outage Event during an AP Billing Period;

**"Net Dependable Capacity"** means the net generating capacity (*expressed in MW*) of the Facility on a continuous and reliable basis available at the Electricity Delivery Point(s), at Reference Site Conditions. For the purposes of the Availability Payment, the Net Dependable Capacity shall be equal to the lower of: (A) the net generating capacity demonstrated at the Test (excluding the CO<sub>2</sub> Capture Rate Test) that has most recently been carried out by the Generator in accordance with this DPA; and (B) the Net Dependable Capacity Estimate;

**"Other Extra Variable Costs"** means the Initial Other Extra Variable Costs attributable to the Facility (expressed in £/MWh), as adjusted pursuant to Conditions 10.15 to 10.18 (*Other Extra Variable Costs indexation*);

**"Outage Relief Event"** means a Generation Outage Relief Event or a Capture Outage Relief Event;

**"Outage Relief Notice"** has the meaning given to that term in Condition 9.5 (*Outage Relief Events*);

**"Outage Relief Response Notice"** has the meaning given to that term in Condition 9.7 (*Outage Relief Events*);

**"Outage Relief Supporting Information"** has the meaning given to that term in Condition 9.7(B) (*Outage Relief Events*);

**"Reference Plant CO<sub>2</sub> Emissions"** means the Initial Reference Plant CO<sub>2</sub> Emissions, as may be adjusted by the DPA Counterparty pursuant to Condition 10.19 (*Base Performance Assumptions Adjustments*);

**"Reference Plant Gas Consumption"** means the Initial Reference Plant Gas Consumption, as may be adjusted by the DPA Counterparty pursuant to Condition 10.19 (*Base Performance Assumptions Adjustments*);

**"Reference Site Conditions"** has the meaning given to that term in paragraph 1 of Annex 2 (*Testing Requirements*);

**"Relief Recalculation Amount"** has the meaning given to that term in Condition 9.9(D) (*Outage Relief Events*);

**"Relief Event Settlement Unit"** has the meaning given to that term in Condition 9.5(A) (*Outage Relief Events*);

**"Relief Event AP Billing Period"** has the meaning given to that term in Condition 9.5(A) (*Outage Relief Events*);

**"Required AP Other Metered Data"** has the meaning given to that term in Condition 9.16 (*AP Other Metered Data Fallback*);

**"T&S Capacity Fee"** means the portion of any transport and storage capacity fee in respect of the DPA Reserved T&S Capacity (expressed in £) payable in respect of an AP Billing Period calculated in accordance with the following formula:

$$TSCF = DRC \times TSCF_{CR}$$

where:

$TSCF$  = T&S Capacity Fee (£)

$DRC$  = DPA Reserved T&S Capacity ([●])<sup>22</sup>

$TSCF_{CR}$  = T&S Capacity Fee Charging Rate ([●])<sup>23</sup>

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<sup>22</sup> Note to Reader: The unit of the size of connection is subject to further consideration by BEIS.

<sup>23</sup> Note to Reader: The unit of the size of connection is subject to further consideration by BEIS.

**"T&S Capacity Fee Charging Rate"** means the transport and storage capacity fee charging rate (expressed in [●]) applicable to an AP Billing Period as set out in the T&S Connection Agreement provided by the Generator to the DPA Counterparty from time to time;

**"T&S Residual Fee"** means the portion of any transport and storage residual charge(s) relevant to the DPA Reserved Size of Connection (*expressed in £*) payable in respect of an AP Billing Period calculated in accordance with the following formula:

$$TSCF = DRCoC \times TSCF_{CR}$$

where:

$TSRF$  = T&S Residual Fee (£)

$DRSoC$  = DPA Reserved T&S Size of Connection ([●])<sup>24</sup>

$TSRF_{CR}$  = T&S Residual Fee Charging Rate ([●])<sup>25</sup>

**"T&S Residual Fee Charging Rate"** means the transport and storage residual fee charging rate (expressed in [●]) applicable to an AP Billing Period as set out in the T&S Connection Agreement provided by the Generator to the DPA Counterparty from time to time;

**"T&S Volumetric Fee Charging Rate"** means any volumetric transport and storage fee charging rate for captured CO<sub>2</sub> (expressed in £/tCO<sub>2</sub>) payable in respect of a VP Billing Period in accordance with the T&S Connection Agreement;

**"T&S Volumetric Payment Charging Rate"** means the volumetric transport and storage payment rate in respect of the Facility (expressed in £/MWh) calculated in accordance with the following formula:

$$TSVP_{CR} = TSVF_{CR} \times \frac{CO2_{exp}}{MWh}$$

where:

$TSVP_{CR}$  = T&S Volumetric Payment Charging Rate (£/MWh)

$TSVF_{CR}$  = T&S Volumetric Fee Charging Rate (£/tCO<sub>2</sub>)

$CO2_{exp}$  = VP Metered CO<sub>2</sub> Output (tCO<sub>2</sub>)

$MWh$  = Metered Day Electricity Output (MWh)

**"UK Allowance"** means an allowance created under the UK Emissions Trading Scheme;

**"UKA Futures December Contract"** means a December contract with the soonest contract delivery date relating to the transfer of a fixed number of UK Allowances for the relevant year (in which the Carbon Market Reference Price is calculated), between two or more accounts established under the UK Emissions Trading Registry;

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<sup>24</sup> Note to Reader: The unit of the size of connection is subject to further consideration by BEIS.

<sup>25</sup> Note to Reader: The unit of the size of connection is subject to further consideration by BEIS.



**"UKA Futures December Contract Trading Price"** means the price (expressed in £/tCO<sub>2e</sub>) for a UKA Futures December Contract as reflected in a UKA Futures Index or UKA Futures Indices (as the context requires);

**"UKA Futures December Contract Trading Volume"** means the quantity of UK Allowances (expressed in tCO<sub>2</sub>) traded for delivery in a VP Settlement Unit via the auction occurring on the previous CMRP Trading Day (or, in respect of the last VP Settlement Unit of any day which is also the first (1st) VP Settlement Unit of a CMRP Trading Day, occurring on such CMRP Trading Day) and conducted by the operator of the relevant CMRP Source;

**"UKA Futures Index"** means an index of UKA Futures December Contract Trading Prices or another source of UKA Futures December Contract Trading Prices and **"UKA Futures Indices"** shall be construed accordingly;

**"UK Emissions Trading Registry"** means the registry established pursuant to the UK Emissions Trading Scheme;

**"UK Emissions Trading Scheme"** means the emissions trading scheme in the UK established pursuant to The Greenhouse Gas Emissions Trading Scheme Order 2020;

**"Variable Payment"** means the payment calculated in accordance with Condition 10.1 (*Variable Payment Calculation*);

**"Variable Payment Rate"** means the payment rate (expressed in £/MWh) calculated in accordance with Condition 10.1 (*Variable Payment*); and

**"VP Metered CO<sub>2</sub> Output"** means the mass quantity of CO<sub>2</sub> (expressed in tCO<sub>2</sub>) entering the T&S Network from the Facility at the CO<sub>2</sub> Delivery Point(s), as measured by the CO<sub>2</sub> Metering Equipment, during a VP Billing Period. If the actual VP Metered CO<sub>2</sub> Output is greater than an amount equal to the Maximum VP Metered CO<sub>2</sub> Output, the VP Metered CO<sub>2</sub> Output for such VP Billing Period shall be deemed to be equal to the Maximum VP Metered CO<sub>2</sub> Output.

## 9. AVAILABILITY PAYMENT CALCULATION

9.1 The **"Availability Payment"** in respect of each AP Billing Period shall be calculated in accordance with the following formula:

$$AP = \sum (AG_i \times AC_i \times NDC \times APR_i) + TSCF + TSRF$$

where:

$AP$	=	Availability Payment in AP Billing Period (£)
$AG_i$	=	Availability of Generation ( <i>expressed as a percentage (%)</i> ) in AP Settlement Unit (i)
$AC_i$	=	Availability of Capture ( <i>expressed as a percentage (%)</i> ) in AP Settlement Unit (i)
$NDC$	=	Net Dependable Capacity (MW)
$APR_i$	=	Availability Payment Rate in AP Settlement Unit (i) (£/MW)
$TSCF$	=	T&S Capacity Fee (£)

*TSRF* = T&S Residual Fee (£)

### **Determination of Deemed CO<sub>2</sub> Capture Rate**

- 9.2 Where the Deemed CO<sub>2</sub> Capture Rate is applicable to an AP Settlement Unit pursuant to the definition of "**Availability of Capture**" (as such term is defined in Condition 8 (*Definitions: Part 5*)), the Deemed CO<sub>2</sub> Capture Rate shall be equal to the lower of the following:
- (A) the Declared CO<sub>2</sub> Capture Rate provided by the Generator to the DPA Counterparty pursuant to Condition 23.1 (*Declaration Obligation*) in compliance with the Generators Declaration Obligation; and
  - (B) the relevant Deemed Rate as determined in accordance with Condition 9.3.
- 9.3 For the purposes of Condition 9.2(B), the "**Deemed Rate**" shall be equal to:
- (A) where the relevant AP Settlement Unit falls within the first (1st) AP Billing Period of the Term:
    - (i) subject to Condition 9.3(A)(i), the Test Achieved CO<sub>2</sub> Capture Rate demonstrated at the OCP Performance Tests or the Longstop Date Performance Tests;
    - (ii) if Condition 6.7 or Condition 6.8 applies, the Test Achieved CO<sub>2</sub> Capture Rate which is deemed to apply pursuant to Condition 6.7(B)(ii) or Condition 6.8(B)(ii); or
  - (B) where the relevant AP Settlement Unit falls within a T&S Commissioning Delay Period:
    - (i) subject to Conditions (ii) and 9.3(B)(iii), the Test Achieved CO<sub>2</sub> Capture Rate demonstrated at the OCP Performance Tests or the Longstop Date Performance Tests;
    - (ii) if Condition 6.7 or Condition 6.8 applies, the Test Achieved CO<sub>2</sub> Capture Rate which is deemed to apply pursuant to Condition 6.7(B)(ii) or Condition 6.8(B)(ii); or
    - (iii) if Condition 9.4(B) applies, the Achieved CO<sub>2</sub> Capture Rate demonstrated by the CO<sub>2</sub> Capture Rate Test(s) carried out pursuant to Condition 9.4(B);
  - (C) where there are less than twelve (12) AP Billing Periods where the Achieved CO<sub>2</sub> Capture Rate has been used to determine the Availability of Capture prior to the relevant AP Settlement Unit, the Average Achieved CO<sub>2</sub> Capture Rate determined in accordance with limb (A) of the definition of "**Deemed Calculation Period**"; or
  - (D) where there twelve (12) or more AP Billing Periods where the Achieved CO<sub>2</sub> Capture Rate has been used to determine the Availability of Capture prior to the relevant AP Settlement Unit, the Average Achieved CO<sub>2</sub> Capture Rate determined in accordance with limb (B) of the definition of "**Deemed Calculation Period**".
- 9.4 The DPA Counterparty may request a CO<sub>2</sub> Capture Rate Test:
- (A) at any time to verify a Declared CO<sub>2</sub> Capture Rate; or
  - (B) if a T&S Commissioning Delay Period exceeds twelve (12) AP Billing Periods, on one (1) occasion in each twelve (12) AP Billing Period(s) until the end of the T&S

Commissioning Delay Period in order to verify a Deemed Rate as referred to in Condition 9.3.

**Outage Relief Events**

- 9.5 The Generator shall give the DPA Counterparty a notice promptly following the occurrence of an Outage Relief Event (an "**Outage Relief Notice**"). An Outage Relief Notice shall:
- (A) specify the AP Settlement Unit(s) in which the Outage Relief Event occurred (a "**Relief Event Settlement Unit**") within the relevant AP Billing Period(s) (a "**Relief Event AP Billing Period**");
  - (B) describe the applicable Outage Relief Event (including the impact, if any, of the Outage Relief Event on the Net Dependable Capacity, Availability Generation and/or Achieved CO<sub>2</sub> Capture Rate);
  - (C) include evidence relating to the applicable Outage Relief Event from (as applicable):
    - (i) in relation to a Generation Outage Relief Event:
      - (a) the Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor; and
      - (b) the Gas Licensed Transporter; or
    - (ii) in relation to a Capture Outage Relief Event, the T&S Operator;
  - (D) include such Supporting Information as the Generator considers to be relevant to the Outage Relief Event; and
  - (E) include details of the steps that the Generator has taken and/or proposes to take to mitigate the effect of the relevant Outage Relief Event.
- 9.6 Each Outage Relief Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Outage Relief Notice.
- 9.7 The DPA Counterparty shall, no later than ten (10) Business Days after receipt of an Outage Relief Notice, give a notice to the Generator (an "**Outage Relief Response Notice**"). An Outage Relief Response Notice shall specify whether the DPA Counterparty considers that:
- (A) the Generator has or has not provided sufficient evidence in relation to the Outage Relief Event to which the Outage Relief Notice relates; or
  - (B) it has not been provided with sufficient Supporting Information to determine whether the Generator has provided sufficient evidence in relation to the Outage Relief Event to which the Outage Relief Response Notice relates and, if so, details of the additional Supporting Information which the DPA Counterparty requires to determine whether the Generator has provided sufficient evidence in relation to the Outage Relief Event (the "**Outage Relief Supporting Information**").
- 9.8 If the DPA Counterparty states in the Outage Relief Response Notice that:
- (A) the Generator has provided sufficient evidence in relation to the Outage Relief Event, then the Outage Relief Event will be deemed to have occurred for the purposes of the DPA;

- (B) the Generator has not provided sufficient evidence in relation to the Outage Relief Event, then the Outage Relief Event will be deemed not to have occurred for the purposes of the DPA unless and until a resolution or determination to the contrary is made pursuant to the Expert Determination Procedure; or
- (C) the Generator has not provided the DPA Counterparty with sufficient Supporting Information to determine whether the Generator has provided sufficient evidence in relation to the Outage Relief Event then:
  - (i) the Generator shall provide the Outage Relief Supporting Information as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Outage Relief Response Notice, or such longer period as is specified by the DPA Counterparty; and
  - (ii) upon receipt of the Outage Relief Supporting Information, the DPA Counterparty shall, as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of such Outage Relief Supporting Information, give a further Outage Relief Response Notice to the Generator (a "**Further Outage Relief Response Notice**"). A Further Outage Relief Response Notice shall specify whether the DPA Counterparty considers that the Generator has or has not provided sufficient evidence in relation to the Outage Relief Event.

9.9 If an Outage Relief Event is deemed to have occurred in accordance with Condition 9.8(A) or 9.8(C)(ii) and such event is:

- (A) a Generation Outage Relief Event, the Availability of Generation for each applicable Relief Event Settlement Unit shall be equal to one (1); and/or
- (B) a Capture Outage Relief Event, the Availability of Capture for each applicable Relief Event Settlement Unit shall be equal to the Deemed CO<sub>2</sub> Capture Rate (as determined pursuant to Conditions 9.2 and 9.3),

and for the purposes of calculating the Availability Payment in accordance with Condition 9.1 (*Availability Payment Calculation*):

- (C) the DPA Counterparty shall recalculate the Availability Payment for such Relief Event Settlement Unit; and
- (D) any adjustment to the Availability Payment for the Relief Event AP Billing Period ("**Relief Recalculation Amount**") shall be included as such in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

***T&S Capacity Fee and T&S Residual Fee***

9.10 If there is a T&S Commissioning Delay Event then:

- (A) the T&S Capacity Fee and T&S Residual Fee components of the Availability Payment shall not be payable by the DPA Counterparty to the Generator, until such time as the T&S Network is so available; and
- (B) the T&S Capacity Fee and the T&S Residual Fee shall be deemed to be zero (0) during such period for the purposes of calculating the Availability Payment in accordance with Condition 9.1 (*Availability Payment Calculation*).

***Availability Payment Rate***

- 9.11 The Availability Payment Rate shall be adjusted only in accordance with the express provisions of the DPA.

**APR Indexation Adjustment**

- 9.12 The DPA Counterparty shall calculate an indexation adjustment to the Availability Payment Rate in each calendar year of the Term (each such adjustment, an "**APR Indexation Adjustment**")

- 9.13 Each APR Indexation Adjustment shall:

- (A) become effective on the first (1st) day of the Summer Season in the calendar year in which the APR Indexation Adjustment is calculated (each such date, an "**APR Indexation Anniversary**"); and
- (B) use the CPI for January of the relevant calendar year save where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, in which case the Reference CPI shall be used.

- 9.14 The Availability Payment Rate which is to apply with effect from each APR Indexation Anniversary as a result of the APR Indexation Adjustment shall be calculated by the DPA Counterparty in accordance with the following formula:

$$APR = APR_{Base} \times \Pi_i$$

where:

$APR$  = Availability Payment Rate

$APR_{Base}$  = Initial Availability Payment Rate

$\Pi_i$  = the Inflation Factor applicable to AP Settlement Unit (i)

- 9.15 The DPA Counterparty shall notify the Generator of the revised Availability Payment Rate no later than five (5) Business Days after each APR Indexation Anniversary.

**AP Other Metered Data Fallback**

- 9.16 If the DPA Counterparty has not received from [*the relevant metering bodies*]<sup>26</sup> one (1) or more of the AP Other Metered Data (such missing data being the "**Required AP Other Metered Data**") for any AP Settlement Unit (an "**Incomplete AP Settlement Unit**") which falls within an AP Billing Period (an "**Incomplete AP Billing Period**") on or prior to the AP Other Metered Data Cut-Off Time, the Incomplete AP Settlement Unit will not be taken into account by the DPA Counterparty for the purpose of calculating the Achieved CO<sub>2</sub> Capture Rate in such Incomplete AP Billing Period.

**Recalculations of Other Metered Data**

- 9.17 If *the relevant metering body*<sup>27</sup> subsequently notifies the DPA Counterparty of the Required AP Other Metered Data relating to an Incomplete AP Settlement Unit the DPA Counterparty

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<sup>26</sup> Note to Reader: The relevant company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

<sup>27</sup> Note to Reader: The relevant company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

shall recalculate the Availability Payment for the affected AP Billing Period(s) using such AP Other Metered Data and any adjustment to the Availability Payment for the affected AP Billing Period(s) ("**AP Other Metered Data Recalculation Amount**") shall be included in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

### **Estimates of AP Fuel Composition**

- 9.18 If the DPA Counterparty has not received from [*the relevant metering bodies*]<sup>28</sup> all required data relating to the AP Fuel Composition for any AP Settlement Unit (an "**Estimated Fuel Settlement Unit**") within an AP Billing Period (an "**Estimated Fuel Billing Period**") on or prior to the AP Other Metered Data Cut-Off Time, the AP Fuel Composition for such Estimated Fuel Settlement Unit as set out in the Availability Payment Billing Statement relating to such Estimated Fuel Billing Period, shall be deemed to be equal to the AP Fuel Composition in the most recent AP Settlement Unit in respect of which the DPA Counterparty has received all required data relating to the AP Fuel Composition from [*the relevant metering bodies*].

### **Recalculations of Estimated AP Fuel Composition**

- 9.19 If *the relevant metering body*<sup>29</sup> subsequently provides all required data relating to the AP Fuel Composition for an Estimated Fuel Settlement Unit the DPA Counterparty shall recalculate the Availability Payment for the affected AP Billing Period(s) using such Estimated Fuel Settlement Unit and any adjustment to the Availability Payment for the affected AP Billing Period(s) ("**AP Fuel Composition Recalculation Amount**") shall be included in the Availability Payment Billing Statement which is next issued by the DPA Counterparty.

## **10. VARIABLE PAYMENT CALCULATION**

- 10.1 The "**Variable Payment**" in respect of each VP Billing Period shall be calculated in accordance with the following formula:

$$VP = VPR \times MWh$$

$$VPR = GC + CC + OC + TSVP_{CR}$$

where:

<i>VP</i>	=	Variable Payment in VP Billing Period (£)
<i>VPR</i>	=	Variable Payment Rate (£/MWh)
<i>MWh</i>	=	Metered Day Electricity Output (MWh)
<i>GC</i>	=	Gas Cost Differential (£/MWh)
<i>CC</i>	=	CO <sub>2</sub> Cost Differential (£/MWh)
<i>OC</i>	=	Other Extra Variable Costs (£/MWh)
<i>TSVP<sub>CR</sub></i>	=	T&S Volumetric Payment Charging Rate (£/MWh)

<sup>28</sup> Note to Reader: The company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

<sup>29</sup> Note to Reader: The company responsible for providing the relevant CO<sub>2</sub> and gas data will be determined in due course.

**Variable Payment**

10.2 If, in respect of a VP Settlement Unit, the Variable Payment:

- (A) is greater than zero (0), the DPA Counterparty shall pay the Generator such Variable Payment for the relevant VP Settlement Unit; or
- (B) is less than or equal to zero (0), no Variable Payment will be due by either Party for the relevant VP Settlement Unit.

**Gas Price calculation**

10.3 The DPA Counterparty shall calculate the Gas Price in respect of each VP Settlement Unit. The "**Gas Price**" shall be expressed in pence/therm and shall, in respect of each VP Settlement Unit, be calculated in accordance with the following formula:

$$\text{Gas Price} = \frac{((GRP)_{k1} \times MWh_{k1}) + ((GRP)_{k2} \times MWh_{k2})}{Total_{MWh}}$$

where:

- Gas Price* = Gas Price in respect of VP Settlement Unit (i) (*pence/therm*)
- GRP<sub>k1</sub>* = The applicable Gas Reference Price between 0:00 and 05:59 of VP Settlement Unit (i) (*pence/therm*)
- MWh<sub>k1</sub>* = The Metered Sub-Period Electricity Output between 0:00 and 05:59 of VP Settlement Unit (i) (*MWh*)
- GRP<sub>k2</sub>* = The applicable Gas Reference Price between 6:00 and 23:59 of VP Settlement Unit (i) (*pence/therm*)
- MWh<sub>k2</sub>* = The Metered Sub-Period Electricity Output between 6:00 and 23:59 of VP Settlement Unit (i) (*MWh*)
- Total<sub>MWh</sub>* = Metered Day Electricity Output in VP Settlement Unit (i) (*MWh*)

10.4 The "**Gas Reference Price**" shall be expressed in pence/therm and shall, in respect of each VP Settlement Unit, be calculated as follows:

- (A) The Gas Reference Price in relation to VP Settlement Unit (t) shall be calculated in accordance with the following formula:

$$\text{Gas Reference Price} = \left( \frac{\sum_{t=1}^e (GDAP_t \times GDAV_t)}{\sum_{t=1}^e (GDAV_t)} \right)$$

where:

- e* = is the number of Gas Price Sources
- GDAP<sub>t</sub>* = is the Gas GB Day Ahead Price in VP Settlement Unit (i) as determined in the auction on the previous GRP Trading Day conducted by the operator of each Gas Price Source (t) (*pence/therm*)

$GDAV_t$  = is the Gas GB Day Ahead Volume traded on Gas Price Sources (t) in respect of VP Settlement Unit (i) (*therms*)

(B) If no Gas Reference Price is capable of being calculated pursuant to Condition 10.4(A) (whether due to the unavailability of all Gas Price Sources pursuant to Condition 10.5 or otherwise) in respect of any VP Settlement Unit (an "**GRP Fallback Settlement Unit**"), the Gas Reference Price for such GRP Fallback Settlement Unit shall be the Gas Reference Price as calculated in accordance with Condition 10.4(A) for the VP Settlement Unit corresponding to the nearest prior corresponding day to the GRP Fallback Settlement Unit for which a Gas Reference Price has been calculated in accordance with Condition 10.4(A).

10.5 If any Gas Price Source is not available to the DPA Counterparty on commercially reasonable terms in relation to any VP Settlement Unit, such Gas Price Source shall be excluded from the calculation of the Gas Reference Price in relation to such VP Settlement Unit.

10.6 The DPA Counterparty shall as soon as reasonably practicable prior to:

(A) excluding any Gas Price Source from the calculation of the Gas Reference Price in relation to any VP Settlement Unit pursuant to Condition 10.5, notify the Generator of such exclusion; and

(B) including any Gas Price Source in the calculation of the Gas Reference Price which was previously excluded pursuant to Condition 10.5, notify the Generator of such inclusion.

10.7 Condition 8 (*Definitions: Part 5*) and Conditions 10.3 and 10.4 (*Gas Price calculation*) may be amended, supplemented or replaced in accordance with Annex 6 (*Gas Reference Price Review*).

### **Carbon Price calculation**

10.8 The DPA Counterparty shall calculate the Carbon Price respect of each VP Settlement Unit. The "**Carbon Price**" shall be expressed in £/tCO<sub>2</sub> and shall, in respect of each VP Settlement Unit, be equal to the sum of the prevailing: (i) Carbon Support Price; and (ii) Carbon Market Reference Price, for such VP Settlement Unit.

10.9 The "**Carbon Market Reference Price**" shall be expressed in £/tCO<sub>2e</sub> and shall, in respect of each VP Settlement Unit, be calculated as follows:

(A) The Carbon Market Reference Price in relation to VP Settlement Unit (i) shall be calculated in accordance with the following formula:

$$\text{Carbon Market Reference Price} = \left( \frac{\sum_{t=1}^e (UKCTP_t \times UKCTV_t)}{\sum_{t=1}^e (UKCTV_t)} \right)$$

where:

$e$  = is the number of CMRP Sources

$UKCTP_t$  = is the UKA Futures December Contract Trading Price in VP Settlement Unit (i) as determined in the auction on the previous CMRP Trading Day conducted by the operator of each CMRP Source (t) (£/tCO<sub>2e</sub>)



$UKCTV_t$  = is the UKA Futures December Contract Trading Volume traded on CMRP Sources (t) in respect of VP Settlement Unit (i) ( $tCO_2e$ )

(B) If no Carbon Market Reference Price is capable of being calculated pursuant to Condition 10.9(A) (whether due to the unavailability of all CMRP Sources pursuant to Condition 10.10 or otherwise) in respect of any VP Settlement Unit (a "**CMRP Fallback Settlement Unit**"), the Carbon Market Reference Price for such CMRP Fallback Settlement Unit shall be the Carbon Market Reference Price as calculated in accordance with Condition 10.9(A) for the VP Settlement Unit corresponding to the nearest prior corresponding day to the CMRP Fallback Settlement Unit for which a Carbon Market Reference Price has been calculated in accordance with Condition 10.9(A).

10.10 If any CMRP Source is not available to the DPA Counterparty on commercially reasonable terms in relation to any VP Settlement Unit, such CMRP Source shall be excluded from the calculation of the Carbon Market Reference Price in relation to such VP Settlement Unit.

10.11 The DPA Counterparty shall as soon as reasonably practicable prior to:

(A) excluding any CMRP Source from the calculation of the Carbon Market Reference Price in relation to any VP Settlement Unit pursuant to Condition 10.10, notify the Generator of such exclusion; and

(B) including any CMRP Source in the calculation of the Carbon Market Reference Price in relation to any VP Settlement Unit which was previously excluded pursuant to Condition 10.10, notify the Generator of such inclusion.

10.12 Condition 8 (*Definitions: Part 5*) and Conditions 10.8 to 10.12 (*Carbon Price calculation*) may be amended, supplemented or replaced in accordance with Annex 7 (*Carbon Market Reference Price Review*).

10.13 The DPA Counterparty may amend, supplement or replace the Carbon Support Price in accordance with Annex 4 (*Change Control Procedure*).

#### **Other Extra Variable Costs**

10.14 The Other Extra Variable Costs shall be adjusted only in accordance with the express provisions of the DPA.

#### **Other Extra Variable Costs indexation**

10.15 The DPA Counterparty shall calculate an indexation adjustment to the Other Extra Variable Costs in each calendar year of the Term (each such adjustment, an "**OEVC Indexation Adjustment**").

10.16 Each OEVC Indexation Adjustment shall:

(A) become effective on the first (1st) day of the Summer Season in the calendar year in which the OEVC Indexation Adjustment is calculated (each such date, an "**OEVC Indexation Anniversary**"); and

(B) use the CPI for January of the relevant calendar year save where the CPI for January is not published by the first (1st) day of the Summer Season in such calendar year, in which case the Reference CPI shall be used.

- 10.17 The Other Extra Variable Costs which are to apply with effect from each OEVC Indexation Anniversary as a result of the OEVC Indexation Adjustment shall be calculated by the DPA Counterparty in accordance with the following formula:

$$OEVC = OEVC_{Base} \times \Pi_i$$

where:

$OEVC$	=	Other Extra Variable Costs
$OEVC_{Base}$	=	Initial Other Extra Variable Costs
$\Pi_i$	=	the Inflation Factor applicable to VP Settlement Unit

- 10.18 The DPA Counterparty shall notify the Generator of the revised Other Extra Variable Costs no later than five (5) Business Days after each OEVC Indexation Anniversary.

### **Base Performance Assumptions Adjustments**

- 10.19 The Base Performance Assumptions may be amended, supplemented or replaced in accordance with Annex 8 (*Reference Plant Review*).

## **11. METERED ELECTRICITY OUTPUT**

### ***Metered Day Electricity Output calculation***

- 11.1 The DPA Counterparty shall calculate:

- (A) the Metered Day Electricity Output in respect of each VP Settlement Unit; and
- (B) the Metered Electricity Output in respect of each AP Settlement Unit and VP Settlement Unit.

### ***Estimates of Loss Adjusted Metered Electricity Output***

- 11.2 If the DPA Counterparty has not received notification from a BSC Company or a BSC Agent of the Loss Adjusted Metered Electricity Output for any Settlement Unit (an "**Estimated Output Settlement Unit**") within a Billing Period (an "**Estimated Output Billing Period**") on or prior to the Metered Electricity Output Cut-Off Time, the Loss Adjusted Metered Electricity Output for the Estimated Output Settlement Unit, as set out in the Billing Statement relating to such Estimated Output Billing Period (an "**Estimated Output Billing Statement**"), shall be calculated by the DPA Counterparty in accordance with Condition 11.3.
- 11.3 The estimated Loss Adjusted Metered Electricity Output for each Estimated Output Settlement Unit comprised within an Estimated Output Billing Period (the "**Estimated Metered Electricity Output**") shall be calculated by the DPA Counterparty as being the Loss Adjusted Metered Electricity Output in the most recent Settlement Unit prior to the Estimated Output Settlement Unit for which the DPA Counterparty has received notification of the Loss Adjusted Metered Electricity Output from a BSC Company or a BSC Agent.

### ***Recalculations of Estimated Metered Electricity Output***

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

- (A) the DPA Counterparty shall recalculate the Metered Electricity Output for such Settlement Unit using such Loss Adjusted Metered Electricity Output; and
- (B) if the calculation performed by the DPA Counterparty pursuant to Condition 11.4(A) results in a different Metered Electricity Output than that calculated by the DPA Counterparty in relation to the Estimated Output Settlement Unit and reflected in the relevant Estimated Output Billing Statement, then:
  - (i) the recalculated Metered Electricity Output shall be used by the DPA Counterparty to recalculate the Payment for the relevant Estimated Output Settlement Unit; and
  - (ii) any adjustment to the Payment for the Estimated Output Billing Period ("**Metered Electricity Output Recalculation Amount**") shall be included as such in the Billing Statement which is next issued by the DPA Counterparty.

**Part 6**  
**Billing and payment**

**12. BILLING STATEMENTS**

***Delivery of Availability Payment Billing Statement***

12.1 The DPA Counterparty:

- (A) may, in relation to any period from and including the Agreement Date to, but excluding, the date on which the Start Date Notice is given; and
- (B) shall, in relation to each AP Billing Period from and including the date on which the Start Date Notice is given,

deliver a billing statement to the Generator (each, an **"Availability Payment Billing Statement"**) in relation to the previous AP Billing Period.

12.2 Subject to Condition 12.3, each Availability Payment Billing Statement issued after the date on which the Start Date Notice is given shall be delivered to the Generator no later than seven (7) Business Days after the end of each AP Billing Period.

12.3 If not previously the subject of an Availability Payment Billing Statement, the first (1st) Availability Payment Billing Statement in relation to an AP Billing Period on or after the date on which the Start Date Notice is given shall commence on the Start Date and end on the last day of the Month in which the DPA Counterparty notifies the Generator pursuant to the OCP Response Notice or the Further OCP Response Notice (as relevant) that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*) and/or Condition 3.43 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable).

***Contents of Availability Payment Billing Statement***

12.4 Each Availability Payment Billing Statement shall set out or identify:

*Identification information*

- (A) the AP Billing Period or other period to which the Availability Payment Billing Statement relates;
- (B) the name of the Generator (or a unique identifier attributed to the Generator by the DPA Counterparty);
- (C) the details of the Facility (or a unique identifier attributed to the Facility by the DPA Counterparty);

*Availability Payment calculation*

- (D) in respect of each Availability Payment Billing Statement issued on or after the date on which the Start Date Notice is given:
  - (i) the Availability Payment for the relevant AP Billing Period;
  - (ii) the Availability of Generation in respect of each AP Settlement Unit falling within the relevant AP Billing Period;

- (iii) the Availability of Capture in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (iv) the Availability Payment Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (v) the T&S Capacity Fee for the relevant AP Billing Period;
- (vi) the T&S Capacity Fee Charging Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (vii) the T&S Residual Fee for the relevant AP Billing Period;
- (viii) the T&S Residual Fee Charging Rate in respect of each AP Settlement Unit falling within the relevant AP Billing Period;
- (ix) the Net Dependable Capacity for each AP Settlement Unit falling within the relevant AP Billing Period;

*Availability of Generation calculation*

- (x) the Net Available Capacity for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xi) if applicable, the duration of each Generation Outage Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Generation Outage Event occurs;
- (xii) if applicable, the duration of each Generation Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Generation Outage Relief Event occurs;

*Availability of Capture calculation*

- (xiii) the Achieved CO<sub>2</sub> Capture Rate for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xiv) the AP Metered CO<sub>2</sub> Output for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xv) the AP Calculated CO<sub>2</sub> Generated for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xvi) the AP Total Metered Fuel Consumption for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xvii) the AP Fuel Composition (or, if relevant, the Estimated AP Fuel Composition) for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xviii) if applicable, the AP Calculated CO<sub>2</sub> Generated with Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xix) if applicable, the AP Metered CO<sub>2</sub> Output with Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xx) if applicable, the duration of each Capture Outage Relief Event for each AP Settlement Unit falling within the relevant AP Billing Period where a Capture

Outage Relief Event occurs and the corresponding Deemed CO<sub>2</sub> Capture Rate for each such AP Settlement Unit;

- (xxi) if applicable, the Declared CO<sub>2</sub> Capture Rate for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xxii) if applicable, the Deemed Rate for each AP Settlement Unit falling within the relevant AP Billing Period;
- (xxiii) the Metered Electricity Output (or, if relevant, the Estimated Metered Electricity Output) for each AP Settlement Unit falling within the relevant AP Billing Period; and
- (xxiv) if applicable, the Deemed CO<sub>2</sub> Capture Rate for each AP Settlement Unit falling within the relevant AP Billing Period;

*Additional components*

- (E) any AP Reconciliation Amounts;
- (F) any AP Compensatory Interest Amount;

*AP Net Payable Amount*

- (G) the AP Net Payable Amount in respect of the relevant AP Billing Period or other period to which the Availability Payment Billing Statement relates;

*Subsidy Control Set Off Amount*

- (H) any amount set off against the AP Net Payable Amount pursuant to Condition 3.46 (*Set-Off of Previous Subsidy*) or Condition 24.15 (*Set Off of Other Subsidy*); [and

*Project Gain Share Amount*

- (I) any Project Gain Share Amount].<sup>30</sup>

**Calculation of AP Reconciliation Amounts**

12.5 The "**AP Reconciliation Amounts**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), comprise any revisions to the AP Net Payable Amount in respect of any preceding AP Billing Period (or any other prior period in respect of which an Availability Payment Billing Statement was issued) which are required to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Disputes;
- (C) any Metered Electricity Output Recalculation Amount pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);

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<sup>30</sup> Note to Reader: The inclusion of this definition is subject to whether the gain share schedule applies to the DPA.

- (D) any AP Other Metered Data Recalculation Amount pursuant to Condition 9.17 (*Recalculations of Other Metered Data*);
- (E) any AP Fuel Composition Recalculation Amount pursuant to Condition 9.19 (*Recalculations of Estimated AP Fuel Composition*);
- (F) the operation of Condition 9.5 (*Outage Relief Events*);
- (G) any amount payable pursuant to:
  - (i) Conditions 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), 7.13 (*Suspension of Payments (Annual NDC Test Access Right breach)*), Condition 20.2 (*Failure to comply with compliance of technology undertaking*), Condition 21.13 (*Failure to comply with Metering Schematic Obligation*), Condition 21.19 (*Failure to provide Metering Access Right*), Condition 21.24 (*Failure to comply with SCADA Systems Obligations*), Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), Condition 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*), Condition 23.13 (*Failure to provide Declaration Access Right*), or Condition 35.15 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*); or
  - (ii) Conditions 24.6 (*Suspension of Payments*), 24.9 (*Suspension of Payments (Failure to Provide Information)*) or 24.12 (*Waiver of Generator's Obligation to Repay Subsidy, State aid or Union Funding*);
- (H) any agreed or determined adjustment to the Net Dependable Capacity;
- (I) any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture);
- (J) any QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment);
- (K) any APR Indexation Adjustment; and
- (L) the correction of any error in any previous Availability Payment Billing Statement.

**Calculation of AP Compensatory Interest Amount**

- 12.6 The "**AP Compensatory Interest Amount**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), comprise interest due and payable in relation to each AP Reconciliation Amount reflected in the Availability Payment Billing Statement for the relevant AP Billing Period or such other period (an "**AP Reconciliation Billing Period**"), calculated on the basis that interest on each AP Reconciliation Amount shall accrue on such amount at the AP Compensatory Interest Rate for the period from (and including):
- (A) the relevant AP Settlement Unit(s) in the AP Billing Period to which a Settlement Run relates in respect of any AP Reconciliation Amount resulting from a Settlement Run;
  - (B) the relevant AP Settlement Unit(s) in the AP Billing Period to which a Metering Dispute relates in respect of any AP Reconciliation Amount resulting from the resolution of a Metering Dispute;

- (C) the earlier of: (i) the Longstop Date; and (ii) the date of the Longstop Date Capacity Notice, in respect of any AP Reconciliation Amount resulting from the agreement or determination of the Net Dependable Capacity;
- (D) the Annual Adjusted NDC Implementation Date, in respect of any AP Reconciliation Amount resulting from the agreement or determination of the Net Dependable Capacity;
- (E) the Incomplete AP Billing Period to which an adjustment to the AP Other Metered Data relates pursuant to Condition 9.17 (*Recalculations of Other Metered Data*);
- (F) the Estimated Fuel Billing Period to which an adjustment to the AP Fuel Composition relates pursuant to Condition 9.19 (*Recalculations of Estimated AP Fuel Composition*);
- (G) the Relief Event AP Billing Period to which an adjustment to the Availability of Generation or Availability of Capture relates pursuant to Condition 9.9;
- (H) the QCiL Compensation Date in respect of any AP Reconciliation Amount to reflect any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture) or QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment);
- (I) the relevant Indexation Anniversary in respect of any APR Indexation Adjustment; and
- (J) the relevant AP Settlement Unit(s) in the AP Billing Period to which any adjustment to correct any error in any previous Availability Payment Billing Statement relates in respect of any AP Reconciliation Amount to correct such an error (or if such AP Reconciliation Amount to correct such error was included in an Availability Payment Billing Statement issued prior to the Start Date, the date of the prior Availability Payment Billing Statement in which such error was included),

to the final AP Settlement Unit in the relevant AP Reconciliation Billing Period. For this purpose: (i) interest shall accrue on such amounts from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days; and (ii) the "**AP Compensatory Interest Rate**" shall be the prevailing Base Rate on each day during the relevant calculation period.

#### **Calculation of AP Net Payable Amount**

- 12.7 The "**AP Net Payable Amount**" shall, in respect of each AP Billing Period (or such other period prior to the Start Date in respect of which an Availability Payment Billing Statement is issued), be an amount (expressed in pounds) calculated in accordance with the following formula:

$$AP \text{ Net Payable Amount} = AP + APRA + APCIA$$

where:

- AP* = is the Availability Payment in respect of such AP Billing Period;
- APRA* = is any AP Reconciliation Amount in respect of such AP Billing Period (or such other period to which the Availability Payment Billing Statement relates); and



*APCIA* = is any AP Compensatory Interest Amount in respect of such AP Billing Period (or such other period to which the Availability Payment Billing Statement relates),

and if such amount is:

- (i) positive, it shall represent an amount payable by the DPA Counterparty to the Generator; or
- (ii) negative, it shall represent an amount payable by the Generator to the DPA Counterparty.

### ***Delivery of Variable Payment Billing Statement***

12.8 The DPA Counterparty:

- (A) may in relation to any period from and including the Agreement Date to, but excluding, the date on which the Start Date Notice is given; and
- (B) shall in relation to each VP Billing Period from and including the date on which the Start Date Notice is given,

deliver a billing statement to the Generator (each, a "**Variable Payment Billing Statement**") in relation to the previous VP Billing Period.

12.9 Subject to Condition 12.10, each Variable Payment Billing Statement issued after the date on which the Start Date Notice is given shall be delivered to the Generator no later than seven (7) Business Days after the end of each VP Billing Period.

12.10 If not previously the subject of a Variable Payment Billing Statement, the first (1st) Variable Payment Billing Statement in relation to a VP Billing Period on or after the date on which the Start Date Notice is given shall cover the VP Billing Periods falling within the period from and including the Start Date to and including the date of the OCP Response Notice or Further OCP Response Notice (as relevant) in which the DPA Counterparty specifies that it has determined that all of the Operational Conditions Precedent have been satisfied or waived in accordance with Condition 3.28 (*Waiver of Conditions Precedent and Default*) and/or Condition 3.43 (*Waiver of Subsidy Control Declaration Operational CP*) (as applicable).

### ***Contents of Variable Payment Billing Statement***

12.11 Each Variable Payment Billing Statement shall set out or identify:

#### *Identification information*

- (A) the VP Billing Period or other period to which the Variable Payment Billing Statement relates;
- (B) the name of the Generator (or a unique identifier attributed to the Generator by the DPA Counterparty);
- (C) the details of the Facility (or a unique identifier attributed to the Facility by the DPA Counterparty);

#### *Variable Payment calculation*

- (D) in respect of each Variable Payment Billing Statement issued on or after the date on which the Start Date Notice is given:

- (i) the Variable Payment for the relevant VP Billing Period;
- (ii) the Metered Day Electricity Output in respect of the relevant VP Billing Period;
- (iii) the Metered Electricity Output (or, if relevant, the Estimated Metered Electricity Output) in respect of the relevant VP Billing Period;
- (iv) the Variable Payment Rate for the relevant VP Billing Period including the following:
  - (a) the Gas Cost Differential for the relevant VP Billing Period;
  - (b) the CO<sub>2</sub> Cost Differential for the relevant VP Billing Period;
  - (c) the Other Extra Variable Costs for the relevant VP Billing Period;
  - (d) the T&S Volumetric Payment Charging Rate for the relevant VP Billing Period;<sup>31</sup>
  - (e) the Gas Price in respect of the relevant VP Billing Period;
  - (f) the Gas Reference Prices in respect of the relevant VP Billing Period;
  - (g) the Carbon Price in respect of the relevant VP Billing Period;
  - (h) the Carbon Market Reference Price in respect of the relevant VP Billing Period;
  - (i) the Carbon Support Price in respect of the relevant VP Billing Period;
  - (j) the T&S Volumetric Fee Charging Rate in respect of the relevant VP Billing Period; and<sup>32</sup>
  - (k) the VP Metered CO<sub>2</sub> Output in respect of the relevant VP Billing Period;

*Additional components*

- (E) any VP Reconciliation Amounts;
- (F) any VP Compensatory Interest Amount; and

*Net Payable Amount*

- (G) the VP Net Payable Amount in respect of the relevant VP Billing Period or other period to which the Variable Payment Billing Statement relates.

**Calculation of VP Reconciliation Amounts**

12.12 The "**VP Reconciliation Amounts**" shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which a Variable Payment Billing Statement is issued), comprise any revisions to the VP Net Payable Amount in respect of any preceding VP

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<sup>31</sup> Note to Reader: This Condition is subject to further development as the T&S business model is developed.

<sup>32</sup> Note to Reader: This Condition is subject to further development as the T&S business model is developed.

Billing Period (or any other prior period in respect of which a Variable Payment Billing Statement was issued) which are required to reflect:

- (A) any Settlement Runs;
- (B) the resolution of any Metering Dispute;
- (C) any Metered Electricity Output Recalculation Amount pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);
- (D) any amount payable pursuant to:
  - (i) Conditions 7.2 (*Suspension of Payments (Annual NDC Test Obligation breach)*), 7.13 (*Suspension of Payments (Annual NDC Test Access Right breach)*), Condition 20.2 (*Failure to comply with compliance of technology undertaking*), Condition 21.13 (*Failure to comply with Metering Schematic Obligation*), Condition 21.19 (*Failure to provide Metering Access Right*), [Condition 21.24 (*Failure to comply with SCADA Systems Obligations*),] Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), Condition 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*), Condition 23.13 (*Failure to provide Declaration Access Right*), or Condition 35.15 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*); or
  - (ii) Conditions 24.6 (*Suspension of Payments*), 24.9 (*Suspension of Payments (Failure to Provide Information)*) or 24.12 (*Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding*);
- (E) any QCiL Compensation (including any adjustments to the Variable Payment);
- (F) any QCiL True-Up Compensation (including any adjustments to the Variable Payment);
- (G) any agreed or determined adjustment to the Base Performance Assumptions; and
- (H) the correction of any error in any previous Variable Payment Billing Statement.

**Calculation of VP Compensatory Interest Amount**

12.13 The "**VP Compensatory Interest Amount**" shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which a Variable Payment Billing Statement is issued), comprise interest due and payable in relation to each VP Reconciliation Amount reflected in the Variable Payment Billing Statement for the relevant VP Billing Period or such other period (a "**VP Reconciliation Billing Period**"), calculated on the basis that interest on each VP Reconciliation Amount shall accrue on such amount at the VP Compensatory Interest Rate for the period from (and including):

- (A) the VP Billing Period to which a Settlement Run relates in respect of any VP Reconciliation Amount resulting from a Settlement Run;
- (B) the VP Billing Period to which a Metering Dispute relates in respect of any VP Reconciliation Amount resulting from the resolution of a Metering Dispute;
- (C) the Estimated Output Billing Period to which an adjustment to the Metered Electricity Output relates pursuant to Condition 11.4 (*Recalculations of Estimated Metered Electricity Output*);

- (D) the Reference Plant Criteria Review Implementation Date, in respect of any VP Reconciliation Amount resulting from the agreement or determination of the Base Performance Assumptions;
- (E) the QCiL Compensation Date in respect of any VP Reconciliation Amount to reflect any QCiL Compensation (including any QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture) or QCiL True-Up Compensation (including any QCiL Adjusted Revenues Period Adjustment); and
- (F) the VP Billing Period to which any adjustment to correct any error in any previous Variable Payment Billing Statement relates in respect of any VP Reconciliation Amount to correct such an error (or if such VP Reconciliation Amount to correct such error was included in an Variable Payment Billing Statement issued prior to the Start Date, the date of the prior Variable Payment Billing Statement in which such error was included);

to (but excluding) the date of the relevant VP Reconciliation Billing Period. For this purpose: (i) interest shall accrue on such amounts from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days; and (ii) the **"VP Compensatory Interest Rate"** shall be the prevailing Base Rate on each day during the relevant calculation period.

#### **Calculation of VP Net Payable Amount**

- 12.14 The **"VP Net Payable Amount"** shall, in respect of each VP Billing Period (or such other period prior to the Start Date in respect of which an Variable Payment Billing Statement is issued), be an amount (expressed in pounds) calculated in accordance with the following formula:

$$VP \text{ Net Payable Amount} = VP + VPRA + VPCIA$$

where:

- VP* = is the Variable Payment in respect of such VP Billing Period;
- VPRA* = is any VP Reconciliation Amount in respect of such VP Billing Period (or such other period to which the Variable Payment Billing Statement relates); and
- VPCIA* = is any VP Compensatory Interest Amount in respect of such VP Billing Period (or such other period to which the Variable Payment Billing Statement relates),

and if such amount is:

- (i) positive, it shall represent an amount payable by the DPA Counterparty to the Generator; or
- (ii) negative, it shall represent an amount payable by the Generator to the DPA Counterparty.

### **13. SETTLEMENT**

#### **Payment from Generator**

- 13.1 If the AP Net Payable Amount is a negative number, no later than the end of the tenth (10th) Business Day following the delivery of the relevant Availability Payment Billing Statement, the

Generator shall pay to the DPA Counterparty the absolute value of the AP Net Payable Amount in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17.1(A).

- 13.2 If the VP Net Payable Amount is a negative number, no later than the end of the tenth (10th) Business Day following the delivery of the relevant Variable Payment Billing Statement, the Generator shall pay to the DPA Counterparty the absolute value of the VP Net Payable Amount in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17.1(A).

***Payment from DPA Counterparty***

- 13.3 Subject to Condition 3.46 (Set-Off of Previous Subsidy) and Condition 24.15 (Set-Off of Other Subsidy):

- (A) if the AP Net Payable Amount is a positive number, no later than twenty eight (28) calendar days following the AP Billing Period or other period to which the Availability Payment Billing Statement relates, the DPA Counterparty shall pay to the Generator the AP Net Payable Amount in relation to the relevant AP Billing Period in accordance with the Availability Payment Billing Statement; and
- (B) if the VP Net Payable Amount is a positive number, no later than twenty eight (28) calendar days following the VP Billing Period or other period to which the Variable Payment Billing Statement relates, the DPA Counterparty shall pay to the Generator the VP Net Payable Amount in relation to the relevant VP Billing Period in accordance with the Variable Payment Billing Statement,

such payments shall be made in Sterling by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the DPA Counterparty pursuant to Condition 17.1(B).

***Billing Statement Disputes***

- 13.4 Conditions 13.1 to 13.3 (inclusive) shall apply notwithstanding any dispute with respect to any Billing Statement and, if a Party wishes to dispute any amount shown in a Billing Statement, it shall give a notice to the other Party (a "**Billing Statement Dispute Notice**") which shall:
- (A) specify the Billing Statement(s) to which the Dispute relates;
- (B) specify the name of the Generator (or the unique identifier attributed to the Generator by the DPA Counterparty);
- (C) specify the name of the Facility (or the unique identifier attributed to the Facility by the DPA Counterparty);
- (D) specify the Billing Statement items to which the Dispute relates;
- (E) specify the amount in dispute and the apportionment of such amount in relation to the relevant Billing Statement items;
- (F) include details of any other Billing Statement dispute which the referring Party considers should be consolidated with or joined to the dispute;
- (G) specify the position the Party considers is correct and the Party's reasons for that position;

- (H) include copies of any Supporting Information on which the referring Party intends to rely; and
- (I) include any other Information that the Party deems relevant in relation to the dispute.

13.5 The making of a payment pursuant to Condition 13.1, 13.2 or 13.3 shall not prevent a Party from raising a dispute pursuant to Condition 13.4.

### ***Electricity Metering Dispute***

13.6 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the Metered Electricity Output<sup>33</sup> in respect of a Settlement Unit (an "**Electricity Metering Dispute**"):

- (A) such Electricity Metering Dispute shall be treated as a Trading Dispute pursuant to the BSC and shall be resolved in accordance with the provisions set out therein (to the exclusion of the Dispute Resolution Procedure);
- (B) the Parties shall continue to comply with their obligations under the DPA notwithstanding such Electricity Metering Dispute;
- (C) the final determination of the Electricity Metering Dispute in accordance with Condition (A) shall be binding on the Parties; and
- (D) neither Party shall dispute or attempt to dispute a final determination made in accordance with Condition (A).

13.7 Any Electricity Metering Dispute must be brought by the Party within the limitation period set out in the BSC with respect to Trading Disputes.

13.8 The Generator shall inform the DPA Counterparty as soon as reasonably practicable (and, in respect of Condition 13.6(A), no later than five (5) Business Days) after the Generator:

- (A) commences or becomes engaged in any Trading Dispute; or
- (B) becomes aware of any fact, matter or circumstance which will or is reasonably likely to give rise to a Trading Dispute,

where (in either case) the resolution of such Trading Dispute will or may impact the calculation of the Loss Adjusted Metered Electricity Output for the purposes of the DPA.

### ***CO<sub>2</sub> Metering Dispute***<sup>34</sup>

13.9 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the Metered CO<sub>2</sub> Output in respect of a Settlement Unit (a "**CO<sub>2</sub> Metering Dispute**"):

- (A) such CO<sub>2</sub> Metering Dispute shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes);

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<sup>33</sup> Note to Reader: BEIS is considering how an Imported Input Electricity Dual Scheme Facility will be considered in respect of Electricity Disputes.

<sup>34</sup> Note to Reader: The dispute resolution procedures for Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes are subject to change as industry codes and procedures are established and developed.

- (B) such CO<sub>2</sub> Metering Dispute must be brought by the Party before the Metering Dispute Deadline in relation to all Settlement Units to which the CO<sub>2</sub> Metering Dispute relates;
- (C) the Parties shall continue to comply with their obligations under the DPA notwithstanding such CO<sub>2</sub> Metering Dispute;
- (D) the final determination of the CO<sub>2</sub> Metering Dispute in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes) shall be binding on the Parties; and
- (E) neither Party shall dispute or attempt to dispute a final determination made in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to CO<sub>2</sub> Metering Disputes).

### **Gas Supply Metering Dispute**

13.10 If a dispute or part of a dispute pursuant to Condition 13.4 relates to the calculation of the AP Calculated CO<sub>2</sub> Generated in respect of a Settlement Unit (a "**Gas Supply Metering Dispute**"):

- (A) such Gas Supply Metering Dispute shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes);
- (B) such Gas Supply Metering Dispute must be brought by the Party before the Metering Dispute Deadline in relation to all Settlement Units to which the CO<sub>2</sub> Metering Dispute relates;
- (C) the Parties shall continue to comply with their obligations under the DPA notwithstanding such Gas Supply Metering Dispute;
- (D) the final determination of the Gas Supply Metering Dispute in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes) shall be binding on the Parties; and
- (E) neither Party shall dispute or attempt to dispute a final determination made in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes).

## **14. DEFAULT INTEREST**

### **Definition; Calculation**

14.1 "**Default Interest**" for any period (a "**calculation period**") shall be calculated as follows:

$$\prod_{i=1}^D \left( \frac{BR_i + 5\%}{365} \right)$$

where:

- $i$  = is a series of whole numbers from one (1) to "**D**" each representing the relevant day in chronological order from, and including, the first (1st) day in such calculation period;
- $D$  = is the number of days in such calculation period; and
- $BR_i$  = is the prevailing Base Rate on the relevant day in the calculation period.

### **Application of Default Interest**

- 14.2 Subject to Conditions 14.4, 14.5 and 63 (*Costs*), if either Party fails to pay any sum payable by it pursuant to the DPA (including any amounts payable under any Arbitral Award or Expert determination) on the due date for payment, Default Interest shall accrue on that sum for the period from the due date for payment to the date of actual payment of that sum (after as well as before award or judgment).
- 14.3 The right to receive Default Interest pursuant to the DPA (and as calculated in accordance with this Condition 14 (*Default Interest*)) is not exclusive of any rights and remedies provided by law in respect of the failure to pay the relevant sum on the due date or at all, provided that the Late Payment of Commercial Debts (Interest) Act 1988 shall not apply in respect of any unpaid sum due pursuant to the DPA.
- 14.4 Default Interest shall be payable by the DPA Counterparty only in circumstances in which the DPA Counterparty is in breach of Condition 53.2, 53.3 or 53.4 (*DPA Counterparty payment undertakings*), but not otherwise.
- 14.5 Subject to Condition 14.4, no Default Interest shall be payable by one Party to the other Party in relation to a Reconciliation Amount in respect of the period during which a Compensatory Interest Amount has accrued and been calculated pursuant to Condition 12.6 or Condition 12.13, except 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.
15. **SET-OFF**
- Each Party may set off any matured obligations due by the other Party pursuant to the DPA against any matured obligation owed by that Party to the other Party pursuant to the DPA.
16. **DEDUCTIONS AND WITHHOLDINGS**
- Subject to Condition 15 (*Set-off*), all payments required to be made by the Generator pursuant to the DPA 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.
17. **PAYMENT ACCOUNTS**
- 17.1 Any payments made pursuant to or in connection with the DPA and made to:
- (A) the DPA Counterparty shall be made to such account as may be notified to the Generator by the DPA Counterparty from time to time; and
  - (B) the Generator shall be made to such account in the United Kingdom as may be notified to the DPA Counterparty by the Generator from time to time.





**Part 7**  
**Representations, warranties and undertakings**

**18. GENERATOR REPRESENTATIONS AND WARRANTIES**

***Agreement Date representations***

18.1 The Generator represents and warrants to the DPA 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 the DPA and the other DPA Documents.
- (B) *Power and authority*: The Generator has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the DPA and the other DPA Documents (including the obligations of the Generator, and the transaction contemplated by or provided for by the DPA and the other DPA Documents).
- (C) *Enforceability*: The obligations expressed to be assumed by the Generator pursuant to the DPA and the other DPA Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into, delivery and performance by the Generator of, and the transactions contemplated by, the DPA and the other DPA Documents does not conflict with:
- (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
  - (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*:
- (i) All Required Authorisations which are required to be obtained or effected by the Generator on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been obtained or effected by the Generator and are in full force and effect, save to the extent that failure to do so has not had and is not reasonably expected to have a Material Adverse Effect.
  - (ii) All conditions of, and all obligations and liabilities under, Required Authorisations which are required to be performed, complied with or satisfied by the Generator on or before the date on which this representation and warranty is made or deemed to be repeated by the Generator have been performed, complied with

or satisfied, save where failure to do so has not had and is not reasonably expected to have a Material Adverse Effect.

- (F) *No Default*: No Default with respect to the Generator has occurred and is continuing or might reasonably be expected to result from its entry into or performance of the DPA or any of the other DPA Documents.
- (G) *No litigation*: No litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claim or Tax investigation against the Generator (or, so far as the Generator is aware, relating to the Project) is:
- (i) current;
  - (ii) pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or
  - (iii) so far as the Generator is aware, by reason of receipt of a formal written notice before action or similar, threatened,

and which, if adversely determined, would have or would reasonably be expected to have a Material Adverse Effect.

- (H) *No requirement to deduct or withhold*: The Generator is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the DPA Counterparty pursuant to the DPA or any of the other DPA Documents.
- (I) *CO<sub>2</sub> capture*: As far as the Generator is aware (having made all due and careful enquiries), the CO<sub>2</sub> captured by the Facility and transferred to a T&S Network will be permanently stored.

### **Start Date representation**

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

- (A) *Ownership*: The Generator is the legal and beneficial owner of the Facility, subject only to such rights and benefits as have been assigned by way of security to or in favour of any Lender, Affected Person or parent undertaking of the Generator (or an agent or security trustee on its behalf) in accordance with Condition 61 (*Transfers*).
- (B) *Compliance of technology*:
- (i) The generation and capture technology deployed by the Facility is the Facility Generation Technology and the Facility Capture Technology (as applicable).
  - (ii) The fuel used by the Facility is the Facility Fuel.

### **Repeating representations**

18.3 The Generator Repeating Representations are deemed to be repeated by the Generator on the Start Date in each case by reference to the facts and circumstances then existing.

19. **DPA COUNTERPARTY REPRESENTATIONS AND WARRANTIES**

19.1 The DPA 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 DPA Counterparty:
  - (i) is a limited liability company, duly incorporated and validly existing pursuant to the laws of England and Wales; and
  - (ii) has the power to own its assets and carry on its business as contemplated by the DPA and the other DPA Documents.
- (B) *Power and authority*: The DPA Counterparty has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the DPA and the other DPA Documents (including the obligations of the DPA Counterparty, and the transaction contemplated by or provided for by the DPA and the other DPA Documents).
- (C) *Enforceability*: The obligations expressed to be assumed by the DPA Counterparty pursuant to the DPA and the other DPA Documents are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) *Non-conflict with other obligations*: The entry into, delivery and performance by the DPA Counterparty of the DPA and the other DPA Documents does not conflict with:
  - (i) its constitutional documents;
  - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;
  - (iii) any authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation or other approval of or from any Competent Authority required to enable it to perform and comply with its obligations under the DPA and the other DPA Documents to which it is a party, 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) *No requirement to deduct or withhold*: The DPA Counterparty is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for Tax purposes, to make any deduction or withholding for or on account of any Tax from any payment to be made by it to the Generator pursuant to the DPA or any of the other DPA Documents.

19.2 The representations in Conditions 19.1(A) to 19.1(D) are deemed to be repeated by the DPA Counterparty on the Start Date in each case by reference to the facts and circumstances then existing.

20. **GENERATOR UNDERTAKINGS: GENERAL**

20.1 The Generator undertakes to the DPA Counterparty as follows:

- (A) *Compliance with Laws and Directives*: The Generator shall at all times comply with all Laws and Directives to which it may be subject if failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (B) *Required Authorisations*: The Generator shall: (i) promptly obtain all Required Authorisations; (ii) at all times perform, comply with and satisfy all conditions of, and all obligations and liabilities under, all Required Authorisations; and (iii) do all that is necessary to maintain in full force and effect all Required Authorisations, to the extent, in each case, that failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (C) *Industry Documents*: The Generator shall at all times comply with all terms of those Industry Documents to which it is a party or by which it is bound if failure to do so would have or would reasonably be expected to have a Material Adverse Effect.
- (D) *No insolvency action*: The Generator shall not petition, apply for, institute, support or vote for the administration, winding-up or liquidation of the DPA Counterparty or seek any other relief as against the DPA Counterparty under any administration, insolvency or bankruptcy law or similar law affecting creditors' rights generally.
- (E) *Ownership*: The Generator shall at all times be the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility.
- (F) *Compliance of technology*: The Generator shall at all times ensure that:
  - (i) the generation technology deployed by the Facility is the Facility Generation Technology and the capture technology deployed by the Facility is the Facility Capture Technology, provided that (without prejudice to any other provision of the DPA) this provision shall not prevent the operation of the Generation Assets in unabated mode; and
  - (ii) the fuel used by the Facility is the Facility Fuel.
- (G) *Notification*: The Generator shall:
  - (i) provide the DPA Counterparty as soon as reasonably practicable with such Information regarding compliance or non-compliance by the Generator with the undertakings in this Condition 20.1 as the DPA Counterparty may reasonably request; and
  - (ii) give notice to the DPA Counterparty as soon as reasonably practicable upon becoming aware of the occurrence of any Default (together with details of the steps, if any, being taken to remedy it).

***Failure to comply with compliance of technology undertaking***

20.2 If the Generator fails to comply with Condition 20.1(F), the DPA Counterparty:

- (A) may withhold payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition; and
- (B) shall be entitled to recover from the Generator any amounts paid by the DPA Counterparty to the Generator which are attributable to the period during which the Generator is not in compliance with such Condition.

## 21. GENERATOR UNDERTAKINGS: METERING

### ***Undertakings: Electricity Metering Obligation***

21.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times, the Electricity Metering Equipment relating to the Facility:
  - (i) has been installed at the metering point(s) identified in the Agreement;
  - (ii) has been and is installed, configured, registered and maintained in accordance with the requirements of the BSC;
- (B) ensure that at all times:
  - (i) the Electricity Metering Equipment accurately records the BM Unit Metered Volume, such BM Unit Metered Volume comprising:
    - (a) all output electricity generated by the Facility; and
    - (b) all input electricity used by the Facility (excluding, if the Facility is a Dual Scheme Facility, the Imported Input Electricity); and
  - (ii) where the Facility is a Dual Scheme Facility, the Electricity Metering Equipment accurately records all Imported Input Electricity in relation to the Generating Station;
- (C) without prejudice to Condition (E), ensure that at all times, the Electricity Metering Equipment measures the input and output electricity referred to in Condition (B) separately from any other input and output electricity;
- (D) investigate any fault or issue with the Electricity Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the BSC; and
- (E) ensure that at all times that no Electricity Storage Facility shall be used by or otherwise associated with the Facility,

(each an "**Electricity Metering Obligation**" and together the "**Electricity Metering Obligations**").

### ***Undertakings: CO<sub>2</sub> Metering Obligation***

21.2 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times the CO<sub>2</sub> Metering Equipment relating to the Facility:
  - (i) has been installed at the metering point(s) identified in the Agreement;
  - (ii) has been and is installed, configured, registered, operated and maintained in accordance with the requirements of the CO<sub>2</sub> Metering Specification, including to ensure that captured CO<sub>2</sub> which fails to comply with the Delivery CO<sub>2</sub> Quality Standards is not exported to a T&S Network;
  - (iii) is configured exclusively in relation to the Facility and no other CO<sub>2</sub> output is metered through such meters; and

- (iv) is operational and capable of measuring accurately the CO<sub>2</sub> output from the Facility at the CO<sub>2</sub> Delivery Point(s).
  - (B) ensure that at all times the captured CO<sub>2</sub> from the Facility complies with the Delivery CO<sub>2</sub> Quality Standards; and
  - (C) investigate any fault or issue with the CO<sub>2</sub> Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to [insert relevant code(s)],<sup>35</sup>
- (each a "**CO<sub>2</sub> Metering Obligation**" and together the "**CO<sub>2</sub> Metering Obligations**").

***Undertakings: Gas Supply Metering Obligation***

21.3 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) ensure that at all times the Gas Supply Metering Equipment relating to the Facility:
  - (i) has been installed at the metering point(s) identified in the Agreement;
  - (ii) has been installed, configured, registered, operated and maintained in accordance with the requirements of the Uniform Network Code;
  - (iii) is configured exclusively in relation to the Facility and no other Gas supply is metered through such meters; and
  - (iv) is operational and capable of measuring accurately the Gas supply to the Facility at the Gas Supply Point for each AP Settlement Unit; and
- (B) investigate any fault or issue with the Gas Supply Metering Equipment of which it is notified by the DPA Counterparty or which it is required to investigate pursuant to the Uniform Network Code,

(each a "**Gas Supply Metering Obligation**" and together the "**Gas Supply Metering Obligations**").

***Notification of Metering Obligation breach***

21.4 The DPA Counterparty may at any time submit a notice to the Generator (a "**Metering Breach Notice**") if it considers that the Generator is in breach of a Metering Obligation. A Metering Breach Notice shall:

- (A) specify which Metering Obligation the DPA Counterparty considers that the Generator has breached; and
- (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the breach of the Metering Obligation.

***Response to notification of Metering Obligation breach***

21.5 No later than ten (10) Business Days after receipt of a Metering Breach Notice (a "**Metering Breach Response Notice Period**"), the Generator shall investigate whether it is in breach of

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<sup>35</sup> Note to Reader: BEIS to confirm the relevant codes.

the relevant Metering Obligation and submit a notice to the DPA Counterparty (a "**Metering Breach Response Notice**"). A Metering Breach Response Notice shall state that either:

- (A) the Generator accepts that there has been a breach of the Metering Obligation (and, in such case, the notice shall include confirmation of the date from which the Generator accepts that there has been a breach of the relevant Metering Obligation); or
- (B) the Generator does not accept that there has been a breach of the Metering Obligation.

21.6 If:

- (A) the Generator submits a Metering Breach Response Notice in accordance with Condition 21.5(A), the provisions of Condition 21.7 shall apply; or
- (B) the Generator fails to submit a Metering Breach Response Notice within the Metering Breach Response Notice Period or submits a Metering Breach Response Notice in accordance with Condition 21.5(B), the Expert Determination Procedure shall apply to determine whether there has been a breach of the Metering Obligation and if the Expert Determination Procedure applied pursuant to this Condition 21.6(B) determines that:
  - (i) there has not been a breach of the Metering Obligation, then neither Party shall be required to take any further steps in relation to the Metering Breach Notice; or
  - (ii) there has been a breach of the Metering Obligation, the provisions of Condition 21.7 shall apply.

***Rectification of Metering Obligation breach***

21.7 If this Condition 21.7 applies:

- (A) the Generator shall provide a copy of a Metering Remediation Plan to the DPA Counterparty no later than fifteen (15) Business Days after the later of: (i) the expiry of the Metering Breach Response Notice Period; and (ii) the date on which an Expert makes a determination in accordance with Condition 21.6(B)(ii) (as applicable);
- (B) as soon as reasonably practicable after the date referred to in paragraph (A) above and in any event no later than sixty (60) Business Days after [●]<sup>36</sup> has approved the Metering Remediation Plan, the Generator shall:
  - (i) implement the Metering Remediation Plan and remedy the breach of the Metering Obligation; and
  - (ii) provide the DPA Counterparty with written confirmation that:
    - (a) in the case of a breach of an Electricity Metering Obligation, the relevant BSC Company that the breach of the Electricity Metering Obligation has been remedied, to the satisfaction of such relevant BSC Company;

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<sup>36</sup> Note to Reader: To be confirmed.



- (b) in the case of a breach of a CO<sub>2</sub> Metering Obligation, that the breach of the CO<sub>2</sub> Metering Obligation has been remedied to the satisfaction of [●];<sup>37</sup> and
  - (c) in the case of a breach of a Gas Supply Metering Obligation, that the breach of the Gas Supply Metering Obligation has been remedied to the satisfaction of [●];<sup>38</sup> and
- (C) the Generator shall submit a notice to the DPA Counterparty confirming the fulfilment of its obligations pursuant to Condition (B) no later than five (5) Business Days after remedying the breach and in any event no later than sixty (60) Business Days after [●]<sup>39</sup> has approved the Metering Remediation Plan (a "**Generator Metering Remediation Notice**") together with such Supporting Information as is reasonably necessary to evidence that the breach has been remedied.
- 21.8 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator Metering Remediation Notice, require the Generator to provide such Supporting Information in relation to that Generator Metering Remediation Notice (a "**Generator Metering Remediation Notice Information Request**") as the DPA Counterparty reasonably requests.
- 21.9 If the DPA Counterparty issues a Generator Metering Remediation Notice Information Request, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

***Failure to remedy Metering Obligation breach***

- 21.10 If the Generator has not complied with its obligations under Condition 21.7 or 21.9, then a "**Technical Compliance Termination Event**" will be deemed to have occurred.

***Undertakings: Metering Schematics***

- 21.11 If there is a Material Change to the Facility Metering Equipment, then the Generator shall:
- (A) notify the DPA Counterparty as soon as reasonably practicable and in any event no later than two (2) Business Days after the Material Change occurs, setting out details of the Material Change that has been effected (a "**Metering Schematic Obligation Notice**"); and
  - (B) provide an updated version of the relevant schematic diagram referred to in paragraph 2(C), 3(C) or 4(B) of Part B of Annex 1 (*Conditions Precedent*) (as applicable) and Supporting Information including any technical datasheets relating to the Facility Metering Equipment as soon as reasonably practicable and in any event no later than ten (10) Business Days after the Material Change occurs,
- (the "**Metering Schematic Obligation**").

- 21.12 Any:

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<sup>37</sup> Note to Reader: The relevant company to approve a remediation plan in respect of a breach of the CO<sub>2</sub> Metering Obligation is to be confirmed.

<sup>38</sup> The relevant company to approve a remediation plan in respect of a breach of the Gas Supply Metering Obligation is to be confirmed.

<sup>39</sup> Note to Reader: To be confirmed.

- (A) Metering Schematic Obligation Notice shall be accompanied by a Directors' Certificate in relation to the details of the Material Change referred to in the Metering Schematic Obligation Notice; and
- (B) copy of the relevant schematic diagram provided pursuant to Condition 21.11(B) shall be accompanied by a Directors' Certificate in relation to the relevant schematic diagram and Supporting Information (including the date of such diagram and the version number thereof).

***Failure to comply with Metering Schematic Obligation***

- 21.13 If the Generator is in breach of the Metering Schematic Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of the Metering Schematic Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 21.14 If the Generator subsequently complies with its Metering Schematic Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.13. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.14.

***Undertakings: Access to and testing of meters***

- 21.15 With effect from the Start Date, the Generator shall grant (or, if the Generator is not the [Registrant]<sup>40</sup> of the Facility Metering Equipment, shall procure that the [Registrant] grants) the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility, the Facility Metering Equipment and to such plant, property or assets owned, occupied or controlled by the Generator (or the [Registrant] if the Generator is not the [Registrant] of the Facility Metering Equipment) and to which the Generator (or the [Registrant] if the Generator is not the [Registrant] of the Facility Metering Equipment) can lawfully grant access as may be reasonably necessary for the DPA Counterparty to read, test or verify the Facility Metering Equipment and inspect and conduct tests in respect of the Facility Metering Equipment from time to time (the "**Metering Access Right**").
- 21.16 If the DPA Counterparty intends to exercise the Metering Access Right it shall give a notice to the Generator (a "**Metering Inspection Notice**"). A Metering Inspection Notice shall:
- (A) specify that the DPA Counterparty (or suitably qualified persons nominated by it in accordance with Condition 21.15) intends to exercise the Metering Access Right; and
  - (B) specify the date by which the Generator must, in accordance with Condition 21.17, permit the exercise of the Metering Access Right.
- 21.17 If the Generator:
- (A) is the [Registrant] of the Facility Metering Equipment, it shall permit the DPA Counterparty to exercise the Metering Access Right no later than the later of: (i) ten (10)

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<sup>40</sup> Note to Reader: To be confirmed whether there will be a "**Registrant**" in relation to the CO2 Metering Equipment and Gas Metering Equipment.

Business Days after receipt of the Metering Inspection Notice; and (ii) the date specified in the Metering Inspection Notice; and

- (B) is not the [Registrant] of the Facility Metering Equipment, it shall procure that the DPA Counterparty is permitted to exercise the Metering Access Right no later than the later of: (i) fifteen (15) Business Days after receipt of the Metering Inspection Notice; and (ii) the date specified in the Metering Inspection Notice.

21.18 The DPA Counterparty shall (and shall procure that any suitably qualified persons nominated by it in accordance with Condition 21.15 shall):

- (A) take or refrain from taking all such other action as may be reasonably required by the Generator in order to comply with health and safety rules relating to the Facility; and
- (B) obtain each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval of or from a Competent Authority necessary for it to exercise the Metering Access Right.

***Failure to provide Metering Access Right***

21.19 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Metering Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

21.20 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Metering Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.19. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.20.

21.21 If the Generator:

- (A) fails to comply with its obligations under Condition 21.17; and
- (B) has not permitted the DPA Counterparty to exercise its Metering Access Right within twenty (20) Business Days following the latest permitted date for compliance with its obligations pursuant to Condition 21.17(A) or 21.17(B) (as applicable),

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

***Metering Access Right costs***

21.22 If, pursuant to or as a result of the exercise of the Metering Access Right, it is agreed or determined that there has been a breach of a Metering Obligation, the Generator shall promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty in exercising the Metering Access Right.

***Undertakings: SCADA Systems***

21.23 With effect from the Start Date, the Generator shall ensure that:

- (A) a SCADA System is installed and maintained at the Facility in accordance with the Reasonable and Prudent Standard; and
- (B) the DPA Counterparty has full access to all Information from the SCADA System (including live operational data) via a data communications link or other applicable data link as agreed between the Parties (such agreement not to be unreasonably withheld or delayed by the Generator),

(each a "**SCADA Systems Obligation**" and together the "**SCADA Systems Obligations**").

***Failure to comply with SCADA Systems Obligations***

- 21.24 If the Generator is in breach of a SCADA Systems Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of the SCADA Systems Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 21.25 If the Generator subsequently complies with such SCADA Systems Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 21.24. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 21.25.

**22. GENERATOR UNDERTAKING: MINIMUM CO<sub>2</sub> CAPTURE RATE**

- 22.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty that for each AP Billing Period, the Achieved and Declared CO<sub>2</sub> Capture Rate Average will be equal to or greater than the Minimum CO<sub>2</sub> Capture Rate (a "**Minimum CO<sub>2</sub> Capture Rate Obligation**").

***Notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***

- 22.2 If the Generator is in breach of the Minimum CO<sub>2</sub> Capture Rate Obligation for either three (3) consecutive AP Billing Periods or three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods (a "**Minimum CO<sub>2</sub> Capture Rate Breach**"), then the DPA Counterparty may at any time following the occurrence of such breach give notice to the Generator (a "**Capture Rate Breach Notice**"). A Capture Rate Breach Notice shall:
- (A) specify the Capture Rate Breach Deadline being the date on and from which the DPA Counterparty may, subject to the remainder of this Condition 22, give the Generator a Default Termination Notice in respect of the Minimum CO<sub>2</sub> Capture Rate Breach in accordance with Condition 35.26; and
  - (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the Minimum CO<sub>2</sub> Capture Rate Breach.

***Response to notification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***

- 22.3 No later than twenty (20) Business Days after receipt of the Capture Rate Breach Notice, the Generator shall submit a notice to the DPA Counterparty (a "**Capture Rate Breach Response Notice**"). A Capture Rate Breach Response Notice shall specify that the Generator intends to either:
- (A) rectify the Minimum CO<sub>2</sub> Capture Rate Breach by achieving an Achieved and Declared CO<sub>2</sub> Capture Rate Average equal to or greater than eighty five per cent. (85%) for three

(3) consecutive AP Billing Periods (a "**Capture Rate Breach Rectification**") on or before the Capture Rate Breach Deadline; or

(B) provide the DPA Counterparty with and implement a Capture Rate Breach Rectification Plan, following which Condition 22.5 shall apply.

22.4 If the Generator fails to submit a Capture Rate Breach Response Notice to the DPA Counterparty in accordance with Condition 22.3, then the Generator will be deemed to have notified the DPA Counterparty that it intends to achieve a Capture Rate Breach Rectification on or before the Capture Rate Breach Deadline in accordance with Condition 22.3(A).

***Rectification of Minimum CO<sub>2</sub> Capture Rate Obligation breach***

22.5 If this Condition 22.5 applies:

(A) the Generator shall prepare and submit to the DPA Counterparty for approval a draft Capture Rate Breach Rectification Plan (with such Supporting Information as the Generator considers to be relevant to the content of the Capture Rate Breach Rectification Plan) no later than sixty (60) Business Days after the date of the Capture Rate Breach Notice, during which period the Generator shall use its best endeavours to mitigate the effects of the Minimum CO<sub>2</sub> Capture Rate Breach; and

(B) the DPA Counterparty shall, no later than sixty (60) Business Days after receipt of the draft Capture Rate Breach Rectification Plan (and Supporting Information), provide a notice to the Generator (a "**Capture Rate Breach Rectification Review Notice**") which shall specify whether the DPA Counterparty:

(i) approves the draft Capture Rate Breach Rectification Plan without amendment, following which the draft Capture Rate Breach Rectification Plan shall become the "**Approved Capture Rate Breach Rectification Plan**";

(ii) requires the Generator to provide additional Supporting Information in relation to the draft Capture Rate Breach Rectification Plan, in order for the DPA Counterparty to determine whether or not to approve such plan;

(iii) requires amendments to the draft Capture Rate Breach Rectification Plan, in which case the Capture Rate Breach Rectification Review Notice shall provide the Generator with sufficient detail in relation to such amendments; or

(iv) in its sole and absolute discretion, rejects the draft Capture Rate Breach Rectification Plan, in which case the Capture Rate Breach Rectification Review Notice shall provide the Generator with sufficient detail in relation to such rejection and the Generator agrees and acknowledges that it shall not be entitled to refer any decision made by the DPA Counterparty pursuant to this Condition (iv) to the Dispute Resolution Procedure.

22.6 The Generator shall no later than fifteen (15) Business Days after receipt of a Capture Rate Breach Rectification Review Notice, submit to the DPA Counterparty:

(A) if Condition 22.5(B)(ii) applies, the relevant additional Supporting Information specified in the Capture Rate Breach Rectification Review Notice;

(B) if Condition 22.5(B)(iii) applies, an amended draft Capture Rate Breach Rectification Plan which includes the amendments specified in the Capture Rate Breach Rectification Review Notice; or

- (C) if Condition 22.5(B)(iv) applies, an amended draft Capture Rate Breach Rectification Plan,

following which Condition 22.5(B) shall then reapply.

22.7 If Condition 22.5(B)(i) applies:

- (A) as soon as reasonably practicable after receipt of the Capture Rate Breach Rectification Review Notice, and in any event no later than sixty (60) Business Days after such date, the Generator shall commence the implementation of the Approved Capture Rate Breach Rectification Plan, and the Generator shall continue to implement the Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to remedy the Minimum CO<sub>2</sub> Capture Rate Breach; and
- (B) the Generator shall notify the DPA Counterparty in writing no later than five (5) Business Days following the date on which the Generator fully implements the Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to achieve a Capture Rate Breach Rectification (a "**Generator Capture Rate Breach Remediation Notice**"), together with such Supporting Information as is reasonably necessary to evidence that the breach has been remedied.

***Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach***

22.8 If:

- (A) subject to limb (B), the Generator fails to achieve a Capture Rate Breach Rectification by the Capture Rate Breach Deadline; or
- (B) Condition 22.5(B)(i) applies and at and/or following the Capture Rate Breach Deadline the Generator has failed to commence the implementation of and/or continue to implement an Approved Capture Rate Breach Rectification Plan in accordance with its terms in order to achieve a Capture Rate Breach Rectification,

then a "**Capture Rate Termination Event**" will be deemed to have occurred.

***Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension***

22.9 Without prejudice to Conditions 22.1 to 22.7, if the Generator's Achieved and Declared CO<sub>2</sub> Capture Rate Average is less than the Suspension CO<sub>2</sub> Capture Rate for either three (3) consecutive AP Billing Periods or three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods (a "**Suspension CO<sub>2</sub> Capture Rate Breach**"), then the DPA Counterparty may at any time following the occurrence of such breach, elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

22.10 If the Generator evidences to the satisfaction of the DPA Counterparty that it has achieved a Capture Rate Breach Rectification, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable (which, for the avoidance of doubt, shall be based on the Availability of Capture that is achieved during the suspension period) but for the operation of Condition 22.9. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 22.10.

- 22.11 Any evidence provided by the Generator to the DPA Counterparty pursuant to Condition 22.10 shall be accompanied by a Directors' Certificate in respect of such evidence.

***Relief due to Force Majeure and Capture Outage Relief Event***

- 22.12 The Generator shall be relieved from liability, and deemed not to be in breach of the Minimum CO<sub>2</sub> Capture Rate Obligation and/or Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*), for any failure or delay in the performance of such obligations if and to the extent such failure or delay is directly attributable to the occurrence and continuance of either:

- (A) Force Majeure in respect of which the Generator is the FM Affected Party but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (Force Majeure); or
- (B) a Capture Outage Relief Event which directly affects the Generator.

**23. GENERATOR UNDERTAKING: DECLARATION OBLIGATIONS**

***Declaration Obligations***

- 23.1 With effect from the Start Date, the Generator undertakes to the DPA Counterparty to:

- (A) submit electricity capacity data declarations and details of Generation Outage Events, including:
  - (i) the Net Available Capacity immediately preceding a Generation Outage Event;
  - (ii) the Net Available Capacity during each time segment of a Generation Outage Event;
  - (iii) the duration, start time, and end time of each time segment of a Generation Outage Event; and
  - (iv) the reason for a Generation Outage Event (including, if applicable, a Generation Outage Relief Event),

in all cases, but subject to Condition 23.1(B), in accordance with UK REMIT (the "**Generation Declaration Capacity Data**");

- (B) if UK REMIT is unavailable at any time, promptly provide the Generator Declaration Capacity Data to the DPA Counterparty, in a form and content satisfactory to the DPA Counterparty (acting reasonably), and with the frequency that such data would have been provided had UK REMIT been available;
- (C) submit a Declared CO<sub>2</sub> Capture Rate in respect of AP Settlement Units where:
  - (i) the Metered Electricity Output is equal to or less than zero (0); and/or
  - (ii) a T&S Outage Event occurs,

in a form and content satisfactory to the DPA Counterparty (acting reasonably) and with the frequency that the Declared CO<sub>2</sub> Capture Rate is required to be provided in accordance with [a methodology and framework (similar to BMRS) to be determined];<sup>41</sup>

- (D) submit details (to the nearest minute) of the duration, start time and end time of a Full Capture Outage Event and/or a Full T&S Outage Event (as applicable) where a Full Capture Outage Event and/or a Full T&S Outage Event occurs and is continuing, in a form and content satisfactory to the DPA Counterparty (acting reasonably) and no later than five (5) calendar days following the VP Billing Period in which the last such outage event ceases to apply (the "**Capture Declaration Capacity Data**");
- (E) ensure that all Declaration Capacity Data provided by or on behalf of the Generator pursuant to Conditions 23.1(A), 23.1(B), 23.1(C), and 23.1(D) is true, complete and accurate in all material respects and is not misleading;
- (F) if the Generator becomes aware at any time that any Declaration Capacity Data (and/or Supporting Information) submitted pursuant to Condition 23.1(A), 23.1(B), 23.1(C) or 23.1(D) was not true, complete and accurate in all material respects and/or was misleading as at the date of submission, promptly:
  - (i) notify the DPA Counterparty of the relevant error(s); and
  - (ii) provide the DPA Counterparty with updated Declaration Capacity Data and Supporting Information which is true, complete and accurate in all material respects and is not misleading (the "**Revised Declaration Capacity Data**"), together with a Directors' Certificate and Supporting Information in relation to such data; and
- (G) if the DPA Counterparty notifies the Generator that the DPA Counterparty considers that any Declaration Capacity Data (and/or Supporting Information) submitted pursuant to Condition 23.1(A), 23.1(B), 23.1(C) or 23.1(D) was not true, complete and accurate in all material respects and/or was misleading as at the date of submission, promptly investigate such issue and provide the DPA Counterparty with Revised Declaration Capacity Data together with a Directors' Certificate and Supporting Information in relation to such data,

(each, a "**Declaration Obligation**" and together the "**Declaration Obligations**").

23.2 If the Generator fails to submit the Capture Declaration Capacity Data to the DPA Counterparty in accordance with Condition 23.1(D) for two (2) or more consecutive AP Settlement Units in which:

- (i) the Metered Electricity Output is greater than zero (0); and
- (ii) the Metered CO<sub>2</sub> Output is equal to or less than zero (0),

the Generator will be deemed to be in breach of the Declaration Obligations.

**Notification by DPA Counterparty of Declaration Obligation breach**

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<sup>41</sup> Note to Reader: The methodology and framework for capture rate declarations is to be determined by BEIS.



- 23.3 The DPA Counterparty may at any time give a notice to the Generator if it considers that the Generator is in breach of a Declaration Obligation (a "**DPA Counterparty Declaration Breach Notice**"), with such notice to:
- (A) specify which Declaration Obligation the DPA Counterparty considers that the Generator has breached; and
  - (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the breach of the Declaration Obligation.

***Notification by Generator of Declaration Obligation breach***

- 23.4 The Generator shall promptly give a notice to the DPA Counterparty if it becomes aware that it is in breach of a Declaration Obligation (a "**Generator Declaration Breach Notice**"). A Generator Declaration Breach Notice shall:
- (A) specify which Declaration Obligation the Generator considers that it has breached; and
  - (B) be accompanied by such Supporting Information as the Generator considers to be relevant to evidence the breach of the Declaration Obligation.
- 23.5 Each Generator Declaration Breach Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Generator Declaration Breach Notice.

***Suspension of Payments (Failure to provide Declaration Capacity Data)***

- 23.6 If the Generator is in breach of a Declaration Obligation, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such Declaration Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 23.7 Without prejudice to Condition 23.8, if the Generator subsequently rectifies the breach of the relevant Declaration Obligation, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 23.6. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 23.7.

***Misleading Declaration Capacity Data***

- 23.8 If any Declaration Capacity Data provided pursuant to Condition 23.1 is misleading in any respect, or the Generator's failure to provide Declaration Capacity Data is misleading in any respect, then a "**Misleading Declaration Termination Event**" will be deemed to have occurred.

***Undertaking: Access to and test of Facility***

- 23.9 With effect from the Start Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty from time to time and considered by the DPA Counterparty to be suitably qualified) access to the Facility and to such plant, property or assets owned, occupied or controlled by the Generator and to which the Generator can lawfully grant access as may be reasonably necessary for the DPA Counterparty to read, test or verify any Declaration Capacity Data or Revised Declaration Capacity Data (or to test or verify whether the Generator should have provided Declaration Capacity Data or Revised

Declaration Capacity Data where it has failed to do so) and inspect and conduct tests (including CO<sub>2</sub> Capacity Rate Tests, with such tests to be carried out in accordance with the Reasonable and Prudent Standard, and in compliance with industry guidelines, practices and standards) in respect of the Declaration Capacity Data from time to time (the "**Declaration Access Right**").

- 23.10 If the DPA Counterparty intends to exercise the Declaration Access Right it shall give a notice to the Generator (a "**Declaration Inspection Notice**"). A Declaration Inspection Notice shall:
- (A) specify that the DPA Counterparty (or suitably qualified persons nominated by it in accordance with Condition 23.9) intends to exercise the Declaration Access Right; and
  - (B) specify the date by which the Generator must, in accordance with Condition 23.9, permit the exercise of the Declaration Access Right.
- 23.11 The Generator shall permit the DPA Counterparty to exercise the Declaration Access Right no later than the later of: (i) two (2) Business Days after receipt of the Declaration Inspection Notice; and (ii) the date specified in the Declaration Inspection Notice.
- 23.12 The DPA Counterparty shall (and shall procure that any suitably qualified persons nominated by it in accordance with Conditions 23.9 and 23.10 shall):
- (A) take or refrain from taking all such other action as may be reasonably required by the Generator in order to comply with health and safety rules relating to the Facility; and
  - (B) obtain each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order confirmation, permission or other approval of or from a Competent Authority that is necessary for it to exercise the Declaration Access Right.

***Failure to provide Declaration Access Right***

- 23.13 If the Generator is in breach of its obligation to permit the DPA Counterparty to exercise the Declaration Access Right, the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of such obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.
- 23.14 If the Generator subsequently complies with its obligation to permit the DPA Counterparty to exercise the Declaration Access Right, then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 23.13. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 23.14.
- 23.15 If the Generator:
- (A) fails to comply with its obligations under Condition 22.8 to permit the DPA Counterparty to exercise the Declaration Access Right; and
  - (B) has not permitted the DPA Counterparty to exercise its Declaration Access Right within four (4) Business Days of the date on which the DPA Counterparty or its appointed representative first sought to exercise the Declaration Access Right,

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

**Declaration Access Right costs**

23.16 If, pursuant to or as a result of the exercise of the Declaration Access Right, it is agreed or determined that there has been a breach of a Declaration Obligation, the Generator shall promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty in exercising the Declaration Access Right.

24. **GENERATOR UNDERTAKINGS: INFORMATION PROVISION AND NO CUMULATION OF SUBSIDY, STATE AID AND/OR UNION FUNDING**

**Provision of Information to the DPA Counterparty**

24.1 In addition and without prejudice to its obligations under Condition 3.7 (*Operational Conditions Precedent: General Reporting Obligations*), Condition 4.8 (*Difficulties in achieving the Milestone Requirement*), Condition 20 (*Generator Undertakings: General*) and Condition 51.4 (*Provision of Force Majeure information*), the Generator, acting in accordance with the Reasonable and Prudent Standard, shall provide the DPA Counterparty (and, if requested by the DPA Counterparty, the DPA Settlement Services Provider) with:

- (A) the Generator's estimate of:
  - (i) the expected Start Date;
  - (ii) the Net Dependable Capacity, Plant Net Efficiency, Start Up Times and the Test Achieved CO<sub>2</sub> Capture Rate as at the Start Date;
  - (iii) the Achieved CO<sub>2</sub> Capture Rate and the Availability of Generation during the first AP Billing Period; and
  - (iv) the commissioning profile of the Facility,

each such estimate to be provided on the Agreement Date and at monthly intervals thereafter;
- (B) all Information requested by the DPA Counterparty to comply with its obligations under the DPA (including the DPA Settlement Required Information), such Information to be provided as soon as reasonably practicable, and no later than five (5) Business Days (or, if such Information is not within the possession of the Generator, no later than ten (10) Business Days) or such longer period as is specified by the DPA Counterparty, after the Information is requested;
- (C) all Information relating to the T&S Fees (including any invoice provided by the T&S Operator to the Generator), such Information to be provided as soon as reasonably practicable, and no later than three (3) Business Days after the T&S Operator has notified the Generator of the same;
- (D) the Forecast Data, such Forecast Data to be provided:
  - (i) no later than ten (10) Business Days after the Agreement Date, for the period from the projected Start Date to the following 31 March and in respect of each Month (or part of a Month) during such period (but only if the Start Date is projected to occur before the following 31 March);
  - (ii) not later than 31 January in each year (or, in relation to the first (1st) such forecast, and if the Agreement Date is after 31 January, no later than ten (10) Business Days after the Agreement Date) for the twelve (12) Month period

commencing on 01 April in the following year in respect of each Month (or part of a Month) during such period, provided that either:

- (a) such period commences after the Start Date; or
  - (b) the Start Date is projected to occur during such period; and
  - (iii) not later than six (6) Months prior to the expected Start Date (as provided by the Generator at intervals in accordance with Condition 21.1(A)), for the twelve (12) Month period commencing on the expected Start Date; and
  - (iv) not later than five (5) Business Days prior to the first (1st) day of each calendar month after the Start Date in respect of:
    - (a) the next Month; and
    - (b) any other Months in respect of which the Generator has previously provided forecasts to the DPA Counterparty (but only if any of the Generator's forecasts have changed);
- (E) notification of the occurrence of any event or circumstance which will or is reasonably likely to affect significantly the:
- (i) Net Dependable Capacity;
  - (ii) Availability of Capture;
  - (iii) Availability of Generation;
  - (iv) Metered Electricity Output;
  - (v) Achieved CO<sub>2</sub> Capture Rate;
  - (vi) T&S Fees; and
  - (vii) *[any other information to be determined]*,<sup>42</sup>
- together with Supporting Information in respect of the reasons for such event or circumstance and the impact on (i) to [(vii)], such notification to be provided as soon as reasonably practicable, and no later than five (5) Business Days after the Generator has become aware of such an event or circumstance;
- (F) all Information reasonably requested by the DPA Counterparty regarding the financial condition, business or operations of the Generator to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes, such Information to be provided as soon as soon as reasonably practicable and no later than ten (10) Business Days, or such longer period as is specified by the DPA Counterparty, after such Information is requested;
- (G) all Information reasonably requested by the DPA Counterparty for the purposes of: (i) compiling and evaluating statistics relating to the outcomes of the DPA and the CCUS Programme and the impact of the CCUS Programme across a range of social and economic factors; and (ii) publishing material relating thereto, including announcements and reports describing the general outcomes, merits and achievements relating to the

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<sup>42</sup> Note to Reader: This Condition is subject to further review by BEIS.

CCUS Programme, such Information to be provided as soon as soon as reasonably practicable and no later than ten (10) Business Days, or such longer period as is specified by the DPA Counterparty, after such Information is requested;

- (H) as soon as reasonably practicable upon request, all Information reasonably requested by the DPA Counterparty for the purposes of assessing compliance by the Generator with the Metering Obligations;
- (I) as soon as reasonably practicable upon becoming aware of them, the details of any litigation, arbitration or administrative suit or proceeding, adjudication, expert determination, Tax claim, or Tax investigation against the Generator which is current; pending before any court, arbitral or other tribunal, administrative or regulatory body or, as the case may be, expert; or, so far as the Generator is aware, for which a formal written notice before action or similar threatening such suit or proceedings has been received and which, if adversely determined, would have or would be reasonably likely to have a Material Adverse Effect;
- (J) the Expected Facility Data, such Expected Facility Data to be provided:
  - (i) no later than two (2) Months after the Agreement Date;
  - (ii) no later than two (2) Months after the Milestone Delivery Date;
  - (iii) no later than the 31 January in each year during the Term, starting with the year after the year in which the Milestone Delivery Date falls,
 

except that where the Expected Facility Data has not changed significantly since the last submission by the Generator to the DPA Counterparty of such information, the Generator is not required to resubmit the Expected Facility Data but must submit to the DPA Counterparty a written confirmation, in form and content satisfactory to the DPA Counterparty (acting reasonably), that such information has not changed significantly since the last submission;
  - (iv) as soon as reasonably practicable and in any event no later than ten (10) Business Days after the Generator has become aware of the occurrence of any event or circumstance which will, or is reasonably likely to, significantly affect the accuracy of the Expected Facility Data last submitted; and
  - (v) as soon as reasonably practicable and in any event no later than ten (10) Business Days after receipt of a written request by the DPA Counterparty; and
- (K) as soon as reasonably practicable, all Information (kept to the Reasonable and Prudent Standard) reasonably requested that represents the status and progress of the Project to date against contractual and Project milestones, showing the critical path of the Project towards these milestones up to the delivery of a Longstop Date Capacity Notice.

### **Forecast Data**

24.2 For the purposes of Condition 24.1(D), the "**Forecast Data**" means:

- (A) Net Dependable Capacity;
- (B) Availability of Capture;
- (C) Availability of Generation;
- (D) Metered Electricity Output;

- (E) Achieved CO<sub>2</sub> Capture Rate;
- (F) T&S Fees; and
- (G) [any other information to be determined],<sup>43</sup>

in each case in relation to the period referred to in Condition 24.1(D).

**Accuracy of Information**

24.3 The Generator shall ensure that:

- (A) all forecasts, forward-looking statements and data provided by or on behalf of the Generator pursuant to Condition 24.1 are prepared in good faith, on a reasonable basis and with due care and attention; and
- (B) all other Information provided by or on behalf of the Generator pursuant to Condition 24.1 is true, complete and accurate in all material respects and is not misleading.

**Warranty: No Cumulation of Subsidy**

24.4 The Generator represents and warrants to the DPA Counterparty that, as at the Start Date, the following statement is true, accurate and not misleading:

- (A) no Subsidy, State aid or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person), other than:
  - (i) the subsidy arising under the DPA; or
  - (ii) any Subsidy, State aid and/or Union Funding notified to the DPA Counterparty in accordance with the process for the satisfaction or waiver of the Subsidy Control Declaration Operational CP.

**Undertaking: No cumulation of Subsidy, State aid and/or Union Funding**

24.5 With effect from the Subsidy Control Declaration Date, the Generator undertakes to the DPA Counterparty as follows:

- (A) the Generator shall at all times ensure that no Subsidy, State aid or Union Funding is received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person), other than the subsidy arising under the DPA;
- (B) *Notification*: the Generator shall:
  - (i) give notice to the DPA Counterparty as soon as reasonably practicable upon becoming aware that any Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person, or is received before, on or after the Subsidy Control Declaration Date) (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 24.4(A)(i) and 24.4(A)(ii); and

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<sup>43</sup> Note to Reader: This Condition is subject to further review by BEIS.

- (ii) provide the DPA Counterparty with such Supporting Information regarding compliance or non-compliance by the Generator with the undertaking in Condition 24.5(A) as the DPA Counterparty reasonably requires, as soon as reasonably practicable and in any event no later than thirty (30) Business Days following receipt of the DPA Counterparty's request. Any Supporting Information provided by a Generator to the DPA Counterparty under this Condition 24.5(B)(ii) shall be accompanied by a Directors' Certificate in respect of such Supporting Information; and
- (C) *Repayment*: the Generator shall repay or procure the repayment of any Subsidy, State aid and/or Union Funding which has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person or is received before, on or after the Subsidy Control Declaration Date) (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) to the granter of such subsidy, aid or funding (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 24.4(A)(i) and 24.4(A)(ii).

### **Suspension of Payments**

- 24.6 If the Generator breaches Conditions 24.4 or fails to comply with Condition 24.5(A) the DPA Counterparty shall:
- (A) suspend payment of any amount(s) which would otherwise be payable by the DPA Counterparty to the Generator, from the date the DPA Counterparty becomes aware that the Generator has breached or failed to comply with such Condition (or as soon as reasonably practicable thereafter); and
  - (B) notify the Generator of any suspension as soon as reasonably practicable.
- 24.7 If the Generator evidences to the satisfaction of the DPA Counterparty that the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) has been repaid in full to the granter, any suspension under Condition 24.6 shall cease and the DPA Counterparty shall (subject to Condition 24.9, where applicable) pay any amounts to the Generator which would have been payable but for the operation of Condition 24.6. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 24.7.
- 24.8 Any evidence provided by the Generator to the DPA Counterparty pursuant to Condition 24.7 shall be accompanied by a Directors' Certificate in respect of such evidence.

### **Suspension of Payments (Failure to Provide Information)**

- 24.9 If the Generator fails to comply with Condition 24.5(B)(ii), the DPA Counterparty shall:
- (A) suspend payment of any amount(s) which would otherwise be payable by the DPA Counterparty to the Generator, from the date the DPA Counterparty becomes aware that the Generator failed to comply with such Condition (or as soon as reasonably practicable thereafter); and
  - (B) notify the Generator of any suspension as soon as reasonably practicable.
- 24.10 Subject to Condition 24.6 and 24.15, if the Generator subsequently provides the DPA Counterparty with the Supporting Information (accompanied by a Directors' Certificate) requested pursuant to Condition 24.5(B)(ii), any suspension under Condition 24.9 shall cease and the DPA Counterparty shall pay any amounts to the Generator which would have been

payable but for the operation of Condition 24.9. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable to the Generator pursuant to this Condition 24.10.

**Subsidy Interest**

- 24.11 Interest shall be due and payable in relation to any amount of Subsidy, State aid and/or Union Funding which has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or any other person), calculated on the basis that interest shall accrue on the outstanding balance of any such amount at the Subsidy Interest Rate from (and including) the date that the Subsidy, State aid and/or Union Funding was received, to (but excluding): (i) the date that the Subsidy, State aid and/or Union Funding and interest is repaid in full to the granter; or (ii) where Condition 24.16 applies, the date that payments equivalent to the amount of Subsidy, State aid and/or Union Funding and interest are recovered in full; or (iii) where Condition 3.46 (*Set-Off of Previous Subsidy*) or 24.15 (*Set-Off of Other Subsidy*) applies, the date the Subsidy, State aid and/or Union Funding and interest are set off in full. For this purpose:
- (A) interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year of 365 days;
  - (B) the "**Subsidy Interest Rate**" shall be either:
    - (i) the interest rate set out in any recovery order issued by a Subsidy Control Competent Authority;
    - (ii) the interest rate determined by the DPA Counterparty in accordance with the Reference Rate Methodology; or
    - (iii) in the case of State aid or Union Funding only, the interest rate that applies to recovery under the relevant State aid or Union Funding scheme; and
  - (C) to the extent that interest accrues for more than a year, the Subsidy Interest Rate shall be recalculated on an annual basis by the DPA Counterparty in accordance with the Reference Rate Methodology, and interest shall be compounded annually, so that interest accruing in the previous year shall be subject to interest in any subsequent year.

For the avoidance of doubt, interest pursuant to this Condition 24.11 shall not be due and payable in relation to any subsidy arising under the DPA.

**Waiver of Generator's Obligation to Repay Subsidy, State aid and/or Union Funding**

- 24.12 The DPA Counterparty shall agree by notice to waive the Generator's obligation under Condition 24.5(C) if the Generator evidences to the satisfaction of the DPA Counterparty that the granter of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11), in full or in part. If the Generator seeks a waiver, the Generator shall:
- (A) provide the DPA Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment in accordance with this Condition; and
  - (B) provide the DPA Counterparty with such additional Supporting Information as the DPA Counterparty reasonably requires, as soon as reasonably practicable, and in any event



no later than ten (10) Business Days following receipt of the DPA Counterparty's request,

in each case accompanied by a Directors' Certificate in respect of such Supporting Information.

24.13 If the DPA Counterparty agrees to waive the Generator's obligation to repay Subsidy, State aid and/or Union Funding pursuant to Condition 24.5(C):

(A) the DPA Counterparty shall also notify the Generator of:

(i) the amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11) which has not been repaid to the granter as at that date (the "**Other Subsidy**"); and

(ii) the Subsidy Interest Rate currently applicable;

(B) Condition 24.15 shall apply; and

(C) subject to Condition 24.15, the suspension under Condition 24.6(A) shall cease and the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 24.6(A). The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amounts payable pursuant to this Condition 24.13(C).

24.14 Nothing in this Condition 24 shall require the DPA Counterparty to waive the Generator's obligation under Condition 24.5(C), unless the DPA Counterparty is satisfied that the requirements of Condition 24.12 have been met.

#### ***Set-Off of Other Subsidy***

24.15 Any amount of Other Subsidy (as adjusted for interest in accordance with Condition 24.11) shall be set off against any amounts payable to the Generator under the DPA, so that no payment shall be made to the Generator until such amount has been set off in its entirety.

#### ***Recovery***

24.16 If the DPA expires or terminates and any amount of Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 24.11) has not yet been repaid in full pursuant to Condition 24.5(C) or set off in full, pursuant to Condition 3.46 (*Set-Off of Previous Subsidy*) or Condition 24.15 (*Set Off of Other Subsidy*), the DPA Counterparty shall be entitled to recover any payments made to the Generator under the DPA, up to the value of the outstanding amount. The DPA Counterparty shall give notice to the Generator of the outstanding amount and the currently applicable Subsidy Interest Rate and the Generator shall repay or procure the repayment of the notified amount (as adjusted for interest in accordance with Condition 24.11) to the DPA Counterparty within ten (10) Business Days from the date of the notice.

### **25. GENERATOR UNDERTAKING: SUPPLY CHAIN REPORTING**

#### ***Supply Chain Report<sup>44</sup>***

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<sup>44</sup> Note to Reader: The procedure in relation to supply chain reporting is subject to further review.

- 25.1 The Generator shall provide the DPA Counterparty with a Supply Chain Report (together with such Supporting Information as the Generator considers to be relevant to the content of the Supply Chain Report):
- (A) no earlier than six (6) Months prior to the Milestone Delivery Date and no later than the Milestone Delivery Date;
  - (B) no earlier than six (6) Months prior to the third (3<sup>rd</sup>) anniversary of the Start Date and no later than the third (3<sup>rd</sup>) anniversary of the Start Date; and
  - (C) no earlier than six (6) Months prior to the seventh (7<sup>th</sup>) anniversary of the Start Date and no later than the seventh (7<sup>th</sup>) anniversary of the Start Date,
- (each a **"Supply Chain Report Deadline"** and together the **"Supply Chain Report Deadlines"**).
- 25.2 Each Supply Chain Report shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the Supply Chain Report.
- 25.3 The Generator acknowledges and agrees that each Supply Chain Report shall be provided by the DPA Counterparty to the Secretary of State.
- 25.4 The DPA Counterparty shall, no later than twenty (20) Business Days after each Supply Chain Report Deadline, give a notice to the Generator (a **"Supply Chain Report Response Notice"**). A Supply Chain Report Response Notice shall specify whether the Generator has or has not submitted a Supply Chain Report which complies with the requirements set out in Annex 9 (*Form of Supply Chain Report*).
- 25.5 If the DPA Counterparty states in a Supply Chain Report Response Notice that:
- (A) the Supply Chain Report complies with the requirements of a Supply Chain Report as set out in Annex 9 (*Form of Supply Chain Report*), then such Supply Chain Report shall be deemed to be approved by the DPA Counterparty as a valid Supply Chain Report; or
  - (B) the:
    - (i) Supply Chain Report does not comply with the requirements set out in Annex 9 (*Form of Supply Chain Report*) and is therefore not a valid Supply Chain Report; or
    - (ii) Generator has failed to submit a valid Supply Chain Report by the relevant Supply Chain Report Deadline,
- then the Supply Chain Report Fees shall be payable by the Generator in respect of the Generator's failure to provide the DPA Counterparty with the relevant Supply Chain Report.

#### **Payment of Supply Chain Report Fees**

- 25.6 Subject to Condition 25.6, if Condition 25.4(B) applies, the Generator shall pay the Supply Chain Report Fees in respect of the relevant Supply Chain Report to the DPA Counterparty within thirty (30) Business Days of the date of the relevant Supply Chain Report Fee being incurred, provided that if at any time after the relevant Supply Chain Report Deadline the Generator submits the relevant Supply Chain Report to the DPA Counterparty which the DPA Counterparty subsequently confirms under Condition 25.4(A) complies with the requirements

set out in Annex 9 (*Form of Supply Chain Report*), then no further Supply Chain Report Fees shall be payable by the Generator in relation to such Supply Chain Report.

- 25.7 Any Supply Chain Fees that accrue prior to the Start Date shall not be due and payable by the Generator unless and until the Start Date has occurred, except to the extent that any amounts become due and payable by the DPA Counterparty to the Generator prior to the Start Date whereby such Supply Chain Report Fees shall become due and payable.

***Set-Off of Supply Chain Report Fees***

- 25.8 Without prejudice to the generality of Condition 15 (*Set-off*), the DPA Counterparty may set off any Supply Chain Report Fees that are due and payable by the Generator against any amounts that are due and payable to the Generator under the DPA.

**Part 8**  
**Changes in Law**

**26. QUALIFYING CHANGE IN LAW: PROCEDURE**

***DPA Counterparty QCiL Notice***

26.1 If the DPA Counterparty considers that a Qualifying Change in Law has been implemented, occurred or become effective (or is shortly to be implemented, to occur or to become effective), it may give a notice to the Generator (a "**DPA Counterparty QCiL Notice**"). A DPA Counterparty QCiL Notice shall:

- (A) include reasonable details of the relevant Qualifying Change in Law;
- (B) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (C) specify why the DPA Counterparty considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including whether the DPA 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; and
- (D) (if the DPA Counterparty considers it reasonably practicable to do so) specify whether the DPA Counterparty considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings;
  - (ii) QCiL Capital Costs or QCiL Capital Savings;
  - (iii) an Adjusted Revenues Period (and, if so, the DPA Counterparty's ARP Estimate);
  - (iv) a QCiL Construction Event; and/or
  - (v) a QCiL Operations Cessation Event.

***Generator QCiL Response Notice***

26.2 If the DPA Counterparty gives a DPA Counterparty QCiL Notice to the Generator, the Generator shall as soon as reasonably practicable, and in any event no later than forty (40) Business Days after receipt of such DPA Counterparty QCiL Notice, give a notice to the DPA Counterparty (a "**Generator QCiL Response Notice**"). A Generator QCiL Response Notice shall:

- (A) specify whether the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law (and, if the Generator does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, the Generator shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
- (B) include either:
  - (i) a statement that the Generator agrees with the QCiL Effective Date or the Expected QCiL Effective Date specified in the DPA Counterparty QCiL Notice; or

- (ii) if the Generator does not agree with the QCiL Effective Date or the Expected QCiL Effective Date specified in the DPA Counterparty QCiL Notice, an alternative QCiL Effective Date or Expected QCiL Effective Date;
- (C) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
- (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (iii) an Adjusted Revenues Period and, if so the Generator's ARP Estimate;
  - (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or
  - (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings,
- together with such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the foregoing;
- (D) in respect of Conditions 26.2(C)(i), 26.2(C)(iii), and 26.2(C)(v), include Supporting Information evidencing the impact of the Qualifying Change in Law on the Facility's:
- (i) process heat and mass balance data;
  - (ii) cost base data and related process consumption parameters; and
  - (iii) load factor and short run marginal cost; and
- (E) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard,

(the information referred to or specified in paragraphs (A) to (E) above being "**QCiL Response Information**").

- 26.3 If the Generator, in a Generator QCiL Response Notice, indicates that it does not consider that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, it shall nonetheless provide the QCiL Response Information on the basis of an assumption that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law.
- 26.4 Any Generator QCiL Response Notice shall be accompanied by a Directors' Certificate in relation to the QCiL Response Information which states (without prejudice to the generality of the certification required pursuant to this Condition 26.4) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.
- 26.5 If the Generator becomes aware before any QCiL Compensation is agreed or determined, or paid, commenced or effected, pursuant to this Part 8 (*Changes in Law*) that any of the QCiL Response Information is no longer true, complete and accurate in all material respects or is

misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 26.4), the Generator shall as soon as reasonably practicable:

- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL Response Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL Response Information.

26.6 The DPA Counterparty may, by notice to the Generator no later than thirty (30) Business Days after receipt of a Generator QCiL Response Notice or any Revised Generator QCiL Response Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL Response Notice or, as the case may be, the Revised Generator QCiL Response Information (a "**Generator QCiL Response Notice Information Request**") as the DPA Counterparty reasonably requests.

26.7 If the DPA Counterparty gives a Generator QCiL Response Notice Information Request to the Generator, the Generator shall, no later than thirty (30) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

#### **Generator QCiL Notice**

26.8 If the Generator considers that a Qualifying Change in Law has been implemented, occurred or become effective or is shortly to be implemented, occur or become effective, it may give a notice to the DPA Counterparty (a "**Generator QCiL Notice**"). A Generator QCiL Notice shall:

- (A) include reasonable details of the relevant Qualifying Change in Law;
- (B) specify the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
- (C) specify why the Generator considers that the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law, including 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 (and including Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of that conclusion);
- (D) specify whether the Generator considers that the Notified Change in Law will give rise to or result in:
  - (i) QCiL Operating Costs or QCiL Operating Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (ii) QCiL Capital Costs or QCiL Capital Savings and, if so, include the Generator's good faith estimate of such amounts and the profile of the incurrence of, or the making or receipt of, such costs or savings (as applicable);
  - (iii) an Adjusted Revenues Period and, if so the Generator's ARP Estimate;
  - (iv) a QCiL Construction Event and, if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or

- (v) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings,

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

- (E) in respect of Conditions 26.8(D)(i), 26.8(D)(iii), 26.8(D)(v), include Supporting Information evidencing the impact of the Qualifying Change in Law on the Facility's:
  - (i) process heat and mass balance data;
  - (ii) cost base data and related process consumption parameters; and
  - (iii) load factor and short run marginal cost; and
- (F) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard,

(the information referred to or specified in paragraphs (A) to (F) above being "**QCIL Supporting Information**").

- 26.9 Any Generator QCiL Notice shall be accompanied by a Directors' Certificate in relation to the QCiL Supporting Information which states (without prejudice to the generality of the certification required pursuant to this Condition 26.9) whether, in the opinion of the Generator, having made all due and careful enquiries, the Notified Change in Law is or will be a Qualifying Change in Law.
- 26.10 If the Generator becomes aware before any QCiL Compensation is agreed or determined, or paid, commenced or effected, pursuant to this Part 8 (*Changes in Law*) that any of the QCiL Supporting Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 26.9), the Generator shall as soon as reasonably practicable:
  - (A) notify the DPA Counterparty that this is the case; and
  - (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL Response Information.
- 26.11 The DPA Counterparty may, by notice to the Generator no later than thirty (30) Business Days after receipt of a Generator QCiL Notice or any Revised Generator QCiL Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL Notice or, as the case may be, the Revised Generator QCiL Information (a "**Generator QCiL Notice Information Request**") as the DPA Counterparty reasonably requests.
- 26.12 If the DPA Counterparty gives a Generator QCiL Notice Information Request to the Generator, the Generator shall, no later than thirty (30) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.
- 26.13 The DPA 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 DPA Counterparty with all of the QCiL Supporting Information, and the Directors' Certificate, in respect of such Generator QCiL Notice.

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

26.14 As soon as reasonably practicable, and in any event no later than fifteen (15) Business Days, after either:

- (A) the DPA Counterparty receives from the Generator a Generator QCiL Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL Notice Information Request, fifteen (15) Business Days after the DPA Counterparty has received the requested Supporting Information); or
- (B) the DPA Counterparty receives from the Generator a Generator QCiL Response Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL Response Notice Information Request, fifteen (15) Business Days after the DPA Counterparty has received the requested Supporting Information),

the Parties shall meet to discuss and, in good faith, seek to agree:

- (i) whether the Notified Change in Law constitutes, or will constitute, a Qualifying Change in Law;
- (ii) in respect of a Qualifying Change in Law:
  - (a) the QCiL Effective Date or the Expected QCiL Effective Date (as appropriate);
  - (b) whether the Notified Change in Law will, or is reasonably expected to, result in:
    - (1) QCiL Net Operating Costs or QCiL Net Operating Savings;
    - (2) QCiL Net Capital Costs or QCiL Net Capital Savings;
    - (3) an Adjusted Revenues Period (and, if so, the impact, or the reasonably anticipated impact, of the Notified Change in Law on one (1) or more of the following: (i) the Net Dependable Capacity; (ii) the Availability of Generation; (iii) the Availability of Capture; and/or (iv) the Metered Day Electricity Output);
    - (4) a QCiL Construction Event and if so, the Generator's good faith estimate of the QCiL Construction Event Costs and QCiL Construction Event Savings; and/or
    - (5) a QCiL Operations Cessation Event and, if so, the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings;
  - (c) the amounts, forecasts and estimates applicable to that Qualifying Change in Law referred to in Condition 26.2(C) or 26.8(D) (as appropriate);
  - (d) the steps or additional steps, as the case may be, which the Generator should take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard; and
  - (e) any other matters necessary to determine the quantum of the QCiL Compensation;



- (iii) the QCiL Compensation in respect of such Qualifying Change in Law; and
- (iv) the QCiL Compensation Date.

***Disputes in respect of a Qualifying Change in Law***

- 26.15 If the Parties are not able to agree any of the matters in Condition 26.14, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing 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.
- 26.16 Until the Dispute has been resolved by agreement between the Parties or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL Compensation payable.

**27. QUALIFYING CHANGE IN LAW: COMPENSATION**

***Categories of Qualifying Change in Law compensation***

- 27.1 Subject to Condition 27.3, compensation in respect of a Qualifying Change in Law shall be calculated:
- (A) if there are QCiL Operating Costs or QCiL Operating Savings, in accordance with Conditions 27.4 to 27.10 (inclusive) (a "**QCiL Opex Payment**");
  - (B) if there are QCiL Capital Costs or QCiL Capital Savings, in accordance with Conditions 27.11 to 27.19 (inclusive) (a "**QCiL Capex Payment**");
  - (C) if there is an Adjusted Revenues Period, in accordance with Conditions 27.20 to 27.25 (inclusive) (a "**QCiL Adjusted Revenues Payment**");
  - (D) if there is a QCiL Construction Event, in accordance with Conditions 27.26 to 27.29 (inclusive) (a "**QCiL Construction Event Payment**"); and/or
  - (E) if there is a QCiL Operations Cessation Event, in accordance with Conditions 27.30 to 27.32 (inclusive) (a "**QCiL Operations Cessation Event Payment**").
- 27.2 Any and all QCiL Compensation to be calculated in accordance with Condition 27.1 shall be payable in accordance with, and subject to, Conditions 28 (*Qualifying Change in Law: Effective date and payment*), 29 (*Qualifying Change in Law: True-up*) and 31 (*Changes in Law: General provisions*).
- 27.3 If a Qualifying Change in Law occurs which gives rise to or results in: (i) QCiL Operating Costs; (ii) QCiL Capital Costs; (iii) a QCiL Adjusted Revenues Payment; or (iv) any combination of the foregoing:
- (A) before the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Operating Costs, QCiL Capital Costs and/or QCiL Adjusted Revenues Payment is greater than the amount of the QCiL Construction Event Payment that would have been payable under Conditions 27.26 to 27.29 if such Qualifying Change in Law were to have constituted a QCiL Construction Event; or
  - (B) on or after the Start Date, and the amount of the QCiL Compensation that would otherwise be payable in respect of the estimated QCiL Operating Costs, QCiL Capital Costs and/or QCiL Adjusted Revenues Payment is greater than the amount of the QCiL

Operations Cessation Event Payment that would have been payable under Conditions 27.30 to 27.32 if such Qualifying Change in Law were to have constituted a QCiL Operations Cessation Event,

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

- (i) if Condition 27.3(A) applies, the amount of the QCiL Construction Event Payment that would have been payable under Conditions 27.26 to 27.29; or
- (ii) if Condition 27.3(B) applies, the amount of the QCiL Operations Cessation Event Payment that would have been payable under Conditions 27.30 to 27.32.

### **QCiL Opex Payment**

27.4 Any and all QCiL Opex Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), either as staged payments and/or as daily payments, either on an Ex-Ante and/or Ex-Post basis, which shall be payable:

- (A) by the DPA Counterparty to the Generator if there are QCiL Net Operating Costs; or
- (B) by the Generator to the DPA Counterparty if there are QCiL Net Operating Savings,

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.5 For the purposes of Condition 27.4, each QCiL Opex Payment shall, subject to Condition 27.10, be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 27.7 if the QCiL Opex Payment is to be paid by means of staged payments; or
- (B) Condition 27.8 if the QCiL Opex Payment is to be paid by means of daily payments.

27.6 In order to calculate the QCiL Opex Payment pursuant to Condition 27.7 and Condition 27.8, the QCiL Opex Payment shall first be calculated on a lump sum basis in accordance with one (1) of the following formulae:

- (A) if the QCiL Opex Payment is to be effected on an Ex-Ante basis:

$$QCiL\ Opex\ Payment = \sum_{j=1}^n \frac{C_{I,j} - C_{S,j}}{(1 + R_s)^{j-1}}$$

- (B) if the QCiL Opex Payment is to be effected on an Ex-Post basis:

$$QCiL\ Opex\ Payment = \sum_{j=1}^n [(C_{I,j} - C_{S,j}) \times (1 + R_s)^{n-j}]$$

27.7 If Condition 27.5(A) applies:

- (A) the QCiL Opex Payment shall be equivalent to the QCiL Opex Payment calculated as a lump sum payment in accordance with Condition 27.6; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made within forty (40) Business Days of the Specified Expiry Date.

27.8 If Condition 27.5(B) applies, the QCiL Opex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$\text{QCiL Opex Payment (daily payments)} = OP \times \frac{R_d}{1 - \left(1/(1 + R_d)^N\right)} \times \frac{CPI_t}{CPI_q}$$

27.9 For the purposes of the formulae in Conditions 27.6 to 27.8:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the ( $n-1$ )th period ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each;
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the final QCiL Opex Payment is payable and ending on the date that such final QCiL Opex Payment is paid;
- $n$  = is a whole number integer which defines the number of calendar year periods ( $j$ ) covered by the QCiL Opex Payment calculation, including the year in which the QCiL Compensation Date falls and the year in which the final QCiL Opex Payment is payable;
- $C_{i,j}$  = are, subject to Condition 27.10(B), the QCiL Operating Costs in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date;
- $C_{s,j}$  = are subject to Condition 27.10(B), the QCiL Operating Savings in period ( $j$ ) expressed in pounds in real terms as at the QCiL Compensation Date;
- $OP$  = is the QCiL Opex Payment (lump sum), as calculated in accordance with Condition 27.6;
- $R_d$  is the Daily Discount Rate;
- $R_s$  = is the Post-Tax Real Discount Rate;
- $N$  = is the duration, in days, of the period commencing on the QCiL Compensation Date and ending on the date on which the final QCiL Opex Payment is payable; and
- $CPI_t$  = denotes the CPI applicable during Billing Period ( $t$ ); and
- $CPI_q$  = denotes the CPI applicable at the QCiL Compensation Date.

27.10 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Operating Costs or QCiL Operating Savings; and (ii) an Adjusted Revenues Period, then:

- (A) subject to Condition 27.10(B), such QCiL Operating Costs or QCiL Operating Savings shall be used for the purposes of calculating the QCiL Opex Payment in accordance with Conditions 27.4 and 27.5; and

- (B) if and to the extent that any QCiL Operating Costs or QCiL Operating Savings are (or are reasonably likely to be) incurred, made or received solely in connection with, and during, the Adjusted Revenues Period, such QCiL Operating Costs or QCiL Operating Savings shall be excluded from the calculation of the QCiL Opex Payment in accordance with Conditions 27.4, 27.5 and 27.10(A) and shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 27.20, 27.21, and Conditions 27.22, 27.23 or 27.25 (as applicable).

### **QCIL Capex Payment**

27.11 Any and all QCiL Capex Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), as a lump sum payment, staged payments and/or daily payments which shall be payable:

- (A) by the DPA Counterparty to the Generator if there are QCiL Net Capital Costs; or
- (B) by the Generator to the DPA Counterparty where there are QCiL Net Capital Savings, irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.12 For the purposes of Condition 27.11, each QCiL Capex Payment shall, subject to Condition 27.18, be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 27.13 or 27.14 (as applicable) if the QCiL Capex Payment is to be paid as a lump sum;
- (B) Condition 27.15 if the QCiL Capex Payment is to be paid by means of staged payments; or
- (C) Condition 27.16 or 27.17 (as applicable) if the QCiL Capex Payment is to be paid by means of daily payments.

27.13 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$QCIL\ Capex\ Payment = \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}}$$

27.14 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(A) applies, the QCiL Capex Payment shall be calculated in accordance with the following formula:

$$QCIL\ Capex\ Payment = \frac{L - X}{L - N} \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}}$$

27.15 If Condition 27.12(B) applies:

- (A) the QCiL Capex Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Capex Payment been effected as a lump sum payment in accordance with Condition

27.13 or 27.14 (as applicable) or as daily payments in accordance with Condition 27.16 or 27.17 (as applicable); and

- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first date following the expiry of the period which is equal to the number of days in the Term divided by three (3) (to the nearest integer) following the QCiL Effective Date; and (ii) the Specified Expiry Date.

- 27.16 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) on or prior to the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL\ Capex\ Payment = \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}} \times \frac{R_d}{1 - 1/(1 + R_d)^{365(L-X)}} \times \frac{CPI_t}{CPI_q}$$

- 27.17 If: (i) the QCiL Net Capital Costs or the QCiL Net Capital Savings are first incurred, made or realised (or reasonably expected to be first incurred, made or realised) after the QCiL Capex Payment Adjustment Date; and (ii) Condition 27.12(C) applies, the QCiL Capex Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL\ Capex\ Payment = \frac{L - X}{L - N} \times \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-1}} \times \frac{R_d}{1 - 1/(1 + R_d)^{365(L-X)}} \times \frac{CPI_t}{CPI_q}$$

- 27.18 For the purposes of the formulae in Conditions 27.13, 27.14, 27.16 and 27.17:

$j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:

- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
- the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;

$C_j$  = are the QCiL Capital Costs in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date;

$S_j$  = are the QCiL Capital Savings in period ( $j$ ) expressed in pounds in real terms as at the QCiL Compensation Date;

$R_s$  = is the Post-Tax Real Discount Rate;

$L$  = is the period between: (a) the Start Date; and (b) the Specified Expiry Date, in years, and 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 equal to  $L$  multiplied by 0.8, and expressed to the nearest integer;
- $R_d$  = is the Daily Discount Rate;
- $CPI_t$  = denotes the CPI applicable during Billing Period ( $t$ ); and
- $CPI_q$  = denotes the CPI applicable at the QCiL Compensation Date.

- 27.19 If a Qualifying Change in Law gives rise to or results in both: (i) QCiL Capital Costs or QCiL Capital Savings; and (ii) an Adjusted Revenues Period, then:
- (A) subject to Condition 27.19(B), such QCiL Capital Costs or QCiL Capital Savings shall be used for the purposes of calculating the QCiL Capex Payment in accordance with Conditions 27.11, and 27.12 and Condition 27.13, 27.14, 27.15, 27.16 or 27.17 (as applicable); and
- (B) if and to the extent that any QCiL Capital Savings are (or are reasonably likely to be) made or received solely in connection with, and during, the Adjusted Revenues Period, then such QCiL Capital Savings shall be excluded from the calculation of the QCiL Capex Payment in accordance with Conditions 27.11, 27.12, and 27.19(A), and Condition 27.13, 27.14, 27.15, 27.16 or 27.17 (as applicable), and such QCiL Capital Savings shall instead be taken into account in the calculation of the QCiL Adjusted Revenues Payment in accordance with Conditions 27.20, 27.21 and Conditions 27.21 or 27.22 (as applicable).

**QCiL Adjusted Revenues Payment**

- 27.20 Any and all QCiL Adjusted Revenues Payments shall be effected, at the election of the DPA Counterparty (after consultation with the Generator), as a lump sum payment, staged payments, daily payments and/or an adjustment to the Net Dependable Capacity, the Availability of Capture and/or the Availability of Generation, either on an Ex-Ante and/or Ex-Post basis, which shall be payable:
- (A) by the DPA Counterparty to the Generator if the relevant Qualifying Change in Law results in a: (i) decrease or increase in the Generator's Revenue; (ii) a decrease or increase in the Availability Payments paid or payable to the Generator resulting from an increase or decrease in the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture; and/or (iii) a decrease or increase in Variable Payments paid or payable to the Generator, in each case as a direct result of the relevant Qualifying Change in Law and where the sum of (i), (ii) and (iii) is greater than zero (0); or
- (B) by the Generator to the DPA Counterparty if the relevant Qualifying Change in Law results in a: (i) decrease or increase in the Generator's Revenue; (ii) a decrease or increase in the Availability Payments paid or payable to the Generator resulting from an increase or decrease in the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture; and/or (iii) a decrease or increase in Variable Payments paid or payable to the Generator, in each case as a direct result of the relevant Qualifying Change in Law and where the sum of (i), (ii) and (iii) is less than zero (0),

irrespective of whether or not the relevant Qualifying Change in Law occurs, is implemented or becomes effective before, on or after the Start Date.

27.21 For the purposes of Condition 27.20, each QCiL Adjusted Revenues Payment shall be an amount (*expressed in pounds*) calculated in accordance with:

- (A) Condition 27.22 if the QCiL Adjusted Revenues Payment is to be paid as a lump sum on an Ex-Post basis;
- (B) Condition 27.23 if the QCiL Adjusted Revenues Payment is to be paid by means of staged payments on an Ex-Post basis;
- (C) Condition 27.24 if the QCiL Adjusted Revenues Payment is to be paid by means of daily payments; or
- (D) Condition 27.25 if the QCiL Adjusted Revenues Payment is to be paid by means of an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture component(s) of the Availability Payment on Ex-Ante basis.

27.22 If Condition 27.21(A) applies the QCiL Adjusted Revenues Payment shall be calculated in accordance with the following formula:

$$QCiL \text{ Adjusted Revenues Payment (lump sum)} = \sum_{j=1}^n [(\Delta AP_j + \Delta VP_j + \Delta Revenue_j) \times (1 + R_s)^{n-j}]$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the last of the Adjusted Revenues Period falls and ending on the last day of the Adjusted Revenues Period.
- $\Delta AP_j$  = is the Availability Payment QCiL Differential in period ( $j$ ) (£) (as calculated in accordance with Condition 27.34);
- $\Delta VP_j$  = is the Variable Payment QCiL Differential in period ( $j$ ) (£) (as calculated in accordance with Condition 27.34);
- $\Delta Revenue_j$  = is the Generator's Revenue Differential (Ex-Post Basis) in period ( $j$ ) (£) (as calculated in accordance with Condition 27.34; and
- $R_s$  = is the Post-Tax Real Discount Rate.

27.23 If Condition 27.21(B) applies:

- (A) the QCiL Adjusted Revenues Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Adjusted Revenues Payment been effected as a lump sum payment in accordance with Condition 27.22 or as daily payments in accordance with Condition 27.24; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made within forty (40) Business Days of the Specified Expiry Date.

27.24 If Condition 27.21(C) applies, the QCiL Adjusted Revenues Payment in respect of each Billing Period shall be calculated in accordance with the following formula:

$$QCiL \text{ Adjusted Revenues Payment (daily payments)} = ARP \times \frac{R_d}{1 - \left(\frac{1}{(1 + R_d)^N}\right)} \times \frac{CPI_t}{CPI_q}$$

where:

- ARP* = is the QCiL Adjusted Revenues Payment (lump sum), as calculated in accordance with Condition 27.22;
- R<sub>d</sub>* = is the Daily Discount Rate;
- N* = is the duration, in days, of the Adjusted Revenues Period; and
- CPI<sub>t</sub>* = denotes the CPI applicable during Billing Period (t); and
- CPI<sub>q</sub>* = denotes the CPI applicable at the QCiL Compensation Date.

27.25 If Condition 27.21(D) applies and the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture component(s) of the Availability Payment on an Ex-Ante basis, then such adjustment shall be calculated in accordance with the following formula:

- (A) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Net Dependable Capacity, the Net Dependable Capacity in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to:

$$NDC_i + (NDC_{i,NoQCIL} - NDC_{i,QCiL})$$

where:

- NDC<sub>i</sub>* = is the Net Dependable Capacity applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- NDC<sub>i,NoQCIL</sub>* = is the Net Dependable Capacity for the AP Settlement Unit prior to the QCiL Effective Date (MW); and
- NDC<sub>i,QCiL</sub>* = is the Net Dependable Capacity after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (MW),

- (B) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Availability of Generation, the Availability of Generation in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to:



$$AG_i + (AG_{i,NoQCIL} - AG_{i,QCiL})$$

where:

- $AG_i$  = is the Availability of Generation applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- $AG_{i,NoQCIL}$  = is the average Availability of Generation for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*); and
- $AG_{i,QCiL}$  = is the Availability of Generation after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*),

- (C) where the QCiL Adjusted Revenues Payment is to be effected as an adjustment to the Availability of Capture, the Availability of Capture in each AP Settlement Unit (i) following the QCiL Compensation Date shall be deemed to be equal to

$$AC_i + (AC_{i,NoQCIL} - AC_{i,QCiL})$$

where:

- $AC_i$  = is the Availability of Capture applicable to each AP Settlement Unit (i) following the QCiL Compensation Date;
- $AC_{i,NoQCIL}$  = is the average Achieved CO<sub>2</sub> Capture Rate for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*); and
- $AC_{i,QCiL}$  = is the Availability of Capture after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*),

except that where the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture in any AP Settlement Unit is equal to zero (0), then the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture (as applicable) shall be deemed to be zero (0) and the adjustments in this Condition 27.25 shall not apply.

### **QCIL Construction Event Payment**

- 27.26 Any QCiL Construction Event Payment shall be effected at the election of the DPA Counterparty (after consultation with the Generator) as a lump sum payment or staged payments and shall be payable to the Generator by the DPA Counterparty.
- 27.27 For the purposes of Condition 27.26, the QCiL Construction Event Payment shall be an amount (expressed in pounds) calculated in accordance with:
- (A) Condition 27.28 if the QCiL Construction Event Payment is to be paid as a lump sum;  
or

- (B) Condition 27.29 if the QCiL Construction Event Payment is to be paid by means of staged payments.

27.28 If Condition 27.27(A) applies, the QCiL Construction Event Payment shall be calculated in accordance with the following formula:

$$\text{QCiL Construction Event Payment} = \sum_{j=1}^n \frac{C_j - S_j}{(1 + R_s)^{j-m}}$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the date the first QCiL Construction Event Cost was incurred to 31 December in that year;
  - the second (2nd) to the ( $n-1$ )th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $j = n$ ) is the period starting on 01 January in the year in which the final QCiL Construction Event Cost was incurred and ending on the last day of that year;
- $C_j$  = are all QCiL Construction Event Costs in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date;
- $S_j$  = are all QCiL Construction Event Savings in period ( $j$ ), expressed in pounds in real terms as at the QCiL Compensation Date; and
- $R_s$  = is the Post-Tax Real Discount Rate.
- $m$  = a whole number integer that defines the calendar year period within which the QCiL Compensation Date falls, defined as the number of years since the date the first QCiL Construction Event Cost was incurred in relation to the QCiL Construction Event, rounded up to the nearest integer.

27.29 If Condition 27.27(B) applies:

- (A) the QCiL Construction Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have received had the QCiL Construction Event Payment been effected as a lump sum payment in accordance with Condition 27.28; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first day following the expiry of the period which is equal to the number of days in the Term divided by three (3) (to the nearest integer) following the QCiL Effective Date; and (ii) the Specified Expiry Date.

### **QCiL Operations Cessation Event Payment**

27.30 Any QCiL Operations Cessation Event Payment shall be effected at the election of the DPA Counterparty (after consultation with the Generator) as a lump sum payment or staged payments and shall be payable to the Generator by the DPA Counterparty.

27.31 For the purposes of Condition 27.30, the QCiL Operations Cessation Event Payment shall be an amount (expressed in pounds) calculated in accordance with:

- (A) Condition 27.32 if the QCiL Operations Cessation Event Payment is to be paid as a lump sum; or
- (B) Condition 27.33 if the QCiL Operations Cessation Event Payment is to be paid by means of staged payments.

27.32 If Condition 27.31(A) applies, the QCiL Operations Cessation Event Payment shall be calculated in accordance with the following formula:

$$QCiL\ Operation\ Cessation\ Event\ Payment\ (lump\ sum) = \sum_{j=1}^n \frac{(\Delta AP_j + \Delta VP_j + Revenue_j) + (C_j - S_j)}{(1 + R_s)^{j-1}}$$

where:

$\Delta AP_j$  = is the Availability Payment QCiL Differential in period (j) (£) (as calculated in accordance with Condition 27.34);

$\Delta VP_j$  = is the Variable Payment QCiL Differential in period (j) (£) (as calculated in accordance with Condition 27.34);

$Revenue_j$  = is the Generator's Revenue (Ex-Ante Basis) in period (j) (£) (as calculated in accordance with Condition 27.34);

$C_j$  = are all QCiL Operations Cessation Event Costs in period (j), expressed in real terms as at the QCiL Compensation Date;

$S_j$  = are all QCiL Operations Cessation Event Savings in period (j), expressed in real terms as at the QCiL Compensation Date;

$j$  = is a whole number integer from one (1) to n; such integers referring to distinct time periods as follows:

- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
- the second (2nd) to the (n-1)th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
- the nth period ( $j = n$ ) is the period starting on 01 January in which the Specified Expiry Date falls and ending on the Specified Expiry Date and

$R_s$  = is the Post-Tax Real Discount Rate.

27.33 If Condition 27.31(B) applies:

- (A) the QCiL Operations Cessation Event Payment shall be effected on the basis that such QCiL Compensation shall be equivalent to the amount that the Generator would have

received had the QCiL Operations Cessation Event Payment been effected as a lump sum payment in accordance with Condition 27.32; and

- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that falls on the first day following the expiry of the period which is equal to the number of days in the Term divided by three (3) from the QCiL Effective Date; and (ii) the Specified Expiry Date.

27.34 For purposes of Conditions 27.22 and 27.32:

**"Actual Load Factor"** means (i) the Loss Adjusted Metered Electricity Output during the relevant period divided by (ii) the product of the Net Dependable Capacity Estimate (in MW) and the duration of the relevant period (in hours); and which shall not exceed one hundred per cent. (100%);

**"Actual Net Efficiency"** means the plant net efficiency of the Facility, equal to the PNE Metered Electricity Output divided by the PNE Facility Heat Input during the relevant period;

**"Adjusted Revenues Sub-Period"** means each component of an Adjusted Revenues Period in respect of which the Generator's Revenue Differential (Ex-Post Basis) is calculated and paid in accordance with Condition 27.24, with the duration of each such period and the frequency of the associated Generator's Revenue Differential (Ex-Post Basis) payments as determined by the DPA Counterparty (after consultation with the Generator);

**"Assumed CO<sub>2</sub> Capture Rate"** means the Achieved CO<sub>2</sub> Capture Rate of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law;

**"Assumed Load Factor"** means (i) the expected Loss Adjusted Metered Electricity Output during the relevant period divided by (ii) the maximum Loss Adjusted Metered Electricity Output for the same period which could be achieved with the Facility operating at full load, as determined by an analysis of the Facility's relative competitive position in the GB electricity market as derived from a GB Power Market Model procured from an Energy Economist, with due consideration of the Assumed Net Dependable Capacity, Assumed Net Efficiency and Assumed CO<sub>2</sub> Capture Rate for such period;

**"Assumed Net Dependable Capacity"** means the net generating capacity of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law;

**"Assumed Net Efficiency"** means the plant net efficiency of the Facility which would have been expected to have been achieved for the relevant period but for the occurrence of the Qualifying Change in Law.

**"Availability Payment QCiL Differential"** means the difference in Availability Payments in period (j), calculated in accordance with the following formula:

$$\Delta AP_j = \sum_{j=1}^n [(AG_{j,NoQCIL} \times AC_{j,NoQCIL} \times NDC_{j,NoQCIL}) \times APR_j] - [(AG_{j,QCiL} \times AC_{j,QCiL} \times NDC_{j,QCiL}) \times APR_j]$$

Where:

$\Delta AP_j$  = is the Availability Payment QCiL Differential in the relevant period (j) (£);

- $AG_{j,NoQCIL}$  = is the average Availability of Generation for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*);
- $AC_{j,NoQCIL}$  = is the average Achieved CO<sub>2</sub> Capture Rate for: (i) the twelve (12) AP Billing Periods prior to the QCiL Effective Date; or (ii) where there have been less than twelve (12) AP Billing Periods prior to the QCiL Effective Date, all the AP Billing Periods (*expressed as a percentage (%)*);
- $NDC_{j,NoQCIL}$  = is the Net Dependable Capacity used for the AP Settlement Unit (i) prior to the QCiL Effective Date (MW);
- $APR_j$  = is the Availability Payment Rate in the relevant period (j) (£/MWh);
- $AG_{j,QCiL}$  = is the Availability of Generation in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*);
- $AC_{j,QCiL}$  = is the Availability of Capture in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (*expressed as a percentage (%)*);
- $NDC_{j,QCiL}$  = is the Net Dependable Capacity in period (j) after the QCiL Effective Date as a result of the relevant Qualifying Change in Law (MW); and
- $j$  = is a whole number integer from one (1) to n; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the QCiL Compensation Date to 31 December in the year of the QCiL Compensation Date;
  - the second (2nd) to the (n-1)th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the nth period ( $j = n$ ) is the period starting on 01 January in the year which the Specified Expiry Date falls and ending on the Specified Expiry Date;

**"Daily Discount Rate"** means the rate calculated in accordance with the following formula:

$$\text{Daily Discount Rate} = (1 + R_S)^{\frac{1}{365}} - 1$$

where:

$R_S$  = is the Post-Tax Real Discount Rate.

**"Energy Economist"** means an internationally recognised, leading energy market consultancy firm (not being an Affiliate of either Party or any other DPA Generator) experienced in advising clients in the UK electricity generation sector;

**"GB Power Market Model"** means a software model that, as a minimum, forecasts GB half hourly electricity market dispatch decisions, load factors, day ahead wholesale electricity market prices out to 2050, along with plant new build and retirement decisions;

**"Generator's Revenue Differential (Ex-Post Basis)"** means the revenue that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, the Generator (i) would have generated during each Adjusted Revenues Sub-Period (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of electricity that the Facility would have generated during such period, in each case but for the occurrence of the Qualifying Change in Law, minus (ii) actually generated in such Adjusted Revenues Sub-Period (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) in respect of the Loss Adjusted Metered Output in each such period, with such revenue difference:

- (A) calculated periodically and paid on an Ex-Post basis in respect of each Adjusted Revenues Sub-Period;
- (B) based on the Facility's Assumed Net Dependable Capacity, Assumed Net Efficiency and Assumed CO<sub>2</sub> Capture Rate which would have been achieved but for the occurrence of the Qualifying Change in Law (with each such term reflecting forecast degradation factors and other appropriate factors), compared to the Facility's average Availability of Generation, Actual Net Efficiency and average Availability of Capture; and
- (C) based on the Facility's Assumed Load Factor which, but for the occurrence of the Qualifying Change in Law, would have been achieved for the Facility's relative competitive position in the GB electricity market as derived from a GB Power Market Model produced by an Energy Economist, compared to the Facility's Actual Load Factor;

**"Generator's Revenue (Ex-Ante Basis)"** means the revenue that the Parties agree, or that is determined pursuant to the Dispute Resolution Procedure, the Generator would have generated (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) from electricity that the Facility would have generated from the date of the QCiL Operations Cessation Event until the date on which the Term would have expired but for the occurrence of the QCiL Operations Cessation Event, with such revenue:

- (A) based on the Facility's Assumed Net Dependable Capacity, Assumed Load Factor and Assumed Net Efficiency (with each term reflecting forecast degradation factors and other appropriate factors);
- (B) based on the Facility's Assumed CO<sub>2</sub> Capture Rate which shall not exceed the CO<sub>2</sub> Capture Rate Estimate (with such term reflecting forecast degradation factors and other appropriate factors); and
- (C) based on the Facility's wholesale market revenues forecast for the day-ahead market, in accordance with an operating regime that stacks revenues across the different revenue streams and which balances the objectives of maximising revenue and minimising the volatility of earnings, derived from a GB Power Market Model produced by an Energy Economist; and

**"Variable Payment QCiL Differential"** means the difference in Variable Payments in period (j), calculated in accordance with the following formula:

$$\Delta VP_j = \sum_{i=1}^n \Delta VP_i$$

$$\Delta VP_i = \left[ \frac{GP_i}{100_i} \times (GU_{CCUS, QCiL} - GU_{CCUS, NoQCiL}) + CP_i \times (CO_2E_{CCUS, QCiL} - CO_2E_{CCUS, NoQCiL}) + (OC_{i, QCiL} - OC_{i, NoQCiL}) \right] \times MWh_i$$

where:

$\Delta VP_j$	=	is the Variable Payment QCiL Differential in year (j) (£);
$\Delta VP_i$	=	is the Variable Payment QCiL Differential in VP Settlement Unit (i);
$i$	=	is a whole number integer from (1) to (n) with each such integer referring to distinct VP Settlement Units in the period (j);
$n$	=	is the number of VP Settlement units in the period (j);
$CP_i$	=	Carbon Price in VP Settlement Unit (i) (£/tCO <sub>2</sub> );
$GU_{i, CCUS, QCiL}$	=	is the Facility Gas Consumption in VP Settlement Unit (i) after the QCiL Effective Date ( <i>therms/MWh</i> );
$GU_{i, CCUS, NoQCiL}$	=	is the Facility Gas Consumption used in the VP Settlement Unit (i) prior to the QCiL Effective Date ( <i>therms/MWh</i> );
$CO_2E_{i, CCUS, QCiL}$	=	is the Facility CO <sub>2</sub> Emissions in VP Settlement Unit (i) after the QCiL Effective Date ( <i>tCO<sub>2</sub>/MWh</i> );
$CO_2E_{i, CCUS, NoQCiL}$	=	is the Facility CO <sub>2</sub> Emissions used in the VP Settlement Unit (i) prior to the QCiL Effective Date ( <i>tCO<sub>2</sub>/MWh</i> );
$OC_{i, QCiL}$	=	is the Other Extra Variable Costs in VP Settlement Unit (i) after the QCiL Effective Date (£/MWh);
$OC_{i, NoQCiL}$	=	is the Other Extra Variable Costs used in the VP Settlement Unit (i) prior to the QCiL Effective Date (£/MWh); and
$MWh_i$	=	is the Metered Day Electricity Output in VP Settlement Unit (i) (MWh).

## 28. QUALIFYING CHANGE IN LAW: EFFECTIVE DATE AND PAYMENT

28.1 Any and all QCiL Compensation in respect of a Notified Change in Law (or, in the case of paragraph (D) below, in respect of a Qualifying Shutdown Event) shall be calculated as at and be effective from:

- (A) (if the QCiL Compensation takes the form of a QCiL Opex Payment or a QCiL Capex Payment) the earlier of: (i) the QCiL Effective Date; and (ii) the date on which the Generator (acting in accordance with the Reasonable and Prudent Standard) first incurs QCiL Operating Costs or QCiL Capital Costs, or makes or realises QCiL Operating Savings or QCiL Capital Savings, in anticipation of such Notified Change in Law being implemented, occurring or becoming effective;
- (B) (if the QCiL Compensation takes the form of a QCiL Adjusted Revenues Payment) the first (1st) day of the relevant Adjusted Revenues Period;
- (C) (if the QCiL Compensation takes the form of a QCiL Construction Event Payment) the date of the QCiL Construction Event; or

- (D) (if the QCiL Compensation takes the form of a QCiL Operations Cessation Event Payment) the date of the QCiL Operations Cessation Event,  
(the "**QCiL Compensation Date**").

28.2 Subject to Condition 28.3:

- (A) any and all QCiL Compensation effected as a lump sum payment shall be paid by the DPA Counterparty or the Generator (as applicable) no later than ten (10) Business Days after the later of:
- (i) the QCiL Compensation Date; and
  - (ii) the date on which the amount of the QCiL Compensation is agreed or determined;
- (B) any and all QCiL Adjusted Revenues Payments effected as an adjustment to the Net Dependable Capacity, the Availability of Generation and/or the Availability of Capture shall be reflected in the calculation of the Availability Payment in the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date (or, if necessary, reflected as a Reconciliation Amount in respect of each relevant Billing Period); and
- (C) any and all QCiL Compensation effected as daily or staged payments shall commence no later than ten (10) Business Days after the later of:
- (i) the QCiL Compensation Date; and
  - (ii) the date on which the amount of the QCiL Compensation is agreed or determined,

and, in either case, the final payment shall be made by the earlier of: (i) the date that is five (5) years from the QCiL Effective Date; and (ii) the Specified Expiry Date, in accordance with Condition 27.15(B), 27.23(B), 27.29(B) or 27.33(B) (as appropriate),

provided that, in each case, if the amount of any QCiL Compensation is agreed or determined after the QCiL Compensation Date, such QCiL Compensation shall be reflected as a Reconciliation Amount (pursuant to Condition 12.5(I)) in respect of the Billing Statements for each Billing Period on and with effect from the QCiL Compensation Date.

- 28.3 No QCiL Compensation shall be payable if and for so long as the DPA Counterparty withholds or suspends payment pursuant to Conditions 20.2 (*Failure to comply with compliance of technology undertaking*), 21.13 (*Failure to comply with Metering Schematic Obligation*), 21.19 (*Failure to provide Metering Access Right*), 21.24 (*Failure to comply with SCADA Systems Obligations*), 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*) or 23.13 (*Failure to provide Declaration Access Right*).
- 28.4 All QCiL Compensation shall be made by direct bank transfer or equivalent transfer of immediately available funds into the account notified to the Generator pursuant to Condition 17.1(A) (*Payment Accounts*) or the DPA Counterparty pursuant to Condition 17.1(B) (*Payment Accounts*) (as relevant).

29. **QUALIFYING CHANGE IN LAW: TRUE-UP**

***DPA Counterparty QCiL True-Up Notice***



- 29.1 If any QCiL Compensation has been agreed or determined, or paid, commenced or effected, in respect of any Qualifying Change in Law or a Qualifying Shutdown Event, the DPA Counterparty may, subject to Condition 29.2, give the Generator a notice (a "**DPA Counterparty QCiL True-Up Notice**"), requiring the Generator to confirm:
- (A) the impact of the relevant Qualifying Change in Law having occurred, having being implemented or having become effective or, as the case may be, the Qualifying Shutdown Event having occurred (including all out-of-pocket costs (including QCiL Tax Liabilities) which have been incurred in respect of the Project by the Generator, all savings (including avoided out-of-pocket costs, reliefs from or reductions in a QCiL Tax Liability, insurance proceeds and other compensation) which have been made or received in respect of the Project by the Generator, all revenue decreases or increases which were incurred, received or made by the Generator and which arose directly from the relevant Qualifying Change in Law being implemented, occurring or becoming effective or, as the case may be, the Qualifying Shutdown Event having occurred, and/or the duration and impact of any Adjusted Revenues Period affecting the Facility);
  - (B) that no amount has been recovered (or is entitled to be recovered) by the Generator pursuant to Conditions 46.5 (*No double recovery*) and 46.7 (*No double recovery*) or, if any amount has been so recovered, confirmation of such amount; and
  - (C) such other matters which were pertinent to the calculation of the QCiL Compensation (including the steps that the Generator has taken to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard), the information referred to or specified in paragraphs (A) to (C) above being "**QCiL True-Up Information**".
- 29.2 No DPA Counterparty QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.

**Generator QCiL True-Up Response Notice**

- 29.3 If the DPA Counterparty gives a DPA Counterparty QCiL True-Up Notice to the Generator, the Generator shall, as soon as reasonably practicable and in any event no later than forty (40) Business Days after receipt of such DPA Counterparty QCiL True-Up Notice, give a notice to the DPA Counterparty (a "**Generator QCiL True-Up Response Notice**"). A Generator QCiL True-Up Response Notice shall:
- (A) contain the QCiL True-Up Information; and
  - (B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the QCiL True-Up Information,
- (the information referred to or specified in paragraphs (A) and (B) above being the "**QCiL True-Up Response Information**").
- 29.4 A Generator QCiL True-Up Response Notice shall be accompanied by a Directors' Certificate in relation to the QCiL True-Up Response Information.
- 29.5 If the Generator becomes aware before QCiL True-Up Compensation is agreed or determined, or paid, effected or commenced, pursuant to this Condition 29 (*Qualifying Change in Law: True-up*) that the QCiL True-Up Response Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 29.4), the Generator shall as soon as reasonably practicable:

- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL True-Up Response Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL True-Up Response Information.

29.6 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator QCiL True-Up Response Notice or any Revised Generator QCiL True-Up Response Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL True-Up Response Notice or, as the case may be, the Revised Generator QCiL True-Up Response Information (a "**Generator QCiL True-Up Response Notice Information Request**") as the DPA Counterparty reasonably requests.

29.7 If the DPA Counterparty gives a Generator QCiL True-Up Response Notice Information Request to the Generator, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.

#### **Generator QCiL True-Up Notice**

29.8 If any QCiL Compensation has been agreed or determined, or paid, commenced or effected, in respect of any Qualifying Change in Law, the Generator may, subject to Condition 29.13, give the DPA Counterparty a notice (a "**Generator QCiL True-Up Notice**"). A Generator QCiL True-Up Notice shall:

- (A) contain the QCiL True-Up Information; and
- (B) include such Supporting Information, in reasonable detail, as the Generator considers to be relevant to and supportive of the QCiL True-Up Information,

(the information referred to or specified in paragraphs (A) and (B) above being "**QCiL True-Up Supporting Information**").

29.9 A Generator QCiL True-Up Notice shall be accompanied by a Directors' Certificate in relation to the QCiL True-Up Supporting Information.

29.10 If the Generator becomes aware before QCiL True-Up Compensation is agreed or determined, or paid, effected or commenced, pursuant to this Condition 29 (*Qualifying Change in Law: True-up*), that the QCiL True-Up Supporting Information is no longer true, complete and accurate in all material respects or is misleading (or was not true, complete and accurate in all material respects or was misleading as at the date of the Directors' Certificate referred to in Condition 29.9), the Generator shall as soon as reasonably practicable:

- (A) notify the DPA Counterparty that this is the case; and
- (B) provide the DPA Counterparty with the updated, corrected information (the "**Revised Generator QCiL True-Up Information**"), together with a Directors' Certificate in relation to the Revised Generator QCiL True-Up Information.

29.11 The DPA Counterparty may, by notice to the Generator no later than twenty (20) Business Days after receipt of a Generator QCiL True-Up Notice or any Revised Generator QCiL True-Up Information, require the Generator to provide such Supporting Information in relation to that Generator QCiL True-Up Notice or, as the case may be, the Revised Generator QCiL True-Up Information (a "**Generator QCiL True-Up Notice Information Request**") as the DPA Counterparty reasonably requests.

- 29.12 If the DPA Counterparty gives a Generator QCiL True-Up Notice Information Request to the Generator, the Generator shall, no later than twenty (20) Business Days, or such longer period as is specified by the DPA Counterparty, after receipt of the request, prepare and deliver such further Supporting Information to the DPA Counterparty.
- 29.13 No Generator QCiL True-Up Notice shall be given in respect of a Qualifying Change in Law or a Qualifying Shutdown Event, as the case may be, within one (1) calendar year of the relevant QCiL Compensation Date.
- 29.14 The DPA Counterparty shall be under no obligation to consider or take any action in response to a Generator QCiL True-Up Notice unless and until the Generator shall have provided the DPA Counterparty with all the QCiL True-Up Information, and the Directors' Certificate in respect of such Generator QCiL True-Up Notice.

***Agreement between the Parties in respect of a true-up***

- 29.15 The Parties shall meet to discuss and, in good faith, seek to agree:
- (A) the QCiL True-Up Information;
  - (B) any such other matters which the Parties consider pertinent to the calculation of the QCiL True-Up Compensation (if any);
  - (C) the QCiL True-Up Compensation (if any) that shall be payable by the DPA Counterparty or the Generator (as the case may be); and
  - (D) the manner in which such QCiL True-Up Compensation (if any) shall be paid by the DPA Counterparty or the Generator (as the case may be), provided that:
    - (i) where the QCiL True-Up Compensation relates to a QCiL Adjusted Revenues Period Adjustment, the QCiL True-Up Compensation shall be effected by way of a QCiL True-Up Adjusted Revenues Period Adjustment; and
    - (ii) where the QCiL True-Up Compensation does not relate to a QCiL Adjusted Revenues Period Adjustment, the QCiL True-Up Compensation shall be paid in the same manner as the QCiL Compensation agreed in respect of that Qualifying Change in Law, unless the Parties expressly agree otherwise.

Such meeting shall be convened: (i) as soon as reasonably practicable, and in any event no later than twenty (20) Business Days, after the DPA Counterparty receives a Generator QCiL True-Up Response Notice and the associated Directors' Certificate (or, if the DPA Counterparty gives the Generator a Generator QCiL True-Up Response Notice Information Request, no later than twenty (20) Business Days after the DPA Counterparty receives the requested Supporting Information); or (ii) if the Generator gives the DPA Counterparty a Generator QCiL True-Up Notice and the associated Directors' Certificate, at such date as is determined by the DPA Counterparty in its sole and absolute discretion.

- 29.16 Any and all QCiL True-Up Compensation is to be calculated and paid in accordance with and subject to Conditions 27 (*Qualifying Change in Law: Compensation*), 28 (*Qualifying Change in Law: Effective date and payment*) and 31 (*Changes in Law: General provisions*) (in each case with the necessary modifications).

***Disputes in respect of a true-up***

- 29.17 If the Parties are not able to agree any of the matters in Condition 29.15, either Party may refer the Dispute for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing 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.

- 29.18 Until the Dispute has been resolved by agreement between the Parties or determination in accordance with the Arbitration Procedure or the Expert Determination Procedure, as the case may be, there shall be no QCiL True-Up Compensation payable.

30. **QUALIFYING SHUTDOWN EVENT: PROCEDURE**

- 30.1 If a Qualifying Shutdown Event has occurred, the Generator may give notice to that effect to the DPA Counterparty (a "**QSE Notice**"). A QSE Notice shall:

- (A) include reasonable details of the Qualifying Shutdown Event;
- (B) specify the date on which the Qualifying Shutdown Event occurred;
- (C) specify the Generator's good faith estimate of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings;
- (D) include such Supporting Information, in reasonable detail, which the Generator considers to be relevant and supportive of the foregoing; and
- (E) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard.

- 30.2 Any QSE Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the QSE Notice.

- 30.3 A QSE Notice shall be deemed to constitute a Generator QCiL Notice and the provisions of Conditions 26 (*Qualifying Change in Law: Procedure*) to 29 (*Qualifying Change in Law: True-up*) (inclusive) shall apply (with the necessary modifications) for the purposes of:

- (A) agreeing or determining whether a Qualifying Shutdown Event has occurred;
- (B) (if a Qualifying Shutdown Event has occurred) agreeing or determining the amount of QCiL Compensation resulting from the occurrence of such Qualifying Shutdown Event (on the basis that a Qualifying Shutdown Event constitutes a QCiL Operations Cessation Event) and the terms and conditions upon which such QCiL Compensation will be paid or effected; and
- (C) agreeing or determining any and all other related matters pertinent to the foregoing.

31. **CHANGES IN LAW: GENERAL PROVISIONS**

***Indemnity***

- 31.1 The Generator shall, promptly on demand from time to time, indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the DPA Counterparty and which would not have been incurred but for a Generator QCiL Notice (including any QSE Notice) having been given. This Condition 31.1 shall not apply in respect of any such costs resulting from the DPA Counterparty having disputed that a Qualifying Change in Law or Qualifying Shutdown Event has occurred if a resolution or determination to the contrary is made pursuant to the Dispute Resolution Procedure.

***Excluded Change in Law***

31.2 There shall be no amendment to the DPA, adjustments to any components of the Availability Payment formula and/or other compensation in respect of or on account of any Excluded Change in Law other than pursuant to the Change Control Procedure.

## 32. CHANGE IN APPLICABLE LAW: PROCEDURE

### *Requirement to undertake a CiAL Review*

32.1 The DPA Counterparty shall conduct a CiAL Review if:

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

32.2 If the Generator considers that:

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

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

- (i) shall specify why, and the date on which, the Generator considers that a Change in Applicable Law: (a) has been implemented, has occurred or has become effective; or (b) is expected to be implemented, occur or become effective;
  - (ii) shall specify why the Generator considers that the Change in Applicable Law results or will result in one (1) or more of the Required CiAL Amendment Objectives ceasing to be met; and
  - (iii) may set out the Generator's opinion of the Required CiAL Amendment(s),
- together with such Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the foregoing.

32.3 For the purposes of Condition 32.1(B), the "**CiAL Request Criterion**" is that thirty per cent. (30%) or more of all DPA Generators as at the date of the CiAL Request Notice, by volume or number, have given the DPA Counterparty a CiAL Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the CiAL Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CiAL Request Notice as a percentage of the total number of DPA Generators as at the date of the CiAL Request Notice; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CiAL Request Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity Estimate in each relevant CCUS Programme DPA).

**Validity of CiAL Request Notices**

- 32.4 The Generator acknowledges and agrees that all CiAL Request Notices shall be invalid and of no effect if the CiAL Request Criterion is not met.
- 32.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CiAL Request Criterion has been met (a "**CiAL Request Validity Notice**").

**Notification of CiAL Review**

- 32.6 If the DPA Counterparty is required or elects to undertake a CiAL Review pursuant to Condition 32.1, the DPA Counterparty shall give a notice to the Generator (a "**CiAL Review Notice**"). A CiAL Review Notice shall specify:
- (A) the CiAL Review Trigger which has occurred; and
  - (B) a deadline by which the Generator must provide a CiAL Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the CiAL Review Notice is received by the Generator (the "**CiAL Review Response Deadline**").
- 32.7 The Generator shall, as soon as reasonably practicable and not later than the CiAL Review Response Deadline, give a notice to the DPA Counterparty (the "**CiAL Review Response Notice**"). A CiAL Review Response Notice:
- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the CiAL Review; and
  - (B) may set out the Generator's opinion of the Required CiAL Amendment(s).
- 32.8 The DPA Counterparty may disregard any CiAL Review Response Notice received after the CiAL Review Response Deadline.

**Notification of outcome of CiAL Review**

- 32.9 The DPA Counterparty shall give a notice to the Generator of the outcome of a CiAL Review (a "**CiAL Review Outcome Notice**") as soon as reasonably practicable following the conclusion of a CiAL Review. A CiAL Review Outcome Notice shall:
- (A) set out the outcome of the CiAL Review and, if applicable, the Required CiAL Amendments; and
  - (B) specify the date from which such Required CiAL Amendments are to take effect.

**33. CHANGE IN APPLICABLE LAW: DISPUTE PROCESS**

**Procedure for raising a Dispute**

- 33.1 The Generator may, no later than twenty (20) Business Days after receipt of a CiAL Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such CiAL Review (a "**CiAL Dispute**", such notice a "**CiAL Dispute Notice**" and any such Generator, a "**CiAL Dispute Generator**"). Each CiAL Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

**Validity of CiAL Dispute Notices**

- 33.2 The Generator acknowledges and agrees that all CiAL Dispute Notices shall be invalid and of no effect if the CiAL Dispute Threshold Criterion in respect of the relevant CiAL Dispute is not met.
- 33.3 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CiAL Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a CiAL Dispute Generator) (a "**CiAL Dispute Validity Notice**"). A CiAL Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the CiAL Dispute (the "**Proposed CiAL Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed CiAL Expert to determine such CiAL Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed CiAL Expert from determining the CiAL Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

**Permitted bases of Dispute: CiAL Review**

- 33.4 The Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any CiAL Review if there is a manifest error or fraud in any determination by the DPA Counterparty as to:
- (A) the outcome of the CiAL Review; or
  - (B) the Required CiAL Amendments,

in each case contained within the CiAL Review Outcome Notice, and any CiAL Dispute Notice which is based upon grounds other than those specified in this Condition 33.4 shall be invalid and of no effect.

**Resolution of valid CiAL Disputes**

- 33.5 If:
- (A) the CiAL Dispute Threshold Criterion is met in respect of the relevant CiAL Dispute; and
  - (B) the relevant CiAL Dispute complies with Condition 33.4,

then such CiAL Dispute shall be finally resolved in accordance with Condition 33.6.

- 33.6 If Condition 33.5 applies to any CiAL Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such CiAL Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant CiAL Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such CiAL Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such CiAL Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such CiAL Dispute on the basis that:
  - (i) (if the Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed CiAL Expert;
  - (ii) (if the Expert Appointment Threshold is not met) the DPA Counterparty may, within ten (10) Business Days, either:
    - (a) make an alternative proposal as to the identity and the terms of reference of an Expert to determine the CiAL Dispute; or
    - (b) (1) request the LCIA to nominate an Expert for the purposes of determining the CiAL Dispute in accordance with Condition 41.4; and (2) following such nomination by the LCIA, the DPA Counterparty shall make an alternative proposal as to the terms of reference of such Expert to determine the CiAL Dispute,

in each case, Conditions 33.3(A) and 33.6(E)(i), and this Condition 33.6(E)(ii), shall apply to such proposed Expert as if that Expert were a Proposed CiAL Expert. The identity and the terms of reference of the Proposed CiAL Expert shall be determined by the DPA Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any DPA Generator) and any such determination shall be final and binding on the parties, provided that the terms of reference shall be sufficiently broad to enable the Expert to determine the CiAL Dispute;
  - (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the parties agreeing the identity and terms of reference of an Expert in accordance with Condition 33.6(E)(i) or 33.6(E)(ii), as applicable, such matter shall be determined by the DPA Counterparty in its sole and absolute discretion (after having regard to any submissions presented by any DPA Generator) and any such determination shall be final and binding on the parties, provided that the terms of appointment shall comply with the requirements of Condition 33.6(E)(iv);
  - (iv) Condition 41.5 shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:



- (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator; or
  - (b) the DPA Counterparty to the Expert in consequence of, or in respect of, their appointment as the Expert to any DPA Generator other than the Generator;
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the CiAL Dispute, to afford the Generator an opportunity to make submissions in respect of the CiAL Dispute irrespective of whether or not the Generator is a CiAL Dispute Generator;
  - (vi) if the circumstances described in Condition 41.8 arise, Conditions 33.3(A), 33.6(E)(i) and 33.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
  - (vii) for the purposes of Condition 41.12, the Expert shall be: (a) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the CiAL Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the CiAL Dispute Generators; and (b) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the CiAL Dispute Generators; and
  - (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any CiAL Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the CiAL Dispute giving rise to that determination.

#### ***Expert Appointment Threshold***

- 33.7 For the purposes of Conditions 33.6(E)(i) and 33.6(E)(ii), the **"Expert Appointment Threshold"** is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed CiAL Expert. For the purposes of determining whether the Expert Appointment Threshold is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed CiAL Expert as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed CiAL Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, **"volume"** shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

#### ***Provisions applying pending resolution of a CiAL Dispute***

- 33.8 If there is a valid CiAL Dispute requiring resolution in accordance with the provisions of Conditions 33.5 and 33.6 then, pending resolution of such CiAL Dispute, there shall be no amendments or supplements to the DPA as a result of the Change in Applicable Law.

#### **CiAL Dispute Threshold Criterion**

- 33.9 For the purposes of this Condition 33 (*Change in Applicable Law: Dispute process*), the "**CiAL Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CiAL Dispute Notice in respect of any given CiAL Dispute prior to the date specified in Condition 33.1. For the purposes of determining whether the CiAL Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CiAL Dispute Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CiAL Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

#### **34. CHANGE IN APPLICABLE LAW: GENERAL PROVISIONS**

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

- (A) constitute Force Majeure or a Payment Disruption Event for the purposes of the DPA; or
- (B) provide either Party the right to suspend or terminate its obligations under the DPA,

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

- 34.2 Subject to the provisions of Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), the Parties shall be relieved from liability, and deemed not to be in breach of the DPA (or any other DPA Document) for any failure or delay in the performance under the DPA (or any other DPA Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuation of a Change in Applicable Law, provided that nothing in Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), shall relieve either Party from any obligation to pay any sum due and payable to the other Party pursuant to the DPA (or any other DPA Document) (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise).

- 34.3 Any costs and expenses, or risks, arising from a Change in Applicable Law which are not of a type provided for in the DPA are not intended by the provisions of Conditions 32 (*Change in Applicable Law: Procedure*), 33 (*Change in Applicable Law: Dispute process*) and this Condition 34 (*Change in Applicable Law: General provisions*), to be allocated to one (1) Party; and any such costs and expenses, or risks, shall be borne by the affected Party.

**Part 9**  
**Termination**

**35. TERMINATION**

***Pre-Start Date termination***

35.1 If:

- (A) (i) the Generator fails to deliver the Milestone Requirement Notice by the Milestone Delivery Date; or (ii) (subject to Condition 35.3) neither Milestone Requirement has been complied with and fulfilled by the Milestone Delivery Date;
- (B) at any time prior to the Start Date, any Directors' Certificate provided pursuant to Condition 4.2 is not true, complete or accurate in any material respect or is misleading as at the date thereof;
- (C) at any time prior to the Start Date, a Termination Event occurs and is continuing;
- (D) any of the Initial Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty within twenty (20) Business Days of the Agreement Date; or
- (E) (subject to Condition 35.4) any of the Operational Conditions Precedent are not fulfilled by the Generator or waived by the DPA Counterparty by the Longstop Date,

then the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Pre-Start Date Termination Notice**"). A Pre-Start Date Termination Notice shall specify:

- (i) the date (on or following the date of the Pre-Start Date Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**Pre-Start Date Termination Date**"); and
- (ii) in the case of termination pursuant to Condition 35.1(C), the Termination Event which has occurred.

35.2 If the DPA Counterparty gives a Pre-Start Date Termination Notice, the DPA shall terminate on the Pre-Start Date Termination Date even if (as the context requires):

- (A) a Milestone Requirement has been complied with and 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.

35.3 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.1(A) in circumstances in which the Generator has provided a Milestone Requirement Notice no later than the Milestone Delivery Date unless and until:

- (A) the DPA Counterparty has given the Generator a Milestone Assessment Response Notice specifying that it requires Requested Milestone Supporting Information to be provided to it by the Generator; and
- (B) either:

- (i) the Generator fails to provide to the DPA Counterparty the Requested Milestone Supporting Information within the period specified in Condition 4.4(C)(i) (*Milestone Requirement Notice*); or
  - (ii) (a) the Requested Milestone Supporting Information is provided to the DPA Counterparty within the period specified in Condition 4.4(C)(i) (*Milestone Requirement Notice*); and (b) the DPA Counterparty has given the Generator a Further Milestone Assessment Response Notice specifying that the DPA Counterparty does not consider a Milestone Requirement to have been complied with and fulfilled.
- 35.4 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.1(E) in circumstances in which the Generator has provided an OCP Notice no later than the Longstop Date unless and until:
- (A) the DPA Counterparty has given the Generator a OCP Response Notice specifying that it requires OCP Supporting Information to be provided to it by the Generator; and
  - (B) either:
    - (i) the Generator fails to provide to the DPA Counterparty the OCP Supporting Information within the period specified in Condition 3.10(C)(i) (*Operational Conditions Precedent: General Reporting Obligations*); or
    - (ii) (a) the requested OCP Supporting Information is provided to the DPA Counterparty within the period specified in Condition 3.10(C)(i) (*Operational Conditions Precedent: General Reporting Obligations*); and (b) the DPA Counterparty has given the Generator a Further OCP Response Notice specifying that the DPA Counterparty does not consider the Operational Condition Precedent to have been fulfilled.

#### ***Termination for Prolonged Force Majeure***

- 35.5 If an event or circumstance of Force Majeure (excluding Force Majeure that occurs by reason of a Change in Law) that first occurs between the Agreement Date and the Milestone Satisfaction Date, prevents or delays the development, construction, completion, testing and/or commissioning of the Facility for a continuous period of at least twelve (12) Months as determined by the DPA Counterparty (a "**Prolonged FM Event**"), then the DPA Counterparty shall have the right, but not the obligation, to notify the Generator in writing (a "**Prolonged FM Event Notice**") that the DPA Counterparty may terminate the DPA following the expiry of a further six (6) Month period from the date of such Prolonged FM Event Notice (a "**Prolonged FM Trigger Date**") in accordance with Condition 35.6. The Prolonged FM Event Notice shall:
- (A) specify the Prolonged FM Trigger Date; and
  - (B) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the Prolonged FM Event.
- 35.6 If a Prolonged FM Event has not been remedied and is continuing at the Prolonged FM Trigger Date, the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Prolonged FM Termination Notice**"). A Prolonged FM Termination Notice shall specify the date (on or following the date of the Prolonged FM Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**Prolonged FM Termination Date**").

- 35.7 If the DPA Counterparty issues a Prolonged FM Termination Notice in accordance with Condition 35.6, the DPA shall terminate on the Prolonged FM Termination Date even if (as the context requires):
- (A) a Milestone Requirement has been complied with and fulfilled (such that the Milestone Satisfaction Date has occurred) prior to such date; or
  - (B) the Prolonged FM Event is no longer continuing as at such date.

***Termination for T&S Prolonged Unavailability Event<sup>45</sup>***

- 35.8 If, at any time after the Agreement Date, the DPA Counterparty determines that:
- (A) one (1) of the following events has occurred and has been continuing for a continuous period of at least [six (6)] Months:
    - (i) a T&S Commissioning Delay Event; or
    - (ii) a Full T&S Outage Event<sup>46</sup>; or
  - (B) a T&S Cessation Event has occurred,

(a **"T&S Prolonged Unavailability Event"**), the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator of the occurrence of such T&S Prolonged Unavailability Event (a **"T&S Prolonged Unavailability Event Notice"**) and the Generator agrees and acknowledges that it shall not be entitled to refer any determination made by the DPA Counterparty pursuant to this Condition 35.8 to the Dispute Resolution Procedure. A T&S Prolonged Unavailability Event Notice shall:

- (i) specify the date:
    - (a) by which the Generator shall give a notice responding to the DPA Counterparty in accordance with Condition 35.9, being the date which falls [six (6)] Months from the date of the T&S Prolonged Unavailability Event Notice (the **"Generator T&S Prolonged Unavailability Response Deadline"**); and
    - (b) on and from which, without prejudice to the DPA Counterparty's rights under Condition 35.15, the DPA Counterparty may terminate the DPA being the date which falls [thirty (30)] Months from the date of the T&S Prolonged Unavailability Event Notice (the **"T&S Prolonged Unavailability Remediation Deadline"**); and
  - (ii) be accompanied by such Supporting Information as the DPA Counterparty considers necessary to evidence the T&S Prolonged Unavailability Event.
- 35.9 No later than the Generator T&S Prolonged Unavailability Response Deadline, the Generator shall give notice to the DPA Counterparty (a **"T&S Prolonged Unavailability Response Notice"**). A T&S Prolonged Unavailability Response Notice shall:
- (A) specify that:

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<sup>45</sup> Note to Reader: The time periods in this section are subject to further consideration by BEIS.

<sup>46</sup> Note to Reader: BEIS is considering whether this termination right will also apply to substantial outages of the T&S Network.

- (i) the T&S Prolonged Unavailability Event is no longer continuing as at such date, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same;<sup>47</sup> or
  - (ii) the Generator considers that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same; or
  - (iii) the Generator intends to provide the DPA Counterparty with and implement an Alternative T&S Network Solution Plan, following which Condition 35.13 shall apply; or
  - (iv) the Generator considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to one (1) or more of the following reasons (each a **"No Alternative T&S Solution Reason"**):
    - (a) it is not technically feasible for the Generator, acting in accordance with the Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage site;
    - (b) the implementation of an Alternative T&S Network Solution Plan would be illegal;
    - (c) it is not economically feasible for the Generator, acting in accordance with the Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage site;
    - (d) there is no feasible alternative T&S Network which can permanently store the CO<sub>2</sub> from the Facility; and/or
    - (e) any other reason which will, or is reasonably likely to, justify the decision not to provide an Alternative T&S Network Solution Plan,
- (B) include Supporting Information evidencing, in reasonable detail, the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 (*Mitigation*) and the Reasonable and Prudent Standard.
- 35.10 Each T&S Prolonged Unavailability Response Notice and (where Condition 35.12(B)(ii) applies) T&S Prolonged Unavailability Further Response Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the T&S Prolonged Unavailability Response Notice or T&S Prolonged Unavailability Further Response Notice (as applicable).
- 35.11 The DPA Counterparty shall, no later than [thirty (30)] Business Days after receipt of: (i) a T&S Prolonged Unavailability Response Notice in accordance with Condition 35.9(A)(i) or 35.9(A)(ii); (ii) Supporting Information in accordance with Condition 35.9(B); or (iii) or a T&S Prolonged Unavailability Further Response Notice in accordance with Condition 35.12(B)(ii),

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<sup>47</sup> Note to Reader: BEIS is considering what is needed from the relevant T&S Operator to verify that the T&S Prolonged Unavailability Event has been remedied.

give a notice to the Generator (a "**T&S Prolonged Unavailability Review Notice**"). A T&S Prolonged Unavailability Review Notice shall specify whether the DPA Counterparty considers that:

- (A) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the T&S Prolonged Unavailability Event is no longer continuing as at such date; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event is no longer continuing as at such date and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination;
- (B) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(ii) or the DPA Counterparty has received Supporting Information in respect of Condition 35.9(A)(ii) in accordance with Condition 35.9(B) or a T&S Prolonged Unavailability Further Response Notice in respect of Condition 35.9(A)(ii) in accordance with Condition 35.12(B)(ii)(b):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty, that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline; or
  - (ii) the Generator has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination;
- (C) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(iv) or the DPA Counterparty has received Supporting Information in respect of Condition 35.9(A)(iv) in accordance with Condition 35.9(B) or a T&S Prolonged Unavailability Further Response Notice in respect of Condition 35.9(A)(iv) in accordance with Condition 35.12(B)(ii)(d):
  - (i) the Generator has or has not delivered evidence, in form and content satisfactory to the DPA Counterparty, that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan; or
  - (ii) it has not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan and, if so, such notice shall contain details of the additional Supporting Information which the DPA Counterparty requires to make such a determination.

35.12 If the DPA Counterparty states in the T&S Prolonged Unavailability Review Notice that:

- (A) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i), the Generator has delivered satisfactory evidence that the T&S Prolonged Unavailability

Event is no longer continuing as at such date, then the T&S Prolonged Unavailability Event will be deemed to have been remedied for the purposes of the DPA; or

- (B) the Generator has not delivered satisfactory evidence that the T&S Prolonged Unavailability Event:
- (i) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i), is no longer continuing as at such date then the T&S Prolonged Unavailability Event will be deemed to have not been remedied for the purposes of the DPA; or
  - (ii) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(ii), will be remedied by the T&S Prolonged Unavailability Remediation Deadline then, as soon as reasonably practicable but no later than the Alternative T&S Network Solution Plan Deadline, the Generator shall give notice to the DPA Counterparty (a "**T&S Prolonged Unavailability Further Response Notice**"). A T&S Prolonged Unavailability Further Response Notice shall specify that:
    - (a) the T&S Prolonged Unavailability Event is no longer continuing as at the date of such notice, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply;
    - (b) the Generator considers that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply;
    - (c) the Generator intends to implement an Alternative T&S Network Solution Plan, whereby such notice shall be accompanied by a draft Alternative T&S Network Solution Plan (with Supporting Information), following which Condition 35.13 shall apply; or
    - (d) the Generator considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan due to one (1) or more of the No Alternative T&S Network Solution Reasons, whereby such notice shall be accompanied by such Supporting Information as the Generator considers necessary to evidence the same, following which Condition 35.11 shall reapply;
- (C) the Generator has not provided sufficient Supporting Information to enable the DPA Counterparty to determine:
- (i) if the T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(i), whether the T&S Prolonged Unavailability Event is no longer continuing as at the date of such notice;
  - (ii) if T&S Prolonged Unavailability Response Notice relates to Condition 35.9(A)(ii), whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline; or
  - (iii) if Condition 35.9(A)(iv) applies, whether the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline



and the Generator cannot provide a feasible Alternative T&S Network Solution Plan,

then the Generator shall provide such Supporting Information to the DPA Counterparty within [twenty (20)] Business Days of the date of the T&S Prolonged Unavailability Review Notice and Condition 35.11 shall reapply.

35.13 If this Condition 35.13 applies:

- (A) the Generator shall prepare and submit to the DPA Counterparty for the DPA Counterparty's approval a draft Alternative T&S Network Solution Plan (with Supporting Information) no later than the Alternative T&S Network Solution Plan Deadline; and
- (B) the DPA Counterparty shall, no later than [six (6)] Months after receipt of the draft Alternative T&S Network Solution Plan (and Supporting Information), give a notice to the Generator (an "**Alternative T&S Network Review Notice**") which shall specify whether the DPA Counterparty:
  - (i) approves the draft Alternative T&S Network Solution Plan without amendment, following which the draft Alternative T&S Network Solution Plan shall become the Approved Alternative T&S Network Solution Plan;
  - (ii) requires the Generator to provide additional Supporting Information in relation to the draft Alternative T&S Network Solution Plan, in order for the DPA Counterparty to assess whether or not to approve such plan;
  - (iii) requires amendments to the draft Alternative T&S Network Solution Plan, in which case the Alternative T&S Network Review Notice shall provide the Generator with sufficient detail in relation to such required amendments; or
  - (iv) in its sole and absolute discretion, rejects the draft Alternative T&S Network Solution Plan, in which case the Alternative T&S Network Review Notice shall provide the Generator with such Supporting Information as the DPA Counterparty considers necessary to evidence the reasons for such rejection and the Generator agrees and acknowledges that it shall not be entitled to refer any decision made by the DPA Counterparty pursuant to this Condition 35.13(B)(iv) to the Dispute Resolution Procedure.

35.14 The Generator shall no later than [twenty (20)] Business Days after receipt of an Alternative T&S Network Review Notice, submit to the DPA Counterparty:

- (A) if Condition 35.13(B)(ii) applies, the relevant additional Supporting Information specified in the Alternative T&S Network Review Notice;
- (B) if Condition 35.13(B)(iii) applies, an amended draft Alternative T&S Network Solution Plan which includes the amendments specified in the Alternative T&S Network Review Notice; or
- (C) if Condition 35.13(B)(iv) applies, an amended draft Alternative T&S Network Solution Plan,

and Condition 35.13(B) shall then reapply.

***Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension***

35.15 If the Generator fails to give:

- (A) a T&S Prolonged Unavailability Response Notice to the DPA Counterparty by the T&S Prolonged Unavailability Response Deadline pursuant to Condition 35.9;
- (B) if applicable, a T&S Prolonged Unavailability Further Response Notice to the DPA Counterparty by the Alternative T&S Network Solution Plan Deadline pursuant to Condition 35.12(B)(ii);
- (C) if applicable, the relevant Supporting Information to enable the DPA Counterparty to assess the T&S Prolonged Unavailability Response Notice pursuant to Condition 35.12(C),
- (D) if applicable, a draft Alternative T&S Network Solution Plan to the DPA Counterparty by the Alternative T&S Network Solution Plan Deadline pursuant to Condition 35.13(A);
- (E) if applicable, the relevant additional Supporting Information specified in the Alternative T&S Network Review Notice pursuant to Condition 35.14(A), if an Alternative T&S Network Review Notice relates to Condition 35.13(B)(ii); and/or
- (F) if applicable, an amended draft Alternative T&S Network Solution Plan which includes the amendments specified in the Alternative T&S Network Review Notice pursuant to 35.14(B), if an Alternative T&S Network Review Notice relates to Condition 35.13(B)(iii),

(each a "**T&S Prolonged Unavailability Procedure Obligation**"),

the DPA Counterparty may elect to suspend payment of any amounts which would otherwise be payable by the DPA Counterparty to the Generator in any period during which the Generator is in breach of a T&S Prolonged Unavailability Procedure Obligation, provided that, prior to effecting any such suspension, the DPA Counterparty shall notify the Generator of: (i) its intention to suspend payment of any such amounts; and (ii) the date from which it proposes to effect such suspension.

35.16 If the Generator subsequently complies with the relevant T&S Prolonged Unavailability Procedure Obligation(s), then the DPA Counterparty shall pay any amounts to the Generator which would have been payable but for the operation of Condition 35.15. The DPA Counterparty may elect to make such payment on a lump sum, staged or daily basis. No Compensatory Interest or Default Interest shall be payable in respect of any amount payable pursuant to this Condition 35.16.

35.17 If Condition 35.13(B)(i) applies:

- (A) as soon as reasonably practicable after receipt of the Alternative T&S Network Review Notice and in any event, no later than [sixty (60)] Business Days after such date, the Generator shall commence the implementation of the Approved Alternative T&S Network Solution Plan, and the Generator shall continue to implement the Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event; and
- (B) the Generator shall notify the DPA Counterparty in writing no later than [five (5)] Business Days following the date on which the Generator fully implements the Approved Alternative T&S Network Solution Plan such that the T&S Prolonged Unavailability Event has been remedied (a "**Generator T&S Prolonged Unavailability Remediation Notice**") together with such Supporting Information, in form and content satisfactory to the DPA Counterparty (acting reasonably), to evidence that the T&S Prolonged Unavailability Event has been remedied.

- 35.18 The Generator shall keep the DPA Counterparty reasonably informed as to the progress towards remediation of the T&S Prolonged Unavailability Event and, in particular, shall provide the DPA Counterparty with reports (in a form, content and frequency satisfactory to the DPA Counterparty) of the progress made in or towards the remediation of the T&S Prolonged Unavailability Event.
- 35.19 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to:
- (A) significantly affect the accuracy of any T&S Prolonged Unavailability Response Notice or T&S Prolonged Unavailability Further Response Notice, including any accompanying Supporting Information;
  - (B) where the Generator has notified or has been deemed to have notified the DPA Counterparty that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline, prevent (or delay) the remediation of the T&S Prolonged Unavailability Event by the T&S Prolonged Unavailability Remediation Deadline; or
  - (C) where Condition 35.13(B)(i) applies, prevent (or delay) the implementation of an Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event.
- 35.20 The Generator shall ensure that:
- (A) all forecasts, forward-looking statements and data provided by or on behalf of the Generator pursuant to Conditions 35.9 to 35.19 are prepared in good faith, on a reasonable basis and with due care and attention; and
  - (B) all other Information provided by or on behalf of the Generator pursuant to Conditions 35.9 to 35.19 is true, complete and accurate in all material respects and is not misleading.

***Termination for failing to remedy a T&S Prolonged Unavailability Event***

- 35.21 If:
- (A) subject to limbs (B), (C) and (D), the T&S Prolonged Unavailability Event has not been remedied by the T&S Prolonged Unavailability Remediation Deadline;
  - (B) Condition 35.9(A)(iv) applies, the Generator has delivered evidence to the satisfaction of the DPA Counterparty that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and the Generator cannot provide a feasible Alternative T&S Network Solution Plan;
  - (C) where Condition 35.13 applies, the DPA Counterparty rejects the draft Alternative T&S Network Solution Plan pursuant to Condition 35.13(B)(iv); or
  - (D) where Condition 35.13(B)(i) applies but no earlier than the T&S Prolonged Unavailability Remediation Deadline, and subject to Condition 35.25, the Generator fails to commence and continue to implement an Approved Alternative T&S Network Solution Plan in accordance with its terms in order to remedy the T&S Prolonged Unavailability Event (notwithstanding that the T&S Prolonged Unavailability Event has not been remedied by the T&S Prolonged Unavailability Remediation Deadline),

then the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**T&S Prolonged Unavailability Termination Notice**"). A

T&S Prolonged Unavailability Termination Notice shall specify the date (on or following the date of the T&S Prolonged Unavailability Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**T&S Prolonged Unavailability Termination Date**").

- 35.22 No later than ten (10) Business Days after receipt of a T&S Prolonged Unavailability Termination Notice, the Generator shall give notice to the DPA Counterparty (a "**T&S Termination Response Notice**"). A T&S Termination Response Notice shall:
- (A) specify the Generator's good faith estimate of the T&S Termination Payment; and
  - (B) include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to calculate the T&S Termination Payment, in particular the details required to calculate the formula set out in Condition 36.4 (*Consequences of T&S Prolonged Unavailability Event termination*).
- 35.23 A T&S Termination Response Notice shall be accompanied by a Directors' Certificate in relation to the information contained in, and enclosed with, the T&S Termination Response Notice.
- 35.24 Following the delivery of a T&S Prolonged Unavailability Termination Notice, the DPA shall terminate on the T&S Prolonged Unavailability Termination Date even if the T&S Prolonged Unavailability Event is no longer continuing on the T&S Prolonged Unavailability Termination Date.
- 35.25 To the extent that the Generator is prevented from or delayed in implementing an Approved Alternative T&S Network Solution Plan in accordance with Condition 35.21(D) as a direct result of the occurrence and continuance of Force Majeure in respect of which the Generator is the FM Affected Party, then:
- (A) the Generator shall be relieved from liability and deemed not to be in breach of Condition 35.21(D); and
  - (B) any agreed milestones set out in the Approved Alternative T&S Network Solution Plan shall be extended day for day for each day of delay to the implementation of the Approved Alternative T&S Network Solution Plan,
- but only to the extent that the Generator has satisfied the requirements and conditions of Condition 51 (*Force Majeure*).

#### **Default termination**

- 35.26 If, at any time on or after the Start Date, a Termination Event has occurred and is continuing, the DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA (a "**Default Termination Notice**"). A Default Termination Notice shall specify:
- (A) the date (on or following the date of the Default Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**Default Termination Date**"); and
  - (B) the Termination Event which has occurred.
- 35.27 If the DPA Counterparty gives a Default Termination Notice to the Generator, the DPA shall terminate on the Default Termination Date even if the Termination Event is no longer continuing on the Default Termination Date.

**Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements**

35.28 If:

- (A) the Generator fails to satisfy the Minimum Longstop Date Commissioning Requirements at the Longstop Date Performance Tests; or
- (B) the Generator does not give a Longstop Date Capacity Notice on or prior to the date which is ten (10) Business Days after the later of:
  - (i) the Longstop Date; and
  - (ii) the date which is ten (10) Business Days after the DPA Counterparty has given notice to the Generator reminding the Generator of the requirement to give a Longstop Date Capacity Notice,

the DPA Counterparty shall have the right, but not the obligation, to terminate the DPA with immediate effect upon giving the Generator notice (a "**Minimum Longstop Date Termination Notice**").

**Termination for failing to satisfy the T&S Connection Confirmation CP**

35.29 If the DPA Counterparty has waived the T&S Connection Confirmation CP pursuant to Condition 3.40 (*Waiver of T&S Connection Confirmation CP*), and the T&S Connection Confirmation Requirement is not fulfilled by the Generator on or before the T&S Connection Confirmation Deadline, the DPA Counterparty shall have the right, but not the obligation, to terminate the DPA with immediate effect upon giving the Generator notice (a "**TCDE Termination Notice**").

**Qualifying Change in Law termination**

35.30 Subject to Condition 35.31, if a Qualifying Change in Law is implemented, occurs or becomes effective and gives rise to or results in a QCiL Construction Event or a QCiL Operations Cessation Event (including a Qualifying Shutdown Event), the DPA Counterparty shall give notice to the Generator terminating the DPA (a "**QCIL Termination Notice**"). A QCiL Termination Notice shall specify the date (on or following the date of the QCiL Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**QCIL Termination Date**").

35.31 The DPA Counterparty shall not exercise its right to terminate the DPA pursuant to Condition 35.30 in circumstances in which the Generator has provided a Generator QCiL Notice or a Generator QCiL Response Notice unless and until the Parties have agreed that a QCiL Construction Event or QCiL Operations Cessation Event has occurred or a determination to that effect has been made pursuant to the Dispute Resolution Procedure.

**QCIL Compensation termination**

35.32 The DPA Counterparty shall have the right, but not the obligation, to give notice to the Generator terminating the DPA if:

- (A) a Qualifying Change in Law occurs, is implemented or becomes effective; and
- (B) either:
  - (i) (a) such Qualifying Change in Law occurs, is implemented or becomes effective before the Start Date and does not constitute a QCiL Construction Event; and
  - (b) Condition 27.3(A) applies; or

- (ii) (a) such Qualifying Change in Law occurs, is implemented or becomes effective on or after the Start Date and does not constitute a QCiL Operations Cessation Event; and (b) Condition 27.3(B) applies,

(a "**QCIL Compensation Termination Notice**"). A QCiL Compensation Termination Notice shall specify the date (on or following the date of the QCiL Compensation Termination Notice) on which termination of the DPA is designated by the DPA Counterparty to take effect (the date so designated being a "**QCIL Compensation Termination Date**").

**No other termination rights**

35.33 The termination rights in this Condition 35 (*Termination*) are the only rights that either Party has to terminate the DPA.

**Notice provisions**

35.34 Any Pre-Start Date Termination Notice, Prolonged FM Termination Notice, T&S Prolonged Unavailability Event Notice, Default Termination Notice, T&S Prolonged Unavailability Termination Notice or QCiL Compensation Termination Notice issued by the DPA Counterparty pursuant to this Condition 35 (*Termination*) may be revoked by the DPA Counterparty giving written notice of the same to the Generator at any time prior to the Pre-Start Date Termination Date, Prolonged FM Termination Date, T&S Prolonged Unavailability Termination Date, Default Termination Date or QCiL Compensation Termination Date (as applicable) and, upon such revocation, the Pre-Start Date Termination Notice, Prolonged FM Termination Notice, Default Termination Notice, T&S Prolonged Unavailability Termination Notice or QCiL Compensation Termination Notice (as applicable) shall cease to have any effect.

**36. CONSEQUENCES OF TERMINATION**

**Consequences of termination: General**

36.1 Termination of the DPA pursuant to Condition 35.1 (*Pre-Start Date termination*), 35.6 (*Termination for Prolonged Force Majeure*), 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.26 (*Default termination*), 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*), Condition 35.29 (*Termination for failing to satisfy the T&S Connection Confirmation CP*) 35.30 (*Qualifying Change in Law Termination*) or 35.32 (*QCIL Compensation termination*):

- (A) shall not affect, and shall be without prejudice to, the accrued rights and liabilities of each Party and the rights and liabilities of each Party arising as a result of:
  - (i) any antecedent breach of any provision of the DPA; and
  - (ii) any breach of any provisions of the DPA which are expressed to survive expiry pursuant to Condition 38 (*Survival*); and
- (B) shall be subject to Condition 38 (*Survival*).

**Consequences of Pre-Start Date termination; termination for Prolonged Force Majeure; termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements and termination for failing to satisfy the T&S Connection Confirmation CP**

36.2 Subject to Condition 36.1, if the DPA Counterparty terminates the DPA pursuant to Condition 35.1 (*Pre-Start Date termination*), Condition 35.6 (*Termination for Prolonged Force Majeure*), Condition 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning*

Requirements) or Condition 35.29 (Termination for failing to satisfy the T&S Connection Confirmation CP):

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
- (B) all rights and obligations of the Parties under the DPA shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.

### **Consequences of T&S Prolonged Unavailability Event termination**

36.3 If the DPA Counterparty terminates the DPA pursuant to Condition 35.21 (Termination for failing to remedy a T&S Prolonged Unavailability Event), as soon as reasonably practicable after receipt of the T&S Termination Response Notice pursuant to Condition 35.22 (Termination for failing to remedy a T&S Prolonged Unavailability Event), the DPA Counterparty shall:

- (A) calculate the T&S Termination Payment; and
- (B) give a notice to the Generator (a "**T&S Termination Payment Notice**"). A T&S Termination Payment Notice shall specify:
  - (i) the amount of the T&S Termination Payment;
  - (ii) the principal inputs used by the DPA Counterparty to calculate the T&S Termination Payment; and
  - (iii) whether the T&S Termination Payment shall be effected (after consultation with the Generator) as a lump sum payment or staged payments.

36.4 If the T&S Termination Payment is to be paid as a lump sum, the T&S Termination Payment shall be calculated in accordance with the following formula:

$$\text{T\&S Termination Payment} = \sum_{j=1}^n \frac{C_j - S_j - RVA_j}{(1 + R_s)^{j-1}}$$

where:

- $j$  = is a whole number integer from one (1) to  $n$ ; such integers referring to distinct time periods as follows:
- the first (1st) period ( $j = 1$ ) covers the period from the T&S Prolonged Unavailability Termination Date to 31 December in the year of the T&S Prolonged Unavailability Termination Date;
  - the second (2nd) to the  $(n-1)$ th periods ( $2 \leq j < n$ ) are consecutive periods of one (1) calendar year length each; and
  - the  $n$ th period ( $i = j$ ) is the period starting on 01 January in the year in which the Specified Expiry Date falls and ending on the Specified Expiry Date;

$RVA_j$	=	is the Residual Value Adjustment relevant to period (j) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;
$C_j$	=	are all T&S Termination Costs in period (j) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;
$S_j$	=	are all T&S Termination Savings in period (j) (£) expressed in real terms as at the T&S Prolonged Unavailability Termination Date;
$R_s$	=	is the Post-Tax Real Discount Rate.

36.5 If the T&S Termination Payment is to be paid by means of staged payments:

- (A) the T&S Termination Payment shall be effected on the basis that such compensation shall be equivalent to the amount that the Generator would have received had the T&S Termination Payment been effected as a lump sum payment in accordance with Condition 36.4; and
- (B) the DPA Counterparty may (after consultation with the Generator) determine the frequency of such payments provided that the final staged payment shall be made by the earlier of: (i) the date that is five (5) years from the date of the T&S Termination Payment Notice; and (ii) the Specified Expiry Date.

36.6 Subject to Condition 36.7:

- (A) if the T&S Termination Payment is to be effected as a lump sum payment, the DPA Counterparty shall no later than thirty (30) Business Days after the date of the T&S Termination Payment Notice, pay to the Generator (or such person as the Generator may direct) the T&S Termination Payment; or
- (B) if the T&S Termination Payment is to be effected as staged payments, the DPA Counterparty shall commence payment no later than ten (10) Business Days after the date of the T&S Termination Payment Notice and the final payment shall be made by the earlier of: (i) the date that is five (5) years from the date of the T&S Termination Payment Notice; and (ii) the Specified Expiry Date.

36.7 The DPA Counterparty may set off against the T&S Termination Payment any or all other amounts owing (whether or not matured, contingent or invoiced) by the Generator to the DPA Counterparty as at the T&S Prolonged Unavailability Termination Date. The right of set off shall be without prejudice and in addition to any other right to which the DPA Counterparty is otherwise entitled. If an amount is unascertained, the DPA Counterparty may reasonably estimate the amount to be set off, subject to subsequent adjustment within twenty eight (28) calendar days of the amount becoming ascertained.

36.8 Subject to Conditions 36.1, 36.3, 36.4, 36.5, 36.6 and 36.7, if the DPA Counterparty terminates the DPA pursuant to Condition 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*):

- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
- (B) all rights and obligations of the Parties under the DPA shall end; and
- (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.



**Consequences of Default termination**

- 36.9 If the DPA Counterparty terminates the DPA pursuant to Condition 35.26 (*Default termination*), the DPA Counterparty shall:
- (A) on, or as soon as reasonably practicable after, the Default Termination Date, calculate the Default Termination Payment; and
  - (B) give a notice to the Generator (a "**Default Termination Payment Notice**"). A Default Termination Payment Notice shall specify the amount of the Default Termination Payment along with the principal inputs used by the DPA Counterparty to calculate such Default Termination Payment.
- 36.10 The Generator shall no later than thirty (30) Business Days after notification of the amount of the Default Termination Payment, pay to the DPA Counterparty (or such person as the DPA Counterparty may direct) the Default Termination Payment, which amount shall bear interest in accordance with Condition 14 (*Default Interest*), and no dispute by the Generator as to the amount of the Default Termination Payment shall relieve it of its obligation pursuant to this Condition 36.10.
- 36.11 If the DPA Counterparty terminates the DPA pursuant to Condition 22.8 (*Failure to remedy Minimum CO<sub>2</sub> Capture Rate Obligation breach*), the Default Termination Payment shall be reduced by any payments which the DPA Counterparty has suspended in accordance with Condition 22.9 to 22.11 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*) and not subsequently paid to the Generator in accordance with Condition 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*).
- 36.12 Subject to Conditions 36.1, 36.9 and 36.10, if the DPA Counterparty terminates the DPA pursuant to Condition 35.26 (*Default termination*):
- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination;
  - (B) all rights and obligations of the Parties under the DPA shall end; and
  - (C) neither Party shall be entitled to make any claim against the other Party under or in respect of the DPA.

**Consequences of Qualifying Change in Law termination and QCiL Compensation termination**

- 36.13 Subject to Condition 36.1, if the DPA Counterparty terminates the DPA pursuant to Condition 35.30 (*Qualifying Change in Law Termination*) or 35.32 (*QCiL Compensation termination*):
- (A) no payment shall be payable by either Party to the other Party as a consequence of such termination, except that such termination shall be without prejudice to each Party's obligation to pay any QCiL Compensation and QCiL True-Up Compensation;
  - (B) all rights and obligations of the Parties under the DPA shall end; and
  - (C) (subject to paragraph (A) above) neither Party shall be entitled to make any claim against the other Party pursuant to the DPA.

**37. TERMINATION EVENTS****Termination Events**

37.1 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, pursuant to the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Conditions 37.1(A)(i) or 37.1(A)(ii),

except where any of the events set out in this Condition 37.1(A) is attributable to the DPA Counterparty not paying when due any amount which, but for the operation of Condition 53 (*Limited recourse arrangements, undertakings and acknowledgements*), would have been due pursuant to the DPA.

(B) *Non-payment*: the Generator fails to pay any Generator Net Payable Amount on the due date pursuant to the DPA 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 DPA 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 on which the Payment Disruption Event continues.

(C) *Breach of key obligations*:

- (i) the Generator is in breach of any of Condition 20.1(E) (*Ownership*) or Condition 61 (*Transfers*); or
- (ii) any director, officer or other senior manager of the Generator commits or procures fraud, or aids, abets or counsels fraud (and fraud is in fact committed) in relation to the DPA or any other DPA Document.

(D) *Metering*: a Technical Compliance Termination Event or a Metering Access Termination Event occurs.

(E) *Minimum CO<sub>2</sub> Capture Rate*: a Capture Rate Termination Event occurs.

(F) *Declarations*: a Misleading Declaration Termination Event or a Declaration Access Termination Event occurs.

(G) [*Credit Support Default*]:

- (i) the Generator fails to transfer, deliver, extend, renew or replace (or procure the transfer, delivery, extension, renewal or replacement of) Acceptable Collateral in accordance with the Schedule (*Gain Share*);
- (ii) any Acceptable Collateral provided pursuant to the Schedule (*Gain Share*) expires or terminates or fails or ceases to be in full force and effect in breach of, and is not extended, renewed or replaced in accordance with the Schedule (*Gain Share*); or

- (iii) the Generator, or the issuer of any Acceptable Collateral, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of the Acceptable Collateral provided to the DPA Counterparty pursuant to the Schedule (*Gain Share*) unless such disclaimer, repudiation, rejection or challenge is withdrawn or a substitute Acceptable Collateral is provided to the DPA Counterparty no later than five (5) Business Days after such disclaimer, repudiation, rejection or challenge.]<sup>48</sup>

### 38. SURVIVAL

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

- (A) (save to the extent taken into account in the calculation of the Default Termination Payment or the T&S Termination Payment (if any)), the provisions of the DPA as they relate to the payment of any sum due by one Party to the other pursuant to the DPA; and
- (B) the continued existence and validity of, and the rights and obligations of the Parties pursuant to Part 1 (*Introduction*), Conditions 3.46 and 3.47 (*Set-Off of Previous Subsidy*), Part 6 (*Billing and payment*), this Part 9 (*Termination*) and Part 10 (*Dispute Resolution*) to Part 13 (*Miscellaneous*) (inclusive).

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<sup>48</sup> Note to Reader: If the gain share schedule applies to a DPA, there will be an additional termination event which will relate to credit support/collateral provisions contained in the gain share schedule.

**Part 10**  
**Dispute Resolution**

**39. DISPUTE RESOLUTION PROCEDURE: GENERAL PROVISIONS<sup>49</sup>**

***Objective for resolution of Disputes***

39.1 If a Dispute arises, the objective of the Parties shall be to seek to ensure that the Dispute is resolved as quickly, as efficiently and as cost-effectively as possible. Each Party shall, at each stage of the Dispute Resolution Procedure, endeavour in good faith to resolve all Disputes through negotiation.

***Compliance with obligations during a Dispute***

39.2 The Generator and the DPA Counterparty shall continue to comply with all of their respective obligations under the DPA notwithstanding any Dispute which falls to be resolved in accordance with this Condition 39 (*Dispute Resolution Procedure: General provisions*).

***Outline of Dispute Resolution Procedure***

39.3 Except as otherwise expressly provided in these Conditions, 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:

- (A) shall include a description of the subject matter of the Dispute and the issues to be resolved;
- (B) shall include a statement identifying the Condition to which the Dispute relates or pursuant to which the Dispute arises;
- (C) shall include a description of the position the referring Party considers is correct and the referring Party's reasons for that position;
- (D) (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) shall include details of any other dispute or claim relating to or arising out of another CCUS Programme DPA which the referring Party considers should be consolidated with or joined to the Dispute;
- (E) may, where the referring Party considers it appropriate, include copies of any Supporting Information on which the referring Party intends to rely;
- (F) shall include a statement outlining the relief, determination, remedy or recourse which the referring Party seeks in relation to the Dispute;
- (G) (except where the DPA expressly provides for the Dispute, including any Gas Supply Metering Dispute and any CO<sub>2</sub> Metering Dispute, to be subject to determination in accordance with the Expert Determination Procedure) shall include a statement as to whether the referring Party considers that the Dispute should (without 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

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<sup>49</sup> Note to Reader: The Dispute Resolution Procedure may need to be updated if a gain share schedule is incorporated into the DPA in order to accommodate multi-party disputes.

(H) shall include the identity of the referring Party's Senior Representative.

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

- (A) (subject to Condition 39.5) the Parties shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties in accordance with Condition 40 (*Resolution by Senior Representatives*) but, if and to the extent that the Senior Representatives are unable to agree, settle, compromise or resolve the Dispute in accordance with Condition 40 (*Resolution by Senior Representatives*), Condition 39.4(B) shall apply;
- (B) (subject to Condition 39.6) either Party may refer the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties agree in writing within the Resolution Period (or such longer period as they may agree in writing) 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
- (C) (subject to Condition 39.6) either Party may refer a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute for determination by an Expert in accordance with the Expert Determination Procedure.

39.5 Condition 39.4(A) shall not apply where the DPA expressly provides that Condition 40 (*Resolution by Senior Representatives*) shall not apply to the relevant Dispute.

39.6 If the DPA expressly provides for the relevant Dispute to be subject to determination in accordance with the Expert Determination Procedure:

- (A) Conditions 39.4(B) and 39.4(C) shall not apply to such Dispute; and
- (B) if and to the extent that the Senior Representatives are unable to agree, settle, compromise or resolve the Dispute in accordance with Condition 40 (*Resolution by Senior Representatives*), such Dispute shall be referred by the referring Party to an Expert for determination in accordance with the Expert Determination Procedure (but subject to such amendments to the Expert Determination Procedure as are expressly provided for in the relevant provisions of the DPA).

39.7 Subject to Condition 39.8, all communications between the Parties with respect to a Dispute (including any statement, concession, waiver or agreement made by a Party during discussions and meetings pursuant to Condition 40 (*Resolution by Senior Representatives*)) (and any minutes or statements relating to such discussions or meetings) shall be "without prejudice" to the Dispute (or "without prejudice save as to costs" if expressly communicated or stated to be as such) (together, "**Dispute Information**"). Dispute Information shall be inadmissible in any Proceedings that may follow whether related to the Dispute or otherwise (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 Conditions 41.12 and 42.2.

39.8 Condition 39.7 shall not apply to:

- (A) any Dispute Notice;
- (B) any Senior Representatives Settlement;
- (C) any communications between the Parties once an Expert Determination Procedure or an Arbitration Procedure has commenced, save for such communications expressly

communicated or stated to be "without prejudice" or "without prejudice save as to costs";  
or

- (D) any communications between the Parties where the Parties agree in writing that Condition 39.7 shall not apply.

#### 40. RESOLUTION BY SENIOR REPRESENTATIVES

40.1 The Parties shall procure that their respective Senior Representatives shall meet no later than ten (10) Business Days after the date of service of a Dispute Notice. If the Senior Representatives of the Parties:

- (A) are able to resolve the Dispute within thirty (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, settlement, compromise or resolution 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;
- (B) are unable to resolve the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering 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 in writing within the Resolution Period (or such longer period as they may agree in writing) 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; or
- (C) are unable to resolve a Gas Supply Metering Dispute and/or CO<sub>2</sub> Metering Dispute (as applicable) within the Resolution Period, either Party may refer such Gas Supply Metering Dispute and/or CO<sub>2</sub> Metering Dispute (as applicable) for determination by an Expert in accordance with the Expert Determination Procedure.

40.2 If, at any time during the Resolution Period, both Parties agree that the Senior Representatives of the Parties will not be able to agree, settle, compromise or resolve the Dispute, then:

- (A) either Party may refer the Dispute (except for a Gas Supply Metering Dispute or a CO<sub>2</sub> Metering Dispute) for resolution by an Arbitral Tribunal in accordance with the Arbitration Procedure or, if the Parties 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;
- (B) either Party may refer a Gas Supply Metering Dispute and/or a CO<sub>2</sub> Metering Dispute (as applicable) for determination by an Expert in accordance with the Expert Determination Procedure; and
- (C) there shall be no requirement for the Parties to wait until the expiry of the Resolution Period before making any such reference.

40.3 Neither Party may commence the Expert Determination Procedure nor the Arbitration Procedure prior to the expiry of the Resolution Period except in the circumstances specified in Condition 40.2.

40.4 The rules, obligations and procedures set out in this Condition 40 (*Resolution by Senior Representatives*) shall apply to all Disputes unless expressly stated to the contrary in the DPA.

#### 41. EXPERT DETERMINATION PROCEDURE

- 41.1 Either Party may, subject to Condition 40 (*Resolution by Senior Representatives*), refer a Dispute to be determined by an Expert if either: (i) the Parties have agreed in writing that a Dispute is amenable to determination by an Expert pursuant to Condition 40.1(B) or 40.2(A); or (ii) the DPA expressly provides for the relevant Dispute to be determined by an Expert. Such referral shall be effected by either Party giving a notice (an "**Expert Determination Notice**") to the other Party. An Expert Determination Notice shall:
- (A) include the information required to be included in a Dispute Notice pursuant to Conditions 39.3(A) to 39.3(F); and
  - (B) include a proposal as to the identity, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies the proposed Expert to determine the relevant Expert Dispute.
- 41.2 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.
- 41.3 The Party receiving the Expert Determination Notice (the "**Respondent**") shall, no later than ten (10) Business Days after receipt of the Expert Determination Notice, give notice (an "**Expert Determination Response Notice**") to the other Party (the "**Claimant**"). An Expert Determination Response Notice shall specify whether or not the Respondent accepts:
- (A) the Expert proposed by the Claimant (and, if the Respondent does not accept the Expert proposed by the Claimant, it shall specify an alternative Expert for consideration by the Claimant); and
  - (B) the terms of reference for the Expert proposed by the Claimant (and, if the Respondent does not accept the terms of reference for the Expert proposed by the Claimant, it shall propose alternative terms of reference for the Expert for consideration by the Claimant).
- 41.4 If the Parties fail to agree on the identity of the Expert within twenty (20) Business Days of the date of service of the Expert Determination Notice (or such other period as the Parties may agree in writing), 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, subject to Condition 41.5(A)(i), be binding on the Parties.
- 41.5 The Parties shall:
- (A) use reasonable endeavours to procure that no later than ten (10) Business Days after the Parties have agreed the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with Condition 41.4):
    - (i) the Expert confirms in writing to the Parties that:
      - (a) the Expert is willing and available to act in relation to the Expert Dispute; and
      - (b) the Expert has no conflict of interest which prevents the Expert from determining the Expert Dispute; and
    - (ii) (subject to the confirmation referred to in Condition 41.5(A)(i) having been given) the terms of appointment and the terms of reference 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 Supporting Information disclosed or delivered by a Party to the Expert in consequence of, or in respect of, their 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 or in bad faith;
- (B) instruct the Expert:
- (i) to act fairly and impartially;
  - (ii) to reach its decision in accordance with the applicable Laws in relation to the Dispute referred to the Expert;
  - (iii) to take the initiative in ascertaining the facts and the law, including by:
    - (a) considering any Supporting Information submitted to the Expert by the Parties;
    - (b) instructing an expert and/or taking counsel's opinion as to any matter raised in connection with the Dispute, provided that the Expert shall not be entitled to delegate any decision to such expert or counsel;
    - (c) requiring the Parties to produce any Supporting Information (excluding any of the foregoing 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 pursuant to the DPA, provided that the Expert may not in so doing purport: (i) to open up, review or revise any matter determined pursuant to an earlier dispute under the Dispute Resolution Procedure or included with a negotiated settlement; or (ii) to decide any matter which falls outside the Expert's terms of reference in relation to the relevant Expert Dispute or is otherwise excluded from the Expert Determination Procedure; and
  - (iv) if requested by either Party in writing, to provide reasons for their 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, no later than ten (10) Business Days after such date and the Parties agree that:
    - (a) the Expert shall be requested to afford (and shall so afford) the Parties the opportunity to address the Expert in a meeting at which both Parties shall have the right to be present, where either 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 their sole and absolute discretion;

- (b) subject to (c) below, the Expert may modify the time periods provided for in Condition 41.6 and otherwise modify the procedure contemplated by such Condition; and
- (c) any modification(s) to the time periods and/or procedure for the determination of an Expert Dispute shall not extend the overall timetable of the Expert Determination Procedure by more than sixty (60) calendar days without the agreement of both Parties;
- (ii) all submissions made by a Party to the Expert (including all Supporting Information provided to the Expert) shall be provided to the other Party contemporaneously with such submissions being made to the Expert; and
- (iii) the Parties shall (without prejudice to Condition 41.5(C)(i)) request the Expert to determine the Expert Dispute within the earlier of:
  - (a) thirty (30) Business Days following the date on which a Response Submission has been provided by the Respondent; and
  - (b) sixty (60) Business Days after the First Submission Deadline; and
- (D) afford the Expert all Supporting Information and assistance which the Expert requires to determine the Expert Dispute (and, if a Party fails to produce any such Supporting Information or assistance, the Expert may continue the determination process without that Supporting Information or assistance).

41.6 Subject to Condition 41.5(C):

- (A) the Claimant shall provide the Expert with a copy of the Expert Determination Notice no later than ten (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) the Claimant shall provide a written statement of its case, together with any Supporting Information, to the Expert (the "**First Submission**") no later than twenty (20) Business Days after 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 Conditions 39.3(A) to 39.3(F) (inclusive) and shall include copies of any Supporting Information which the Claimant considers to be important and relevant and a copy of such First Submission shall be provided to the Respondent at the same time as it is provided to the Expert; and
- (C) the Respondent may, but is not obliged to, submit a response to the Claimant's First Submission, together with any Supporting Information on which the Respondent intends to rely (a "**Response Submission**") no later than thirty (30) Business Days after receipt of the First Submission.

41.7 The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or their determination or the procedure by which the Expert reaches their determination.

- 41.8 If the Expert is at any time unable or unwilling to act or fails to come to a decision within the specified time allowed, either Party may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served. The provisions of the Expert Determination Procedure shall apply to any replacement Expert and the replacement Expert shall be authorised to determine any Expert Dispute which was submitted to their predecessor but which their predecessor had not determined at the time when their predecessor became unable or unwilling to act.
- 41.9 The Expert's determination shall be final and binding upon the Parties, except in the event of fraud or manifest error.
- 41.10 No Expert determination shall have the effect of amending the DPA unless expressly permitted pursuant to the DPA.
- 41.11 If either Party does not comply with the decision of the Expert, the other Party may commence proceedings in the English Courts to secure enforcement of that decision.
- 41.12 The Expert may, in their determination, provide that one or other or both of the Parties pay the Expert's fees and expenses and each other's costs (including the fees and expenses of external advisers and consultants) in such proportions as the Expert may specify on the general principle that the allocation of costs should reflect the Parties' relative success and failure in the Expert Determination Procedure. In the absence of such a direction, each Party shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the Parties.

## 42. **ARBITRATION PROCEDURE**

- 42.1 Either Party may, subject to Condition 40 (*Resolution by Senior Representatives*), refer an Arbitration Dispute to arbitration. 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 Condition 42.
- 42.2 The Arbitral Tribunal shall make its award in writing (the "**Arbitral Award**") and the Parties agree that all final Arbitral Awards shall be binding on the Parties.
- 42.3 No Arbitral Award shall have the effect of amending the DPA unless expressly permitted pursuant to the DPA.
- 42.4 The Arbitral Tribunal shall consist of three (3) Arbitrators except where the Parties have agreed in writing that the Arbitral Tribunal shall consist of one (1) Arbitrator (the "**Mutual Appointment Decision**").
- 42.5 If the Arbitral Tribunal is to consist of:
- (A) three (3) Arbitrators, each Party shall nominate one (1) Arbitrator to be appointed by the LCIA as contemplated by the LCIA Arbitration Rules and the third Arbitrator shall be nominated by the Arbitrators nominated by the Parties and shall act as chairman; or
  - (B) one (1) Arbitrator, the Parties shall use reasonable endeavours to agree on the identity of the Arbitrator no later than ten (10) Business Days after the Mutual Appointment Decision, failing which the Arbitrator shall be appointed by the LCIA as contemplated by the LCIA Arbitration Rules.
- 42.6 The seat, or legal place, of any arbitration shall be London.
- 42.7 The language to be used in any arbitral proceedings shall be English.

42.8 This Condition 42 shall not apply to any Gas Supply Metering Dispute or any CO<sub>2</sub> Metering Dispute.

43. **CONSOLIDATION OF CONNECTED DISPUTES**

43.1 If:

- (A) any Dispute raises issues which are substantially the same as, connected with or related to issues raised in any dispute or claim relating to or arising out of any other CCUS Programme DPA (each, a "**Connected Dispute**");
- (B) the Dispute Resolution Procedure has been commenced in relation to the Dispute; and
- (C) a dispute resolution procedure under the other CCUS Programme DPA has been commenced in relation to the Connected Dispute under that contract,

then either Party may request consolidation of those Connected Disputes at any time so that the Connected Disputes shall be determined together and in respect of any Connected Dispute, the Parties consent, pursuant to Article 22.7 and/or Article 22.8 of the LCIA Arbitration Rules (or any equivalent provisions in any version of the LCIA Arbitration Rules that may come into force hereafter), to the consolidation of an arbitration commenced pursuant to the DPA with an arbitration commenced under the relevant other CCUS Programme DPA(s).

43.2 Where a Party wishes to consolidate Connected Disputes pursuant to Condition 43.1, that Party shall give notice in writing to all of the parties to the Connected Disputes (a "**Consolidation Request**"). A Consolidation Request shall be copied to the Expert or Arbitrator(s) (as relevant) of each Connected Dispute at the same time that it is given to the parties to each Connected Dispute, or, to the extent that the Expert or Arbitrator(s) have not been appointed at that date, forthwith upon appointment of the Expert or Arbitrator(s).

43.3 Following delivery of a Consolidation Request to every party who is to receive it under Condition 43.2, the Parties shall use reasonable endeavours (including cooperating with the parties to the other CCUS Programme DPA) to procure that the Expert or Arbitrator(s) (as relevant) of each Connected Dispute shall, within five (5) Business Days after the delivery of the Consolidation Request, determine between them whether:

- (A) they are satisfied that the issues of both fact and/or law raised in each of the Connected Disputes are substantially the same as, or substantially connected or related to, each other; and
- (B) consolidation of the Connected Disputes will not materially affect the timetable for resolution of any Connected Disputes.

43.4 If:

- (A) the Expert(s) or Arbitrator(s) are so satisfied by majority and provide notice of that fact to the parties to all of the Connected Disputes; and
- (B) the parties to the other CCUS Programme DPA(s) consent to consolidation;

the Dispute may be consolidated with any relevant Connected Disputes (including, in the case of two or more arbitrations, pursuant to the relevant provisions of the LCIA Arbitration Rules).

43.5 If the Expert(s) or Arbitrator(s) are not so satisfied by majority or one (1) or more parties to another CCUS Programme DPA does not consent to the consolidation, the Dispute shall not be consolidated with the Connected Dispute under that contract.

- 43.6 If the Parties or either of them receive(s) one (1) or more notice(s) from a party or parties to one (1) or more other CCUS Programme DPA(s) seeking to consolidate a dispute under the other CCUS Programme DPA(s) with a Dispute under the DPA for reasons similar to those set out in Condition 43.3 above, neither Party shall unreasonably withhold its consent to consolidation of the Dispute with the relevant dispute(s) under the other CCUS Programme DPA(s) and shall use reasonable endeavours to facilitate the consolidation of the disputes.
- 43.7 If there has been a request for consolidation, whether by way of Consolidation Request under the DPA or an equivalent notice under one (1) or more other CCUS Programme DPA(s) and it is determined that two or more disputes shall be consolidated,
- (A) the Parties shall use reasonable endeavours to procure that the outcome described in Condition 43.8 below is achieved; and
- (B) neither Party shall unreasonably withhold consent to any reasonable proposal by a party to another CCUS Programme DPA which has as its objective the procuring of an outcome equivalent to that described in Condition 43.8 below.
- 43.8 If different Experts or Arbitrators have been appointed in respect of Connected Disputes prior to their being consolidated in accordance with the Dispute Resolution Procedure and those Experts or Arbitrator(s) give a notice, in accordance with Condition 43.4, that the Connected Disputes shall be consolidated, the Parties shall use reasonable endeavours to agree in writing with each other and the parties to any relevant Connected Dispute, no later than five (5) Business Days after the giving of that notice, which of the Experts or Arbitrators shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes. If no such agreement can be reached, the parties to the Dispute shall request that the president or vice-president of the LCIA court select, no later than five (5) Business Days after such request, which of those Experts or Arbitrator(s) shall be the Experts or Arbitrator(s) for the consolidated Connected Disputes, provided the parties to any relevant Connected Dispute(s) consent to this step.
- 43.9 If the Expert(s) or Arbitrator(s) of consolidated Connected Disputes is or are unable to give their award in respect of the consolidated Connected Disputes at the same time then the award in respect of the Dispute may be given in such order as the Expert(s) or Arbitrator(s) may determine.
- 43.10 This Condition 43 shall not apply to any Gas Supply Metering Dispute, any CO<sub>2</sub> Metering Dispute.

44. **NO OTHER PROCEEDINGS**

- 44.1 Subject to Conditions 44.2 and 45.1, any and all Disputes are to be finally resolved in accordance with the Dispute Resolution Procedure, and neither Party shall commence any Proceedings in respect of a Dispute other than in accordance with the Dispute Resolution Procedure. If either Party commences any Proceedings in breach of the Dispute Resolution Procedure, it shall not oppose an application for strike-out, termination, discontinuance or stay of such Proceedings.
- 44.2 Notwithstanding any other provision of the Dispute Resolution Procedure, either Party may at any time:
- (A) commence, prosecute and/or defend 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;

- (ii) judgment to enforce a Senior Representatives Settlement, the determination 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.

45. **METERING DISPUTES**

- 45.1 Electricity Metering Disputes shall be resolved solely as a Trading Dispute in accordance with the Balancing and Settlement Code pursuant to Conditions 13.6 to 13.8 (*Electricity Metering Dispute*) and the Dispute Resolution Procedure shall not apply to any such Electricity Metering Disputes.
- 45.2 Notwithstanding any Electricity Metering Dispute, the Parties shall continue to comply with all of their respective obligations under the DPA.
- 45.3 Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes shall be resolved in accordance with the Dispute Resolution Procedure (except for those provisions of the Dispute Resolution Procedure which are expressly stated not to apply to Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes).<sup>50</sup>

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<sup>50</sup> Note to Reader: The dispute resolution procedures for Gas Supply Metering Disputes and CO<sub>2</sub> Metering Disputes are subject to change as industry codes and procedures are established and developed.

**Part 11**  
**General provisions regarding liabilities, remedies and waivers**

**46. EXCLUDED LOSSES AND LIABILITIES**

***Interpretation***

- 46.1 Any and all compensation in respect of any event to be calculated, agreed or determined, and paid, commenced or effected, pursuant to the DPA shall be calculated on the basis that the Generator:
- (A) has complied, and will comply, with the general mitigation obligation set out in Condition 46.3, irrespective of whether the Generator has in fact complied, or will comply, with such obligation; and
  - (B) has complied, and will comply, with the Reasonable and Prudent Standard, including with respect to the incurrence of costs in relation to the Project, irrespective of whether the Generator has in fact complied, or will comply, with such standard.
- 46.2 Any notification by the Generator to the DPA Counterparty of the mitigating steps that the Generator has taken, or proposes to take, in order to comply with the general mitigation obligation set out in Condition 46.3, or the Reasonable and Prudent Standard, shall be of indicative value only and, as such, shall not be determinative of whether it has complied, or will comply, with such general mitigation obligation or Reasonable and Prudent Standard.

***Mitigation***

- 46.3 The Generator shall promptly take all reasonable steps to mitigate any loss or, as the case may be, maximise any benefit, in respect of which a claim could be brought under the DPA or any other DPA Document (including by recommencing generation and/or CO<sub>2</sub> capture as soon as reasonably practicable), provided that this obligation to mitigate shall not be construed as relieving the Generator from complying in full with its obligations under the DPA or any other DPA Document.
- 46.4 The Generator shall give notice as soon as reasonably practicable to the DPA Counterparty of the mitigating steps that it has taken or procured, is taking or procuring or proposes to take or procure and shall as soon as reasonably practicable provide such Supporting Information regarding such mitigation as the DPA Counterparty may reasonably request.

***No double recovery***

- 46.5 The Generator may recover only once in respect of the same loss. The DPA Counterparty shall not be liable to pay any compensation under any term of the DPA to the extent that the subject of the claim has been compensated for, or the same loss has been recovered by the Generator under the DPA or any other DPA Document.
- 46.6 If the Generator is at any time entitled to recover from a third party any sum (whether under a power purchase agreement, an electricity sale contract, an insurance policy or otherwise) in respect of any matter or circumstance giving rise to a claim under the DPA or any other DPA Document, the Generator shall take all necessary steps to enforce such recovery.
- 46.7 If the Generator (or its nominee) recovers any amount from: (i) the DPA Counterparty as a consequence of any claim under the DPA or any other CCUS Programme DPA to which it is a party; or (ii) such other person as is referred to in Condition 46.6:
- (A) such amount shall be taken into account in the calculation of any compensation payable pursuant to the DPA or any other DPA Document;

- (B) no claim shall be made by the Generator pursuant to the DPA or any other DPA Document in respect of the amounts so recovered; and
- (C) if the Generator has previously received compensation in relation to the same claim, they or it shall pay promptly to the DPA Counterparty an amount equal to the lesser of:
  - (i) the amount so recovered; and
  - (ii) the amount so previously received.

**General limitation on liability**

46.8 Subject to Condition 46.9, neither Party shall be liable to the other Party under or pursuant to the DPA or any other DPA Document, 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 respect of any breach of the terms of the DPA or any other DPA Document.

46.9 Condition 46.8 shall not operate so as to prejudice or override:

- (A) the express terms of any obligation to pay, indemnity or costs reimbursement provision contained within the DPA or any other DPA Document;
- (B) the express terms relating to the calculation of any QCiL Compensation or QCiL True-Up Compensation, or the obligation of either Party to pay any QCiL Compensation or QCiL True-Up Compensation to the other Party (or to commence or effect such compensation), in each case in accordance with Part 8 (*Changes in Law*); or
- (C) the express terms relating to the calculation of the Default Termination Payment or the obligation of the Generator to pay the Default Termination Payment to the DPA Counterparty, in accordance with Condition 36.10, it being agreed that the DPA Counterparty has a legitimate interest to which the Default Termination Payment is proportionate in light of factors including but not limited to the anticipated harm that the DPA Counterparty would suffer and the difficulty of estimation or calculation of actual damages upon early termination of the DPA.<sup>51</sup>

**T&S Operator actions**

46.10 Any payments to the Generator in respect of or pursuant to instructions issued by any T&S Operator shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting losses.

**Electricity Transmission System Operator, Electricity Transmission Licensee or Electricity Licensed Distributor actions**

46.11 Any payments to the Generator in respect of or pursuant to:

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<sup>51</sup> Note to Reader: This provision is subject to further review by BEIS.

- (A) instructions issued by any Electricity Transmission System Operator, Electricity Transmission Licensee or an Electricity Licensed Distributor, as the case may be; or
- (B) directions given or actions taken pursuant to the Fuel Security Code (as such term is defined in the Electricity Transmission Licence),

shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting losses.

***Gas Licensed Transporter or Gas Licensed Shipper actions***

46.12 Any payments to the Generator in respect of or pursuant to instructions issued by any Gas Licensed Transporter or Gas Licensed Shipper, as the case may be, shall not be calculated or made pursuant to the terms of the DPA, and the DPA Counterparty shall have no liability pursuant to the DPA to pay or compensate the Generator in respect of any resulting lost supply.

**47. NO WAIVER**

47.1 No waiver by either Party of any breach by the other Party of the DPA or any other DPA Document shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.

47.2 No delay or omission by either Party in exercising any right, power or remedy provided by law or pursuant to the DPA or any other DPA Document shall:

- (A) affect that right, power or remedy; or
- (B) operate as a waiver of it.

47.3 The single or partial exercise by either Party of any right, power or remedy provided by law or pursuant to the DPA or any other DPA Document shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.

47.4 Any legal privilege attaching to information or documents that are:

- (A) made available by the Generator or its Representatives to the DPA Counterparty or its Representatives remains for the benefit of the Generator; or
- (B) made available by the DPA Counterparty or its Representatives to the Generator or its Representatives remains for the benefit of the DPA Counterparty,

and, in each case, disclosure is not intended to amount to a waiver of legal privilege.

**48. CONSENTS**

48.1 Any consents, confirmations, approvals, waivers or agreements to be given by the DPA Counterparty pursuant to the DPA or any other DPA Document:

- (A) shall be effective only if given in writing; and
- (B) except as otherwise expressly provided in the DPA, may be given or withheld by the DPA Counterparty in its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as the DPA Counterparty may in its sole and absolute discretion determine.



48.2 The exercise of discretion by the DPA Counterparty (including in respect of the grant or withholding of any consent, confirmation, 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 the DPA or any other DPA Document.

49. **ENTIRE AGREEMENT**

49.1 The DPA, together with the other DPA Documents, constitutes the entire agreement, understanding and representations of the Parties in respect of its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made in respect thereof other than those included in the DPA or the other DPA Documents.

49.2 Each Party acknowledges that in entering into the DPA it has not relied on, and shall have no right or remedy in respect of, any draft, agreement, undertaking, representation, warranty, promise, assurance, arrangement or public statement of any nature whatsoever, whether or not in writing, relating to the subject matter of the DPA or any other DPA Document made or given by or on behalf of either Party or the Secretary of State at any time prior to the Agreement Date (whether made negligently or innocently) other than as expressly set out in the DPA or any other DPA Document.

49.3 Nothing in this Condition 49 (*Entire agreement*) shall limit or exclude liability for fraud.

50. **PAYMENT DISRUPTION EVENT**

***Relief due to Payment Disruption Event***

50.1 Subject to Condition 50.2, a Party affected by a Payment Disruption Event (a "**PDE Affected Party**") shall be relieved from liability, and deemed not to be in breach of the DPA (or any other DPA Document), for:

- (A) any failure to pay (or delay in paying) to the other Party any sum due and payable pursuant to the DPA (or any other DPA Document) (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise); and
- (B) [(in the case of the Generator) any failure to transfer, deliver, extend, renew or replace (or procure the replacement of) Acceptable Collateral in accordance with the Schedule (*Gain Share*), or any delay in doing so,]<sup>52</sup>

(such obligations "**PDE Obligations**") in each case if and to the extent that such failure or delay is directly attributable to the occurrence and continuance of such Payment Disruption Event.

***Conditions to Payment Disruption Event relief***

50.2 The PDE Affected Party's relief from liability pursuant to Condition 50.1 is subject to and conditional upon:

- (A) the PDE Affected Party giving notice as soon as reasonably practicable to the other Party of the nature and extent of the Payment Disruption Event causing its failure or delay in performance; and
- (B) the PDE Affected Party using reasonable endeavours:

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<sup>52</sup> Note to Reader: This provision will be applicable if the gain share schedule applies to a DPA.

- (i) to mitigate the effects of the Payment Disruption Event;
- (ii) to carry out and perform its obligations under the DPA (and each other DPA Document) in any way that is reasonably practicable; and
- (iii) to pay the sum due and payable [or transfer, deliver, extend, renew or replace Acceptable Collateral in accordance with the Schedule (*Gain Share*) (as relevant)]<sup>53</sup> immediately upon cessation of the Payment Disruption Event.

## 51. FORCE MAJEURE

### ***Relief due to Force Majeure***

- 51.1 Subject to the provisions of this Condition 51 (*Force Majeure*), a Party affected by Force Majeure (an "**FM Affected Party**") shall:
- (A) be relieved from liability, and deemed not to be in breach of the DPA (or any other DPA Document), for any failure or delay in the performance of any of its obligations under the DPA (or any other DPA Document) if and to the extent such failure or delay is directly attributable to the occurrence and continuance of such Force Majeure; and
  - (B) be entitled to an extension of one (1) or more of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window, for any delay to the Project if and to the extent such delay is directly attributable to the occurrence and continuance of such Force Majeure, subject to the requirements of the definition of that term.
- 51.2 Nothing in this Condition 51 (*Force Majeure*) shall relieve either Party from its obligations to perform or comply with any PDE Obligations.
- 51.3 Nothing in this Condition 51 (*Force Majeure*) shall affect the DPA Counterparty's right to terminate the DPA pursuant to Conditions 35.5 to 35.7 (*Termination for Prolonged Force Majeure*) and, subject to Condition 35.25, Conditions 35.8 to 35.25 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*).

### ***Conditions to Force Majeure relief***

- 51.4 The FM Affected Party's relief from liability and/or entitlement to an extension of any of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window pursuant to Condition 51.1 is subject to and conditional upon (and in the case of 52.1(B) shall only be available to the extent that the failure or delay in performance and/or delay to the Project could not have been avoided by):
- (A) the FM Affected Party giving notice as soon as reasonably practicable to the other Party (the "**Non-affected Party**") in writing of the nature and extent of: (i) any Force Majeure of which it is aware which it considers will or is likely to cause its failure or delay in performance and/or delay to the Project; and (ii) any Force Majeure that has caused or is causing failure or delay in performance and/or delay to the Project; and
  - (B) the FM Affected Party using reasonable endeavours:
    - (i) to mitigate the effects of the Force Majeure (including delay to the Project);

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<sup>53</sup> Note to Reader: This provision will be applicable if the gain share schedule applies to a DPA.

- (ii) to carry out its obligations under the DPA and each other DPA Document in any way that is reasonably practicable; and
- (iii) to resume the performance of its obligations under the DPA and each other DPA Document as soon as reasonably practicable.

***Provision of Force Majeure information***

51.5 In addition to its notification obligation pursuant to Condition 51.4, the FM Affected Party shall give notice as soon as reasonably practicable to the Non-affected Party in writing (to the extent that such Information is available to the FM Affected Party) of:

- (A) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure (including delay to the Project) and to carry out its obligations under the DPA (or the relevant DPA Document);
- (B) the anticipated date of resumption of performance of its obligations under the DPA (or the relevant DPA Document); and
- (C) such other details relating to the Force Majeure and its effects (including delay to the Project) as may be reasonably requested by the Non-affected Party,

and, to the extent that such Information is not 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 to it.

51.6 The FM Affected Party shall give notice to the Non-affected Party every twenty (20) Business Days:

- (A) of any update to the Information provided pursuant to Condition 51.5 and shall give notice as soon as reasonably practicable to the Non-affected Party upon it becoming aware of any material developments or additional material Information relating to the Force Majeure and its effects; and
- (B) where the Force Majeure is a continuing one, that it is continuing, accompanied by an explanation and Information to show that the events or circumstances concerned continue to meet all of the requirements of the definition of Force Majeure.

**52. SEVERABILITY**

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

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of the DPA or of any other DPA Document; or
- (B) the legality, validity or enforceability in other jurisdictions of that or any other provision of the DPA or of any other DPA Document.

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

***DPA Counterparty payment undertakings***

53.1 For the purpose of Conditions 53.2 to 53.8, references in Conditions 53.2 to 53.5 to "liabilities" shall be construed as if the limited recourse provisions set out in Condition 53.7 do not apply.

- 53.2 The DPA Counterparty shall make appropriate requests to Electricity Suppliers on the basis provided for by the Supplier Obligation Regulations for the purpose of ensuring that it is in sufficient funds to meet its liabilities in full pursuant to the DPA.
- 53.3 The DPA Counterparty shall, to the extent consistent with the DPA Counterparty's proper exercise of its functions and duties pursuant to the EA 2013 or any other statutory function or duty, as soon as reasonably practicable:
- (A) take such steps as are necessary to recover from an Electricity Supplier any sum which the Electricity Supplier is required by virtue of the Supplier Obligation Regulations to pay to the DPA Counterparty and which has not been paid by the date on which it is required by virtue of the Supplier Obligation Regulations to be paid and which is necessary to ensure the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
  - (B) at the times and otherwise in the manner prescribed by the Supplier Obligation Regulations, issue and enforce notices to Electricity Suppliers requiring the provision and/or payment of financial collateral to ensure the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
  - (C) take such action (including the taking and prosecution of legal proceedings) against Electricity Suppliers as is necessary to ensure that the DPA Counterparty can meet its liabilities in full pursuant to the DPA;
  - (D) pursue any Electricity Supplier which has defaulted in making payment pursuant to the Supplier Obligation Regulations as a civil debtor unless (acting reasonably) the DPA Counterparty considers that there are more appropriate means of pursuing the defaulting Electricity Supplier or securing payment due to the Generator;
  - (E) take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds (if any) available to the DPA Counterparty, including:
    - (i) moneys standing to the credit of any designated risk, reserve or shortfall fund; and/or
    - (ii) moneys available by reason of any 'make whole', loss mutualisation or similar arrangements among Electricity Suppliers or others in respect of any shortfall in amounts due and owing but not paid by Electricity Suppliers to the DPA Counterparty for the purposes of enabling the DPA Counterparty to make payments pursuant to CCUS Programme DPAs,

as is necessary for the purpose of meeting its liabilities in full pursuant to the DPA; and
  - (F) notify the Secretary of State if the DPA Counterparty has reason to believe that it will have insufficient funds available to make when due the totality of the payments to generators that are required pursuant to CCUS Programme DPAs.
- 53.4 The DPA Counterparty shall notify the Generator if it is of the opinion that it will have insufficient funds to meet its liabilities in full pursuant to the DPA.
- 53.5 The DPA Counterparty agrees that in circumstances where the DPA Counterparty has failed to pay an amount on the due date thereof pursuant to the DPA:
- (A) damages alone would not be an adequate remedy for any breach by it of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 53.3;

- (B) accordingly, the Generator will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the DPA Counterparty of its obligations set out in paragraphs (A) to (E) (inclusive) of Condition 53.3; and
- (C) it will not raise any objection to an application by the Generator for any such remedies.

53.6 Without prejudice to Condition 53.7, the maximum liability of the DPA Counterparty in respect of breach by it of Condition 53.2, 53.3 or 53.4 shall be limited to an amount equivalent to the Default Interest on the amount which has not been paid by the DPA Counterparty to the Generator pursuant to the DPA by reason of the relevant breach for the period from what would have been the date of payment but for such breach to the date of actual payment, provided that the limit of liability in this Condition 53.6 shall not apply where the breach is caused by the gross negligence or wilful misconduct of the DPA Counterparty.

***Limited recourse***

53.7 Notwithstanding any other provision of the DPA:

- (A) the liability of the DPA Counterparty pursuant to the DPA shall not exceed the aggregate of:
  - (i) the amounts from time to time received and held by the DPA Counterparty, and allocated to the DPA, pursuant to the Supplier Obligation Regulations; and
  - (ii) any other funds of the type referred to in Condition 53.3(E) from time to time received and held by the DPA Counterparty, and allocated to the DPA, whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (B) the DPA Counterparty shall not be in default pursuant to the DPA in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in Condition 53.7(A) which are necessary to make such payment, but if and to the extent that such payment is not made, the DPA Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

***Damages for breach***

53.8 The Parties acknowledge and agree that:

- (A) the DPA Counterparty shall have full right and liberty to recover from the Generator any loss, damage, cost or expense suffered or incurred by the DPA Counterparty as a result of a breach by the Generator of the DPA or any other DPA Document and for this purpose no regard shall be had to the right or ability (if any) of the DPA Counterparty to recover such loss, damage, cost or expense from all or any Electricity Suppliers or any other person pursuant to any regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations); and
- (B) to the extent that any such loss, damage, cost or expense is recovered by the DPA Counterparty from the Generator, it is the intent that the DPA Counterparty will not keep those amounts but will, pursuant to the regulations made pursuant to the EA 2013 (including the Supplier Obligation Regulations):

- (i) use such amounts to make good any loss, damage, cost or expense suffered or incurred by the DPA Counterparty;
- (ii) pass or return those amounts to the Electricity Supplier(s) or other persons entitled thereto pursuant to such regulations; and/or
- (iii) use such amounts for the benefit of such Electricity Supplier(s) or other person(s).

**Part 12**  
**Confidentiality, announcements and freedom of information**

**54. CONFIDENTIALITY**

***Confidentiality restrictions: application to the terms of the DPA***

54.1 Subject to Condition 55 (*Announcements*), the Parties agree that the provisions of the DPA shall not be treated as Confidential Information and may be disclosed without restriction.

***Generator Confidential Information***

54.2 The DPA Counterparty shall keep all Generator Confidential Information confidential and shall not disclose Generator Confidential Information without the prior written consent of the Generator, other than as permitted by Condition 54.3 or to fulfil the DPA Counterparty Permitted Purposes.

54.3 Condition 54.2 shall not prevent the disclosure of Generator Confidential Information by the DPA Counterparty:

- (A) on a confidential basis:
  - (i) to its Representatives to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
  - (ii) to any Transferee to fulfil the DPA Counterparty Permitted Purposes;
  - (iii) to any person engaged in providing services to the DPA Counterparty to enable or assist the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
  - (iv) to any Government Entity (or to its Representatives or to any person engaged in providing services to such Government Entity) where the DPA Counterparty considers such disclosure is required to enable or assist:
    - (a) the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes;
    - (b) such person to: (i) fulfil any of its functions arising out of or in connection with the DPA or for the purposes of any other CCUS Programme DPA or any other DPA Document; or (ii) perform any function ancillary or related to its functions arising out of or for the purposes of the DPA or any other CCUS Programme DPA or any other DPA Document or the CCUS Programme; or (iii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the EA 2013; or
    - (c) any transfer under a Transfer Scheme; or
  - (v) to any Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the Gas Licensed Transporter, the T&S Operator, the Economic Regulator, the DPA Settlement Services Provider, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the DPA Counterparty considers such disclosure is necessary to enable or assist: (a) the DPA Counterparty to fulfil the DPA Counterparty Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with the DPA or for the purposes of any other CCUS Programme DPA or DPA Document or to fulfil or perform any ancillary or related function, duty or obligation (including

any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013),

provided that: (i) the DPA Counterparty shall use reasonable endeavours to inform the recipient of the Generator Confidential Information of the DPA Counterparty's obligations pursuant to Condition 54.2; and (ii) in the case of disclosure of Generator Confidential Information pursuant to Condition 54.3(A)(i), 54.3(A)(ii) or 54.3(A)(iii), the DPA Counterparty shall ensure that the recipient of the Generator Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Condition 54.2;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant Generator Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;
- (D) (subject to Condition 54.4) to Parliament or to any Parliamentary committee, but only if and to the extent that the DPA Counterparty considers such disclosure is required to enable or assist it to fulfil any DPA Counterparty Permitted Purpose;
- (E) (subject to Condition 54.4) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that the Secretary of State has notified the DPA Counterparty that such disclosure is required to enable or assist the Secretary of State to fulfil its functions;
- (F) (subject to Condition 54.4) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to a Subsidy Control Competent Authority or other Competent Authority or otherwise to comply with the Subsidy Control Rules, but only if and to the extent that the DPA Counterparty considers (or the Secretary of State has notified the DPA Counterparty that) such disclosure is required in connection with the application of the Subsidy Control Rules or in connection with any decision by a Subsidy Control Competent Authority relating to those rules;
- (G) (subject to Condition 54.4) to a Subsidy Control Competent Authority or other Competent Authority or an interested party under the Subsidy Control Rules, but only if and to the extent that the DPA Counterparty considers such disclosure is necessary in connection with the application of the Subsidy Control Rules or in connection with any decision by a Subsidy Control Competent Authority relating to those rules;
- (H) (subject to Condition 54.4) which is required to comply with any Law or Directive having the force of law or, if not having the force of law, compliance with which is in accordance with accepted general practice;
- (I) (subject to Condition 56 (*Freedom of information*)) which is required:
  - (i) by the FoIA; or
  - (ii) by the EIR;
- (J) to the National Audit Office for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the DPA Counterparty has used its resources;



- (K) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the DPA or any other DPA Document; or
- (L) to any Secretary of State or Government Entity to enable or assist the Secretary of State or Government Entity to: (i) make a disclosure to the European Commission or other Competent Authority in order to fulfil a legal obligation and/or (ii) facilitate transparent public reporting by the Secretary of State or Government Entity, and the Generator agrees and acknowledges that such Information may be published by the Secretary of State, Government Entity, European Commission and/or any other Competent Authority.

54.4 Prior to any disclosure of Generator Confidential Information by the DPA Counterparty pursuant to any of Conditions 54.3(D), 54.3(E), 54.3(F), 54.3(G) and 54.3(H), the DPA 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 Condition 54.3(D) or 54.3(E), it is not inconsistent with Parliamentary convention.

***DPA Counterparty: insider dealing and market abuse***

54.5 The Generator shall consult with the DPA Counterparty in good faith, from time to time upon request by the DPA Counterparty, in relation to whether Generator Confidential Information held by the DPA Counterparty (or its Representatives) constitutes at that time Inside Information. Nothing in this Condition 54.5 is intended to or shall result in the Generator or any of its Representatives: (i) incurring any liability whatsoever under or in respect of the DPA Counterparty's (or any of its Representatives') obligations and responsibilities pursuant to the FSMA or the CJA, or (ii) being obliged to consult with the DPA Counterparty on Generator Confidential Information to be provided to the DPA Counterparty which constitutes (or may constitute) "inside information" (within the meaning of section 118C of the FSMA or section 56 of the CJA) in respect of any person other than the Generator or any members of its Group.

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

54.6 The DPA Counterparty shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 54.3(A)(ii) or 54.3(A)(iii) to comply with Condition 54.2 as if they were subject to it; and
- (B) any use by its current or former Representatives or any person to whom Generator Confidential Information is disclosed pursuant to Condition 54.3(A)(ii) or 54.3(A)(iii), of any Generator Confidential Information in breach of Condition 54.2 as if they were subject to it.

***DPA Counterparty Confidential Information:***

54.7 The Generator shall keep all DPA Counterparty Confidential Information confidential and shall not disclose DPA Counterparty Confidential Information without the prior written consent of the DPA Counterparty other than as permitted by Condition 54.8 or to fulfil the Generator Permitted Purposes.

54.8 Condition 54.7 shall not prevent the disclosure of DPA Counterparty Confidential Information by the Generator:

- (A) on a confidential basis:
- (i) to its Representatives to enable or assist the Generator to fulfil the Generator Permitted Purposes;
  - (ii) to members of its Group (and their respective Representatives) to enable or assist the Generator to fulfil the Generator Permitted Purposes;
  - (iii) to any Transferee to fulfil the Generator Permitted Purposes;
  - (iv) to providers or prospective providers to the Generator of debt financing, refinancing or credit support and their professional advisers, provided that such disclosure is restricted to Information necessary for the purposes of assessing the provision or potential provision of such financing, refinancing or credit support;
  - (v) to *bona fide* prospective purchasers of the Facility or, where the Facility is a Dual Scheme Facility, the Generating Station, provided that such disclosure is restricted to Information necessary for the purpose of assessing such potential purchase;
  - (vi) to any Electricity Transmission System Operator, Electricity Transmission Licensee or any Electricity Licensed Distributor, the Gas Licensed Transporter, any T&S Operator, the Economic Regulator, the DPA Settlement Services Provider, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the Generator considers such disclosure is required to enable or assist: (a) the Generator to fulfil the Generator Permitted Purposes; or (b) such person to fulfil or perform any of its functions, duties or obligations arising out of or in connection with the DPA or any other CCUS Programme DPA or to fulfil or perform any ancillary or related function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013);
  - (vii) for the purposes of:
    - (a) the examination and certification by its auditors 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: (i) the Generator shall use reasonable endeavours to inform the recipient of the DPA Counterparty Confidential Information of the Generator's obligations pursuant to Condition 54.7; and (ii) in the case of disclosure of DPA Counterparty Confidential Information pursuant to Condition 54.8(A)(i), 54.8(A)(ii), 54.8(A)(iii), 54.8(A)(iv) or 54.8(A)(v), the Generator shall ensure that the recipient of the DPA Counterparty Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Condition 54.7;

- (B) to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant DPA Counterparty Confidential Information has been provided on a "without prejudice" or "without prejudice save as to costs" basis);
- (C) to enable an Electricity Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;

- (D) (subject to Condition 54.9) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator; or
- (E) that is otherwise expressly permitted pursuant to the terms, or required for the operation or fulfilment, of the DPA or any other DPA Document.

54.9 Prior to any disclosure of DPA Counterparty Confidential Information by the Generator pursuant to Condition 54.8(D), the Generator shall use reasonable endeavours to give notice to the DPA Counterparty of the DPA Counterparty Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

**Generator: liability for Representatives and service providers**

54.10 The Generator shall be responsible for:

- (A) any failure by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(ii), 54.8(A)(iii), 54.8(A)(iv) or 54.8(A)(v) to comply with Condition 55.7 as if they were subject to it;
- (B) any use by its current or former Representatives or any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(ii) or 54.8(A)(iii), of any DPA Counterparty Confidential Information in breach of Condition 54.7 as if they were subject to it; and
- (C) any failure by any person to whom DPA Counterparty Confidential Information is disclosed pursuant to Condition 54.8(A)(iv) or 54.8(A)(v) to comply with the restrictions on usage of DPA Counterparty Confidential Information provided for in such Conditions.

**No licence**

54.11 No right or licence is granted to any person in relation to any Confidential Information save as explicitly set out in this Condition 54 (*Confidentiality*).

**55. ANNOUNCEMENTS**

**No announcements**

55.1 The Generator:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

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

**Generator permitted announcements**

55.2 Notwithstanding Condition 55.1 (*No announcements*):

- (A) the Generator (and its directors, officers and employees) may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the DPA or any other DPA 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, clearing system or regulatory body) 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 that:
- (i) the Generator shall use (and shall procure that its directors, officers and employees shall use) reasonable endeavours to agree the contents of such announcement or public statement with the DPA Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed); or
  - (ii) if the contents of such announcement or public statement are not able to be agreed before the making, publishing, issuing or releasing of such announcement or public statement, notify the DPA Counterparty of such announcement or public statement immediately following its being made, published, issued or released; and
- (B) neither the Generator (nor any of its directors, officers or employees) shall be precluded from making, publishing, issuing or releasing any announcement or publication in relation to, or which refers to, the DPA or any other DPA Document or any related or ancillary matter if such announcement or publication:
- (i) does not contain any DPA Counterparty Confidential Information;
  - (ii) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon the DPA Counterparty Permitted Purposes or the DPA Counterparty's ability to fulfil the DPA Counterparty Permitted Purposes (whether in relation to the DPA or any other CCUS Programme DPA);
  - (iii) does not relate or refer to any fact, matter or circumstance in respect of a Dispute or an Electricity Metering Dispute or which will, or is reasonably likely to, give rise to a Dispute or an Electricity Metering Dispute (whether in relation to the DPA or any other CCUS Programme DPA); and
  - (iv) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon:
    - (a) the allocation by the Secretary of State or the DPA Counterparty of CCUS Programme DPAs or Other CCUS Programme Contracts, including any auction process in relation thereto;
    - (b) any application by any person for a CCUS Programme DPA or Other CCUS Programme Contract,

provided that the Generator shall notify the DPA Counterparty of such announcement or public statement immediately following its being made, published, issued or released.

55.3 Condition 55.2 shall apply (with the necessary modifications) to any announcement or public statement made, published, issued or released (or proposed to be so made, published, issued or released) by any of the persons referenced in Condition 55.1(B).

***DPA Counterparty permitted announcements***

- 55.4 The DPA Counterparty may make, publish, issue or release any announcement or public statement in relation to, or which refers to, the DPA or any other DPA 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 Condition 54 (*Confidentiality*).

***Publication of DPA Register Information***

- 55.5 Nothing in Condition 54 (*Confidentiality*) shall restrict or prevent the publication by the DPA Counterparty of any DPA Register Information or any other information which in its opinion would facilitate the administration of the DPA.

- 55.6 The DPA Counterparty shall give the Generator an opportunity to make representations in respect of any information that the Generator considers (acting reasonably) should be excluded from publication on the basis that such information is commercially sensitive, and the DPA Counterparty may (but shall not be obliged to) take into consideration any such representations prior to publishing the relevant information.

**56. FREEDOM OF INFORMATION**

***Generator acknowledgements and undertakings***

- 56.1 The Generator acknowledges and agrees that the DPA Counterparty:

- (A) is subject to the requirements of the FoIA and the EIR;
- (B) may be obliged under the FoIA or the EIR to disclose Generator Confidential Information:
  - (i) in certain circumstances without consulting or obtaining consent from the Generator; or
  - (ii) following consultation with the Generator and having taken their views into account,

provided always that where (i) above applies the DPA Counterparty shall draw this to the attention of the Generator prior to any disclosure; and

- (C) shall be responsible for determining in its absolute discretion (subject to any decision of the Information Commissioner following an application under section 50 of the FoIA and the outcome of any subsequent appeal to the Tribunal if applicable), whether the FoIA Information it holds (or that is held on its behalf) that is the subject of a Request for Information:
  - (i) is exempt or excepted from disclosure pursuant to the FoIA or the EIR, as appropriate; or
  - (ii) is to be disclosed in response to a Request for Information,

and, for the purposes of this Condition 56.1(C), any notification to the DPA Counterparty which identifies FoIA Information as being Generator Confidential Information is of indicative value only and the DPA Counterparty may nevertheless be obliged to disclose such FoIA Information in accordance with the requirements of the FoIA and the EIR.

- 56.2 The Generator:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

respond directly to a Request for Information unless expressly authorised to do so in writing by the DPA Counterparty.

- 56.3 The Generator undertakes to assist and co-operate with the DPA Counterparty, at the Generator's cost, to enable the DPA Counterparty to comply with its obligations pursuant to the FoIA and the EIR.

**Requests for Information: procedure**

- 56.4 If the DPA Counterparty receives a Request for Information in relation to FoIA Information that the Generator is holding on behalf of the DPA Counterparty and which the DPA Counterparty does not hold itself, the DPA Counterparty shall notify the Generator as to the FoIA Information to which the Request for Information relates and the Generator shall:

- (A) as soon as reasonably practicable (and in any event within five (5) Business Days, or such longer period as is specified by the DPA Counterparty, after the DPA Counterparty's request) provide the DPA Counterparty with a copy of all such FoIA Information in the form that the DPA Counterparty requests; and
- (B) provide all assistance reasonably requested by the DPA Counterparty in respect of any such FoIA Information to enable the DPA Counterparty to respond to a Request for Information within the time for compliance set out in section 10 of the FoIA or regulation 5 of the EIR.

- 56.5 Following notification under Condition 56.4 and until the Generator has provided the DPA Counterparty with all the FoIA Information specified in Condition 56.4(A), the Generator may make representations to the DPA Counterparty whether or on what basis the FoIA Information requested should be disclosed, and whether further Information should reasonably be provided to identify and locate the FoIA Information requested.

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

- 56.7 If the Generator receives a Request for Information in relation to the DPA Counterparty or in connection with the DPA, the Generator shall as soon as reasonably practicable and in any event within two (2) Business Days after receipt forward such Request for Information to the DPA Counterparty, and this Condition 56 (*Freedom of information*) shall apply as if the Request for Information had been received by the DPA Counterparty.

**Publication schemes**

- 56.8 Nothing in this Condition 56 (*Freedom of information*) shall restrict or prevent the publication by the DPA Counterparty of any FoIA Information in accordance with:

- (A) any publication scheme (as defined in the FoIA) adopted and maintained by the DPA Counterparty in accordance with the FoIA;
- (B) any model publication scheme applicable to the DPA Counterparty as may be approved by the Information Commissioner; or

(C) the obligation to proactively release information under Regulation 4(1)(a) of the EIR, provided that, in deciding whether to publish Generator Confidential Information in accordance with any such publication scheme or model publication scheme, the DPA Counterparty shall take account of whether such Generator Confidential Information would be exempt from disclosure pursuant to the FoIA or the EIR.

**Part 13**  
**Miscellaneous**

**57. INTELLECTUAL PROPERTY RIGHTS**

***Retention of Intellectual Property Rights***

57.1 Nothing in the DPA shall transfer any ownership of any Intellectual Property Rights acquired or developed by or on behalf of any Party, whether pursuant to or independently from (and whether before or during the term of) the DPA, any other DPA Document or (in the case of the DPA Counterparty) any other CCUS Programme DPA.

***Licence of Intellectual Property Rights***

57.2 Each Party hereby grants to the other Party with effect from the Agreement Date and subject to Condition 57.3(B) for the duration of the Term, a licence of any Intellectual Property Rights that are created by it, or on its behalf, pursuant to the terms of the DPA, any other DPA Document or (in the case of the DPA Counterparty) any other CCUS Programme DPA that:

- (A) it owns; or
- (B) is licensed to it (but only to the extent that it has the right to sub-license such Intellectual Property Rights),

on a non-exclusive, royalty-free, non-transferable basis and (subject to Condition 57.3) solely for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty as licensee) or the Generator Permitted Purpose (in the case of the Generator as licensee).

57.3 The licence granted pursuant to Condition 57.2 shall:

- (A) permit each Party to sub-license to the extent required for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty as licensee) or the Generator Permitted Purpose (in the case of the Generator as licensee); and
- (B) permit each Party to use and sub-license the Intellectual Property Rights after expiry or termination of the DPA, but only for the DPA Counterparty Restricted Purposes (in the case of the DPA Counterparty) or the Generator Permitted Purpose (in the case of the Generator).

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

57.4 The Generator shall promptly on demand from time to time indemnify the DPA Counterparty, and keep the DPA Counterparty fully and effectively indemnified, against all liabilities, costs, expenses, damages and losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the DPA Counterparty (or any entity that is sub-licensed in accordance with Condition 57.3) of Intellectual Property Rights licensed to the DPA Counterparty by the Generator pursuant to Condition 57.2, provided that such infringement has arisen from the use of such Intellectual Property Rights in accordance with the DPA Counterparty Restricted Purposes.

57.5 The DPA Counterparty shall promptly on demand from time to time indemnify the Generator, and keep the Generator fully and effectively indemnified, against all liabilities, costs, expenses, damages and losses (including legal costs) incurred in respect of any actual infringement of third party Intellectual Property Rights arising from the use by the Generator (or any entity that is sub-licensed in accordance with Condition 57.3(A)) of Intellectual Property Rights licensed to the Generator by the DPA Counterparty pursuant to Condition 57.2, provided that such



infringement has arisen from the use of such Intellectual Property Rights in accordance with the Generator Permitted Purpose.

**58. GENERATOR CO-OPERATION: SUBSIDY CONTROL RULES**

58.1 If the DPA Counterparty is notified or becomes aware that a Subsidy Control Competent Authority or other Competent Authority has decided that the DPA Counterparty or other public body must recover any subsidy granted or paid in relation to the DPA and that decision has not been annulled, the DPA Counterparty shall, if it is the party to which such order is addressed or if otherwise required by the Secretary of State, give notice as soon as reasonably practicable to the Generator of the sums to be repaid and any other actions necessary to ensure compliance with a Subsidy Control Competent Authority or other Competent Authority's decision and the Generator shall repay or procure the repayment of the relevant sums so notified to the DPA Counterparty or as the DPA Counterparty directs and take any other necessary actions so notified without delay.

58.2 The Generator shall, on reasonable notice and at its own cost:

(A) do or procure the doing of all acts and execute or procure the execution of all documents; and

(B) provide the DPA Counterparty with the Information and assurances,

reasonably necessary for the DPA Counterparty or other public body to comply with the terms of any decision of a Subsidy Control Competent Authority or other Competent Authority pursuant to the Subsidy Control Rules in relation to the DPA and any other CCUS Programme DPAs.

**59. GENERATOR ACKNOWLEDGEMENTS: GENERAL**

***Generator responsibility for advice and appraisal***

59.1 The Generator acknowledges and agrees that none of the DPA Counterparty, the DPA Settlement Services Provider or the Secretary of State (nor any of their respective Representatives):

(A) is:

(i) acting as a fiduciary of the Generator; or

(ii) advising the Generator (including as to any financial, legal, tax, investment, accounting or regulatory matters in any jurisdiction); or

(B) shall have any liability, duty, responsibility or obligation to the Generator with respect thereto.

***DPA Counterparty contracting as principal***

59.2 The Generator acknowledges and irrevocably and unconditionally agrees that:

(A) the DPA Counterparty is contracting as principal and not on behalf of or as an agent for the Secretary of State;

(B) it shall not have or bring any claim or action against the Secretary of State (or their respective Representatives), or the Representatives of the DPA Counterparty, in respect of the DPA or any other DPA Document;

- (C) nothing in the DPA or any other DPA Document shall impute or impose any liability, duty, responsibility or obligation upon the DPA Counterparty (other than pursuant to and in accordance with the express terms of the DPA or any other DPA Document); and
- (D) it shall not hold itself out as having any authority to act for or represent the DPA Counterparty in any way, nor act in any way which confers on the Generator any express, implied or apparent authority to incur any obligation or liability on behalf of the DPA Counterparty.

***Generator's relationship with the DPA Settlement Services Provider***

59.3 The Generator acknowledges and agrees that it shall not have or bring any claim or action against the DPA Settlement Services Provider in respect of any breach of the DPA (or any other DPA Document) or any loss, damage, cost or expense suffered or incurred thereunder and that its sole recourse for any breach of the DPA (or any other DPA Document) or any loss, damage, cost or expense suffered or incurred thereunder shall be against the DPA Counterparty.

**60. NO PARTNERSHIP**

Nothing in the DPA or any other DPA Document and no action taken by the Parties pursuant to the DPA or any other DPA Document shall constitute a partnership, joint venture or agency relationship between the Parties.

**61. TRANSFERS**

***Restriction on Transfers***

61.1 Save as expressly permitted by this Condition 61 (*Transfers*), neither Party may:

- (A) assign to any person all or any of its rights or benefits under the DPA or any other DPA Document;
- (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 the DPA or any other DPA Document; 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 the DPA or any other DPA Document,

(each, a "**Transfer**", and "**Transferee**", which expression shall (where the context so requires) be deemed to include any transferee under a Transfer Scheme, shall be construed accordingly), without the prior written consent of the other Party.

***Permitted Transfers by the DPA Counterparty***

61.2 Notwithstanding Condition 61.1 (*Restriction on Transfers*), a Transfer of the DPA Counterparty's rights or obligations may be effected, without the consent of the Generator, to any person by or by virtue of a Transfer Scheme.

***Other permitted assignments by the DPA Counterparty***

61.3 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the DPA Counterparty shall be entitled, without the consent of the Generator, to assign to any person all or any of its rights or

benefits under the DPA and any other DPA Document on such terms as the DPA Counterparty considers appropriate.

***Permitted delegation by the DPA Counterparty***

61.4 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the DPA Counterparty shall be entitled, without the consent of the Generator, to sub-contract or delegate to any person, or enter into an arrangement whereby any person is to perform, any or all of its obligations under the DPA and any other DPA Document on such terms as the DPA Counterparty considers appropriate, provided that the DPA Counterparty shall not be relieved of any of its obligations under the DPA and any other DPA Document 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 the DPA and any other DPA Document.

***General provisions relating to permitted transfers***

61.5

- (A) If the DPA Counterparty effects or proposes to effect a Transfer referred to in Conditions 61.2, 61.3 or 61.4, the Generator shall enter into such further agreements and do all such other things as are necessary to substitute the relevant Transferee for the DPA Counterparty in respect of the rights, benefits, obligations or liabilities that are, or are to be, the subject of the Transfer (the "**Transferring Rights and Obligations**") and to give effect to any consequential amendments to the DPA (or other relevant DPA Document) that are necessary to give effect to such transfer.
- (B) To the extent practicable, the DPA Counterparty shall give the Generator not less than ten (10) Business Days' prior written notice specifying the identity of the Transferee and the Transferring Rights and Obligations, provided that no such prior written notice shall be required in respect of any Transfer: (i) by or by virtue of a Transfer Scheme; or (ii) pursuant to Condition 61.4 (*Permitted delegation by the DPA Counterparty*).

***Permitted assignment by the Generator***

61.6 Notwithstanding Condition 61.1 (*Restriction on Transfers*), the Generator shall be entitled, without the consent of the DPA Counterparty, to assign all (but not part only) of its rights and benefits under the DPA and any other DPA Document by way of security to or in favour of:

- (A) a Lender;
- (B) any Affected Person;
- (C) any parent undertaking of the Generator which provides funding in relation to the Facility; or
- (D) any agent or security trustee on behalf of any Lender or Affected Person or any parent undertaking of the Generator referred to in (C) above.

The Generator shall give the DPA Counterparty not less than ten (10) Business Days' written notice prior to effecting an assignment pursuant to this Condition 61.6 and shall specify in such notice the identity of the assignee and provide such details in relation to such assignee as the DPA Counterparty may reasonably request having received such notification.

***Direct Agreement***

61.7 The DPA Counterparty shall enter into a Direct Agreement with, and at the request of, any person (or with any agent or security trustee on the relevant person's behalf):

(A)

- (i) who is a Lender with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the DPA); or
- (ii) who is an Affected Person (or an agent or security trustee on an Affected Person's behalf) with the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the DPA); and

(B) in whose favour the Generator assigns its rights under the DPA and any other DPA Document in accordance with Condition 61.6.

***Other Transfers by the Generator; Stapling obligation***

61.8 If the consent of the DPA Counterparty to the transfer by the Generator of all or substantially all of the Generator's rights, benefits and obligations under the DPA and any other DPA Document to a Transferee is required and is given, 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 Condition 61.8 shall be ineffective and void.

***Costs***

61.9 The DPA Counterparty shall, promptly on demand from time to time, indemnify the Generator, and keep the Generator fully and effectively indemnified, against any and all out-of-pocket costs properly incurred by the Generator and which would not have been incurred but for a Transfer of the rights and obligations of the DPA Counterparty being effected by or by virtue of a Transfer Scheme.

**62. NOTICES**

***Form of notices***

62.1 Any notice to be given pursuant to or in connection with the DPA, or any other DPA Document, shall be effective only if it is in writing and is in English. Faxes are not permitted and, unless otherwise expressly stated, website publication is not permitted, but email and submission to the DPA Counterparty's electronic portal are permitted.

***Pro forma notices***

62.2 Where these Conditions permit, or require, either Party to give a notice to the other Party such notice shall be in substantially the form set out in Annex 10 (*Pro forma notices*) (each such notice, a "**Pro Forma**"). The foregoing: (i) shall be without prejudice to the requirement for the relevant notice to include such content as may be prescribed by the relevant Condition; and (ii) shall apply only if a Pro Forma in respect of the relevant Condition is contained in Annex 10 (*Pro forma notices*).

***Notice details***

62.3 The notice details of the Parties as at the Agreement Date are set out in the Agreement.

***Changes to notice details***

- 62.4 A Party may change its notice details on giving notice to the other Party in accordance with this Condition 62 (*Notices*). Such notice shall be effective only from:
- (A) the date specified in such notice (being not less than three (3) 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 (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

***Deemed delivery***

- 62.5 Any notice given pursuant to or in connection with the DPA or any other DPA Document shall, in the absence of 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 (3rd) Business Day after the day of posting;
  - (C) if sent from one country to another, on the fifth (5th) Business Day after the day of posting;
  - (D) if sent by email, when sent except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification; or
  - (E) if submitted to the DPA Counterparty's electronic portal, when submitted except that an electronic portal submission shall be deemed not to have been submitted if the Party submitting the electronic portal submission receives an upload failure notification,

provided that any notice given outside Working Hours in the place to which it is addressed (or, in the case of a notice sent by email, the location of the person to whom 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***

- 62.6 Except where expressly stated to the contrary, each notice given by the DPA Counterparty to the Generator, or by the Generator to the DPA Counterparty, pursuant to the DPA or any other DPA Document must be duly signed (including, in the case of notice by way of email, by Electronic Signature (and "**Electronic Signature**" shall have the meaning given to that term in the Electronic Communications Act 2000)):
- (A) in the manner, and by the person, specified in the relevant provision of the DPA or DPA Document; or
  - (B) (where no such requirement is specified) by an authorised signatory of the relevant Party.

***Disapplication of notice provisions***

- 62.7 This Condition 62 (*Notices*) shall not apply in relation to any document relating to service of process (including in respect of the service of Service Documents).

### 63. COSTS

63.1 Subject to Condition 63.2, each Party shall bear all costs and expenses incurred by it in connection with the entry into the DPA and each other DPA Document, including all costs and expenses incurred in connection with the negotiation, preparation, execution, performance and carrying into effect of, and compliance with, the DPA and each other DPA Document.

63.2 Condition 63.1 is subject to any provision of the DPA or any other DPA Document which expressly provides for the Generator to bear the costs and expenses of the DPA Counterparty (or to pay or reimburse or indemnify the DPA Counterparty in respect of such costs and expenses) in respect of which such costs and expenses shall comprise all out-of-pocket costs and expenses (including all legal and other advisory and consultants' fees) properly incurred by the DPA Counterparty in relation to the relevant matter. Where such costs and expenses are required to be apportioned between the Generator and one (1) or more other DPA Generators, the DPA Counterparty shall apportion such costs between the Generator and such other DPA Generators (for this purpose ignoring the proviso in the definition of DPA Generators in Condition 1.1) in such proportion as the DPA Counterparty (acting reasonably) deems fair and equitable.

### 64. 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 and securing to the other Party the full benefit of the rights, powers and benefits conferred upon it under or pursuant to the DPA and all other DPA Documents save that the DPA Counterparty shall not be required pursuant to this Condition 64 (*Further assurance*) to exercise or perform any statutory power or duty.

### 65. THIRD PARTY RIGHTS

65.1 Conditions 59.1, 59.2 and 59.3 confer benefits on the DPA Settlement Services Provider, the Secretary of State, and their respective Representatives (each, a "**Third Party**") (such Conditions being "**Third Party Provisions**").<sup>54</sup>

65.2 Subject to the remaining provisions of this Condition 65 (*Third party rights*), the Third Party Provisions are intended to be enforceable by the Third Parties by virtue of the C(RTP) Act.

65.3 The Parties do not intend that any term of the DPA, other than the Third Party Provisions, should be enforceable, by virtue of the C(RTP) Act, by any person who is not a Party.

65.4 Notwithstanding this Condition 65 (*Third party rights*), the DPA may be varied in any way and at any time by the Parties without the consent of any Third Party.

### 66. NO VARIATION

66.1 Subject to Condition 66.2, no variation to the provisions of the DPA shall be valid unless it is in writing and signed by each Party.

66.2 Condition 66.1 is subject to the operation of:

(A) Condition 32 (*Change in Applicable Law: Procedure*);

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<sup>54</sup> Note to Reader: Third party rights provisions are subject to further review by BEIS in light of the development of the declarations and metering framework for CO<sub>2</sub>.

- (B) Annex 4 (*Change Control Procedure*);
- (C) Annex 6 (*Gas Reference Price Review*);
- (D) Annex 7 (*Carbon Market Reference Price Review*); and
- (E) Annex 8 (*Reference Plant Review*).

## 67. COUNTERPARTS

The DPA 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 (1) counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

## 68. GOVERNING LAW AND JURISDICTION

- 68.1 The DPA, the other DPA Documents and any matter, claim or dispute arising out of or in connection with any of them (including any Dispute) shall be governed by and construed in accordance with English law.
- 68.2 Any Dispute shall be finally determined or resolved in accordance with the Dispute Resolution Procedure.
- 68.3 Any Electricity Metering Dispute shall be finally determined or resolved in accordance with Condition 45.1 (*Metering Disputes*).

## 69. AGENT FOR SERVICE OF PROCESS

### ***Application***

- 69.1 This Condition 69 (*Agent for service of process*) shall apply to the DPA only if it is expressed to apply to the DPA in the Agreement.

### ***Service Agent***

- 69.2 The Generator irrevocably appoints the Service Agent to be its agent for the receipt of Service Documents and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute. It agrees that any Service Document and any claim form, application notice, order, judgment or other document relating to any Dispute or Electricity Metering Dispute may be effectively served on it in England and Wales by service on its Service Agent effected in any manner permitted by the Civil Procedure Rules.

### ***Replacement***

- 69.3 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 and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute having an address for service in England or Wales and shall notify the DPA Counterparty of the name and address of the replacement agent. Failing such appointment and notification, the DPA 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 Documents and claim forms, application notices, orders, judgments and any other documents relating to any Dispute or Electricity Metering Dispute. The provisions of this Condition 69 (*Agent for service of process*) applying to service on a Service Agent apply equally to service on a replacement agent.

***Service of process***

69.4 A copy of any Service Document or any claim form, application notice, order, judgment or other document relating to any Dispute or Electricity Metering Dispute 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 relevant document.

**70. LANGUAGE*****English language***

70.1 All Information provided by the Generator to the DPA Counterparty pursuant to or in connection with the DPA or any other DPA Document shall be in English unless otherwise agreed in writing by the DPA Counterparty.

***Translations***

70.2 In the case of any Information which is translated into English, prior to its being delivered to the DPA Counterparty pursuant to the DPA or any other DPA 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.

70.3 The DPA Counterparty shall be entitled to assume the accuracy of and rely upon the English translation of any Information provided pursuant to Condition 70.2 and the English translation shall prevail.



**Annex 1**  
**Conditions Precedent**

**Part A**  
**Initial Conditions Precedent**

**1. LEGAL OPINION**

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

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

**2. KYC DOCUMENTATION**

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

**3. THE FACILITY**

Delivery to the DPA Counterparty of the following:

- (A) a description of the Generation Assets, in form and content satisfactory to the DPA Counterparty (acting reasonably), including:
  - (i) details of the assets comprising the Generation Assets;
  - (ii) an aerial view of the unique geographical location of the Generation Assets, whether an extract from the Ordnance Survey map or equivalent, showing the existing or proposed locations of: (a) the Generation Assets; (b) the Electricity Metering Equipment; (c) the Gas Supply Metering Equipment; (d) the Electricity Delivery Points; and (e) the Gas Supply Points; and
  - (iii) a process flow diagram of the Generation Assets; and
- (B) a description of the Capture Assets, in form and content satisfactory to the DPA Counterparty (acting reasonably), including:
  - (i) details of the assets comprising the Capture Assets;
  - (ii) an aerial view of the unique geographical location of the Capture Assets, whether an extract from the Ordnance Survey map or equivalent, showing the proposed locations of: (a) the Capture Assets; (b) the CO<sub>2</sub> Metering Equipment; and (c) the CO<sub>2</sub> Delivery Points; and
  - (iii) a process flow diagram of the Capture Assets, demonstrating that the Capture Assets will comply with the CO<sub>2</sub> Metering Specification.

#### 4. **KEY PROJECT DOCUMENTS**

Delivery to the DPA Counterparty of evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the following documents have been entered into or obtained by the Generator:

- (A) a grid connection offer signed by the Generator and the Electricity Transmission System Operator;
- (B) a gas connection offer signed by the Generator and the Gas Licensed Transporter;
- (C) a T&S Connection Agreement signed by the Generator and the T&S Operator;
- (D) a T&S Construction Agreement signed by the Generator and the T&S Operator; and
- (E) applicable planning consents for the Facility and associated infrastructure, with the challenge period having expired (or any challenge having been unsuccessful with no further rights of appeal).

#### 5. **OTHER**

Delivery to the DPA Counterparty of evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), of the following:

- (A) the Generator's:
  - (i) certificate of incorporation (if applicable);
  - (ii) most recent annual return (where available); and
  - (iii) VAT certificate of registration;
- (B) a copy of the resolution of the Generator's board of directors approving the terms of and the transactions contemplated by the DPA and resolving that it executes, delivers and performs the DPA; and
- (C) a declaration by the authorised person(s) of the Generator that it is:
  - (i) not in receipt of any other scheme of funding by a Government Entity; or
  - (ii) in receipt of another scheme of funding by a Government Entity, together with Supporting Information in relation to such scheme of funding.

**Part B**  
**Operational Conditions Precedent**

**1. DPA SETTLEMENT SERVICES PROVIDER**

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

- (A) it has received the DPA Settlement Required Information which is required from the Generator prior to the Start Date; and
- (B) the Generator has in place the systems and processes which are necessary for the continued provision of the DPA Settlement Required Information.

**2. ELECTRICITY GENERATION**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that a Net Dependable Capacity of not less than eighty five per cent. (85%) of the Net Dependable Capacity Estimate has been Commissioned;
- (B) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the Electricity Metering Obligations at Condition 21.1 (*Undertakings: Electricity Metering Obligation*);
- (C) a date and time stamped copy of the electrical schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the Electricity Metering Equipment associated with all assets comprised within the Facility (including details of the type of BSC approved metering and all Communications Equipment installed in compliance with the Electricity Metering Obligations);
- (D) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that all Communications Equipment relating to the Electricity Metering Equipment is fully compliant with the BSC;
- (E) the expected generation output data, in form and content satisfactory to the DPA Counterparty (acting reasonably), not to be delivered before delivery of the evidence referred to in paragraph 2(A) of this Part B of Annex 1 (*Conditions Precedent*); and
- (F) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that Start Up Times of not more than the Required Start Up Times have been Commissioned.

**3. CO<sub>2</sub> CAPTURE**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the CO<sub>2</sub> Metering Obligations at Condition 21.2 (*Undertakings: CO<sub>2</sub> Metering Obligation*);
- (B) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), of the Test Achieved CO<sub>2</sub> Capture Rate to demonstrate that the OCP Required CO<sub>2</sub> Capture Rate has been Commissioned;

- (C) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the CO<sub>2</sub> Metering Equipment (including CO<sub>2</sub> Delivery Points) associated with all assets comprised within the Facility (including details of the type of metering and CO<sub>2</sub> Metering Equipment installed in compliance with the CO<sub>2</sub> Metering Obligation); and
- (D) evidence, in form and content satisfactory to the DPA Counterparty, that the Facility has connected to the T&S Network in accordance with the T&S Operator's compliance requirements ("**T&S Connection Confirmation CP**")<sup>55</sup>.

#### 4. **GAS SUPPLY AND PLANT EFFICIENCY**

Delivery to the DPA Counterparty of the following:

- (A) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that the Generator is complying in full with the Gas Supply Metering Obligations at Condition 21.3 (*Undertakings: Gas Supply Metering Obligation*);
- (B) a date and time stamped copy of the schematic diagram, certified as being correct and up to date by a director or company secretary of the Generator and showing the locations of the Gas Supply Metering Equipment (including Gas Supply Points) associated with all assets comprised within the Facility (including details of the type of metering and Gas Supply Metering Equipment installed in compliance with the Gas Supply Metering Obligation); and
- (C) evidence, in form and content satisfactory to the DPA Counterparty (acting reasonably), that a Plant Net Efficiency of not less than ninety per cent. (90%) of the Plant Net Efficiency Estimate has been Commissioned.

#### 5. **SUBSIDY CONTROL DECLARATION OPERATIONAL CP**

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

- (A) no Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the subsidy arising under the DPA); or
- (B) Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the subsidy arising under the DPA), and that such Subsidy, State aid and/or Union Funding (as applicable) (adjusted for interest in accordance with Condition 24.11 (*Subsidy Interest*)) has been repaid to the granter of the subsidy, aid or funding in full.

#### 6. **INTERIM OPERATIONAL NOTIFICATION**

Delivery to the DPA Counterparty of either:

- (A) if the Facility is connected directly to the Electricity Transmission System, a certified copy of the Interim Operational Notification issued by the Electricity Transmission System Operator under the Grid Code; or

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<sup>55</sup> Note to Reader: This condition is subject to further development as the T&S business model is developed however BEIS expects this to include the relevant certification of connection.

- (B) if the Facility is not connected directly to the Electricity Transmission System:
- (i) written confirmation from the relevant Electricity Licensed Distributor or, if no such confirmation is applicable, evidence (in form and content reasonably satisfactory to the DPA Counterparty) that the Electricity Distribution Code compliance process for connection to and export to the Electricity Distribution System has been satisfied; and
  - (ii) if applicable, the Interim Operational Notification issued by the Electricity Transmission System Operator under the Grid Code.

## Annex 2 Testing Requirements

### 1. DEFINITIONS

#### 1.1 In this Annex 2 (*Testing Requirements*):

**"Approved Performance Test Procedure"** has the meaning given to that term in paragraph 2.2(A) (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"CO<sub>2</sub> Capture Rate Test Report"** means a report to be supplied to the DPA Counterparty in accordance with paragraph 6.6 (*CO<sub>2</sub> Capture Rate Test Report*) of Part A (*Testing Requirements*);

**"Cold Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Correction Curves"** means the Generator's Required Correction Curves from time to time, being the Initial Correction Curves as may be adjusted pursuant to paragraphs 2.1 to 2.5 (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"Facility Heat and Material Balance Diagram"** means the Generator's Heat and Balance Diagram from time to time, being the Initial Heat and Material Balance Diagram as may be adjusted pursuant to:

(A) Conditions 5.1, 5.5, and 5.6 (*Adjustment to Net Dependable Capacity Estimate: Permitted Reduction*); and/or

(B) paragraphs 2.1 to 2.5 (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"Facility Shutdown"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Full Load Operation"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Full Load Test"** the performance test procedure detailed paragraph 3 (*Full Load Test*) of Part A (*Testing Requirements*);

**"Full Load Test Performance Outputs"** has the meaning given to that term in paragraph 3.1 (*General*) of Part A (*Testing Requirements*);

**"Heat and Material Balance Diagram"** means a diagram detailing the energy and material output from a system that is equal to the energy input to such system at Reference Site Conditions, with such diagram to include a process flow diagram, operating conditions (including mass flow, enthalpy, pressure, temperature, composition and steam quality), compositions and key physical properties of each major process line and equipment of the Facility;

**"Hot Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Initial Correction Curves"** has the meaning given to that term in the Agreement;

**"Performance Test"** means the OCP Performance Test and/or the Longstop Date Performance Test (as applicable);

**"Performance Test Access Notice"** has the meaning given to that term in paragraph 2.12 (*Performance Test Access Right*) of Part A (*Testing Requirements*);

**"Performance Test Access Right"** has the meaning given to that term in paragraph 2.11 (*Performance Test Access Right*) of Part A (*Testing Requirements*);

**"Performance Test Date Notice"** has the meaning given to that term in paragraph 2.10 (*Notification of Performance Test Date*) of Part A (*Testing Requirements*);

**"Performance Test Procedure"** means the performance test procedure relating to the Full Load Tests and Start Up (Shutdown) Tests to be carried out by the Generator for each Performance Test, in accordance with the Test Performance Standards, to be prepared by the Generator approved by the DPA Counterparty pursuant to paragraphs 2.1 to 2.9;

**"Performance Test Procedure Notice"** has the meaning given to that term in paragraph 2.1 (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"Performance Test Report"** means a report to be supplied to the DPA Counterparty in accordance with paragraph 2.14 (*Performance Test Report*) of Part A (*Testing Requirements*);

**"Pre-Start Up (Shutdown) Test Conditions"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Proposed Correction Curves"** has the meaning given to that term in paragraph 2.1(C) (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"PTP Response Notice"** has the meaning given to that term in paragraph 2.2 (*Performance Test Procedure*) of Part A (*Testing Requirements*);

**"Reference Site Conditions"** means the site conditions set out in paragraph 1 (*Reference Site Conditions*) of Part B (*Reference Site Conditions*);

**"Required Correction Curves"** means the correction curves listed in paragraph 1 (*Required Correction Curves*) of Part C, in a form and content satisfactory to the DPA Counterparty;

**"Start Up (Shutdown) Test"** means the test procedure detailed in paragraph 4 (*Start Up (Shutdown) Test*);

**"Start Up (Shutdown) Test Commencement"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*);

**"Test"** means the OCP Performance Test, the Longstop Date Performance Test, the Annual NDC Test or the CO<sub>2</sub> Capture Rate Test (as applicable);

**"Test Performance Standards"** the industry guidelines, practices and standards which:

- (A) are relevant or apply to the completion, testing and commissioning of generating and carbon capture facilities which are the same as, or of a similar type to, the Facility (including those which are relevant to the Facility Generation Technology and the Facility Capture Technology);
- (B) are required to be complied with, followed or passed (as appropriate): (i) in order for a generating facility to generate and export electricity; or (ii) to demonstrate that a generating facility is fit for commercial operation;

- (C) are required to be complied with, followed or passed (as appropriate): (i) in order for a capturing facility to capture and export CO<sub>2</sub> emissions; or (ii) to demonstrate that a capturing facility is fit for commercial operation; and
- (D) if applicable, include the following ASME standards:
  - (i) ASME PTC 46 "Overall Plant Performance";
  - (ii) ASME PTC-48 , or ISO 27919; and
  - (iii) ASME PTC-4.4;

**"Test Report"** means a Performance Test Report or a CO<sub>2</sub> Capture Rate Test Report (as applicable);

**"Test Report Minimum Technical Requirements"** means the minimum required technical content of each Test Report as required by the relevant Test Performance Standards and as required to comply with the Reasonable and Prudent Standard which shall include, but shall not be limited to, the following:

- (A) procedure for testing and calculation;
- (B) details of relevant calculations with definitions of terminology, including showing actual manipulation of test data such as averaging and determination and application of correction factors;
- (C) details of relevant results (corrected to Reference Site Conditions and uncorrected at test conditions);
- (D) Correction Curves;
- (E) copies of log sheets and raw data in electronic format;
- (F) field data sheets;
- (G) exported CO<sub>2</sub> analyses;
- (H) fuel analyses;
- (I) post-test uncertainty analyses; and
- (J) details of calibrations of all instruments and copies of associated calibration certificates;

**"Test Run Period"** means the applicable period(s) of time during which each Test is required to be conducted which, in respect of:

- (A) a Full Load Test shall be the time periods set out in paragraph 3.2(B) (*Full Load Test Run Periods*);
- (B) a Start Up (Shutdown Test) shall be the time periods set out in paragraph 4.4 (*Start Up (Shutdown) Test Run Periods*); or
- (C) a CO<sub>2</sub> Capture Rate Test shall be the time periods set out in paragraph 6.3 (*CO<sub>2</sub> Capture Rate Test Run Period*); and

**"Warm Start"** has the meaning given to that term in paragraph 4.3 (*General*) of Part A (*Testing Requirements*).





**Part A**  
**Testing Requirements**

**2. PERFORMANCE TESTS: GENERAL**

***Performance Test Procedure***

- 2.1 The Generator shall, no later than six (6) Months prior to the date on which it proposes to conduct the first Performance Test, give a notice to the DPA Counterparty (a "**Performance Test Procedure Notice**") with such notice to:
- (A) include the draft Performance Test Procedure it proposes be adopted for the purposes of the Performance Tests;
  - (B) include the Facility's pre-test uncertainty calculations for the instrumentation to be used for the performance test measurements (as detailed in ASME PTC 19.1) in each Performance Test;
  - (C) specify the proposed Correction Curves which should apply for the purposes of the Tests and, if applicable, include such Supporting Information as the Generator considers to be relevant to evidence any changes to the Initial Correction Curves ("**Proposed Correction Curves**");
  - (D) specify the proposed Heat and Material Balance Diagram which should apply for the purposes of the Tests and, if applicable, include such Supporting Information as the Generator considers to be relevant to evidence any changes to the Initial Heat and Material Balance Diagram (or if applicable, the NDCE Adjusted Heat and Material Balance Diagram) ("**Proposed Heat and Material Balance Diagram**"); and
  - (E) confirm the date on which it proposes to carry out such Performance Test.
- 2.2 The DPA Counterparty shall, no later than [thirty (30)] Business Days after receipt of a Performance Test Procedure Notice, give a notice to the Generator (a "**PTP Response Notice**"). A PTP Response Notice shall specify whether the DPA Counterparty:
- (A) approves the draft Performance Test Procedure without amendment, following which the draft Performance Test Procedure shall become the "**Approved Performance Test Procedure**".
  - (B) requires the Generator to provide additional Supporting Information in relation to the draft Performance Test Procedure, in order for the DPA Counterparty to assess whether or not to approve such procedure; or
  - (C) requires amendments to the draft Performance Test Procedure, in which case the PTP Response Notice shall provide the Generator with sufficient detail in relation to such required amendments.
- 2.3 The Generator shall, no later than twenty (20) Business Days after receipt of a PTP Response Notice, submit to the DPA Counterparty:
- (A) if the PTP Response Notice relates to paragraph 2.2(B), the relevant additional Supporting Information specified in the PTP Response Notice; or
  - (B) if the PTP Response Notice relates to paragraph 2.2(C), an amended draft Performance Test Procedure which includes the amendments specified in the PTP Response Notice,

and in either case paragraph 2.2 shall then reapply.

- 2.4 The Generator shall conduct each Performance Test in accordance with the Approved Performance Test Procedure.
- 2.5 With the effect from the date of the PTP Response Notice which approved the Performance Test Procedure:
- (A) the Proposed Correction Curves included in the Approved Performance Test Procedure shall constitute the Correction Curves for the purposes of the DPA; and
  - (B) the Proposed Heat and Material Balance Diagram included in the Approved Performance Test Procedure shall constitute the Heat and Material Balance Diagram for the purposes of the DPA.
- 2.6 The Generator shall give the DPA Counterparty a notice promptly upon the Generator becoming aware of any fact, matter or circumstance which will or is reasonably likely to significantly affect the accuracy of the Approved Performance Test Procedure.
- 2.7 Nothing in paragraphs 2.1 to 2.3 shall require the DPA Counterparty to specify in any PTP Response Notice that the DPA Counterparty accepts any draft Performance Test Procedure unless and until the DPA Counterparty is satisfied of the same.
- 2.8 Any Performance Test Procedure Notice shall be irrevocable.
- 2.9 The Generator may give a Performance Test Procedure Notice pursuant to paragraph 2.1 on only one (1) occasion.

***Notification of Performance Test Date***

- 2.10 The Generator shall, no later than one (1) Month prior to the anticipated date of each Performance Test, give a notice to the DPA Counterparty confirming such date (an "**Performance Test Date Notice**").

***Performance Test Access Right***

- 2.11 With effect from the Agreement Date, the Generator shall grant the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) access to the Facility if the DPA Counterparty intends to witness a Performance Test (the "**Performance Test Access Right**").
- 2.12 If the DPA Counterparty intends to exercise the Performance Test Access Right it shall give a notice to the Generator (a "**Performance Test Access Notice**"). A Performance Test Access Notice shall specify that the DPA Counterparty (and any and all persons nominated by the DPA Counterparty and considered by the DPA Counterparty to be suitably qualified) intends to exercise the Performance Test Access Right.
- 2.13 On receipt of a Performance Test Access Notice, the Generator shall permit the DPA Counterparty to exercise the Performance Test Access Right provided that the date requested by DPA Counterparty to exercise the Performance Test Access Right is no earlier than one (1) Business Day after receipt of the Performance Test Access Notice.

***Performance Test Report***

- 2.14 The Generator shall, as soon as reasonably practicable after the completion of a Performance Test, submit a test report of such Performance Test to the DPA Counterparty (a "**Performance**

**Test Report"**). A Performance Test Report shall include, but shall not be limited to, the following:

- (A) a description of the Facility;
- (B) the Test Report Minimum Technical Requirements; and
- (C) evidence (including any test review reports) from the Generator's engineer and (if applicable) the Lender's engineer:
  - (i) of the results of the Performance Test;
  - (ii) that the Performance Test Report complies with the Test Report Minimum Technical Requirements; and
  - (iii) that the Generator has conducted the relevant Performance Test in accordance with the Approved Performance Test Procedure.

### 3. **FULL LOAD TEST**

#### **General**

3.1 The purpose of each Full Load Test shall be for the Generator to determine (simultaneously) the Facility's:

- (A) Net Dependable Capacity;
  - (B) Plant Net Efficiency; and
  - (C) Test Achieved CO<sub>2</sub> Capture Rate,
- (the "**Full Load Test Performance Outputs**").

#### **Full Load Test Run Periods**

3.2 Each Full Load Test shall:

- (A) include three (3) Test Run Periods; and
- (B) for the purposes of a Full Load Test, each Test Run Period shall be a minimum of one (1) hour duration, or such longer duration as required by the Test Performance Standards.

3.3 The Generator shall ensure that each Full Load Test is carried out in accordance with the Test Performance Standards.

#### **Facility Mode of Operation**

3.4 Each Full Load Test shall not commence until the Facility:

- (A) has satisfied the required stabilisation criteria for steady state operation in accordance the Test Performance Standards; and
- (B) is in the same condition as the condition upon which the Net Dependable Capacity Estimate, the Plant Net Efficiency Estimate and the CO<sub>2</sub> Capture Rate Estimate were determined and the Facility Heat and Material Balance Diagram was calculated.

- 3.5 The Generator shall use reasonable endeavours to conduct each Full Load Test at the Reference Site Conditions, and as a minimum shall ensure that:
- (A) the Facility is operated at full load which can be maintained on a continual basis with normal scheduled plant maintenance intervals (excluding any peak firing operation);
  - (B) any power augmentation which cannot be maintained in operation on a continuous basis, or which has a detrimental impact on plant net efficiency and normal economic operation, is switched off (including GT inlet cooling, and supplementary firing);
  - (C) all standby auxiliaries are operational, but in standby position;
  - (D) variations exceeding steady state conditions invalidate the applicable Test Run Period which shall then be repeated;
  - (E) cycle blowdown and make-up water (as applicable) are not isolated during the Test Run Period;
  - (F) emissions to atmosphere are maintained within the environmental permit limits, as measured by the calibrated Continuous Emissions Monitoring System (CEMS) equipment during the Test Run Period;
  - (G) there is no import of electricity from the grid during the Test Run Period;
  - (H) the Facility is operated in a normal mode which is representative of long term operating configuration with all equipment operating as designed and within specification and alarm limits consistent with the Reasonable and Prudent Standard;
  - (I) no normally operating systems are taken out of service including suppressed alarms unless specifically allowed in the Performance Test Procedure; and
  - (J) the auxiliary power consumers in operation during each Full Load Test include all electrical consumers normally used to operate the equipment.

***Adjustment: Reference Site Conditions and Correction Curves***

- 3.6 The Full Load Test Performance Outputs for each Full Load Test shall be adjusted to the Reference Site Conditions based upon the Correction Curves.
- 3.7 The Full Load Test Performance Outputs shall not be adjusted for:
- (A) degradation; or
  - (B) tolerance to account for instrument uncertainty.

**4. START UP (SHUTDOWN) TEST**

***General***

- 4.1 The purpose of each Start Up (Shutdown) Test shall be for the Generator to determine the Facility's Start Up Times during a:
- (A) Cold Start;
  - (B) Warm Start; and
  - (C) Hot Start,

and to determine the Test Achieved CO<sub>2</sub> Capture Rate for each Start Up (Shutdown) Test Run Period.

4.2 The Generator shall ensure that each Start Up (Shutdown) Test is carried out in accordance with the Test Performance Standards.

4.3 For the purposes of this paragraph 4 (*Start Up (Shutdown) Test*):

**"Cold Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than sixty four (64) hours prior to a Start Up (Shutdown) Test Commencement;

**"Facility Shutdown"** means the completion of a controlled shutdown of the Facility to the point in time where the Metered Electricity Output from the Facility is equal to or less than zero (0);

**"Full Load Operation"** means where the Facility's gas turbine is operating at full load on temperature control with the inlet guide vane position established at the scheduled full load position (as applicable) and the Facility's steam turbine HP and hot reheat bypass valves are closed (as applicable) pursuant to a Start Up (Shutdown) Test;

**"Hot Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than eight (8) hours prior but less than twelve (12) hours prior to a Start Up (Shutdown) Test Commencement;

**"Pre-Start Up (Shutdown) Test Conditions"** means, prior to a Start Up (Shutdown) Test:

- (A) the preceding Facility Shutdown has been conducted as a normal shutdown procedure as detailed in the operation and maintenance manuals; and
- (B) during the [preceding] Facility Shutdown:
  - (i) the Facility has been maintained as detailed in the operation and maintenance manuals; and
  - (ii) if applicable, the Facility's gas turbine and flue gas paths have been purged and secured in order to avoid any purge sequence during the restart of the Facility.

**"Start Up (Shutdown) Test Commencement"** means when the Facility's gas turbine rolls off the turning gear pursuant to a Start Up (Shutdown) Test; and

**"Warm Start"** means where the preceding shutdown of the Facility (gas turbine flame out) has taken place more than twelve (12) hours but less than sixty four (64) hours prior to a Start Up (Shutdown) Test Commencement.

#### ***Start Up (Shutdown) Test Run Periods***

4.4 The applicable Test Run Period for a Start Up (Shutdown) Test shall be:

- (A) for a Cold Start:
  - (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation; plus
  - (ii) twelve (12) hours at Full Load Operation; plus
  - (iii) the period between Full Load Operation and Facility Shutdown;

- (B) for a Warm Start:
  - (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;
  - (ii) twelve (12) hours at Full Load Operation; plus
  - (iii) the period between Full Load Operation and Facility Shutdown;
- (C) for a Hot Start:
  - (i) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;
  - (ii) two (2) hours at Full Load Operation;
  - (iii) the period between Full Load Operation and Facility Shutdown;
  - (iv) the period of two (2) hours off load prior to the Start Up (Shutdown) Test Commencement specified in limb (v);
  - (v) the period between Start Up (Shutdown) Test Commencement to Full Load Operation;
  - (vi) two (2) hours at Full Load Operation; plus
  - (vii) the period between Full Load Operation and Facility Shutdown.

4.5 For the purposes of paragraph [4] a Start Up Time shall be the period of time in the Test Run Period, which for:

- (A) a Cold Start shall be the period of time referred to in paragraph 4.4(A)(i);
- (B) a Warm Start shall be the period of time referred to in paragraph 4.4(B)(i); or
- (C) a Hot Start shall be the sum of the periods referred to in paragraphs 4.4(C)(i) and 4.4(C)(v).

4.6 The Generator shall ensure during each Start Up (Shutdown) Test that:

- (A) the Pre-Start Up (Shutdown) Test Conditions have been fulfilled;
- (B) all plant and/or equipment which is required to be in a ready-to-start condition for turbine start up shall be in a no-fault condition, operational and/or in automatic mode;
- (C) working fluid levels and pressures in drums, hotwells and other vessels are within the limits specified in the operation and maintenance manuals and/or not in an alarmed condition; and
- (D) the turbine sealing working fluid (as applicable) is on and condenser vacuum (as applicable) is within the range required for turbine start-up as specified in the operation and maintenance manuals.

## 5. ANNUAL NDC TEST

Each Annual NDC Test shall be conducted as a Full Load Test in accordance with paragraph 3 (*Full Load Test*) of this Annex 2 (*Testing Requirements*) except the Facility's Plant Net Efficiency shall not be determined.

## 6. **CO<sub>2</sub> CAPTURE RATE TEST**

- 6.1 The purpose of each CO<sub>2</sub> Capture Rate Test shall be for the Generator to determine the Facility's Test Achieved CO<sub>2</sub> Capture Rate.
- 6.2 The Generator shall ensure that each CO<sub>2</sub> Capture Rate Test is carried out in accordance with the Test Performance Standards.

### ***CO<sub>2</sub> Capture Rate Test Run Period***

- 6.3 Each CO<sub>2</sub> Capture Rate Test shall consist of one (1) Test Run Period consisting of an eight (8) hour continuous period.

### ***Facility Mode of Operation***

- 6.4 Each CO<sub>2</sub> Capture Rate Test shall not commence until the Facility:
- (A) has satisfied the required stabilisation criteria for steady state operation in accordance with the Test Performance Standards; and
  - (B) is in the same condition as the condition upon which the Net Dependable Capacity Estimate, the Plant Net Efficiency Estimate and the CO<sub>2</sub> Capture Rate Estimate were determined and the Facility Heat and Material Balance Diagram was calculated.
- 6.5 The Generator shall use reasonable endeavours to conduct each CO<sub>2</sub> Capture Rate Test at the Reference Site Conditions, and as a minimum shall ensure that:
- (A) the Facility is operated at full load which can be maintained on a continual basis with normal scheduled plant maintenance intervals (excluding any peak firing operation);
  - (B) any power augmentation which cannot be maintained in operation on a continuous basis, or which has a detrimental impact on plant net efficiency and normal economic operation, is switched off (including GT inlet cooling, and supplementary firing);
  - (C) the Facility is operated in a normal mode which is representative of long term operating configuration with all equipment operating as designed and within specification and alarm limits consistent with good power generation industry practice;
  - (D) no normally operating systems are taken out of service including jumpered or suppressed alarms unless specifically allowed in the Performance Test Procedure; and
  - (E) the auxiliary power consumers in operation during each Full Load Test include all electrical consumers normally used to operate the equipment.

### ***CO<sub>2</sub> Capture Rate Test Report***

- 6.6 The Generator shall, as soon as reasonably practicable after the completion of a CO<sub>2</sub> Capture Rate Test, submit a test report of such CO<sub>2</sub> Capture Rate Test to the DPA Counterparty (a "**CO<sub>2</sub> Capture Rate Test Report**"). A CO<sub>2</sub> Capture Rate Test Report shall include, but shall not be limited to, the following:
- (A) a description of the Facility;
  - (B) the Test Report Minimum Technical Requirements; and
  - (C) evidence (including any test review reports) from the Generator's engineer and (if applicable) the Lender's engineer:



- (i) of the results of the CO<sub>2</sub> Capture Rate Test; and
- (ii) that the CO<sub>2</sub> Capture Rate Test Report complies with the Test Report Minimum Technical Requirements; and
- (iii) that the Generator has conducted the relevant Performance Test in accordance with the Approved Performance Test Procedure.

**7. T&S COMMISSIONING DELAY EVENT OR T&S OUTAGE EVENT**

7.1 If, at any time during a Test Run Period:

- (A) a T&S Commissioning Delay Event; or
- (B) a T&S Outage Event,

is occurring, the Generator shall ensure that any captured CO<sub>2</sub> vented to atmosphere during the applicable Test Run Period complies with the Captured CO<sub>2</sub> Quality Standards prior to venting.

**Part B**  
**Reference Site Conditions**

1. **Reference Site Conditions**

The following are the "**Reference Site Conditions**" for the purposes of the DPA which apply to each Test:

Ambient conditions:

- dry bulb temperature 9°C
- relative humidity 80%
- ambient pressure 1.013 bara
- wind speed 1m above cooling tower / ACC structure 7 m/s
- direct cooling water temperature 11°C

Fuel composition:

- nitrogen (N<sub>2</sub>) 2.6 mol%
- carbon dioxide (CO<sub>2</sub>) 1.4 mol%
- methane (CH<sub>4</sub>) 88.7 mol%
- ethane (C<sub>2</sub>H<sub>6</sub>) 5.2 mol%
- pPropane (C<sub>3</sub>H<sub>8</sub>) 1.493 mol%
- iso-butane (iC<sub>4</sub>H<sub>10</sub>) 0.18 mol%
- n-butane (nC<sub>4</sub>H<sub>10</sub>) 0.26 mol%
- neo-pentane 0.007 mol%
- iso-pentane (iC<sub>5</sub>H<sub>12</sub>) 0.06 mol%
- n-pentane (nC<sub>5</sub>H<sub>12</sub>) 0.05 mol%
- n-hexane (C<sub>6</sub>H<sub>14</sub>) 0.05 mol%
- heptane (C<sub>7</sub>H<sub>16</sub>) 0 mol%
- octane and above (C<sub>8</sub>H<sub>18</sub>, C<sub>9</sub>H<sub>20</sub>, etc.) 0 mol%
- hydrogen sulfide (H<sub>2</sub>S) 0 mol%
- total 100 mol%
- net calorific value (as per ISO-6976:2016 @ 15°C combustion temp and 15°C meter temp) 45.887 MJ/kg

- Grid frequency: 50 Hz
- Power factor at generator terminals, lagging: 0.85
- Natural gas supply temperature at site boundary: 15°C
- Natural gas supply pressure at site boundary: TBC for site location
- GT inlet air cooling (Evap Cooling / Fogging / High Fogging) OFF
- Supplementary firing OFF

**Part C**  
**Required Correction Curves**

1. **Required Correction Curves**

The following are the "**Required Correction Curves**" for the purposes of the DPA:

Net dependable capacity

- (A) net dependable capacity vs ambient temperature;
- (B) net dependable capacity vs ambient pressure;
- (C) net dependable capacity vs relative humidity;
- (D) net dependable capacity vs direct cooling water temperature (if applicable);
- (E) net dependable capacity vs wind speed (if applicable);
- (F) net dependable capacity vs generator frequency;
- (G) net dependable capacity vs generator power factor;
- (H) net dependable capacity vs fuel composition / net calorific value;
- (I) net dependable capacity vs fuel supply temperature;
- (J) net dependable capacity vs fuel supply pressure;
- (K) net dependable capacity vs CO<sub>2</sub> capture rate;

***Plant net efficiency***

- (L) plant net efficiency vs ambient temperature;
- (M) plant net efficiency vs ambient pressure;
- (N) plant net efficiency vs relative humidity;
- (O) plant net efficiency vs direct cooling water temperature (if applicable);
- (P) plant net efficiency vs wind speed (if applicable);
- (Q) plant net efficiency vs generator frequency;
- (R) plant net efficiency vs generator power factor;
- (S) plant net efficiency vs fuel composition / net calorific value;
- (T) plant net efficiency vs fuel supply temperature;
- (U) plant net efficiency vs fuel supply pressure; and
- (V) plant net efficiency vs CO<sub>2</sub> capture rate.

**Annex 3**  
**Calculation of Default Termination Payment**

**1. DEFAULT TERMINATION PAYMENT**

1.1 In the event that the DPA Counterparty exercises its right to terminate the DPA under Condition 35.26 (*Default termination*), the "**Default Termination Payment**" shall be:

(A) subject to any adjustment that is required pursuant to Condition 36.11 (*Consequences of Default termination*); and

(B) calculated in accordance with the following formula:

$$\text{Default Termination Payment} = \text{NDCE} \times \text{TFR}$$

where:

NDCE = Net Dependable Capacity Estimate (*MW*)

TFR = Termination Fee Rate equal to £35,000 (*£/MW*)

1.2 For the avoidance of doubt, where the DPA Counterparty exercises its right to terminate the DPA under Condition 35.26 (*Default termination*) on the basis that more than one (1) ground for termination has arisen, the Generator shall not be liable to pay more than one Default Termination Payment to the DPA Counterparty.

## Annex 4 Change Control Procedure

### 1. INTERPRETATION: ANNEX 4

#### *Interpretation*

- 1.1 In this Annex 4 (*Change Control Procedure*), any reference to an "amendment" (or grammatical variation thereof or any analogous term) in respect of any Proposed Amendment shall be deemed to include any change, replacement, deletion or supplement to or of any provision of:
- (A) the DPA;
  - (B) CCUS Programme DPAs (other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply); or
  - (C) CCUS Programme DPAs of a particular category (other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply).

### 2. CHANGE CONTROL PROCEDURE

#### *Amendment Notifications*

- 2.1 The DPA Counterparty may at any time give a notice to the Generator proposing an amendment to the DPA (an "**Amendment Notification**"). Each Amendment Notification shall:
- (A) set out the proposed amendment(s) (the "**Proposed Amendment**");
  - (B) specify the date on which the Proposed Amendment is proposed to become effective (the "**Proposed Amendment Effective Date**");
  - (C) state whether the DPA Counterparty considers the Proposed Amendment to be a Material Amendment or a Technical Amendment;
  - (D) if the DPA Counterparty considers the Proposed Amendment to be a Technical Amendment, state whether the Proposed Amendment is a General Amendment;
  - (E) if the Proposed Amendment is a General Amendment, state whether it applies to all CCUS Programme DPAs or only to those of a specified category or categories (in each case, other than any CCUS Programme DPA to which this Annex 4 (*Change Control Procedure*) is expressed not to apply) and, if the latter, set out those categories; and
  - (F) contain such Supporting Information as the DPA Counterparty considers necessary to enable the Generator to evaluate the Proposed Amendment.

#### *Material Amendments: process*

- 2.2 If an Amendment Notification specifies that the Proposed Amendment is a Material Amendment, the Generator shall, no later than twenty (20) Business Days after the Amendment Notification has been received, either:
- (A) confirm by notice in writing to the DPA Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
  - (B) specify, by notice in writing to the DPA 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
- (ii) the Proposed Amendment Effective Date.

2.3 Any Material Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to evaluate the matters covered in such notification.

2.4 No later than ten (10) Business Days after receipt by the DPA Counterparty of a Material Amendment Response Notification, the Parties shall meet and negotiate in good faith to agree:

- (A) whether to effect the Proposed Amendment;
- (B) the date on which the Proposed Amendment shall 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 the DPA.

***Material Amendments: implementation***

2.5 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***

2.6 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, no later than twenty (20) Business Days after receipt of the Amendment Notification (the "**Technical Amendment Response Period**"), either:
  - (i) confirm by notice in writing to the DPA Counterparty that it agrees with the Proposed Amendment and the Proposed Amendment Effective Date; or
  - (ii) specify, by notice in writing to the DPA 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 matters 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.

2.7 Any Technical Amendment Response Notification shall also include such Supporting Information as the Generator considers necessary to enable the DPA Counterparty to evaluate the matters covered in such notification.

2.8 If the Generator:

- (A) does not give the DPA 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 DPA 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 the Dispute Resolution Procedure; and
    - (b) if, pursuant to the Dispute Resolution Procedure, either of the Parties agrees (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; and
  - (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:

- (1) the DPA 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
- (2) the Proposed Amendment (as amended if the DPA Counterparty elects to so amend pursuant to paragraph 2.8(B)(ii)(b)(1)) shall become binding on the Parties with effect from the Proposed Amendment Effective Date.

***Technical Amendments (General Amendments): process***

2.9 If an Amendment Notification specifies that the Proposed Amendment is a Technical Amendment and is a General Amendment, then paragraphs 2.6 to 2.8 shall be applied, with the necessary modifications, on the following basis:

- (A) the confirmation provided for in paragraph 2.6(B)(i) shall be deemed to have been given by the Generator, and the Proposed Amendment shall (subject to paragraph 2.9(C)) be binding on the Generator with effect from the Proposed Amendment Effective Date, unless seventy five per cent. (75%) or more in number of all CCP Affected Parties give a Technical Amendment Response Notification to the DPA Counterparty within the Technical Amendment Response Period;
- (B) if seventy five per cent. (75%) or more 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 2.8(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 become binding on the Generator only in accordance with the provisions of paragraph 2.8(B).

***Technical Amendments: implementation***

2.10 Where any Technical Amendment is to take effect in accordance with this Change Control Procedure, the Generator shall, if requested by the DPA 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 (whether or not identified in the Amendment Notification),

in each case as agreed, determined or resolved in accordance with the relevant provisions of paragraphs 2.6 to 2.9 (inclusive).

2.11 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 Amendment Effective Date in accordance with the provisions of paragraph 2.8(B)(ii) or 2.9(A) (as appropriate).

***Miscellaneous***



- 2.12 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 Condition 43 (*Consolidation of Connected Disputes*) applying to any Dispute arising in respect of that Proposed Amendment.
- 2.13 The Parties agree and acknowledge that any Proposed Amendment which the DPA Counterparty has made in order to identify a replacement carbon support price to reflect the representative Tax on CO<sub>2</sub> emissions produced by the Facility including by reference to the consumption of fuel gas in circumstances where the Carbon Support Price has been or is proposed to be novated or replaced, shall be categorised as a Material Amendment where such amendment would (taking into account, in the case of a Proposed Amendment providing for more than one (1) amendment, the net aggregate effect of all the Proposed Amendments contained within the relevant Amendment Notification) have an adverse effect on: (i) the revenues and/or costs of the Generator which are not fully compensated; or (ii) the overall balance of risks, benefits and liabilities of the Generator, in each case pursuant to the DPA.

**Annex 5**  
**Form of Direct Agreement**

**LOW CARBON CONTRACTS COMPANY LTD**  
as DPA Counterparty and

**[●]**  
as [Lender(s)]/[Security Trustee]<sup>56</sup> and

**[●]**  
as Generator

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**DIRECT AGREEMENT**  
in relation to a DPA for [insert details of generating asset]

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<sup>56</sup> Note to draft: Parties to conform to underlying funding arrangements.

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**THIS DIRECT AGREEMENT** (this "**Deed**") is dated [●] and made as a deed

**BETWEEN:**

- (1) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated under the laws of England and Wales whose registered office is 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711 (the "**DPA Counterparty**");
- (2) *[[insert name of the lender(s)]* a company incorporated under the laws of [●] whose registered office is [●] and whose company number is [●] [the "**Lender(s)**"]; */[in its capacity as [agent and] security trustee for and on behalf of the Finance Parties (the "**Security Trustee**"); and]*
- (3) *[insert name of the generator]*, a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Generator**")<sup>57</sup>.

**BACKGROUND**

- (A) The DPA Counterparty has entered into the Contract with the Generator.
- (B) It is a condition precedent to the availability of funding under the Facilities Agreement that the Parties enter into this Deed.
- (C) The Parties intend this document to take effect as a deed.

**IT IS AGREED as follows:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**<sup>58</sup>

In this Deed, unless otherwise defined herein or the context requires otherwise:

**"Affected Person"** means any direct or indirect shareholder of the Generator who is able to evidence to the satisfaction of the DPA Counterparty that if it (or an agent or security trustee on its behalf) has or had the benefit of a Direct Agreement, it is or would be:

- (A) contractually obliged to exercise rights under the relevant Direct Agreement in accordance with the instructions of one (1) or more Lenders (or a security trustee on its or their behalf); or
- (B) party to an agreement regarding the exercise of rights under such Direct Agreement with a person falling within paragraph (A) above;

**"Affiliate"** means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);

**"Appointed Representative"** means the Representative identified in the Step-In Notice;

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<sup>57</sup> Note to draft: Parties to conform to underlying funding arrangements.

<sup>58</sup> Note to draft: Definitions to conform to underlying funding arrangements

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

**"Contract"** means the dispatchable power agreement dated [●] and made between the DPA Counterparty and the Generator in relation to the Facility;

**"Contract Default"** has the meaning given to **"Default"** in the Contract;

**"Control"** means, in relation to an entity (the "controlled entity"), the ability of another entity (the "controlling entity") to:

- (A) exercise the majority of the voting rights in that entity; or
- (B) having become a direct or indirect shareholder, control the majority of the voting rights in that entity, either alone or pursuant to an agreement with other direct or indirect shareholders; or
- (C) having become a direct or indirect shareholder, appoint or remove a majority of the board of directors in that entity, or
- (D) having become a direct or indirect shareholder, exercise dominant influence or control over that entity.

and **"Controlled"** shall be construed accordingly;

**"DPA Counterparty Enforcement Action"** means:

- (A) the termination or revocation of the Contract by the DPA Counterparty (including the giving of any notice under or pursuant to Condition 35.1 (*Pre-Start Date termination*), 35.5 (*Termination for Prolonged Force Majeure*), 35.26 (*Default termination*), 35.28 (*Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements*) or 35.29 (*Termination for failing to satisfy the T&S Connection Confirmation CP*) of the Contract by the DPA Counterparty to the Generator terminating the Contract, but excluding the giving of any notice under or pursuant to Conditions 35.21 (*Termination for failing to remedy a T&S Prolonged Unavailability Event*), 35.30 (*Qualifying Change in Law termination*), or 35.32 (*QCIL Compensation termination*) of the Contract by the DPA Counterparty to the Generator terminating the Contract and the subsequent termination of the Contract under that Condition);<sup>59</sup>
- (B) the suspension or withholding (as applicable) by the DPA Counterparty of payments under or pursuant to Condition 20.2 (*Failure to comply with compliance of technology undertaking*), 21.13 (*Failure to comply with Metering Schematic Obligation*), 21.19 (*Failure to provide Metering Access Right*), 21.24 (*Failure to comply with SCADA Systems Obligations*), 22.9 (*Failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation: Suspension*), 23.6 (*Suspension of Payments (Failure to provide Declaration Capacity Data)*) or 23.13 (*Failure to provide Declaration Access Right*), or 35.15 (*Failure to comply with T&S Prolonged Unavailability Procedure Obligation: Suspension*) of the Contract; or
- (C) the commencement by the DPA Counterparty of any proceedings for, or the petitioning by the DPA Counterparty for, the winding-up, administration, dissolution or liquidation of the Generator (or the equivalent procedure under the law of the jurisdiction in which

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<sup>59</sup> Note to Reader: This definition is subject to the development of the T&S Prolonged Unavailability Event termination provisions.

the Generator is incorporated, domiciled or resident or carries on business or has assets);

**"DPA Counterparty Enforcement Notice"** means a notice given by the DPA Counterparty to the [Lender(s)]/[Security Trustee] specifying the DPA Counterparty Enforcement Action which the DPA Counterparty intends to take and, in reasonable detail, the grounds for such intended action;

**"DPA Documents"** has the meaning given to that term in the Contract;

**"DPA Settlement Required Information"** has the meaning given to that term in the Contract;

**"DPA Settlement Services Provider"** has the meaning given to that term in the Contract;

**"Event of Default"** means any event or circumstance the occurrence of which is treated as an event of default under the Facilities Agreement;

**"Facilities Agreement"** means the facilities agreement dated [[●]]/[on or around the date of this Deed]] between, amongst others, [the lenders named therein,] the [Lender(s)]/[Security Trustee], [the Facility Agent] and the Generator<sup>60</sup>;

**"Facility"** has the meaning given to that term in the Contract;

**"Facility Agent"** means the Facility Agent appointed under the Facilities Agreement<sup>61</sup>;

**"Finance Documents"** means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement<sup>62</sup>;

**"Finance Parties"** means the parties with the benefit of security under the Security Documents and **"Finance Party"** means any of them<sup>63</sup>;

**"Finance Party Discharge Date"** means the date on which all of the Finance Party Obligations have been fully and irrevocably paid or discharged and no further Finance Party Obligations are capable of becoming outstanding;

**"Finance Party Obligations"** means any obligations owed to the Finance Parties in connection with the Finance Documents;

**"Generator's Proceeds Account"** means the account held by the Generator at [●] with the account number [●] and sort code [●] or such other account and bank as the Generator and the [Lender(s)]/[Security Trustee] may notify to the DPA Counterparty from time to time;

**"Lender"** means any bank or financial institution (excluding any direct or indirect shareholder of the Generator) which provides debt financing or refinancing in relation to the Facility.

**"Non-Qualification Event"** [means the Security Trustee ceasing, in respect of the rights afforded to it under this Deed, to act only on behalf of any person who is:

- (A) [a] Lender(s) having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract) and in whose favour the Generator has assigned its rights under the Contract

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<sup>60</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>61</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>62</sup> Note to draft: Definition to conform to underlying funding arrangements

<sup>63</sup> Note to draft: Definition to conform to underlying funding arrangements

and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract; or

- (B) an Affected Person having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract) and in whose favour the Generator has assigned its rights under the Contract and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract;

PROVIDED that there shall not be a Non-Qualification Event where a person who previously satisfied sub-paragraph (A) above has become a direct or indirect shareholder solely as a result of the creation or enforcement of a security interest held by them (a "**Security Shareholder**") and who otherwise continues to satisfy sub-paragraph (A) above, unless such Security Shareholder (whether directly or indirectly) has exercised Control over the Generator for a period of twenty (20) Business Days or more prior to the time of any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice or, having the right, ability or power to do so, fails to prevent any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice.]<sup>64</sup> /

[means the Lender(s) ceasing, in respect of the rights afforded to [it]/[them] under this Deed, to be [a person who is/persons who are]:

- (A) Lender(s) having the benefit of first ranking security over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract) and in whose favour the Generator has assigned its rights under the Contract and any other DPA Document in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract,

PROVIDED that there shall not be a Non-Qualification Event where [a person/ the persons] who previously satisfied sub-paragraph (A) above [has/have] become [a] direct or indirect shareholder(s) solely as a result of the creation or enforcement of a security interest held by them (a "**Security Shareholder**") but who otherwise continues to satisfy sub-paragraph (A) above, unless such Security Shareholder (whether directly or indirectly) has exercised Control over the Generator for a period of twenty (20) Business Days or more prior to the time of any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice or, having the right, ability or power to do so, fails to prevent any breach, non-compliance or failure which is or may be the subject of a DPA Counterparty Enforcement Notice.]<sup>65</sup>

**"Novation Agreement"** means a novation agreement entered into pursuant to Clause 9.3 (*Substitution Procedure*) between the DPA Counterparty, the Generator and the Substitute substantially in the form set out in Appendix 2 (*Form of Novation Agreement*);

**"Novation Date"** has the meaning given to that term in Clause 9.3(B) (*Substitution Procedure*);

**"Novation Notice"** means a notice given by the [Lender]/[Security Trustee] to the DPA Counterparty pursuant to Clause 9.1 (*Proposed Substitution*) specifying:

- (A) the identity of the proposed Substitute; and

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<sup>64</sup> Retain wording in square brackets if there is a Security Trustee.

<sup>65</sup> Retain wording in square brackets if there is a Lender but no Security Trustee.

(B) the Proposed Novation Date;

**"NQE Termination Trigger Date"** means (as applicable) the date specified in the notice issued to the [Lender(s)]/[Security Trustee] pursuant to Clause 3.4(D)(i) (unless the [Lender(s)]/[Security Trustee] has remedied the failure or non-compliance prior to such date) or the date of a notice delivered to the DPA Counterparty pursuant to Clause 10.3;

**"Party"** means a party to this Deed;

**"Proposed Novation Date"** means the date proposed by the [Lender(s)]/[Security Trustee] in a Novation Notice for the novation to a Substitute of the Generator's rights and obligations under the Contract;

**"Proposed Step-In Date"** means the date proposed by the [Lender(s)]/[Security Trustee] in a Step-In Notice upon which the Appointed Representative shall give a Step-In Undertaking as contemplated by Clause 6.2 (*Step-In Undertaking*);

**"Representative"** means:

- (A) the [Facility Agent], [the Security Trustee] and any Finance Party and/or any of their Affiliates;
- (B) an administrator, administrative receiver, receiver, receiver and manager or any other insolvency official of the Generator and/or any or all of its assets appointed in connection with the Finance Documents;
- (C) a person directly or indirectly owned or Controlled by [the Facility Agent], [the Security Trustee] and/or the Finance Parties or any of them; or
- (D) any other person approved by the DPA Counterparty;

**"Security Documents"** means any documents creating or evidencing any existing or future security interest granted by the Generator to the [Lender(s)]/[Security Trustee] to secure the payment and discharge of any or all Finance Party Obligations;

**"Security Shareholder"** has the meaning given to that term in the definition "Non-Qualification Event";

**"Step-In Date"** means the date on which the Appointed Representative gives a Step-In Undertaking to the DPA Counterparty as contemplated by Clause 6.2 (*Step-In Undertaking*);

**"Step-In Decision Period"** means a period commencing on the date of receipt by the [Lender(s)]/[Security Trustee] from the DPA Counterparty of any DPA Counterparty Enforcement Notice and ending on the first to occur of the Step-In Date, the Novation Date and the date falling one hundred and twenty (120) days after the commencement of the Step-In Decision Period;

**"Step-In Notice"** has the meaning given to that term in Clause 6.1 (*Step-In Notice*);

**"Step-In Period"** means the period from the Step-In Date to and including the first to occur of:

- (A) the expiry of the notice period in any notice given under Clause 8 (*Step-Out*);
- (B) the Novation Date;
- (C) the Finance Party Discharge Date; and



- (D) the date of any termination or revocation of the Contract by the DPA Counterparty in accordance with this Deed and the Contract;

**"Step-In Undertaking"** means an undertaking substantially in the form set out in Appendix 1 (*Form of Step-In Undertaking*) given by the Appointed Representative;

**"Step-Out Date"** means the date upon which a Step-In Period ends;

**"Step-Out Notice"** has the meaning given to that term in Clause 8(A) (*Step-Out*);

**"Substitute"** means a person nominated by the [Lender(s)]/[Security Trustee] pursuant to Clause 9.1 (*Proposed Substitution*) or Clause 9.2 (*Objection to Substitute*), as the case may be, as the transferee of the Generator's rights and obligations under the Contract; and

**"Supplier Obligation Regulations"** has the meaning given to that term in the Contract; and

**"Working Hours"** means 09:00 to 17:00 on a Business Day.

## 1.2 Interpretation

- (A) Unless a contrary indication appears, any reference in this Deed to:
- (i) the **"DPA Counterparty"**, [the **"Facility Agent"**],[ the **"Security Trustee"**], the **"Generator"**, [any **"Lender"**, ][any **"Finance Party"**] or any **"Appointed Representative"** shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) an agreement includes a deed and instrument;
  - (iii) an agreement is a reference to it as amended, supplemented, restated, novated or replaced from time to time;
  - (iv) a provision of law is a reference to that provision as amended, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it;
  - (v) any **"obligation"** of any person under this Deed or any other agreement or document shall be construed as a reference to an obligation expressed to be assumed by or imposed on it under this Deed or, as the case may be, that other agreement or document (and **"due"**, **"owing"** and **"payable"** shall be similarly construed);
  - (vi) a **"Clause"**, **"paragraph"** or **"Appendix"** is a reference to a clause or paragraph of, or an appendix to, this Deed;
  - (vii) 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;
  - (viii) time is a reference to time in London, England; and
  - (ix) words in the singular shall be interpreted as including the plural, and *vice versa*.
- (B) The words **"include"** and **"including"** shall be construed without limitation to the generality of the preceding words.
- (C) Headings are for ease of reference only.

## 2. CONSENT TO SECURITY AND PAYMENT INSTRUCTIONS

### 2.1 Consent to Security

- (A) The Generator hereby gives notice to the DPA Counterparty that, under or pursuant to the Security Documents, the Generator has assigned or charged by way of security to the [Lender(s)]/[Security Trustee] its rights, title and interest in and to the Contract.
- (B) The DPA Counterparty acknowledges receipt of notice of, and consents to, the grant of the security interests referred to in paragraph (A) above.
- (C) The DPA Counterparty acknowledges that neither the [Lender(s)]/[Security Trustee] nor any Finance Party shall have any obligations or liabilities to the DPA Counterparty (whether in place of the Generator or otherwise) in respect of the Contract as a result of any security interest created under the Security Documents except to the extent that the [Lender(s)]/[Security Trustee] or such Finance Party incur[(s)] such obligations or liabilities pursuant to Clause 6 (*Step-In*), Clause 7 (*Step-In Period*), Clause 8 (*Step-Out*) or Clause 9 (*Novation*).

### 2.2 No other Security Interests

The DPA Counterparty confirms that, as at the date of this Deed, it has not received notice of any other security interest granted over the Generator's rights, title and interest in and to the Contract. The DPA Counterparty agrees to notify the [Lender(s)]/[Security Trustee] as soon as reasonably practicable if it receives any such notice.

### 2.3 Payment of Monies

- (A) Each of the Generator and the [Lender(s)]/[Security Trustee] irrevocably authorises and instructs the DPA Counterparty, and the DPA Counterparty agrees, to pay the full amount of each sum which it is obliged at any time to pay to the Generator under or in respect of the Contract (whether before or after termination of the Contract) to the Generator's Proceeds Account or [, following the occurrence of an Event of Default and at any time thereafter,] to such other account in the United Kingdom that the [Lender(s)]/[Security Trustee] may direct in writing to the DPA Counterparty on not less than ten (10) Business Days' notice.
- (B) Each payment made in accordance with paragraph (A) above shall constitute a good discharge *pro tanto* of the obligation of the DPA Counterparty to make the relevant payment to the Generator.
- (C) The authority and instructions set out in paragraph (A) above shall not be revoked or varied by the Generator without the prior written consent of the [Lender(s)]/[Security Trustee], copied to the DPA Counterparty.

### 2.4 Contract

The Parties agree and acknowledge that the exercise of the rights of the [Lender(s)]/[Security Trustee] or the Appointed Representative, as the case may be (a) under the Contract during the Step-in Period; and (b) in connection with the security interests granted by the Generator shall not amend, waive or suspend the provisions of the Contract and the rights of the DPA Counterparty under the Contract, except as expressly set out under this Deed and any Step-In Undertaking.

## 2.5 **Statement as to Event of Default conclusive**

The DPA Counterparty may treat any statement or notice from the [Lender(s)]/[Security Trustee or the lenders under the Facility Agreement] that an Event of Default has occurred as conclusive evidence of the occurrence of the Event of Default.

## 3. **NOTIFICATION BY DPA COUNTERPARTY**

### 3.1 **Notification of Default**

- (A) The DPA Counterparty shall, as soon as reasonably practicable, send to the [Lender(s)]/[Security Trustee] a copy of any notice of default under the Contract served by the DPA Counterparty on the Generator.
- (B) The DPA Counterparty shall have no obligation to notify the [Lender(s)]/[Security Trustee] of a default under the Contract where the DPA Counterparty has not served a notice of default on the Generator.

### 3.2 **Cure Right**

The [Lender(s)]/[Security Trustee] may, at any time outside a Step-In Period, take or procure the taking of any action on behalf of the Generator in circumstances where:

- (A) the Generator's failure to take such action would be a breach of the Contract or would be or could reasonably be expected to contribute towards the occurrence of a Contract Default; or
- (B) the Generator has breached the Contract or a Contract Default has arisen,

and any such action will be deemed to have been taken by the Generator for the purposes of the Contract and any breach or Contract Default will be cured, remedied or will not arise (as appropriate) if such breach or Contract Default would have been cured or remedied or would not have arisen (as appropriate) if the Generator had taken such action itself.

### 3.3 **DPA Counterparty Enforcement Action**

Subject to Clause 7.2 (*DPA Counterparty Enforcement Action during a Step-In Period*), the DPA Counterparty shall not take any DPA Counterparty Enforcement Action without first giving a DPA Counterparty Enforcement Notice to the [Lender(s)]/[Security Trustee].

### 3.4 **Non-Qualification Event**

- (A) The [Lender(s)]/[Security Trustee] shall by the fifteenth (15th) Business Day after delivery to the [Lender(s)]/[Security Trustee] of:
  - (i) any DPA Counterparty Enforcement Notice; or
  - (ii) any notice from the DPA Counterparty requesting that the [Lender(s)]/[Security Trustee] evidence that a Non-Qualification Event has not taken place,
    - (a **"Qualification Demonstration Deadline"**), evidence to the satisfaction of the DPA Counterparty (acting reasonably) that a Non-Qualification Event has not taken place.
- (B) For the purposes of Clause 3.4(A) unless otherwise agreed by the DPA Counterparty, the evidence provided shall be:

- (i) a clear letter to the DPA Counterparty from the external legal advisors to the [Lender(s)]/[Security Trustee] (the "**NQE Confirmation**"):
- (a) setting out the corporate details of the [Lender(s)]/[Security Trustee] [and all persons for whom the Security Trustee acts in respect of the rights afforded to it under this Deed]<sup>66</sup>;
  - (b) [confirming that the Security Trustee acts only, in respect of the rights afforded to it under this Deed, on behalf of the person(s) referred to in paragraphs (A) or (B) of the definition of Non-Qualification Event;]<sup>67</sup>
  - (c) [if the Security Trustee acts on behalf of any person who is a direct or indirect shareholder of the Generator, explaining the basis upon which such person falls within (as applicable) paragraph (B) of the definition of Non-Qualification Event and]<sup>68</sup> confirming whether [such person]<sup>69</sup>/[the Lender]<sup>70</sup> is a Security Shareholder and, if so, when they became a Security Shareholder;
  - (d) confirming that the external legal advisors are not aware of a Non-Qualification Event having occurred; and
  - (e) explaining any changes to the Finance Parties, the Finance Documents, the Security Documents[,] [and/or] the underlying financial arrangements relating or relevant to this Deed [and/or the persons on behalf of whom the Security Trustee is exercising the rights afforded by this Deed]<sup>71</sup> since the last letter provided under this Clause 3.4(B) (or, if no letter has been provided, the date of this Deed) and confirming that: (i) insofar as it is aware having made due and careful enquiry of the [Lender(s)]/[Security Trustee], the Finance Documents and Security Documents are up to date, true, complete and accurate; and (ii) the contents of the NQE Confirmation are a true and accurate reflection of the relevant contents of the Finance Documents and the Security Documents; and
- (ii) a clear letter to the DPA Counterparty from the [Lender(s)]/[Security Trustee] ("**Further NQE Confirmation**") (signed by a duly authorised senior representative and/or in-house legal advisor) certifying that [insofar as it is aware having made all due and careful enquiry]<sup>72</sup>:
- (a) a Non-Qualification Event has not occurred;
  - (b) [if the Security Trustee acts on behalf of any person who is a direct or indirect shareholder of the Generator, whether such person falls within (as applicable) paragraph (B) of the definition of Non-Qualification Event and]<sup>73</sup> whether [such person]<sup>74</sup>/[the Lender]<sup>75</sup> is a Security Shareholder;

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<sup>66</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>67</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>68</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>69</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>70</sup> Words in square brackets to be retained in the case of a Lender and no Security Trustee.

<sup>71</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>72</sup> Words in square brackets to be retained only if there is a Security Trustee.

<sup>73</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>74</sup> Words in square brackets to be retained if there is a Security Trustee.

<sup>75</sup> Words in square brackets to be retained if there is a Lender and no Security Trustee.

- (c) if a breach, non-compliance or failure has occurred which is or may be the subject of a DPA Counterparty Enforcement Notice, such breach, non-compliance or failure did not occur more than twenty (20) Business Days after the [Lender(s)]/[Security Trustee] became a Security Shareholder who has enforced its Security Documents and Controls the Generator. In this case, the [Lender(s)]/[Security Trustee] shall also provide an explanation of the situation and information or evidence to support its certification and explanation;
  - (d) the Finance Documents and Security Documents are up-to-date, true and complete; and constitute a true, complete, comprehensive and accurate record of the financial arrangements between the parties to them and are not misleading; and
  - (e) the [Lender(s)]/[Security Trustee] has provided all the Finance Documents and Security Documents to its external legal advisor for the purpose of such external legal advisor providing the NQE Confirmation; and
- (iii) if requested by the DPA Counterparty, up-to-date, complete and accurate copies of the relevant Finance Documents and Security Documents.
- (C) Without limitation of Clause 3.4(B), the DPA Counterparty may, within ten (10) Business Days of receipt of the NQE Confirmation, Further NQE Confirmation and/or the documentation referred to in Clause 3.4(B)(iii), request clarification of the contents of the NQE Confirmation, Further NQE Confirmation and/or documentation referred to in Clause 3.4(B)(iii). If the [Lender(s)]/[Security Trustee] receives such a request, it shall provide the requested clarification to the DPA Counterparty within ten (10) Business Days of receipt of the request.
- (D) Where the [Lender(s)]/[Security Trustee]:
- (i) fails to comply with Clauses 3.4(A), 3.4(B) and/or 3.4(C) and/or if the Finance Documents and/or Security Documents provided under Clause 3.4(C) do not support and/or are inconsistent with or contradict the NQE Confirmation or Further NQE Confirmation,
- the DPA Counterparty may give a notice to the [Lender(s)]/[Security Trustee] that this Deed shall terminate on the date specified in such notice (such date being no earlier than the date falling ten (10) Business Days after the date of such notice), and this Deed shall so terminate pursuant to Clause 10.1 unless, in the case of Clause 3.4(D)(i), in the intervening period the [Lender(s)]/[Security Trustee] has remedied (as applicable) its failure or non-compliance with Clause 3.4(A), 3.4(B) and/or Clause 3.4(C) and/or the failure of the Finance Documents and/or the Security Documents to support or be consistent with the NQE Confirmation, Further NQE Confirmation and/or any contradiction between the Finance Documents and/or Security Documents and the NQE Confirmation and/or Further NQE Confirmation.
- (E) Where the [Lender(s)]/[Security Trustee] complies with Clause 3.4(A) by the Qualification Demonstration Deadline, the DPA Counterparty shall provide confirmation of such compliance to the [Lender(s)]/[Security Trustee] as soon as reasonably practicable thereafter.

### 3.5 **No Waiver**

The provisions of this Clause 3 shall not constitute any waiver as against the Generator of the grounds for the intended exercise of the DPA Counterparty's rights to take any DPA Counterparty Enforcement Action or any of its other rights regarding such DPA Counterparty Enforcement Action and the giving of a DPA Counterparty Enforcement Notice shall not release the Generator from its obligations or liabilities under the Contract.

## 4. **NOTIFICATION BY THE [LENDER(S)]/[SECURITY TRUSTEE]**

### 4.1 **Notice of Event of Default**

The [Lender(s)]/[Security Trustee] shall, as soon as reasonably practicable, send to the DPA Counterparty a copy of any notice of an Event of Default served by or on behalf of the [Lender(s)]/[Security Trustee or the lenders under the Facility Agreement] on the Generator.

### 4.2 **Notices from the [Lender(s)]/[Security Trustee]**

After receiving notification of an Event of Default from the [Lender(s)]/[Security Trustee], the DPA Counterparty shall accept as validly given by the Generator any notices or demands pursuant to and in accordance with the Contract given or made by the [Lender(s)]/[Security Trustee] or Appointed Representative, as the case may be, provided, in each case, such notice or demand would have been validly given had it been given by the Generator itself. The Generator consents to the giving of such notices or demands and acknowledges and agrees that the service of such notices or demands by the [Lender(s)]/[Security Trustee] or Appointed Representative, as the case may be, shall not affect the rights and remedies of the DPA Counterparty under the Contract.

## 5. **STEP-IN DECISION PERIOD**

### 5.1 **Suspension of Rights and Remedial Action**

During a Step-In Decision Period the DPA Counterparty shall not take any DPA Counterparty Enforcement Action (other than any DPA Counterparty Enforcement Action taken pursuant to Clause 5.3 (*Revival of Remedies*) in relation to any prior Step-In Decision Period).

### 5.2 **Statement of Amounts Due**

- (A) As soon as reasonably practicable, and in any event within thirty (30) days, after the commencement of a Step-In Decision Period, the DPA Counterparty shall give the [Lender(s)]/[Security Trustee] a statement of any amounts owed by the Generator to the DPA Counterparty and any outstanding performance obligations of the Generator under the Contract of which the DPA Counterparty is aware as at the date of the DPA Counterparty Enforcement Notice.
- (B) For the avoidance of doubt, a failure by the DPA Counterparty to include in any such statement an amount owed or a performance obligation outstanding under the Contract shall not limit in any way the obligations or liabilities of the Generator under the Contract or the obligations or liabilities of the [Lender(s)]/[Security Trustee] or any Appointed Representative or Substitute under or pursuant to this Deed.

### 5.3 **Revival of Remedies**

If a DPA Counterparty Enforcement Notice has been given and:

- (A) neither the Step-In Date nor the Novation Date has occurred before expiry of the Step-In Decision Period; or

- (B) the Step-In Date has occurred before expiry of the Step-In Decision Period but a Step-Out Date has subsequently occurred without there being a Novation Date,

the DPA Counterparty shall be entitled to take DPA Counterparty Enforcement Action without serving a further DPA Counterparty Enforcement Notice if the default, event or circumstance in respect of which the DPA Counterparty gave the DPA Counterparty Enforcement Notice is subsisting or has not been remedied or cured (whether by the Generator, [Lender(s)]/[Security Trustee] or any other person).

## 6. STEP-IN

### 6.1 Step-In Notice

- (A) At any time during a Step-In Decision Period, the [Lender(s)]/[Security Trustee] may give notice to the DPA Counterparty (a "**Step-In Notice**") specifying:
- (i) the Appointed Representative who will give a Step-In Undertaking to the DPA Counterparty; and
  - (ii) the Proposed Step-In Date (which shall be a date no earlier than five (5) Business Days after the date of the Step-In Notice).
- (B) The Proposed Step-In Date must fall on or prior to the expiry of the Step-In Decision Period.
- (C) The [Lender(s)]/[Security Trustee] may revoke a Step-In Notice at any time prior to the Step-In Date by notice to the DPA Counterparty, provided that the relevant Step-In Decision Period shall be deemed to have expired on delivery of such notice to the DPA Counterparty.

### 6.2 Step-In Undertaking

Unless otherwise agreed by the DPA Counterparty in its sole and absolute discretion, the [Lender(s)]/[Security Trustee] shall procure that the Appointed Representative gives a Step-In Undertaking to the DPA Counterparty on the Proposed Step-In Date.

## 7. STEP-IN PERIOD

### 7.1 Step-In Period

During the Step-In Period:

- (A) the DPA Counterparty shall deal only with the Appointed Representative and not the Generator and the DPA Counterparty shall have no liability to the Generator for compliance with the instructions of the Appointed Representative or the [Lender(s)]/[Security Trustee] in priority to those of the Generator;
- (B) the DPA Counterparty agrees that payment by the Appointed Representative to the DPA Counterparty of any sums due under the Contract, or performance by the Appointed Representative of any other of the Generator's obligations under the Contract, shall comprise good discharge *pro tanto* of the Generator's payment and other obligations under the Contract; and
- (C) the DPA Counterparty shall owe its obligations under the Contract to the Generator and the Appointed Representative jointly but performance by the DPA Counterparty in favour of the Appointed Representative alone shall be a good discharge *pro tanto* of its obligations under the Contract.

## 7.2 DPA Counterparty Enforcement Action during a Step-In Period

- (A) During the Step-In Period, the DPA Counterparty shall be entitled to take DPA Counterparty Enforcement Action if:
- (i) the Appointed Representative breaches the terms of the Step-In Undertaking; and
  - (ii) such breach would, save for the terms of Clause 5.1 (*Suspension of Rights and Remedial Action*), entitle the DPA Counterparty to take the relevant DPA Counterparty Enforcement Action under or in connection with the Contract.
- (B) The provisions of Clause 3.3 (*DPA Counterparty Enforcement Action*) shall not apply to any DPA Counterparty Enforcement Action taken pursuant to this Clause 7.2.

## 8. STEP-OUT

- (A) The Appointed Representative or the [Lender(s)]/[Security Trustee] shall give the DPA Counterparty at least ten (10) Business Days' prior written notice of the date on which the Appointed Representative will step out (a "**Step-Out Notice**").
- (B) Upon the Step-Out Date (howsoever occurring):
- (i) all of the Appointed Representative's obligations and liabilities to the DPA Counterparty under the Step-In Undertaking will be cancelled, other than those for which the Appointed Representative is liable under the Step-In Undertaking and which arose or accrued prior to the Step-Out Date;
  - (ii) all of the Appointed Representative's rights against the DPA Counterparty under the Step-In Undertaking will be cancelled, other than those which arose or accrued prior to the Step-Out Date; and
  - (iii) without prejudice to sub-paragraph (i) above, the Appointed Representative will be released from all obligations and liabilities to the DPA Counterparty under the Contract and this Deed.
- (C) The Generator shall continue to be bound by the terms of the Contract notwithstanding the occurrence of the Step-Out Date and the DPA Counterparty shall continue to be entitled to exercise and enforce all of its rights and remedies under the Contract as against the Generator.

## 9. NOVATION

### 9.1 Proposed Substitution

- (A) Subject to paragraph (B) below, at any time:
- (i) during a Step-In Decision Period or a Step-In Period; or
  - (ii) during which an Event of Default is subsisting (and the DPA Counterparty may treat as conclusive evidence that an Event of Default is subsisting any notice served by the [Lender(s)]/[Security Trustee] pursuant to this paragraph (A)),
- the [Lender(s)]/[Security Trustee] may give a Novation Notice to the DPA Counterparty.
- (B) The [Lender(s)]/[Security Trustee] shall give the DPA Counterparty not less than fifteen (15) Business Days' prior notice of the Proposed Novation Date.



## 9.2 Objection to Substitute

The DPA Counterparty may only object to a proposed Substitute if the entry into a Novation Agreement or the Contract with the proposed Substitute would be unenforceable or illegal and the DPA Counterparty gives notice of its objection to the [Lender(s)]/[Security Trustee] within ten (10) Business Days of receipt by the DPA Counterparty of the Novation Notice, in which case the [Lender(s)]/[Security Trustee] may propose an alternative Substitute.

## 9.3 Substitution Procedure

- (A) On the Proposed Novation Date or such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) the DPA Counterparty and the Generator shall each enter into a Novation Agreement with the Substitute.
- (B) The novation of the Generator's rights and obligations under the Contract pursuant to a Novation Agreement shall be effective from the date (the "**Novation Date**") which is the latest of the Proposed Novation Date, such later date (if any) as the identity of the Substitute is determined pursuant to Clause 9.2 (*Objection to Substitute*) and the date upon which each of the following conditions is satisfied, namely:
- (i) the DPA Counterparty having received, in form and content satisfactory to the DPA Counterparty acting reasonably:
    - (a) a certified copy of the constitutional documents and certificate of incorporation and any certificate of incorporation on change of name of the Substitute; and
    - (b) evidence of compliance by the Substitute with "know your customer" or similar identification procedures or checks under all applicable laws and regulations pursuant to the transactions contemplated by the Novation Agreement, the Contract and the other DPA Documents;
  - (ii) the DPA Counterparty having received a legal opinion addressed to the DPA Counterparty, in form and content reasonably satisfactory to the DPA Counterparty, from the legal advisers to the Substitute confirming that the Substitute:
    - (a) is duly formed and validly existing under the laws of the jurisdiction of its formation; and
    - (b) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of, the Contract and the other DPA Documents;
  - (iii) the DPA Counterparty having received written confirmation from the DPA Settlement Services Provider that:
    - (a) it has received the DPA Settlement Required Information which is required from the Substitute prior to the Proposed Novation Date or such later date, as the case may be; and
    - (b) the Substitute has in place the systems and processes which are necessary for the continued provision of the DPA Settlement Required Information;

- (iv) the Substitute being or having become the legal and beneficial owner of the Facility, subject only to any third party rights arising by reason of any security interest created or subsisting over or in respect of the Facility; [and
  - (v) any collateral required to be in place in accordance with the Schedule (*Gain Share*) having been provided by or on behalf of the Substitute.]<sup>76</sup>
- (C) The DPA Counterparty shall notify the [Lender(s)]/[Security Trustee] and the Substitute of the Novation Date as soon as reasonably practicable after it has occurred.
- (D) At the [Lender(s)]/[Security Trustee]'s cost, the DPA Counterparty shall, subject to and in accordance with Condition 61.6 (*Permitted assignment by the Generator*) of the Contract, enter into a direct agreement with the [Lender(s)]/[Security Trustee] (or such other representative of the lenders lending to such Substitute) and the Substitute on substantially the same terms as this Deed and effective from the Novation Date.

## 10. DURATION

10.1 This Deed shall commence on the date hereof and shall continue in full force and effect until the first to occur of:

- (A) the Finance Party Discharge Date;
- (B) expiry of the term of the Contract;
- (C) the termination or revocation of the Contract (in accordance with the Contract and this Deed); and
- (D) the NQE Termination Trigger Date,

in each case without prejudice to any accrued rights and obligations arising pursuant to this Deed existing at the date of termination.

10.2 The [Lender(s)]/[Security Trustee] shall promptly notify the DPA Counterparty of the occurrence of the Finance Party Discharge Date.

10.3 The [Lender(s)]/[Security Trustee] shall promptly notify the DPA Counterparty upon becoming aware of the occurrence of a Non-Qualification Event.

10.4 The [Lender(s)]/[Security Trustee] shall not exercise any rights under this Deed after becoming aware that a Non-Qualification Event is in operation as at the date when the right to exercise such rights would otherwise have arisen.

## 11. CHANGES TO PARTIES

### 11.1 Benefit of Deed

This Deed shall benefit and be binding on the Parties, their respective successors and any permitted assignee or transferee of all or some of a Party's rights and obligations under this Deed.

### 11.2 Assignment

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<sup>76</sup> Note to Reader: This provision will be applicable if the gain share schedule applies to a DPA.

Save as provided in Clause 9 (*Novation*) or Clause 11.3 (*Assignment by the [Lender(s)]/[Security Trustee]*), neither the [Lender(s)]/[Security Trustee] nor the Generator may assign, transfer, novate or otherwise dispose of all or any of their respective rights, benefits or obligations under this Deed without the prior consent of the other Parties.

### 11.3 **Assignment by the [Lender(s)]/[Security Trustee]**

The [Lender(s)]/[Security Trustee] may assign or transfer [its]/[their respective] rights under this Deed to any successor [Lender(s)]/[Security Trustee] without the consent of the DPA Counterparty.

### 11.4 **Generator's Acknowledgement**

The Generator joins in this Deed to acknowledge and consent to the arrangements set out in it and agrees not knowingly to do or omit to do anything that may prevent either of the other Parties from enforcing its rights under this Deed.

## 12. **NOTICES**

### 12.1 **Communications in Writing**

Any communications to be made pursuant to or in connection with this Deed shall be made in writing and shall be effective only if they are in writing and in English. Faxes are not permitted but email is permitted.

### 12.2 **Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is as follows:

#### (A) **DPA Counterparty**

Address: Low Carbon Contracts Company Ltd, 10 South Colonnade, London, England, E14 4PU

Attention: Head of Contract Management

#### (B) **[Lender(s)]/[Security Trustee]**

Address: [●]

Attention: [●]

#### (C) **Generator**

Address: [●]

Attention: [●]

### 12.3 **Changes to Notice Details**

A Party may change its notice details on giving notice to the other Party in accordance with this Clause 12 (*Notices*). Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three (3) 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 (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

#### 12.4 **Deemed Delivery**

Any notice given pursuant to or in connection with this Deed shall, in the absence of 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 (3rd) Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth (5th) Business Day after the day of posting; or
- (D) if sent by email, when sent except 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 (or, in the case of a notice sent by email, the location of the person to whom it is addressed) shall be deemed not to have been given until the start of the next period of Working Hours in such place.

### 13. **MISCELLANEOUS**

#### 13.1 **Limited Recourse**

Notwithstanding any other provision of this Deed:

- (A) the liability of the DPA Counterparty pursuant to this Deed shall not exceed the aggregate of:
- (i) the amounts from time to time received and held by the DPA Counterparty, and allocated to this Deed, pursuant to the Supplier Obligation Regulations; and
  - (ii) any other funds of the type referred to in Condition 53.3(E) (*DPA Counterparty payment undertakings*) of the Contract from time to time received and held by the DPA Counterparty, and allocated to this Deed, whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (B) the DPA Counterparty shall not be in default pursuant to this Deed in not making any payment that is due and owing if and to the extent that it shall not have received the amounts and other funds referred to in paragraph (A) above which are necessary to make such payment, but if and to the extent that such payment is not made, the DPA Counterparty shall continue to owe an amount equal to the amount of the payment due and owing but not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

#### 13.2 **Amendments**

This Deed may not be amended, waived, supplemented or otherwise varied unless in writing and signed by or on behalf of all of the Parties.

### 13.3 Remedies and Waivers

No failure to exercise, nor any delay in exercising, any power, right or remedy under this Deed shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

### 13.4 Partial Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

### 13.5 No Partnership

Neither this Deed nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties.

### 13.6 Counterparts

This Deed may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

### 13.7 Third Party Beneficiaries

(A) Save as provided in paragraph (B) below, this Deed is intended for the sole and exclusive benefit of the Parties.

(B) The Contracts (Rights of Third Parties) Act 1999 is expressly excluded save for:

- (i) any rights of any Appointed Representative on and after the issue of a Step-In Undertaking by that Appointed Representative; or
- (ii) any rights of any Substitute on and after any Novation Date under or in connection with Clause 9 (*Novation*),

in each case, as if they were a party to this Deed.

(C) This Deed may be varied in any way and at any time by the Parties without the consent of any third party.

### 13.8 Entire Agreement

This Deed and the Contract constitute the entire agreement between the Parties with respect to the subject matter of this Deed.

### 13.9 Effect of this Deed

(A) The Parties acknowledge and agree that the express or implied terms and conditions of this Deed shall, in the event of any inconsistency or conflict with the express or implied terms and conditions of the Contract, prevail over the relevant terms and conditions of the Contract.

- (B) Nothing in this Deed or the arrangements contemplated hereby shall prejudice the rights of any of the Finance Parties under the Finance Documents or any Security Documents or shall be construed as obliging the [Lender(s)]/[Security Trustee] to exercise any of [its]/[their respective] rights under the Security Documents or under this Deed.

14. **GOVERNING LAW AND JURISDICTION**

- (A) This Deed and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England.
- (B) The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligations arising out of or in connection with this Deed).

**IN WITNESS WHEREOF** this Deed has been duly executed and delivered as a deed on the date stated at the beginning of this Deed.

**DPA Counterparty**

**EXECUTED** and delivered as a **DEED** by )  
**LOW CARBON CONTRACTS COMPANY LTD** )  
acting by its director/duly appointed attorney )

.....  
Director/Attorney

in the presence of

Signature:.....

Print Name:.....

Address:.....

Occupation:.....

**[Lender]/[Security Trustee]**

**EXECUTED** and delivered as a **DEED** by )  
[●] )  
acting by its director/duly appointed attorney )

.....  
Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Generator**

**EXECUTED** and delivered as a **DEED** by )  
 [●] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....



**Appendix 1**  
**Form of Step-In Undertaking**

*[From the Appointed Representative]*

From: [Appointed Representative]

To: Low Carbon Contracts Company Ltd [insert address]

For the attention of: Head of Contract Management

Date: [insert date]

Dear Sir/Madam,

**DIRECT AGREEMENT (the "Agreement")**

1. In accordance with clause 6 (*Step-In*) of the Agreement, we undertake to you that we will:
  - (a) pay, or procure payment, to you within three (3) Business Days of the date hereof any sum that is due and payable to you by the Generator but unpaid as of the date hereof;
  - (b) pay, or procure payment, to you any sum which becomes due and payable by the Generator to you pursuant to the terms of the Contract during the Step-In Period which is not paid by the Generator on the due date;
  - (c) perform or discharge, or procure the performance or discharge of, all outstanding performance obligations of the Generator which have arisen or fallen due prior to the date hereof:
    - (i) within ten (10) Business Days of the date hereof; or
    - (ii) if the performance or discharge of any obligation is being disputed pursuant to the provisions of the Contract, within ten (10) Business Days of the same being agreed or finally determined; and
  - (d) perform or discharge, or procure the performance or discharge of, any performance obligations of the Generator under the Contract which arise during the Step-In Period,

in each case in accordance with and subject to the terms of the Contract as if we were a party to the Contract in place of the Generator.
2. This Step-In Undertaking may be terminated by the giving of a Step-Out Notice to you in accordance with clause 8 (*Step-Out*) of the Agreement and shall automatically terminate upon the Step-Out Date, save that we shall continue to be liable to you for outstanding obligations and liabilities arising prior to termination in accordance with clause 8(B) (*Step-Out*) of the Agreement.
3. All capitalised terms used in this letter shall have the meanings given them in the Agreement.
4. This Step-In Undertaking and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with it.

Yours faithfully,

.....

For and on behalf of

[Appointed Representative]

**Appendix 2  
Form of Novation Agreement**

**THIS NOVATION AGREEMENT is dated [●] and made as a deed BETWEEN:**

- (1) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated under the laws of England and Wales whose registered office is 10 South Colonnade, London, England, E14 4PU and whose company number is 08818711 (the "**DPA Counterparty**");
- (2) [**insert name and details of the generator**], a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Generator**"); and
- (3) [**insert name and details of the substitute**], a company incorporated under the laws of [England and Wales] whose registered office is [●] and whose company number is [●] (the "**Substitute**")

(together referred to as the "**Parties**").

**BACKGROUND**

- (A) The Generator, the DPA Counterparty and the [Lender(s)]/[Security Trustee] have entered into an agreement (the "**Direct Agreement**") dated [●] pursuant to which the [Lender(s)]/[Security Trustee] [has]/[have] the right to require the rights and obligations of the Generator under the Contract to be novated to a Substitute.
- (B) The Substitute has been identified as the Substitute for the purposes of clause 9 (*Novation*) of the Direct Agreement.
- (C) This is the Novation Agreement referred to in clause 9.3 (*Substitution Procedure*) of the Direct Agreement.

**IT IS AGREED as follows:**

**1. Definitions and Interpretation**

Unless a contrary indication appears, words and expressions defined, or defined by reference, in the Direct Agreement have the same meanings in this Agreement.

**2. DPA Counterparty Release and Discharge**

With effect from the Novation Date, the DPA Counterparty releases and discharges the Generator from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the DPA Counterparty and arising out of or in respect of the Contract, save for the Generator's obligations under Condition 54 (*Confidentiality*) of the Contract.

**3. Generator Release and Discharge**

With effect from the Novation Date, the Generator releases and discharges the DPA Counterparty from all liabilities, duties and obligations of every description, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or disputed, owing to the Generator and arising out of or in respect of the Contract.

**4. Substitute Assumption of Liabilities**

The Substitute undertakes to assume all the liabilities, duties and obligations of the Generator of every description contained in the Contract, whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent, ascertained or unascertained or disputed, and agrees to perform all the duties and to discharge all the liabilities and obligations of the Generator under the Contract and to be bound by their terms and conditions in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

**5. DPA Counterparty Agreement to Perform**

The DPA Counterparty agrees to perform all its duties and to discharge all its obligations under the Contract and to be bound by all the terms and conditions of the Contract in every way as if the Substitute were named in the Contract as a party in place of the Generator from the date of the Contract.

**6. Replacement of Generator by Substitute**

As from the Novation Date, reference to the Generator (by whatsoever name known) in the Contract shall be deleted and replaced by reference to the Substitute.

**7. Outstanding DPA Counterparty Claims**

The DPA Counterparty shall not take any DPA Counterparty Enforcement Action by reason of any event notified in a DPA Counterparty Enforcement Notice or any act or omission by the [Lender(s)]/[Security Trustee], any Appointed Representative and/or the Generator occurring prior to the Novation Date provided that the foregoing shall be without prejudice to the DPA Counterparty's remedies (including without limitation the right to take DPA Counterparty Enforcement Action) in respect of:

- (A) outstanding amounts properly due and payable to the DPA Counterparty on the Novation Date and which remain unpaid on the expiry of three (3) Business Days' notice from the DPA Counterparty to the Substitute that such amounts are due and payable; and
- (B) to the extent not covered by paragraph (A) above, any breach of a Step-In Undertaking or the Contract by an Appointed Representative, the Generator or the [Lender(s)]/[Security Trustee] occurring prior to the Novation Date which has not been remedied upon the expiry of ten (10) Business Days' notice from the DPA Counterparty to the Substitute that such breach has not been remedied.

**8. Continuance of the Contract**

It is hereby agreed and declared that the Contract shall continue in full force and effect and that, as from the Novation Date, the terms and conditions of the Contract have only changed to the extent set out in this Agreement.

**9. Further Assurance**

The Parties shall perform such further acts and execute and deliver such further documents as may be required by law or reasonably requested by each other to implement the purposes of and to perfect this Agreement.

10. **Contract (Rights of Third Parties) Act 1999**

This Agreement does not create any rights under the Contract (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to it.

11. **Variations**

No variation of this Agreement shall be effective unless it is in writing and is signed by or on behalf of each of the parties to this Agreement.

12. **Notices**

Any notices to be served on the Substitute pursuant to the Contract shall be served in accordance with Condition 62 (*Notices*) of the Contract and to:

*[insert Substitute contact details]*

13. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

14. **Governing Law and Jurisdiction**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the courts of England.

**IN WITNESS WHEREOF** this Agreement has been executed and delivered as a deed on the date first stated above<sup>77</sup>.

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<sup>77</sup> Note to draft: execution blocks to be amended as appropriate

**DPA Counterparty**

**EXECUTED** and delivered as a **DEED** by )  
**LOW CARBON CONTRACTS COMPANY LTD** )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Generator**

**EXECUTED** and delivered as a **DEED** by )  
 [●] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Substitute**

**EXECUTED** and delivered as a **DEED** by )  
 [●] )  
 acting by its director/duly appointed attorney ) .....  
 Director/Attorney

in the presence of

Signature: .....

Print Name: .....

Address: .....

Occupation:.....

**Annex 6**  
**Gas Reference Price Review**

**Part A**  
**GRP Review Procedures**

1. **DEFINITIONS: ANNEX 6**

1.1 In this Annex 6 (*Gas Reference Price Review*):

**"10-TD Gas Sample Period"** means a period of ten (10) consecutive GRP Trading Days;

**"10-TD Gas Trade Number Percentage"** means, in respect of a price source, the number of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by such price source in a 10-TD Sample Period expressed as a percentage of the total number of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by all of the Calculation Gas Price Sources during such 10-TD Sample Period and, where such price source conducts or reports Gas GB Day Ahead Contracts less frequently than every GRP Trading Day, the number of Gas GB Day Ahead Contracts attributable to each GRP Trading Day shall be the number of Gas GB Day Ahead Contracts conducted or reported on each Price Source Live Day allocated equally to each GRP Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**"10-TD Gas Volume Percentage"** means, in respect of a price source, the volume (expressed in therms) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by such price source in a 10-TD Sample Period expressed as a percentage of the volume (expressed in therms) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain conducted on or reported by all of the Calculation Gas Price Sources during such 10-TD Sample Period and, where such price source conducts or reports Gas GB Day Ahead Contracts less frequently than every GRP Trading Day, the volume of Gas GB Day Ahead Contracts attributable to each GRP Trading Day shall be the volume of Gas GB Day Ahead Contracts conducted or reported on each Price Source Live Day allocated equally to each GRP Trading Day from and including each Price Source Live Day to and excluding the next occurring Price Source Live Day;

**"Calculation Gas Price Source"** means a price source which is determined pursuant to a GRP Principles Review to have met the GRP Quality Criteria;

"Gas GB Day Ahead Contract" means a contract relating to the delivery of a firm volume of gas between 0:00 and 05:59 of a specified VP Settlement Unit entered into in the preceding GRP Trading Day, or the delivery of a firm volume of gas between 6:00 and 23:59 of the same VP Settlement Unit entered into on the same GRP Trading Day as such VP Settlement Unit (whether physically or cash settled);

**"Gas GB Day Ahead Price"** means the price (expressed in pence/therm) for a Gas GB Day Ahead Contract as reflected in a Gas GB Day Ahead Index or Gas GB Day Ahead Indices (as the context requires);

**"Gas GB Day Ahead Index"** means an index of Gas GB Day Ahead Prices or another source of Gas GB Day Ahead Prices and **"Gas GB Day Ahead Indices"** shall be construed accordingly;

**"Gas Price Sources"** means the Gas GB Day Ahead Indices to be used in the calculation of the Gas Reference Price, being the Initial GRP Index or such other replacement or supplementary Gas GB Day Ahead Indices which are required to be so used as a result of the



operation of the provisions of Part B (*GRP Review Procedures*), and **"Gas Price Source"** shall be construed accordingly;

**"Gas Reference Price"** has the meaning given to that term in Condition 10.4 (*Gas Price calculation*);

**"GRP Dispute"** means a Dispute in relation to the outcome of a GRP Principles Review;

**"GRP Dispute Generator"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Notice"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 2.10 (*GRP Dispute Threshold Criterion*) of Part B (*GRP Review Procedures*);

**"GRP Dispute Validity Notice"** has the meaning given to that term in paragraph 2.3 (*Validity of GRP Dispute Notices*) of Part B (*GRP Review Procedures*);

**"GRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 2.7 (*GRP Expert Appointment Threshold*) of Part B (*GRP Review Procedures*);

**"GRP Inclusion Criteria"** in respect of a price source, means that:

- (A) the 10-TD Gas Trade Number Percentage in respect of such price source in each 10-TD Sample Period during the GRP Review Calculation Period is at least five per cent. (5%);
- (B) the 10-TD Gas Volume Percentage in respect of such price source in each 10-TD Sample Period during the GRP Review Calculation Period is at least five per cent. (5%);
- (C) such price source has at all times during the GRP Review Calculation Period, no fewer than ten (10) market participants which, it is evidenced to the DPA Counterparty:
  - (i) are each party to one (1) or more Gas GB Day Ahead Contracts and for each of such market participants at least one reported trade of a Gas GB Day Ahead Contract is used to derive the Gas GB Day Ahead Price; and
  - (ii) comply with one (1) or more of the following criteria:
    - (a) for price sources that are based on brokered trades, the market participants are listed in a maintained list of counterparties which have been approved by one (1) or more brokers to trade the products relevant to such price sources;
    - (b) for price sources that are based on a commodity exchange, the market participants have established arrangements with that exchange for the provision of initial and variation margins;
    - (c) for price sources where trades are enacted through a software platform, the market participants have established links with the platform;
    - (d) for price sources that provide pricing information on a subscription basis, the market participants have a subscription to that price source; or (where none of the above can be evidenced); and

- (e) the market participants have incurred a material cost to trade using the price source; and
- (D) such price source reports prices of Gas GB Day Ahead Contracts at least once per VP Settlement Unit during the GRP Review Calculation Period,

and **"GRP Inclusion Criterion"** shall be construed accordingly;

**"GRP Mechanism Amendment"** has the meaning given to that term in paragraph 1.6 (*Purpose of Gas Price Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles"** means the prioritisation of the GRP Principles provided for in paragraph 1 (*GRP Principles*) of Part C (*GRP Principles*);

**"GRP Principles Prioritisation"** means the prioritisation of the GRP Principles provided for in paragraph 2 (*Prioritisation of GRP Principles*) of Part C (*GRP Principles*);

**"GRP Principles Request Criterion"** has the meaning given to that term in paragraph 1.3 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Principles Request Notice"** has the meaning given to that term in paragraph 1.2 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1.5 (*Validity of GRP Principles Request Notices*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1.12(B) (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Notice"** has the meaning given to that term in paragraph 1.8 (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1.12 (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Proposals"** has the meaning given to that term in paragraph 1.8(A) (*Notification of outcome of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1.8(B) (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1.9 (*Notification of GRP Principles Review*) of Part B (*GRP Review Procedures*);

**"GRP Principles Review Trigger"** has the meaning given to that term in paragraph 1.1 (*Requirement to undertake GRP Principles Reviews*) of Part B (*GRP Review Procedures*);

**"GRP Quality Criteria"** in respect of a price source, means the DPA Counterparty having determined that, as at the GRP Principles Review Response Deadline:

- (A) the underlying data used to compile or prepare such price source:

- (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
- (i) is appropriately documented;
  - (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and
- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and **"GRP Quality Criterion"** shall be construed accordingly;

**"GRP Review Calculation Period"** means in respect of each GRP Principles Review, the twelve (12) Month period ending on (and including) the day immediately prior to the GRP Principles Review Response Deadline;

**"GRP Trading Day"** means any day on which trading on the market from which the Gas Prices Sources are derived ordinarily takes place.

**"Initial GRP Index"** means the NBP UK Index;

**"NBP UK Index"** means the National Balancing Point (NBP) Virtual Trading Point as published on ICE Futures Europe;

**"Price Source Live Day"** means, in respect of price source, a day where Gas GB Day Ahead Contracts are conducted or reported; and

**"Proposed GRP Expert"** has the meaning given to that term in paragraph 2.3(A) (*Validity of GRP Dispute Notices*) of Part B (*GRP Review Procedures*).

**Part B**  
**GRP Review Procedures**

**1. GRP PRINCIPLES REVIEW**

***Requirement to undertake GRP Principles Reviews***

1.1 The DPA Counterparty:

- (A) shall conduct a GRP Principles Review if:
  - (i) the Gas Price Sources cease to be available to the DPA Counterparty;
  - (ii) the splitting of the Great Britain gas market has been proposed or effected by the relevant Competent Authority;
  - (iii) the volume (expressed in therms) of Gas GB Day Ahead Contracts in respect of gas to be delivered within Great Britain reflected in each Gas Price Source is nil in any 10-TD Sample Period;
  - (iv) the Gas Price Sources cease to be available to the DPA Counterparty on commercially reasonable terms; or
  - (v) the GRP Principles Request Criterion is met; and
- (B) may conduct a GRP Principles Review if it determines that the Gas Reference Price does not reflect the market price for the sale of gas delivered within Great Britain,

(each, a "**GRP Principles Review Trigger**").

1.2 If the Generator considers that the calculation of the Gas Reference Price does not comply with all of the GRP Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a GRP Principles Review (a "**GRP Principles Request Notice**"). A GRP Principles Request Notice:

- (A) shall specify which of the GRP Principles the Generator believes the calculation of the Gas Reference Price does not comply with;
- (B) may include proposals from the Generator with respect to the manner in which the non-compliance with the GRP Principles should be addressed (including any proposals regarding GRP Mechanism Amendments which the Generator considers should be effected); and
- (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B).

1.3 For the purposes of paragraph 1.1(A)(v), the "**GRP Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a GRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the GRP Principles Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a GRP Principles Request Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a GRP Principles Request Notice are party as a percentage of the total

volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Validity of GRP Principles Request Notices**

- 1.4 The Generator acknowledges and agrees that all GRP Principles Request Notices shall be invalid and of no effect if the GRP Principles Request Criterion is not met.
- 1.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the GRP Principles Request Criterion has been met (a "**GRP Principles Request Validity Notice**").

**Purpose of Gas Price Principles Review**

- 1.6 If the DPA Counterparty is required or elects to undertake a GRP Principles Review pursuant to paragraph 1.1, then the purpose of such GRP Principles Review shall be to assess the extent to which:
- (A) the calculation of the Gas Reference Price in accordance with Condition 10.4 (*Gas Price calculation*) is compliant with the GRP Principles and, if the calculation of the Gas Reference Price in accordance with Condition 10.4 (*Gas Price calculation*) is not compliant with the GRP Principles, the changes to Condition 10.4 (*Gas Price calculation*) which the DPA Counterparty considers to be necessary to ensure compliance with all of the GRP Principles; and
  - (B) any of the following would ensure compliance with all of the GRP Principles:
    - (i) an amendment or supplement to, or replacement or removal of, the Gas Price Sources;
    - (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Gas Reference Price; or
    - (iii) a change to the day-ahead methodology for calculating the Gas Reference Price, including any consequential changes to Condition 10 (*Variable Payment Calculation*) and this Annex 6 (*Gas Reference Price Review*) which are necessary to give effect to any of the foregoing,
- (each such change, or any combination of such changes, a "**GRP Mechanism Amendment**").
- 1.7 If the DPA Counterparty considers that it is not possible to effect any GRP Mechanism Amendment in a manner which will be compliant with all of the GRP Principles, the DPA Counterparty shall assess which GRP Mechanism Amendment should be effected in order to comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation.

**Notification of GRP Principles Review**

- 1.8 If the DPA Counterparty is required or elects to undertake a GRP Principles Review pursuant to paragraph 1.1, the DPA Counterparty shall give a notice to the Generator (a "**GRP Principles Review Notice**") and, if the DPA Counterparty has been required to undertake a GRP Principles Review pursuant to paragraph 1.1(A)(iii), the DPA Counterparty shall give the GRP Principles Review Notice no later than five (5) Business Days after such GRP Principles Review Trigger has occurred. A GRP Principles Review Notice shall:

- (A) specify the GRP Principles Review Trigger which has occurred; and
- (B) specify a deadline by which the Generator may provide a GRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the GRP Principles Review Notice is received by the Generator (the "**GRP Principles Review Response Deadline**").

1.9 The Generator may, as soon as reasonably practicable and not later than the GRP Principles Review Response Deadline, give a notice to the DPA Counterparty (the "**GRP Principles Review Response Notice**"). A GRP Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the GRP Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the GRP Principles Review Trigger should be addressed (including any proposals regarding GRP Mechanism Amendments which the Generator considers should be effected).

1.10 The DPA Counterparty may disregard any GRP Principles Review Response Notice received by the DPA Counterparty after the GRP Principles Review Response Deadline.

#### ***Gas Price Sources during GRP Principles Review***

1.11 From the date on which the GRP Principles Review Notice is given, the Gas Price Sources prior to the commencement of the relevant GRP Principles Review shall remain unamended pending the outcome of a GRP Principles Review.

#### ***Notification of outcome of GRP Principles Review***

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

- (A) set out the outcome of the GRP Principles Review (including the details of any GRP Mechanism Amendments which the DPA Counterparty proposes to effect) (the "**GRP Principles Review Proposals**") and, if paragraph 1.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any GRP Mechanism Amendment in a manner which complies with all of the GRP Principles; and
  - (ii) the GRP Principles which the DPA Counterparty considers will be complied with by virtue of the GRP Mechanism Amendments being effected; and
- (B) specify the date from which any GRP Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the GRP Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and
  - (ii) in the case of GRP Mechanism Amendments relating to a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii), not before such splitting of the Great Britain gas market occurs,

(the "**GRP Principles Review Implementation Date**").

**GRP Principles Review: Disputes**

- 1.13 Paragraph 2 (*GRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*GRP Principles Reviews*).
- 1.14 Subject to paragraph 2.9, the GRP Mechanism Amendments set out in the GRP Principles Review Outcome Notice shall take effect on the GRP Principles Review Implementation Date.

**2. GRP REVIEWS: DISPUTE PROCESS*****Procedure for raising a Dispute***

- 2.1 The Generator may, no later than twenty (20) Business Days after receipt of a GRP Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such GRP Principles Review (a "**GRP Dispute Notice**" and any such Generator, a "**GRP Dispute Generator**"). Each GRP Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

***Validity of GRP Dispute Notices***

- 2.2 The Generator acknowledges and agrees that all GRP Dispute Notices shall be invalid and of no effect if the GRP Dispute Threshold Criterion in respect of the relevant GRP Dispute is not met.
- 2.3 The DPA Counterparty shall notify the Generator no later than twenty (20) Business Days after the GRP Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a GRP Dispute Generator) (a "**GRP Dispute Validity Notice**"). A GRP Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the GRP Dispute (the "**Proposed GRP Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed GRP Expert to determine such GRP Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed GRP Expert from determining the GRP Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

***Permitted bases of Dispute: GRP Principles Review***

- 2.4 For the purposes of paragraph 2.1, the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any GRP Principles Review if:
- (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take account of in undertaking the GRP Principles Review (as set out in its GRP Principles Review Response Notice);
  - (B) the DPA Counterparty has proposed to effect a GRP Mechanism Amendment which was stated in the GRP Principles Review Outcome Notice to be compliant with all of the GRP Principles and the Generator considers that such GRP Mechanism Amendment contravenes one (1) or more of the GRP Principles; or

- (C) the DPA Counterparty has proposed to effect a GRP Mechanism Amendment on the basis contemplated by paragraph 1.7 and the Generator considers that either:
- (i) one (1) or more of the proposed GRP Mechanism Amendments contravenes one (1) of the GRP Principles which the DPA Counterparty considers would be complied with by virtue of such GRP Mechanism Amendment being effected; or
  - (ii) an alternative GRP Mechanism Amendment complies with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Mechanism Amendments contained within the GRP Principles Review Proposals,

and any GRP Dispute Notice which is based upon grounds other than those specified in this paragraph 2.4 shall be invalid and of no effect.

***Resolution of valid GRP Disputes***

2.5 If:

- (A) the GRP Dispute Threshold Criterion is met in respect of any GRP Dispute; and
- (B) the relevant GRP Dispute complies with paragraph 2.4,

then such GRP Dispute shall be finally resolved in accordance with paragraph 2.6.

2.6 If paragraph 2.5 applies to any GRP Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such GRP Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant GRP Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such GRP Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such GRP Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such GRP Dispute on the basis that:
  - (i) (if the GRP Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed GRP Expert;
  - (ii) (if the GRP Expert Appointment Threshold is not met):
    - (a) the DPA Counterparty may, within ten (10) Business Days, either:
      - (1) make an alternative proposal as to the identity of an Expert to determine the GRP Dispute, in which case paragraphs 2.3(A) and 2.6(E)(i), and this paragraph 2.6(E)(ii)(a)(1), shall apply to such proposed Expert as if that Expert were a Proposed GRP Expert; or



- (2) request the LCIA to nominate an Expert for the purposes of determining the GRP Dispute in accordance with Condition 41.4 (*Expert Determination Procedure*); and
- (b) the terms of reference of the Proposed GRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the GRP Dispute;
- (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 2.6(E)(i) or having been nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 2.6(E)(iii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);
- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
  - (b) the DPA Counterparty in consequence of, or in respect of, their appointment as the Expert to any DPA Generator (including the Generator);
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the GRP Dispute, to afford the Generator an opportunity to make submissions in respect of the GRP Dispute irrespective of whether or not the Generator is a GRP Dispute Generator;
- (vi) if the circumstances described in Condition 41.8 (*Expert Determination Procedure*) arise, paragraphs 2.3(A), 2.6(E)(i) and 2.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
- (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (i) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the GRP Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the GRP Dispute Generators; and (ii) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the GRP Dispute Generators; and

- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any GRP Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the GRP Dispute giving rise to that determination;
- (G) if the GRP Dispute falls within paragraph 2.4(A), 2.4(B) or 2.4(C)(i), the Expert shall be instructed to determine whether the GRP Mechanism Amendments contravene the GRP Principles (or such of the GRP Principles as were specified by the DPA Counterparty as being complied with by virtue of the proposed implementation of the GRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within their determination: (i) a GRP Mechanism Amendment which will comply with all of the GRP Principles; or (ii) (if the Expert considers that it is not possible to effect any GRP Mechanism Amendment in a manner which will be compliant with all of the GRP Principles) the GRP Mechanism Amendment which will comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation;
- (H) if the GRP Dispute falls within paragraph 2.4(C)(ii), the Expert shall be instructed to determine whether the GRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Mechanism Amendments contained within the GRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the GRP Mechanism Amendments which will comply with the greatest number of GRP Principles in accordance with the GRP Principles Prioritisation;
- (I) notwithstanding paragraphs (F) and (G), the Expert shall not be permitted to include within their determination any alternative GRP Mechanism Amendments to those contained within the GRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is a GRP Mechanism Amendment which will comply with a greater number of GRP Principles (in accordance with the GRP Principles Prioritisation) than the GRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the GRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the GRP Principles.

#### ***GRP Expert Appointment Threshold***

2.7 For the purposes of paragraphs 2.6(E)(i) and 2.6(E)(ii), the "**GRP Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed GRP Expert. For the purposes of determining whether the GRP Expert Appointment Threshold is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed GRP Expert as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed GRP Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

#### ***Provisions applying pending resolution of a GRP Dispute***

- 2.8 If there is a valid GRP Dispute requiring resolution in accordance with the provisions of paragraphs 2.5 to 2.7 then, pending resolution of such GRP Dispute, paragraph 2.9 shall apply.
- 2.9 If there is a valid GRP Dispute relating to a GRP Principles Review:
- (A) the relevant GRP Principles Review Outcome Notice shall be deemed to be valid and effective and the GRP Principles Review Proposals shall apply with effect from the GRP Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the GRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made their determination.

***GRP Dispute Threshold Criterion***

- 2.10 For the purposes of this paragraph 2 (*GRP Reviews: Dispute Process*), the "**GRP Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a GRP Dispute Notice in respect of any given GRP Dispute prior to the date specified in paragraph 2.1. For the purposes of determining whether the GRP Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a GRP Dispute Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a GRP Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part C**  
**GRP Principles**

**1. GRP PRINCIPLES**

The following are the "**GRP Principles**":

- (A) Save in respect of a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part B, the calculation of the Gas Reference Price shall be the same for all CCUS Programme DPAs.
- (B) The calculation of the Gas Reference Price shall reflect the market price for the sale of gas within Great Britain or, in the event of a GRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part B, the relevant part of Great Britain.
- (C) The Gas Reference Price shall be calculated using prices in respect of contracts as far in advance of the delivery of gas pursuant to such contracts as possible, provided that, for this purpose, the Gas Reference Price calculation shall not include prices that are quoted further in advance than Gas GB Day Ahead Contracts.
- (D) The Gas Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (E) The Gas Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the gas market in Great Britain that would, absent the existence of CCUS Programme DPA, contribute to the operational behaviour of the gas market in Great Britain and the pricing thereof.
- (F) The Gas Reference Price shall be calculated using price sources which are available to the DPA Counterparty on commercially reasonable terms.
- (G) The Gas Reference Price calculation is to utilise price sources which satisfy the GRP Quality Criteria.
- (H) The Gas Reference Price calculation is to utilise price sources which satisfy the GRP Inclusion Criteria.
- (I) If a GRP Principles Review Trigger falling within paragraph 1.1(A)(ii) of Part B occurs or has occurred, the Gas Reference Price calculation shall pay regard to the physical location of the Facility and the extent to which such physical location and constraints on the delivery of gas into the market thereby imposed may have on the price for the sale of its gas delivered within Great Britain or the relevant part of Great Britain.

**2. PRIORITISATION OF GRP PRINCIPLES**

If:

- (A) the application of any combination of the GRP Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Gas Reference Price to satisfy all of the GRP Principles,

the GRP Principle first appearing in the list in paragraph 1 (*GRP Principles*) shall be afforded priority.

**Annex 7**  
**Carbon Market Reference Price Review**

1. **DEFINITIONS: ANNEX 7**

1.1 In this Annex 7 (*Carbon Market Reference Price Review*):

**"10-TD UKA Sample Period"** means a period of ten (10) consecutive CMRP Trading Days;

**"10-TD UKA Trade Number Percentage"** means, in respect of a price source, the number of UKA Futures December Contracts in respect of UK Allowances conducted on or reported by such price source in a 10-TD Sample Period expressed as a percentage of the total number of UKA Futures December Contracts in respect of UK Allowances conducted on or reported by all of the Calculation CMRP Sources during such 10-TD Sample Period and, where such price source conducts or reports UKA Futures December Contracts less frequently than every CMRP Trading Day, the number of UKA Futures December Contracts attributable to each CMRP Trading Day shall be the number of UKA Futures December Contracts conducted or reported on each CMRP Source Live Day allocated equally to each CMRP Trading Day from and including each CMRP Source Live Day to and excluding the next occurring CMRP Source Live Day;

**"10-TD UKA Volume Percentage"** means, in respect of a price source, the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted on or reported by such price source in a 10-TD Sample Period expressed as a percentage of the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted on or reported by all of the Calculation CMRP Sources during such 10-TD Sample Period and, where such price source conducts or reports UKA Futures December Contracts less frequently than every CMRP Trading Day, the number of UK Allowances traded pursuant to UKA Futures December Contracts attributable to each CMRP Trading Day shall be the number of UK Allowances traded pursuant to UKA Futures December Contracts conducted or reported on each CMRP Source Live Day allocated equally to each CMRP Trading Day from and including each CMRP Source Live Day to and excluding the next occurring CMRP Source Live Day;

**"Calculation CMRP Source"** means a price source which is determined pursuant to a CMRP Principles Review to have met the CMRP Quality Criteria;

**"Carbon Market Reference Price"** has the meaning given to that term in Condition 10.9 (*Carbon Price calculation*);

**"CMRP Dispute"** means a Dispute in relation to the outcome of a CMRP Principles Review;

**"CMRP Dispute Generator"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Notice"** has the meaning given to that term in paragraph 2.1 (*Procedure for raising a Dispute*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Threshold Criterion"** has the meaning given to that term in paragraph 2.10 (*CMRP Dispute Threshold Criterion*) of Part A (*CMRP Review Procedures*);

**"CMRP Dispute Validity Notice"** has the meaning given to that term in paragraph 2.3 (*CMRP Dispute Threshold Criterion*) of Part A (*CMRP Review Procedures*);

**"CMRP Expert Appointment Threshold"** has the meaning given to that term in paragraph 2.7 (*CMRP Expert Appointment Threshold*) of Part A (*CMRP Review Procedures*);

**"CMRP Inclusion Criteria"** in respect of a price source, means that:

- (A) the 10-TD UKA Trade Number Percentage in respect of such price source in each 10-TD Sample Period during the CMRP Review Calculation Period is at least five per cent. (5%);
- (B) the 10-TD UKA Volume Percentage in respect of such price source in each 10-TD Sample Period during the CMRP Review Calculation Period is at least five per cent. (5%);
- (C) such price source has at all times during the CMRP Review Calculation Period, no fewer than ten (10) market participants which, it is evidenced to the DPA Counterparty:
  - (i) are each party to one (1) or more UKA Futures December Contract and for each of such market participants at least one reported trade of a UKA Futures December Contract is used to derive the UKA Futures December Contract Trading Price; and
  - (ii) comply with one (1) or more of the following criteria:
    - (a) for price sources that are based on brokered trades, the market participants are listed in a maintained list of counterparties which have been approved by one (1) or more brokers to trade the products relevant to such price sources;
    - (b) for price sources that are based on a commodity exchange, the market participants have established arrangements with that exchange for the provision of initial and variation margins;
    - (c) for price sources where trades are enacted through a software platform, the market participants have established links with the platform;
    - (d) for price sources that provide pricing information on a subscription basis, the market participants have a subscription to that price source; or (where none of the above can be evidenced);
    - (e) the market participants have incurred a material cost to trade using the price source; and
- (D) such price source reports prices of UKA Futures December Contracts at least once per VP Settlement Unit during the CMRP Review Calculation Period,

and **"CMRP Inclusion Criterion"** shall be construed accordingly;

**"CMRP Mechanism Amendment"** has the meaning given to that term in paragraph 1.6 (*Purpose of Carbon Price Principles Review*) of Part B (*CMRP Review Procedures*);

**"CMRP Principles"** has the meaning given to that term in paragraph 1 (*CMRP Principles*) of Part B (*CMRP Principles*);

**"CMRP Principles Prioritisation"** means the prioritisation of the CMRP Principles provided for in paragraph 2 (*Prioritisation of CMRP Principles*) of Part B (*CMRP Principles*);

**"CMRP Principles Request Criterion"** has the meaning given to that term in paragraph 1.3 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Request Notice"** has the meaning given to that term in paragraph 1.2 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Request Validity Notice"** has the meaning given to that term in paragraph 1.5 (*Validity of CMRP Principles Request Notices*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 1 (*CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Implementation Date"** has the meaning given to that term in paragraph 1.12(B) (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Notice"** has the meaning given to that term in paragraph 1.8 (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Outcome Notice"** has the meaning given to that term in paragraph 1.12 (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Proposals"** has the meaning given to that term in paragraph 1.12(A) (*Notification of outcome of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Response Deadline"** has the meaning given to that term in paragraph 1.8(B) (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Response Notice"** has the meaning given to that term in paragraph 1.9 (*Notification of CMRP Principles Review*) of Part A (*CMRP Review Procedures*);

**"CMRP Principles Review Trigger"** has the meaning given to that term in paragraph 1.1 (*Requirement to undertake CMRP Principles Reviews*) of Part A (*CMRP Review Procedures*);

**"CMRP Quality Criteria"** in respect of a price source, means the DPA Counterparty having determined that, as at the CMRP Principles Review Response Deadline:

- (A) the underlying data used to compile or prepare such price source:
  - (i) is subject to reasonable procedures to ensure its accuracy and completeness;
  - (ii) is subject to reasonable procedures to ensure its retention by the administrator for a period of at least two (2) years such that it is capable of audit; and
  - (iii) consists only of verifiable transaction data and does not include data which is the product of a subjective judgement;
- (B) the methodology used by the administrator to prepare and compile such price source:
  - (i) is appropriately documented;
  - (ii) is not subject to subjective judgement; and
  - (iii) may only be changed in accordance with documented change control procedures which provide adequate protection against conflicts of interest which exist or are reasonably likely to arise in connection with such methodology; and

- (C) the administrator of such price source and the submitters to such price source have effective organisational and administrative arrangements in place to identify and manage conflicts of interest and to protect commercial confidentiality,

and **"CMRP Quality Criterion"** shall be construed accordingly;

**"CMRP Review Calculation Period"** means in respect of each CMRP Principles Review, the twelve (12) Month period ending on (and including) the day immediately prior to the CMRP Principles Review Response Deadline;

**"CMRP Sources"** means the UKA Futures Indices to be used in calculation of the Carbon Market Reference Price, being the Initial CMRP Index or such other replacement or supplementary UKA Futures Indices which are required to be so used as a result of the operation of the provisions of Part A (*CMRP Review Procedures*), and **"CMRP Source"** shall be construed accordingly;

**"CMRP Source Live Day"** means, in respect of a price source, a day where UKA Futures December Contracts are conducted or reported;

**"CMRP Trading Day"** means any day on which trading on the market from which the CMRP Sources are derived ordinarily takes place;

**"ICE Futures Europe Index"** means the UKA Futures Index reported by ICE Futures Europe;

**"Initial CMRP Index"** means the ICE Futures Europe Index;

**"Proposed CMRP Expert"** has the meaning given to that term in paragraph 2.3(A) (*Validity of CMRP Dispute Notices*) of Part A (*CMRP Review Procedures*);

**"UK Allowance"** means an allowance created under the UK Emissions Trading Scheme;

**"UK Emissions Trading Registry"** means the registry established pursuant to the UK Emissions Trading Scheme;

**"UK Emissions Trading Scheme"** means the emissions trading scheme in the UK established pursuant to The Greenhouse Gas Emissions Trading Scheme Order 2020;

**"UKA Futures December Contract"** means a December contract with the soonest contract delivery date relating to the transfer of a fixed number of UK Allowances for the relevant year (in which the Carbon Market Reference Price is calculated) between two or more accounts established under the UK Emissions Trading Registry;

**"UKA Futures December Contract Trading Price"** means the price (*expressed in £/tCO<sub>2</sub>*) for a UKA Futures December Contract as reflected in a UKA Futures Index or UKA Futures Indices (as the context requires);

**"UKA Futures December Contract Trading Volume"** means the quantity of UK Allowances (expressed in tCO<sub>2</sub>) traded for delivery in a VP Settlement Unit via the auction occurring on the previous CMRP Trading Day (or, in respect of the last VP Settlement Unit of any day which is also the first (1st) VP Settlement Unit of a CMRP Trading Day, occurring on such CMRP Trading Day) and conducted by the operator of the relevant CMRP Source; and

**"UKA Futures Index"** means an index of UKA Futures December Contract Trading Prices or another source of UKA Futures December Contract Trading Prices and **"UKA Futures Indices"** shall be construed accordingly.





**Part A**  
**CMRP Review Procedures**

**1. CMRP PRINCIPLES REVIEW**

***Requirement to undertake CMRP Principles Reviews***

1.1 The DPA Counterparty:

- (A) shall conduct a CMRP Principles Review if:
  - (i) the requirement for the CMRP Sources to publish a UKA Futures December Contract Trading Price is materially amended, repealed or replaced;
  - (ii) the replacement or repeal of the UK Emissions Trading Scheme has been proposed or effected by the relevant Competent Authority;
  - (iii) the number of UK Allowances traded pursuant to UKA Futures December Contracts reflected in the CMRP Sources is nil in any 10-TD Sample Period;
  - (iv) the CMRP Sources ceases to be available to the DPA Counterparty on commercially reasonable terms; or
  - (v) the CMRP Principles Request Criterion is met; and
- (B) may conduct a CMRP Principles Review if it determines that the Carbon Market Reference Price does not reflect the market price for the trading of UK Allowances,

(each, a "**CMRP Principles Review Trigger**").

1.2 If the Generator considers that the calculation of the Carbon Market Reference Price does not comply with all of the CMRP Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a CMRP Principles Review (a "**CMRP Principles Request Notice**"). A CMRP Principles Request Notice:

- (A) shall specify which of the CMRP Principles the Generator believes the calculation of the Carbon Market Reference Price does not comply with;
- (B) may include proposals from the Generator with respect to the manner in which the non-compliance with the CMRP Principles should be addressed (including any proposals regarding CMRP Mechanism Amendments which the Generator considers should be effected); and
- (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B).

1.3 For the purposes of paragraph 1.1(A)(v), the "**CMRP Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CMRP Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the CMRP Principles Request Criterion is met, the DPA Counterparty shall calculate:

- (A) the number of DPA Generators which have given a CMRP Principles Request Notice as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CMRP Principles Request Notice are party as a percentage of the total

volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Validity of CMRP Principles Request Notices**

- 1.4 The Generator acknowledges and agrees that all CMRP Principles Request Notices shall be invalid and of no effect if the CMRP Principles Request Criterion is not met.
- 1.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the CMRP Principles Request Criterion has been met (a "**CMRP Principles Request Validity Notice**").

**Purpose of Carbon Price Principles Review**

- 1.6 If the DPA Counterparty is required or elects to undertake a CMRP Principles Review pursuant to paragraph 1.1, then the purpose of such CMRP Principles Review shall be to assess the extent to which:

(A) the calculation of the Carbon Market Reference Price in accordance with Condition 10.9 (*Carbon Price calculation*) is compliant with the CMRP Principles and, if the calculation of the Carbon Market Reference Price in accordance with Condition 10.9 (*Carbon Price calculation*) is not compliant with the CMRP Principles, the changes to Condition 10.9 (*Carbon Price calculation*) which the DPA Counterparty considers to be necessary to ensure compliance with all of the CMRP Principles; and

(B) any of the following would ensure compliance with all of the CMRP Principles:

- (i) an amendment or supplement to, or replacement or removal of, the CMRP Sources;
- (ii) the application of any weighting (whether by volume or number of trades) with respect to any price sources used in the calculation of the Carbon Market Reference Price; or
- (iii) a change to the day-ahead methodology for calculating the Carbon Market Reference Price,

including any consequential changes to Condition 10.9 (*Carbon Price calculation*) and this Annex 7 (*Carbon Market Reference Price Review*) which are necessary to give effect to any of the foregoing,

(each such change, or any combination of such changes, a "**CMRP Mechanism Amendment**").

- 1.7 If the DPA Counterparty considers that it is not possible to effect any CMRP Mechanism Amendment in a manner which will be compliant with all of the CMRP Principles, the DPA Counterparty shall assess which CMRP Mechanism Amendment should be effected in order to comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation.

**Notification of CMRP Principles Review**

- 1.8 If the DPA Counterparty is required or elects to undertake a CMRP Principles Review pursuant to paragraph 1.1, the DPA Counterparty shall give a notice to the Generator (a "**CMRP Principles Review Notice**") and, if the DPA Counterparty has been required to undertake a CMRP Principles Review pursuant to paragraph 1.1(A)(iii), the DPA Counterparty shall give

the CMRP Principles Review Notice no later than five (5) Business Days after such CMRP Principles Review Trigger has occurred. A CMRP Principles Review Notice shall:

- (A) specify the CMRP Principles Review Trigger which has occurred; and
- (B) specify a deadline by which the Generator may provide a CMRP Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the CMRP Principles Review Notice is received by the Generator (the **"CMRP Principles Review Response Deadline"**).

1.9 The Generator may, as soon as reasonably practicable and not later than the CMRP Principles Review Response Deadline, give a notice to the DPA Counterparty (the **"CMRP Principles Review Response Notice"**). A CMRP Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the CMRP Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the CMRP Principles Review Trigger should be addressed (including any proposals regarding CMRP Mechanism Amendments which the Generator considers should be effected).

1.10 The DPA Counterparty may disregard any CMRP Principles Review Response Notice received by the DPA Counterparty after the CMRP Principles Review Response Deadline.

***CMRP Sources during CMRP Principles Review***

1.11 From the date on which the CMRP Principles Review Notice is given, the CMRP Sources prior to the commencement of the relevant CMRP Principles Review shall remain unamended pending the outcome of a CMRP Principles Review.

***Notification of outcome of CMRP Principles Review***

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

- (A) set out the outcome of the CMRP Principles Review (including the details of any CMRP Mechanism Amendments which the DPA Counterparty proposes to effect) (the **"CMRP Principles Review Proposals"**) and, if paragraph 1.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any CMRP Mechanism Amendment in a manner which complies with all of the CMRP Principles; and
  - (ii) the CMRP Principles which the DPA Counterparty considers will be complied with by virtue of the CMRP Mechanism Amendments being effected; and
- (B) specify the date from which any CMRP Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the CMRP Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and

- (ii) in the case of CMRP Mechanism Amendments relating to a CMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii), not before such replacement or repeal of the UK Emissions Trading Scheme occurs,

(the "**CMRP Principles Review Implementation Date**").

**CMRP Principles Review: Disputes**

- 1.13 Paragraph 2 (*CMRP Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*CMRP Principles Reviews*).
- 1.14 Subject to paragraph 2.9, the CMRP Mechanism Amendments set out in the CMRP Principles Review Outcome Notice shall take effect on the CMRP Principles Review Implementation Date.

**2. CMRP REVIEWS: DISPUTE PROCESS**

**Procedure for raising a Dispute**

- 2.1 The Generator may, no later than twenty (20) Business Days after receipt of a CMRP Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such CMRP Principles Review (a "**CMRP Dispute Notice**" and any such Generator, a "**CMRP Dispute Generator**"). Each CMRP Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

**Validity of CMRP Dispute Notices**

- 2.2 The Generator acknowledges and agrees that all CMRP Dispute Notices shall be invalid and of no effect if the CMRP Dispute Threshold Criterion in respect of the relevant CMRP Dispute is not met.
- 2.3 The DPA Counterparty shall notify the Generator no later than twenty (20) Business Days after the CMRP Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a CMRP Dispute Generator) (a "**CMRP Dispute Validity Notice**"). A CMRP Dispute Validity Notice shall:
  - (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the CMRP Dispute (the "**Proposed CMRP Expert**") and details of the relevant expertise that the DPA Counterparty considers qualifies the Proposed CMRP Expert to determine such CMRP Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Proposed CMRP Expert from determining the CMRP Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 43.2 (*Consolidation of Connected Disputes*).

**Permitted bases of Dispute: CMRP Principles Review**

- 2.4 For the purposes of paragraph 2.1, the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any CMRP Principles Review if:
  - (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take

account of in undertaking the CMRP Principles Review (as set out in its CMRP Principles Review Response Notice);

- (B) the DPA Counterparty has proposed to effect a CMRP Mechanism Amendment which was stated in the CMRP Principles Review Outcome Notice to be compliant with all of the CMRP Principles and the Generator considers that such CMRP Mechanism Amendment contravenes one (1) or more of the CMRP Principles; or
- (C) the DPA Counterparty has proposed to effect a CMRP Mechanism Amendment on the basis contemplated by paragraph 1.7 and the Generator considers that either:
  - (i) one (1) or more of the proposed CMRP Mechanism Amendments contravenes one (1) of the CMRP Principles which the DPA Counterparty considers would be complied with by virtue of such CMRP Mechanism Amendment being effected; or
  - (ii) an alternative CMRP Mechanism Amendment complies with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Mechanism Amendments contained within the CMRP Principles Review Proposals,

and any CMRP Dispute Notice which is based upon grounds other than those specified in this paragraph 2.4 shall be invalid and of no effect.

**Resolution of valid CMRP Disputes**

2.5 If:

- (A) the CMRP Dispute Threshold Criterion is met in respect of any CMRP Dispute; and
- (B) the relevant CMRP Dispute complies with paragraph 2.4,

then such CMRP Dispute shall be finally resolved in accordance with paragraph 2.6.

2.6 If paragraph 2.5 applies to any CMRP Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such CMRP Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant CMRP Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such CMRP Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such CMRP Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such CMRP Dispute on the basis that:
  - (i) (if the CMRP Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed CMRP Expert;

- (ii) (if the CMRP Expert Appointment Threshold is not met):
  - (a) the DPA Counterparty may, within ten (10) Business Days, either:
    - (1) make an alternative proposal as to the identity of an Expert to determine the CMRP Dispute, in which case paragraphs 2.3(A) and 2.6(E)(i), and this paragraph 2.6(E)(ii)(a)(1), shall apply to such proposed Expert as if that Expert were a Proposed CMRP Expert; or
    - (2) request the LCIA to nominate an Expert for the purposes of determining the CMRP Dispute in accordance with Condition 41.4 (Expert Determination Procedure); and
  - (b) the terms of reference of the Proposed CMRP Expert (or any Expert nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the CMRP Dispute;
- (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 2.6(E)(i) or having been nominated by the LCIA pursuant to paragraph 2.6(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 2.6(E)(iii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);
- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
  - (a) the Generator to the Expert in consequence of, or in respect of, their appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
  - (b) the DPA Counterparty in consequence of, or in respect of, their appointment as the Expert to any DPA Generator (including the Generator);
- (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the CMRP Dispute, to afford the Generator an opportunity to make submissions in respect of the CMRP Dispute irrespective of whether or not the Generator is a CMRP Dispute Generator;
- (vi) if the circumstances described in Condition 41.8 (*Expert Determination Procedure*) arise, paragraphs 2.3(A), 2.6(E) and 2.6(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;

- (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (i) required to include in their determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the CMRP Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the CMRP Dispute Generators; and (ii) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the CMRP Dispute Generators; and
- (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs;
- (F) the Generator acknowledges and agrees that the determination of the Expert in any CMRP Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the CMRP Dispute giving rise to that determination;
- (G) if the CMRP Dispute falls within paragraph 2.4(A), 2.4(B) or 2.4(C)(i), the Expert shall be instructed to determine whether the CMRP Mechanism Amendments contravene the CMRP Principles (or such of the CMRP Principles as were specified by the DPA Counterparty as being complied with by virtue of the proposed implementation of the CMRP Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within their determination: (i) a CMRP Mechanism Amendment which will comply with all of the CMRP Principles; or (ii) (if the Expert considers that it is not possible to effect any CMRP Mechanism Amendment in a manner which will be compliant with all of the CMRP Principles) the CMRP Mechanism Amendment which will comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation;
- (H) if the CMRP Dispute falls within paragraph 2.4(C)(ii), the Expert shall be instructed to determine whether the CMRP Mechanism Amendments proposed by the Generator would result in compliance with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Mechanism Amendments contained within the CMRP Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the CMRP Mechanism Amendments which will comply with the greatest number of CMRP Principles in accordance with the CMRP Principles Prioritisation; and
- (I) notwithstanding paragraphs (F) and (G), the Expert shall not be permitted to include within their determination any alternative CMRP Mechanism Amendments to those contained within the CMRP Principles Review Proposals unless such proposals contravene one (1) or more principles and the Expert has determined that there is a CMRP Mechanism Amendment which will comply with a greater number of CMRP Principles (in accordance with the CMRP Principles Prioritisation) than the CMRP Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the CMRP Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the CMRP Principles.

### **CMRP Expert Appointment Threshold**

- 2.7 For the purposes of paragraphs 2.6(E)(i) and 2.6(E)(ii), the "**CMRP Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed CMRP Expert. For the purposes of determining whether the CMRP Expert Appointment Threshold is met, the DPA Counterparty shall calculate:



- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed CMRP Expert as a percentage of the total number of DPA Generators; and
- (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed CMRP Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

***Provisions applying pending resolution of a CMRP Dispute***

- 2.8 If there is a valid CMRP Dispute requiring resolution in accordance with the provisions of paragraphs 2.5 to 2.7 then, pending resolution of such CMRP Dispute, paragraph 2.9 shall apply.
- 2.9 If there is a valid CMRP Dispute relating to a CMRP Principles Review:
- (A) the relevant CMRP Principles Review Outcome Notice shall be deemed to be valid and effective and the CMRP Principles Review Proposals shall apply with effect from the CMRP Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the CMRP Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made their determination.

***CMRP Dispute Threshold Criterion***

- 2.10 For the purposes of this paragraph 2 (*CMRP Reviews: Dispute Process*), the "**CMRP Dispute Threshold Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a CMRP Dispute Notice in respect of any given CMRP Dispute prior to the date specified in paragraph 2.1. For the purposes of determining whether the CMRP Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a CMRP Dispute Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a CMRP Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part B**  
**CMRP Principles**

**1. CMRP PRINCIPLES**

The following are the "**CMRP Principles**":

- (A) Save in respect of a CMRP Principles Review Trigger pursuant to paragraph 1.1(A)(ii) of Part A where the replacement or repeal of the UK Emissions Trading Scheme has led to the introduction of separate emissions trading, carbon pricing or similar schemes within the separate constituent countries of the United Kingdom, the calculation of the Carbon Market Reference Price shall:
  - (i) be the same for all CCUS Programme DPAs; and
  - (ii) reflect the market price for the sale of UK Allowances.
- (B) The Carbon Market Reference Price shall be calculated using prices in respect of contracts as far in advance of the sale of UK Allowances pursuant to such contracts as possible, provided that, for this purpose, the Carbon Market Reference Price calculation shall not include prices that are quoted further in advance than UKA Futures December Contracts.
- (C) The Carbon Market Reference Price shall be calculated so as to reflect a reasonable volume of trades from a reasonable number and diverse range of market participants.
- (D) The Carbon Market Reference Price shall be calculated so as not to unduly dampen, dilute, disrupt or otherwise distort components of the UK Emissions Trading Scheme that would, absent the existence of CCUS Programme DPAs, contribute to the operational behaviour of participants in, and the pricing of UK Allowances under, such scheme.
- (E) The Carbon Market Reference Price shall be calculated using price sources which are available to the DPA Counterparty on commercially reasonable terms.
- (F) The Carbon Market Reference Price calculation is to utilise price sources which satisfy the CMRP Quality Criteria.
- (G) The Carbon Market Reference Price calculation is to utilise price sources which satisfy the CMRP Inclusion Criteria.

**2. PRIORITISATION OF CMRP PRINCIPLES**

If:

- (A) the application of any combination of the CMRP Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Carbon Market Reference Price to satisfy all of the CMRP Principles,

the CMRP Principle first appearing in the list in paragraph 1 (*CMRP Principles*) shall be afforded priority.

**Annex 8**  
**Reference Plant Review**

1. **DEFINITIONS: ANNEX 8**

1.1 In this Annex 8 (*Reference Plant Review*):

**"Acceptable Grounds of Objection"** has the meaning given to that term in paragraph 1.6 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Affiliate"** means, in relation to a Party, any holding company or subsidiary company of the relevant Party from time to time or any company which is a subsidiary company of a holding company of that Party from time to time (and the expressions "holding company" and "subsidiary" shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006);

**"Base Performance Assumptions Adjustments"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant"** means any person who meets the Energy Consultant Appointment Criteria and who is appointed to conduct a Reference Plant Criteria Review in accordance with the Reference Plant Criteria Review Procedure;

**"Energy Consultant Appointment Criteria"** means a person or firm who is:

- (A) an internationally recognised, leading energy consultant experienced in advising clients in the UK electricity generation sector including in relation to the design, engineering, procurement and construction of Plants; and
- (B) not an Affiliate of either Party or any other DPA Generator;

**"Energy Consultant Appointment Threshold"** has the meaning given to that term in paragraph 1.8 (*Energy Consultant Appointment Threshold*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant Information Request"** has the meaning given to that term in paragraph 1.13 (*Energy Consultant Information Request*) of Part A (*Reference Plant Review Procedures*);

**"Energy Consultant Minimum Criteria"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Generator Objection Notice"** has the meaning given to that term in paragraph 1.6 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Initial Reference Plant"** means a Plant with the Initial Base Performance Assumptions;

**"Minimum Terms of Reference Requirements"** means that the Proposed Energy Consultant is required to:

- (A) conduct a Reference Plant Criteria Review;
- (B) commence the Reference Plant Criteria Review on the Reference Plant Criteria Review Commencement Date;

- (C) produce and deliver a Reference Plant Criteria Review Report no later than 01 November (or, if such date is not a Business Day, the first (1st) Business Day thereafter), to the DPA Counterparty; and
- (D) consent to the DPA Counterparty disclosing each Reference Plant Criteria Review Report to all DPA Generators;

**"Plant"** means an unabated electricity generation from fossil gaseous and liquid fuels facility capable of generating and metering electricity;

**"Proposed Energy Consultant"** means the Energy Consultant notified by the DPA Counterparty to the Generator in accordance with paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Energy Consultant Deadline"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Energy Consultant Determination Notice"** has the meaning given to that term in paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Proposed Terms of Reference"** means the terms of reference for the Proposed Energy Consultant notified by the DPA Counterparty to the Generator in accordance with paragraph 1.5 (*Proposed Energy Consultant and Proposed Terms of Reference*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant"** means the Initial Reference Plant or such other replacement Plant which becomes the new Reference Plant as result of the operation of the provisions of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria"** means the Plant with the highest lower heating value (LHV) efficiency on the Great Britain electricity system at the time of each Reference Plant Criteria Review based on the Reference Plant Criteria Methodology;

**"Reference Plant Criteria Methodology"** means the following methodology that the Energy Consultant shall apply in order to determine the Reference Plant in accordance with the Reference Plant Criteria for each Reference Plant Criteria Review:

- (A) define a standard set of reference site conditions in order to determine the Reference Plant ("**Reference Plant Site Conditions**");
- (B) review Industry Documents and industry publications in order to determine the technical detail of Plants on the Great Britain electricity system, including (but not limited to):
  - (i) gas turbine model;
  - (ii) plant configuration;
  - (iii) cycle design parameters; and
  - (iv) cooling system design;
- (C) review industry publications, and/or use an industry recognised thermal performance modelling software, in order to determine a Plant's expected technology design basis plant performance level for normal full load operation (including plant net efficiency) under new and clean conditions;

- (D) develop an independent thermal performance model for a Plant using industry recognised thermal performance modelling software for verification of expected plant performance level for normal full load operation at design basis conditions with consideration of previous details identified under (B) and (C) above and appropriate technical assumptions, and subsequent off-design adjustment to the plant performance to account for operation at Reference Plant Site Conditions under new and clean conditions; and
- (E) determine the equivalent Base Performance Assumptions which correspond to a Plant's performance at Reference Plant Site Conditions under new and clean conditions as determined pursuant to limb (D);

**"Reference Plant Criteria Review"** means a review of the Reference Plant conducted by an Energy Consultant pursuant to, and within the parameters specified in, paragraph 1 (*Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*) in order to determine:

- (A) whether the Reference Plant meets the Reference Plant Criteria; and
- (B) where the Reference Plant does not meet the Reference Plant Criteria:
  - (i) the identity of the replacement Reference Plant; and
  - (ii) the changes required to the Base Performance Assumptions used in CCUS Programme DPAs to reflect the replacement Reference Plant;

**"Reference Plant Criteria Review Commencement Date"** means 01 August (or, if such date is not a Business Day, the first (1st) Business Day thereafter);

**"Reference Plant Criteria Review Dispute"** means a Dispute in relation to the outcome of a Reference Plant Criteria Review;

**"Reference Plant Criteria Review Dispute Notice"** has the meaning given to that term in paragraph 2.1(A) (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Implementation Date"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Outcome Notice"** has the meaning given to that term in paragraph 1.15 (*Notification of outcome of Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Procedure"** means the rules, obligations and procedures set out in paragraph 1 (*Reference Plant Criteria Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Report"** means the report prepared by the Energy Consultant referred to in paragraph 1.14 (*Energy Consultant's Reference Plant Criteria Review Report*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Criteria Review Year"** means each calendar year during the Term in which a Reference Plant Criteria Review will be conducted, provided that:

- (A) the first calendar year in which a Reference Plant Criteria Review shall be conducted shall be the year *[to be determined]*<sup>78</sup>; and
- (B) each subsequent calendar year(s) in which a Reference Plant Criteria Review(s) shall be conducted shall be determined in accordance with paragraph 1.3 of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute"** means a Reference Plant Criteria Review Dispute or a Reference Plant Principles Review Dispute;

**"Reference Plant Dispute Generator"** has the meaning given to that term in paragraph 3.1 (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Notice"** has the meaning given to that term in paragraph 3.1 (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Threshold Criterion"** has the meaning given to that term in paragraph 3.14 (*Reference Plant Dispute Threshold Criterion*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Dispute Validity Notice"** has the meaning given to that term in paragraph 3.3 (*Validity of Reference Plant Dispute Notices*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Expert Appointment Threshold"** has the meaning given to that term in paragraph 3.10 (*Reference Plant Expert Appointment Threshold*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Mechanism Amendment"** has the meaning given to that term in paragraph 2.6 (*Purpose of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles"** means the principles set out in paragraph 1 (*Reference Plant Principles*) of Part B (*Reference Plant Principles*);

**"Reference Plant Principles Prioritisation"** means the prioritisation of the Reference Plant Principles provided for in paragraph 2 (*Reference Plant Principles Review*) of Part B (*Reference Plant Principles*);

**"Reference Plant Principles Request Criterion"** has the meaning given to that term in paragraph 2.3 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Request Notice"** has the meaning given to that term in paragraph 2.2 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Request Validity Notice"** has the meaning given to that term in paragraph 2.5 (*Validity of Reference Plant Principles Request Notices*) of Part A (*Reference Plant Review Procedures*);

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<sup>78</sup> Note to Reader: The first Reference Plant Criteria Review Year is to be determined by BEIS.

**"Reference Plant Principles Review"** means a review conducted by the DPA Counterparty pursuant to, and within the parameters specified in, paragraph 2 (*Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Dispute"** means a Dispute in relation to the outcome of a Reference Plant Principles Review;

**"Reference Plant Principles Review Dispute Notice"** has the meaning given to that term in paragraph 3.1(B) (*Procedure for raising a Dispute*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Implementation Date"** has the meaning given to that term in paragraph 2.12(B) (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Notice"** has the meaning given to that term in paragraph 2.8 (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Outcome Notice"** has the meaning given to that term in paragraph 2.12 (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Proposals"** has the meaning given to that term in paragraph 2.12(A) (*Notification of outcome of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Response Deadline"** has the meaning given to that term in paragraph 2.8(B) (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Response Notice"** has the meaning given to that term in paragraph 2.9 (*Notification of Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**"Reference Plant Principles Review Trigger"** has the meaning given to that term in paragraph 2.1 (*Requirement to undertake Reference Plant Principles Reviews*) of Part A (*Reference Plant Review Procedures*); and

**"Reference Plant Review"** means a Reference Plant Criteria Review or a Reference Plant Principles Review (as the context requires) and **"Reference Plant Reviews"** shall be construed accordingly.

**Part A**  
**Reference Plant Review Procedures**

**1. REFERENCE PLANT CRITERIA REVIEWS**

***Reference Plant Criteria Review Years***

- 1.1 Subject to paragraphs 1.2, 1.3, and 1.4, the DPA Counterparty shall procure that an Energy Consultant conducts a Reference Plant Criteria Review in each Reference Plant Criteria Review Year in accordance with the provisions of this paragraph 1.
- 1.2 The DPA Counterparty shall not be required to procure that an Energy Consultant conducts a Reference Plant Criteria Review before [1 August [●]<sup>79</sup>].
- 1.3 Subject to paragraph 1.4, if a Reference Plant Criteria Review Outcome Notice specifies:
- (A) that no change should be made to the Reference Plant and the Base Performance Assumptions, the next Reference Plant Criteria Review Year shall be the year immediately following the year in which the Reference Plant Criteria Review that has been completed has been conducted; or
  - (B) that a change should be made to the Reference Plant and the Base Performance Assumptions, the DPA Counterparty shall be required to procure that an Energy Consultant conducts a Reference Plant Criteria Review five (5) years from the year in which the Reference Plant Criteria Review that has been completed has been conducted.
- 1.4 The DPA Counterparty shall not be required to conduct a Reference Plant Criteria Review pursuant to paragraph 1.1 if, as at the Reference Plant Criteria Review Commencement Date, a Reference Plant Principles Review is being conducted.

***Proposed Energy Consultant and Proposed Terms of Reference***

- 1.5 The DPA Counterparty shall notify the Generator in writing (a "**Proposed Energy Consultant Determination Notice**") of:
- (A) the identity of the Proposed Energy Consultant; and
  - (B) the Proposed Terms of Reference,
- for each Reference Plant Criteria Review no later than 01 February (or, if such date is not a Business Day, the first (1st) Business Day thereafter) in each Reference Plant Criteria Review Year (the "**Proposed Energy Consultant Deadline**"). Each Proposed Energy Consultant Determination Notice shall contain reasonable details in order to demonstrate that the Proposed Energy Consultant meets the Energy Consultant Appointment Criteria and that the Proposed Terms of Reference are materially consistent with the Minimum Terms of Reference Requirements (the "**Energy Consultant Minimum Criteria**").
- 1.6 The Generator may, no later than twenty (20) Business Days following the receipt of the Proposed Energy Consultant Determination Notice, notify the DPA Counterparty in writing that it objects to the appointment of the Proposed Energy Consultant ("**Generator Objection Notice**"), where it considers (acting reasonably) that one (1) or more of the Energy Consultant Minimum Criteria are not satisfied (the "**Acceptable Grounds of Objection**"). A Generator

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<sup>79</sup> Note to Reader: The first Reference Plant Criteria Review Year is to be determined by BEIS.



Objection Notice shall include all Supporting Information in relation to the matters specified therein.

- 1.7 The Generator acknowledges and agrees that:
- (A) it may only submit a Generator Objection Notice on the basis of the Acceptable Grounds of Objection; and
  - (B) a Generator Objection Notice which objects to the appointment of the Proposed Energy Consultant on any other grounds shall be invalid and of no effect.

***Energy Consultant Appointment Threshold***

- 1.8 For the purposes of paragraphs 1.9 and 1.10, the "**Energy Consultant Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or have been deemed to have consented by not submitting a valid objection in writing within the period referred to in paragraph 1.6 above, to the Proposed Energy Consultant and the Proposed Terms of Reference. For the purposes of determining whether the Energy Consultant Appointment Threshold is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed Energy Consultant and the Proposed Terms of Reference as a percentage of the total DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed Energy Consultant and the Proposed Terms of Reference are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).
- 1.9 If the Energy Consultant Appointment Threshold is met, the Energy Consultant Minimum Criteria shall be deemed to have been satisfied and paragraph 1.12 shall apply.
- 1.10 If the Energy Consultant Appointment Threshold is not met, the DPA Counterparty shall, within twenty (20) Business Days of the expiry of the period referred to in paragraph 1.6 above, either:
- (A) make an alternative proposal in relation to the Proposed Energy Consultant and/or the Proposed Terms of Reference; or
  - (B) (1) request the LCIA to nominate an alternative Proposed Energy Consultant and/or alternative Proposed Terms of Reference; and (2) following such nomination by the LCIA, the DPA Counterparty shall make such alternative proposal to the Generator,
- following which, in either case, paragraphs 1.5 to 1.11 shall apply to such alternative proposal.
- 1.11 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Energy Consultant Appointment Threshold is met.

***Appointment of Energy Consultant***

- 1.12 Where paragraph 1.9 applies, the DPA Counterparty shall no later than sixty (60) days prior to the Reference Plant Criteria Review Commencement Date, or where there is a Dispute in relation to the appointment of the Proposed Energy Consultant as soon as reasonably practicable:

- (A) at its own cost and expense, appoint the Proposed Energy Consultant as the Energy Consultant to conduct the Reference Plant Criteria Review based on the Proposed Terms of Reference;
- (B) use reasonable endeavours to procure that:
  - (i) the Energy Consultant confirms in writing to the DPA Counterparty that:
    - (a) it is willing and available to conduct the Reference Plant Criteria Review; and
    - (b) it has no conflict of interest which prevents it from conducting the Reference Plant Criteria Review;
  - (ii) the terms of appointment and the terms of reference of the Energy Consultant include:
    - (a) an undertaking that the Energy Consultant shall not disclose any Supporting Information disclosed or delivered by: (i) the Generator to the Energy Consultant in consequence of, or in respect of, its appointment as the Energy Consultant to any other DPA Generator; and (ii) the DPA Counterparty to the Energy Consultant in consequence of, or in respect of, its appointment as the Energy Consultant to any DPA Generator other than the Generator; and
    - (b) to exempt the Energy Consultant (and any employee, agent or adviser of or to the Energy Consultant) from liability for anything done or omitted in the discharge or purported discharge of the Energy Consultant's functions, unless such act or omission is fraudulent or in bad faith;
- (C) instruct the Energy Consultant:
  - (i) to act fairly and impartially;
  - (ii) to produce and deliver the Reference Plant Criteria Review Report;
  - (iii) to use its professional judgement, discretion and experience in making its determination;
  - (iv) to reach a determination which is to be applied to all CCUS Programme DPAs; and
  - (v) to determine whether the Reference Plant meets the Reference Plant Criteria and, if not, determine the change to the Reference Plant (if any) and the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs, as the Energy Consultant considers appropriate, to reflect the change to the Reference Plant; and
- (D) provide the Energy Consultant with all Supporting Information and assistance that the Energy Consultant reasonably requires to undertake the Reference Plant Criteria Review (and if the DPA Counterparty fails to provide any such Supporting Information or assistance, the Energy Consultant shall continue to undertake the Reference Plant Criteria Review without that Supporting Information or assistance).

**Energy Consultant Information Request**

- 1.13 For the purposes of a Reference Plant Criteria Review, the Energy Consultant shall be entitled to request that the Parties provide such Supporting Information relating to the Reference Plant Criteria Review (an "**Energy Consultant Information Request**") as the Energy Consultant reasonably requires, and if the Energy Consultant delivers an Energy Consultant Information Request to one (1) or more Parties, the Parties shall, not later than ten (10) Business Days after receipt of the request, or such longer period as is specified by the Energy Consultant, prepare and deliver such Supporting Information to the Energy Consultant.

**Energy Consultant's Reference Plant Criteria Review Report**

- 1.14 Each Reference Plant Criteria Review Report shall be a document comprising at least the following:
- (A) a summary of the report's contents;
  - (B) the following statements:
    - (i) confirmation that the Energy Consultant is not an Affiliate of either Party or any other DPA Generator;
    - (ii) confirmation that the Energy Consultant has acted in the capacity of an independent professional in undertaking the Reference Plant Criteria Review and producing the Reference Plant Criteria Review Report; and
    - (iii) any reasons that the Energy Consultant wishes to give for considering that it is independent of both Parties and any other DPA Generator;
  - (C) the determination of the Energy Consultant as to whether the Reference Plant:
    - (i) meets the Reference Plant Criteria; or
    - (ii) does not meet the Reference Plant Criteria, with a summary of the reasons for the Energy Consultant having reached such conclusion, and either:
      - (a) details relating to the change(s) to the Reference Plant (if any) and the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs, as the Energy Consultant considers appropriate, to reflect change to the Reference Plant; or
      - (b) a statement that the Energy Consultant has determined that no Plant meets the Reference Plant Criteria;
  - (D) a section setting out:
    - (i) any assumptions made by the Energy Consultant in making its determination in respect of the Reference Plant Criteria Review Report;
    - (ii) the professional rules or standards which apply to the Energy Consultant;
    - (iii) the curriculum vitae of the key personnel who have prepared the Reference Plant Criteria Review Report and/or any other details of the Energy Consultant's qualifications and experience that it wishes to provide; and

- (iv) any other fact-based evidence as the Energy Consultant in its professional judgement, opinion and experience determines is relevant.

**Notification of outcome of Reference Plant Criteria Review**

1.15 The DPA Counterparty shall, no later than 01 December (or, if such date is not a Business Day, the first (1st) Business Day thereafter) in the relevant Reference Plant Criteria Review Year, notify the Generator of the outcome of the Reference Plant Criteria Review (a **"Reference Plant Criteria Review Outcome Notice"**). Each Reference Plant Criteria Review Outcome Notice shall:

- (A) set out whether the Reference Plant, pursuant to the Reference Plant Criteria Review and based on the Reference Plant Criteria Review Report:
  - (i) meets the Reference Plant Criteria; or
  - (ii) does not meet the Reference Plant Criteria, with a summary of the reasons for such determination having been made, and setting out either:
    - (a) the change to the Reference Plant with:
      - (1) the consequential change(s) that will be made to the Base Performance Assumptions used in CCUS Programme DPAs to reflect the change to the Reference Plant (the **"Base Performance Assumptions Adjustments"**); and
      - (2) the date on which the Base Performance Assumptions Adjustments will take effect and will be utilised to calculate the Variable Payment Rate, such date being 01 January in the year immediately following the relevant Reference Plant Criteria Review Commencement Date (a **"Reference Plant Criteria Review Implementation Date"**); or
    - (b) that the DPA Counterparty has determined that no Plant meets the Reference Plant Criteria; and
- (B) include a copy of the relevant Reference Plant Criteria Review Report (redacted as necessary to protect Information which, in the opinion of the DPA Counterparty (acting reasonably), is commercially confidential to the DPA Counterparty or a DPA Generator).

**Implementation of outcome of Reference Plant Criteria Review**

1.16 Any Base Performance Assumption Adjustments shall take effect from the Reference Plant Criteria Review Implementation Date and shall be reflected in the calculation of the Variable Payment in the Variable Payment Billing Statements for each subsequent VP Billing Periods.

1.17 If, pursuant to a Reference Plant Criteria Review, an Energy Consultant has determined that no Plant meets the Reference Plant Criteria, the Reference Plant prior to the commencement of the relevant Reference Plant Criteria Review shall continue to apply pending the outcome of a Reference Plant Principles Review pursuant to paragraph 2 (*Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*);

**Reference Plant Criteria Review: Disputes**

1.18 Subject to Paragraph 3.4 of Part 3 (*Reference Plant Reviews: Dispute Process*), Paragraph 3 (*Reference Plant Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 1 (*Reference Plant Criteria Reviews*).

## 2. REFERENCE PLANT PRINCIPLES REVIEWS

### **Requirement to undertake Reference Plant Principles Reviews**

- 2.1 The DPA Counterparty shall conduct a Reference Plant Principles Review if:
- (A) the DPA Counterparty determines the Reference Plant Criteria and/or any one (1) or more of the Reference Plant Criteria Methodology are inconsistent with the Reference Plant Principles;
  - (B) an Energy Consultant determines as part of a Reference Plant Criteria Review that no Plant meets the Reference Plant Criteria;
  - (C) a material change to the Great Britain electricity market has been proposed or effected by the relevant Competent Authority; or
  - (D) the Reference Plant Principles Request Criterion is met,
- (each, a "**Reference Plant Principles Review Trigger**").
- 2.2 If the Generator considers that the Reference Plant and/or any one (1) or more of the Base Performance Assumptions are inconsistent with the Reference Plant Principles, the Generator may give a notice to the DPA Counterparty requesting the DPA Counterparty to undertake a Reference Plant Principles Review (a "**Reference Plant Principles Request Notice**"). A Reference Plant Principles Request Notice:
- (A) shall specify which one (1) or more of the Reference Plant Principles the Generator believes the Reference Plant and/or any one (1) or more of the Base Performance Assumptions are inconsistent with;
  - (B) may include proposals from the Generator with respect to the manner in which the inconsistencies with the Reference Plant Principles should be addressed (including any proposals regarding Reference Plant Mechanism Amendments which the Generator considers should be effected); and
  - (C) shall include Supporting Information, in reasonable detail, which the Generator considers to be relevant to and supportive of the matters in paragraphs (A) and (B) above.
- 2.3 For the purposes of paragraph 2.1(D), the "**Reference Plant Principles Request Criterion**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a Reference Plant Principles Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the Reference Plant Principles Request Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a Reference Plant Principles Request Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have given a Reference Plant Principles Request Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each CCUS Programme DPA).

### **Validity of Reference Plant Principles Request Notices**

- 2.4 The Generator acknowledges and agrees that all Reference Plant Principles Request Notices shall be invalid and of no effect if the Reference Plant Principles Request Criterion is not met.
- 2.5 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Reference Plant Principles Request Criterion has been met (a **"Reference Plant Principles Request Validity Notice"**).

***Purpose of Reference Plant Principles Review***

- 2.6 If the DPA Counterparty is required or elects to undertake a Reference Plant Principles Review pursuant to paragraph 2.1, then the purpose of such Reference Plant Principles Review shall be to assess the extent to which:
- (A) the Reference Plant Criteria and/or any one (1) or more of the Reference Plant Criteria Methodology are inconsistent with the Reference Plant Principles and, if there are any such inconsistencies, the changes to the Reference Plant Criteria and/or the Reference Plant Criteria Methodology which the DPA Counterparty considers to be necessary to ensure consistency with all of the Reference Plant Principles; and
  - (B) an amendment or supplement to, or replacement or removal of, the Reference Plant Criteria and/or one (1) or more Reference Plant Criteria Methodology would ensure consistency with all of the Reference Plant Principles,
- including any consequential changes to Condition 10 (*Variable Payment Calculation*) and this Annex 8 (*Reference Plant Reviews*) which are necessary to give effect to any of the foregoing (each such change, or any combination of such changes, a **"Reference Plant Mechanism Amendment"**).
- 2.7 If the DPA Counterparty considers that it is not possible to effect any Reference Plant Mechanism Amendment in a manner that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology will be consistent with all of the Reference Plant Principles, the DPA Counterparty shall assess which Reference Plant Mechanism Amendment(s) should be effected in order to ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation.

***Notification of Reference Plant Principles Review***

- 2.8 If the DPA Counterparty is required or elects to undertake a Reference Plant Principles Review pursuant to paragraph 2.1, the DPA Counterparty shall give a notice to the Generator (a **"Reference Plant Principles Review Notice"**). A Reference Plant Principles Review Notice shall:
- (A) specify the Reference Plant Principles Review Trigger which has occurred; and
  - (B) specify a deadline by which the Generator may provide a Reference Plant Principles Review Response Notice, such deadline to be no less than ten (10) Business Days after the date on which the Reference Plant Principles Review Notice is received by the Generator (the **"Reference Plant Principles Review Response Deadline"**).
- 2.9 The Generator may, as soon as reasonably practicable and not later than the Reference Plant Principles Review Response Deadline, give a notice to the DPA Counterparty (the **"Reference Plant Principles Review Response Notice"**). A Reference Plant Principles Review Response Notice:

- (A) shall include all of the Supporting Information which the Generator wishes the DPA Counterparty to take account of in undertaking the Reference Plant Principles Review; and
- (B) may include proposals from the Generator with respect to the manner in which the Reference Plant Principles Review Trigger should be addressed (including any proposals regarding Reference Plant Mechanism Amendments which the Generator considers should be effected).

2.10 The DPA Counterparty may disregard any Reference Plant Principles Review Response Notice received by the DPA Counterparty after the Reference Plant Principles Review Response Deadline.

***Reference Plant during Reference Plant Principles Review***

2.11 From the date on which the Reference Plant Principles Review Notice is given, the Reference Plant and the Base Performance Assumptions applying prior to the commencement of the relevant Reference Plant Principles Review shall remain unamended pending the outcome of a Reference Plant Principles Review.

***Notification of outcome of Reference Plant Principles Review***

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

- (A) set out the outcome of the Reference Plant Principles Review (including the details of any Reference Plant Mechanism Amendments which the DPA Counterparty proposes to effect) (the "**Reference Plant Principles Review Proposals**") and, if paragraph 2.7 applies:
  - (i) a summary of the reasons for the DPA Counterparty having determined that it is not possible to effect any Reference Plant Mechanism Amendment in a manner which ensures that the Reference Plant and the Base Performance Assumptions are consistent with all of the Reference Plant Principles; and
  - (ii) the Reference Plant Principles which the DPA Counterparty considers that the Reference Plant and the Base Performance Assumptions will be consistent with by virtue of the Reference Plant Mechanism Amendments being effected; and
- (B) specify the date from which any Reference Plant Mechanism Amendments are to take effect, such date being:
  - (i) no earlier than three (3) Months after the date on which the Reference Plant Principles Review Outcome Notice is given (or such other earlier date as may be agreed by the Parties); and
  - (ii) in the case of Reference Plant Mechanism Amendments relating to a Reference Plant Principles Review Trigger pursuant to paragraph 2.1(C), not before such material change to the Great Britain electricity market occurs,

(the "**Reference Plant Principles Review Implementation Date**").

### **Reference Plant Principles Review: Disputes**

- 2.13 Subject to Paragraph 3.5 of Part 3 (*Reference Plant Reviews: Dispute Process*), Paragraph 3 (*Reference Plant Reviews: Dispute Process*) shall apply to any Dispute relating to this paragraph 2 (*Reference Plant Principles Reviews*).
- 2.14 Subject to paragraph 3.13, the Reference Plant Mechanism Amendments set out in the Reference Plant Principles Review Outcome Notice shall take effect on the Reference Plant Principles Review Implementation Date.

### **3. REFERENCE PLANT REVIEWS: DISPUTE PROCESS**

#### **Procedure for raising a Dispute**

- 3.1 The Generator may, no later than twenty (20) Business Days after receipt of:
- (A) a Reference Plant Criteria Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such Reference Plant Criteria Review (a **"Reference Plant Criteria Review Dispute Notice"**); or
  - (B) a Reference Plant Principles Review Outcome Notice, give a notice to the DPA Counterparty that it wishes to raise a Dispute in relation to the outcome of such Reference Plant Principles Review (a **"Reference Plant Principles Review Dispute Notice"**),

(a Reference Plant Criteria Review Dispute Notice and a Reference Plant Principles Review Dispute Notice each being a **"Reference Plant Dispute Notice"** and any such Generator, a **"Reference Plant Dispute Generator"**). Each Reference Plant Dispute Notice shall comply with the requirements of a Dispute Notice as specified in Conditions 39.3(A) to 39.3(H) (*Outline of Dispute Resolution Procedure*) (inclusive).

#### **Validity of Reference Plant Dispute Notices**

- 3.2 The Generator acknowledges and agrees that all Reference Plant Dispute Notices shall be invalid and of no effect if the Reference Plant Dispute Threshold Criterion in respect of the relevant Reference Plant Dispute is not met.
- 3.3 The DPA Counterparty shall notify the Generator no later than ten (10) Business Days after the Reference Plant Dispute Threshold Criterion has been met (irrespective of whether or not the Generator is a Reference Plant Dispute Generator) (a **"Reference Plant Dispute Validity Notice"**). A Reference Plant Dispute Validity Notice shall:
- (A) include a proposal as to the identity, and terms of reference, of an Expert to determine the Reference Plant Dispute (the **"Proposed Reference Plant Expert"**) and details of the relevant expertise that the DPA Counterparty considers qualifies the Expert to determine such Reference Plant Dispute (being a person fulfilling the requirements of Condition 41.2 (*Expert Determination Procedure*) and having no conflict of interest which prevents the Expert from determining the Reference Plant Dispute);
  - (B) comply with the requirements of an Expert Determination Notice as specified in Condition 41.1 (*Expert Determination Procedure*); and
  - (C) comply with the requirements of a Consolidation Request as specified in Condition 41.2 (*Expert Determination Procedure*).



**Permitted bases of Dispute: Reference Plant Criteria Review**

- 3.4 For the purposes of paragraph 3.1(A), the Generator acknowledges and agrees that:
- (A) it may only raise a Dispute with respect to the outcome of any Reference Plant Criteria Review if there is manifest error or fraud in respect of the determination made by the relevant Energy Consultant: (i) as to whether or not the Reference Plant meets the Reference Plant Criteria; and/or (ii) where the Energy Consultant determines that the Reference Plant does not meet the Reference Plant Criteria, of the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs; and
  - (B) any Reference Plant Criteria Review Dispute Notice which is based upon grounds other than those specified in this paragraph 3.4 shall be invalid and of no effect.

**Permitted bases of Dispute: Reference Plant Principles Review**

- 3.5 For the purposes of paragraph 3.1(B), the Generator acknowledges and agrees that it may only raise a Dispute with respect to the outcome of any Reference Plant Principles Review if:
- (A) the DPA Counterparty has acted unreasonably in failing to pay due regard to the Supporting Information which the Generator requested the DPA Counterparty to take account of in undertaking the Reference Plant Principles Review (as set out in its Reference Plant Principles Review Response Notice);
  - (B) the DPA Counterparty has proposed to effect a Reference Plant Mechanism Amendment which was stated in the Reference Plant Principles Review Outcome Notice would ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology would be consistent with all of the Reference Plant Principles, in respect of which the Generator disagrees; or
  - (C) the DPA Counterparty has proposed to effect a Reference Plant Mechanism Amendment on the basis contemplated by paragraph 2.7 and the Generator considers that either:
    - (i) one (1) or more of the proposed Reference Plant Mechanism Amendments would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with one (1) of the Reference Plant Principles, which the DPA Counterparty considers the Reference Plant Criteria and/or the Reference Plant Criteria Methodology would be consistent with by virtue of such Reference Plant Mechanism Amendment being effected; or
    - (ii) an alternative Reference Plant Mechanism Amendment would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology complying with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Mechanism Amendments contained within the Reference Plant Principles Review Proposals,

and any Reference Plant Principles Review Dispute Notice which is based upon grounds other than those specified in this paragraph 3.5 shall be invalid and of no effect.

**Resolution of valid Reference Plant Disputes**

- 3.6 If:

- (A) the Reference Plant Dispute Threshold Criterion is met in respect of the relevant Reference Plant Dispute; and
- (B) the relevant Reference Plant Dispute complies with paragraph 3.4 (in respect of any Reference Plant Criteria Review Dispute Notice) or 3.5 (in respect of any Reference Plant Principles Review Dispute Notice) (as the context requires),

then such Reference Plant Dispute shall be finally resolved in accordance with paragraphs 3.7 and 3.8.

3.7 If paragraph 3.6 applies to any Reference Plant Dispute:

- (A) Condition 40 (*Resolution by Senior Representatives*) shall not apply to such Reference Plant Dispute;
- (B) no agreement between the Generator and the DPA Counterparty to settle the relevant Reference Plant Dispute shall be valid and binding unless such resolution is agreed with all DPA Generators;
- (C) the Arbitration Procedure shall not apply to such Reference Plant Dispute;
- (D) the Generator agrees not to raise any objection to the consolidation of such Reference Plant Dispute in accordance with Condition 43 (*Consolidation of Connected Disputes*);
- (E) the Expert Determination Procedure shall apply to such Reference Plant Dispute on the basis that:
  - (i) (if the Reference Plant Expert Appointment Threshold is met) the DPA Counterparty shall be deemed to have satisfied the requirements of, and to have given an Expert Determination Notice pursuant to, Condition 41.1 (*Expert Determination Procedure*) and the Parties will be deemed to have agreed to both the identity and the terms of reference of the Proposed Reference Plant Expert;
  - (ii) (if the Reference Plant Expert Appointment Threshold is not met):
    - (a) the DPA Counterparty may, within twenty (20) Business Days, either:
      - (1) make an alternative proposal as to the identity of an Expert to determine the Reference Plant Dispute, in which case paragraphs 3.3(A) and 3.7(E)(i), and this paragraph 3.7(E)(ii)(a)(1), shall apply to such proposed Expert as if they were a Proposed Reference Plant Expert; or
      - (2) request the LCIA to nominate an Expert for the purposes of determining the Reference Plant Dispute in accordance with Condition 41.4 (*Expert Determination Procedure*); and
    - (b) the terms of reference of the Proposed Reference Plant Expert (or any Expert nominated by the LCIA pursuant to paragraph 3.7(E)(ii)(a)(2)) shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that such terms of reference are sufficiently broad to enable the Expert to determine the Reference Plant Dispute;
  - (iii) if the DPA Counterparty and the DPA Generators fail to agree on the terms of appointment of the Expert within ten (10) Business Days of the identity of the

Expert having been agreed (or deemed to have been agreed) pursuant to paragraph 3.7(E)(i) or having been nominated by the LCIA pursuant to paragraph 3.7(E)(ii)(a)(2), such terms shall be determined by the DPA Counterparty in its sole and absolute discretion (having regard to any submissions made to it by any DPA Generator), and shall be binding on the Parties, provided that the terms of appointment comply with the requirements of paragraph 3.7(E)(ii) and Conditions 41.5(B) and 41.5(C) (*Expert Determination Procedure*);

- (iv) Condition 41.5 (*Expert Determination Procedure*) shall be deemed to have been modified such that the Parties shall use reasonable endeavours to procure that the terms of appointment of the Expert prohibit the Expert from disclosing any Supporting Information disclosed or delivered by:
    - (a) the Generator to the Expert in consequence of, or in respect of, its appointment as the Expert to any other DPA Generator or the DPA Counterparty; or
    - (b) the DPA Counterparty in consequence of, or in respect of, its appointment as the Expert to any DPA Generator (including the Generator);
  - (v) the Expert will be instructed, in establishing or modifying the procedure for the determination of the Reference Plant Dispute, to afford the Generator an opportunity to make submissions in respect of the Reference Plant Dispute irrespective of whether or not the Generator is a Reference Plant Dispute Generator;
  - (vi) if the circumstances described in Condition 41.12, (*Expert Determination Procedure*) arise, paragraphs 3.3(A), 3.7(E)(i) and 3.7(E)(ii) shall apply, with the necessary modifications, to the appointment of a replacement Expert;
  - (vii) for the purposes of Condition 41.12 (*Expert Determination Procedure*), the Expert shall be: (a) required to include in its determination provision for the allocation of their fees and the costs and expenses of the DPA Counterparty among each of the Reference Plant Dispute Generators in such manner as the Expert, in their absolute discretion, determines is fair and equitable if the Expert makes a determination against the Reference Plant Dispute Generators; and (b) permitted to allocate their fees and the costs and expenses of the DPA Counterparty in such manner as the Expert determines is fair and equitable if the Expert makes a determination in favour of the Reference Plant Dispute Generators; and
  - (viii) the Expert shall, notwithstanding any other provision of the Expert Determination Procedure, be instructed to reach a determination which is to be applied to all CCUS Programme DPAs; and
- (F) the Generator acknowledges and agrees that the determination of the Expert in any Reference Plant Dispute shall be applied to all CCUS Programme DPAs, irrespective of whether the Generator was a party to the Reference Plant Dispute giving rise to that determination.

3.8 If the Reference Plant Dispute is a Reference Plant Principles Review Dispute, the following additional provisions shall apply:

- (A) if the Reference Plant Principles Review Dispute falls within paragraph 3.5(A), 3.5(B) or 3.5(C)(i), the Expert shall be instructed to determine whether the Reference Plant Mechanism Amendments would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with the Reference Plant Principles (or such of the Reference Plant Principles that the DPA Counterparty specified the Reference Plant Criteria and/or the Reference Plant Criteria Methodology would be consistent with by virtue of the proposed implementation of the Reference Plant Mechanism Amendments) and, if the Expert finds in favour of the Generator, to include within its determination: (i) a Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with all of the Reference Plant Principles; or (ii) (if the Expert considers that this is not possible) the Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation;
  - (B) if the Reference Plant Principles Review Dispute falls within paragraph 3.5(C)(ii), the Expert shall be instructed to determine whether the Reference Plant Mechanism Amendments proposed by the Generator would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being consistent with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Mechanism Amendments contained within the Reference Plant Principles Review Proposals and, if the Expert finds in favour of the Generator, to stipulate the Reference Plant Mechanism Amendments that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with the greatest number of Reference Plant Principles in accordance with the Reference Plant Principles Prioritisation; and
  - (C) notwithstanding paragraphs 3.8(A) and 3.8(B), the Expert shall not be permitted to include within its determination any alternative Reference Plant Mechanism Amendments to those contained within the Reference Plant Principles Review Proposals unless such proposals would result in the Reference Plant Criteria and/or the Reference Plant Criteria Methodology being inconsistent with one (1) or more Reference Plant Principles and the Expert has determined that there is a Reference Plant Mechanism Amendment that will ensure that the Reference Plant Criteria and the Reference Plant Criteria Methodology are consistent with a greater number of Reference Plant Principles (in accordance with the Reference Plant Principles Prioritisation) than the Reference Plant Principles Review Proposals and, as such, the Expert's role shall not extend to an assessment of whether the Reference Plant Principles Review Proposals represent an optimal solution in the context of the parameters contemplated by the Reference Plant Principles.
- 3.9 If the Reference Plant Dispute is a Reference Plant Criteria Review Dispute, the Expert shall be instructed to determine:
- (A) whether there is manifest error or fraud in respect of the determination made by the relevant Energy Consultant as to whether or not the Reference Plant meets the Reference Plant Criteria; and/or
  - (B) where the Energy Consultant determines that the Reference Plant does not meet the Reference Plant Criteria, the consequential change(s) (if any) that will need to be made to the Base Performance Assumptions used in CCUS Programme DPAs.

**Reference Plant Expert Appointment Threshold**

- 3.10 For the purposes of paragraphs 3.7(E)(i) and 3.7(E)(ii), the "**Reference Plant Expert Appointment Threshold**" is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have consented, or not objected in writing, to both the identity and the terms of reference of the Proposed Reference Plant Expert. For the purposes of determining whether the Reference Plant Expert Appointment Threshold is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have consented or have been deemed to have consented to the Proposed Reference Plant Expert as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which DPA Generators which have consented or have been deemed to have consented to the Proposed Reference Plant Expert are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, "**volume**" shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Provisions applying pending resolution of a Reference Plant Dispute**

- 3.11 If there is a valid Reference Plant Dispute requiring resolution in accordance with the provisions of paragraphs 3.6 to 3.10 then, pending resolution of such Reference Plant Dispute, paragraphs 3.12 and 3.13 shall apply.
- 3.12 If there is a valid Reference Plant Dispute relating to a Reference Plant Criteria Review:
- (A) the relevant Reference Plant Criteria Review Outcome Notice shall be deemed to be valid and effective and paragraphs 1.16 and 1.17 shall be applied for the purposes of determining the Reference Plant with effect from the Reference Plant Criteria Review Implementation Date; and
  - (B) if the Expert determines that a Plant:
    - (i) meets the Reference Plant Criteria, such Plant shall be the Reference Plant with effect from the date falling three (3) Months after the date on which the Expert has made its determination; or
    - (ii) does not meet the Reference Plant Criteria, then (subject to the operation of the provisos contained in paragraph 1.17), the Reference Plant prior to the commencement of the relevant Reference Plant Criteria Review shall continue to apply pending the outcome of a Reference Plant Principles Review pursuant to paragraph 2 (*Reference Plant Principles Review*) of Part A (*Reference Plant Review Procedures*).
- 3.13 If there is a valid Reference Plant Dispute relating to a Reference Plant Principles Review:
- (A) the relevant Reference Plant Principles Review Outcome Notice shall be deemed to be valid and effective and the Reference Plant Principles Review Proposals shall apply with effect from the Reference Plant Principles Review Implementation Date; and
  - (B) if the Expert finds in favour of the Generator, the Reference Plant Mechanism Amendments provided for in the determination of such Expert shall be implemented on a date falling no earlier than three (3) Months after the date on which the Expert has made its determination.

**Reference Plant Dispute Threshold Criterion**

- 3.14 For the purposes of this paragraph 3 (*Reference Plant Reviews: Dispute Process*), the **"Reference Plant Dispute Threshold Criterion"** is that thirty per cent. (30%) or more of DPA Generators, by volume or number, have given the DPA Counterparty a Reference Plant Dispute Request Notice in any period of ten (10) consecutive Business Days. For the purposes of determining whether the Reference Plant Dispute Threshold Criterion is met, the DPA Counterparty shall calculate:
- (A) the number of DPA Generators which have given a Reference Plant Dispute Notice as a percentage of the total number of DPA Generators; and
  - (B) the volume attributable to CCUS Programme DPAs to which have given a Reference Plant Dispute Notice are party as a percentage of the total volume attributable to CCUS Programme DPAs (and, for this purpose, **"volume"** shall be calculated by the DPA Counterparty using the Net Dependable Capacity in each relevant CCUS Programme DPA).

**Part B**  
**Reference Plant Principles**

4. **REFERENCE PLANT PRINCIPLES**

The following are the "**Reference Plant Principles**":

- (A) The Reference Plant should be the same for all DPA Generators.
- (B) The Base Performance Assumptions utilised to calculate the Variable Payment Rate should incentivise a DPA Generator to dispatch electricity ahead of all unabated electricity generation from fossil fuels in the merit order on the Great Britain electricity system when the Variable Payment is greater than zero (0), in order to contribute to decarbonisation of the Great Britain electricity system.

5. **PRIORITISATION OF REFERENCE PLANT PRINCIPLES**

If:

- (A) the application of any combination of the Reference Plant Principles gives rise to a conflict; or
- (B) it is not possible for a methodology for calculating the Reference Plant to satisfy all of the Reference Plant Principles,

the Reference Plant Principle first appearing in the list in paragraph 1 (*Reference Plant Principles*) shall be afforded priority.

**Annex 9**  
**Form of Supply Chain Report<sup>80</sup>**

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<sup>80</sup> Note to Reader: Form of Supply Chain Report to be appended to the Conditions.



**Annex 10**  
**Pro forma notices<sup>81</sup>**

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<sup>81</sup> Note to Reader: These Pro Forma notices are subject to further review by BEIS.

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**Directors' Certificate**

**[Company Name]**  
**[Unique reference number: [●]]**

**(the "Company")**

**DPA – DIRECTORS' CERTIFICATE**

**To: [●] (the "DPA Counterparty")**

I, [●], being a Director of the Company, refer to the DPA entered into by the Company and the DPA Counterparty on [●] in relation to the [●] Project (the "**Agreement**"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries, the information contained in and enclosed with **[to insert description of matters being certified]** is in all material respects true, complete and accurate and not misleading, in each case by reference to the facts and circumstances then existing.

This Certificate is governed by and construed in accordance with English law.

.....  
Name: [●]  
Position: Director  
Dated: [●]

.....  
Name: [●]  
Position: Director  
Dated: [●]

**OR:**

.....  
Name: [●]  
Position: Director  
Dated: [●]

in the presence of:

.....  
Witness's name: [●]  
Occupation: [●]  
Address: [●]  
Dated: [●]

OCP Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

DPA – OCP NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.7(B).
3. This is an OCP Notice.
4. We consider that the following Operational Condition Precedent has been fulfilled: [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence the fulfilment of the Operational Condition Precedent.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is in all material respects true, complete and accurate and not misleading.

Yours faithfully,

.....

For and on behalf  
of the **Generator**

**OCP Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – OCP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.9(A) / 3.9(B).
3. This is an OCP Response Notice in relation to the OCP Notice dated [●] relating to paragraph [●] of the Agreement.
4. [We consider that you have [not] fulfilled the Operational Condition Precedent to which the OCP Notice relates.]/[We consider that we have not been provided with sufficient Supporting Information to determine whether you have fulfilled the Operational Condition Precedent to which the OCP Notice relates. We require the following OCP Supporting Information: [●].]

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Further OCP Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER OCP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.10(C)(ii).
3. This is a Further OCP Response Notice in relation to the OCP Notice dated [●] and the OCP Response Notice dated [●] relating to paragraph [●] of the Agreement.
4. Following our receipt of the OCP Supporting Information from you on [●], we consider that you have **[not]** fulfilled the Operational Condition Precedent.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**OCP Non-Compliance Notice**

**To:** [●] (the "DPA Counterparty")  
[Address]

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – OCP NON-COMPLIANCE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.11.
3. This is an OCP Non-Compliance Notice.
4. The Affected OCP is: [●].
5. [The Affected OCP [[will not]/[is not reasonably likely to] be fulfilled by the Longstop Date as a result of [●].]/[, which we previously notified to you as fulfilled pursuant to Condition 3.7(B), is no longer fulfilled.]] The reasons for this are: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to the content of this notice.
7. We [have taken]/[are proposing to take] the following remedial action: [●].
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Project Delay Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – PROJECT DELAY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.15.
3. This is a Project Delay Notice.
4. [We consider there is likely to be a delay to the **[design, development, construction, completion, testing and/or commissioning of the Facility]**]. The reasons for this are: [●].
5. We [have taken]/[are proposing to take] the following remedial action: [●].
6. We [enclose] /[set out] **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** the following:
  - (A) a revised Project timetable; and
  - (B) the estimated additional costs to the Project arising as a result of the delay to the Project.
7. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the delay of the **[design, development, construction, completion, testing and/or commissioning of the Facility]**.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

**Audit Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – AUDIT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.18.
3. This is an Audit Notice.
4. We [intend]/[nominate [●]] to exercise the Audit Right.
5. The date by which you must, in accordance with Condition 3.17, permit the exercise of the Audit Right is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Start Date Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – START DATE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Conditions 3.22 and 3.23.
3. This is a Start Date Notice.
4. We propose that the Start Date shall be: [●].
5. We **[enclose] / [will deliver to you on the Start Date]** a Directors' Certificate certifying that the matters provided for in Condition 3.26(C) are, as at the date of this notice [and on the proposed Start Date specified in this notice], true, complete and accurate in all material respects and are not misleading.

Yours faithfully,

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

## TCDE Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

## DPA – TCDE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.30.
3. This is a TCDE Notice.
4. The following T&S Commissioning Delay Event has occurred: [●].
5. ***[We hereby request an extension of the Longstop Date, the Milestone Delivery Date and/or the Target Commissioning Window as a result of the T&S Commissioning Delay Event.][We hereby request that the DPA Counterparty temporarily waives the T&S Connection Confirmation CP as a result of the T&S Commissioning Delay Event.]***
6. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the T&S Commissioning Delay Event and to evidence that we have fulfilled the Generator T&S Connection Works.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

**TCDE Response Notice**

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

**DPA – TCDE RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.32.
3. This is a TCDE Response Notice in relation to the TCDE Notice dated [●].
4. ***[We consider that a T&S Commissioning Delay Event as specified in the TCDE Notice has [not] occurred and is [not] continuing.][We consider that the Generator T&S Connection Works have [not] been completed][We consider that we have not been provided with sufficient Supporting Information to whether a T&S Commissioning Delay Event has occurred and is continuing and/or the Generator has [not] fulfilled the Generator T&S Connection Works. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
 the **DPA Counterparty**

**Further TCDE Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER TCDE RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.33(C)(ii).
3. This is a Further TCDE Response Notice in relation to the TCDE Notice dated [●] and the TCDE Response Notice dated [●].
4. Following our receipt of the TCDE Supporting Information from you on [●], we consider that a T&S Commissioning Delay Event has [**not**] occurred and is [**not**] continuing and you have [not] fulfilled the Generator T&S Connection Works.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**T&S Availability Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – T&S AVAILABILITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 3.42(A).
3. This is a T&S Availability Notice.
4. The anticipated date of the T&S Network being available to enable the Facility to export captured CO<sub>2</sub> to the T&S Network is: [●].
5. We are taking the following steps to carry out our obligations under the DPA: [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**TCDE Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – TCDE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.29.
3. This is a TCDE Termination Notice.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

### Milestone Requirement Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

### DPA – MILESTONE REQUIREMENT NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.1.
3. This is a Milestone Requirement Notice.
4. ***[We enclose invoices, payment receipts and other Supporting Information with respect to the Project [which are listed in Appendix 1 to this notice] which we consider to be relevant to evidence expenditure by us and our direct shareholders of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs, being £[●].]/(We enclose information as is listed as the Project Commitments and the following Supporting Information [which are listed in Appendix 1 to this notice] which we consider to be relevant to evidence compliance or fulfilment of the Project Commitments: [●].]***
5. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Milestone Assessment Response Notice**

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

**DPA – MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.3.
3. This is a Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●].
4. ***[We consider that you have [not] complied with and fulfilled a Milestone Requirement [and the Milestone Satisfaction Date is [●]].][We consider that we have not been provided with sufficient Supporting Information to determine whether you have complied with and fulfilled a Milestone Requirement. We require the following Requested Milestone Supporting Information: [●].]***

Yours faithfully,

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

**Further Milestone Assessment Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER MILESTONE ASSESSMENT RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.4(C)(ii).
3. This is a Further Milestone Assessment Response Notice in relation to the Milestone Requirement Notice dated [●] and the Milestone Assessment Response Notice dated [●].
4. Following our receipt of the Requested Milestone Supporting Information from you on [●], we consider that you have **[not]** complied with and fulfilled a Milestone Requirement [and the Milestone Satisfaction Date is [●]]..

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Milestone Delay Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – MILESTONE DELAY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.8.
3. This is a Milestone Delay Notice.
4. [We consider there is likely to be a delay to the fulfilment of the Milestone Requirement and the Milestone Requirement will not be met by the Milestone Delivery Date]. The reasons for this are: [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the delay of the Milestone Requirement.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

### NDCE Adjustment Notice

To: [●] (the "DPA Counterparty")  
 [Address]

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

Dated: [●]

### DPA – NDCE ADJUSTMENT NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 5.1.
3. This is an NDCE Adjustment Notice.
4. The Net Dependable Capacity will be lower than the Net Dependable Capacity Estimate by: [●] MW.
5. The Revised NDCE is: [●] MW.
6. The following change to the assets comprising the Facility will result from the reduction to the Net Dependable Capacity Estimate: [●].
7. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence of the change to the assets comprising the Facility which will result from the reduction to the Net Dependable Capacity Estimate.
8. *[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] the proposed Heat and Material Balance Diagram and any Supporting Information we consider to be relevant to evidence such changes to the Initial Heat and Material Balance Diagram.]*

Yours faithfully,

.....

For and on behalf of  
 the **Generator**

### Longstop Date Capacity Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

### DPA – LONGSTOP DATE CAPACITY NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.1.
3. This is a Longstop Date Capacity Notice.
4. The Net Dependable Capacity is [●] MW.
5. The Test Achieved CO<sub>2</sub> Capture Rate is [●].
6. The Plant Net Efficiency is [●].
7. The Start Up Times are:
  - (A) Hot start: [●]
  - (B) Warm start: [●]
  - (C) Cold start: [●]
8. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times, including details of the assets comprising the Facility at the date of this notice.
9. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**



Longstop Date Capacity Response Notice

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

DPA – LONGSTOP DATE CAPACITY RESPONSE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.4.
3. This is a Longstop Date Capacity Response Notice in relation to the Longstop Date Capacity Notice dated [●].
4. ***[We [do not] agree with Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice and consider that you have [not] met the Minimum Longstop Date Commissioning Requirements.]/[We consider that we have not been provided with sufficient Supporting Information to determine [the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times]/[the assets comprising the Facility as at the date of the Longstop Date Capacity Notice]. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Further Longstop Date Capacity Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER LONGSTOP DATE CAPACITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 6.5(B)(ii).
3. This is a Further Longstop Date Capacity Response Notice in relation to the Longstop Date Capacity Notice dated [●] and the Longstop Date Capacity Response Notice dated [●].
4. Following our receipt of the Longstop Date Capacity Supporting Information from you on [●], we consider that you have [**not**] demonstrated the Minimum Longstop Date Commissioning Requirements and we agree with the Net Dependable Capacity, the Test Achieved CO<sub>2</sub> Capture Rate, the Plant Net Efficiency and the Start Up Times as specified in the Longstop Date Capacity Notice.

Yours faithfully,

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

**Annual NDC Test Date Adjustment Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – ANNUAL NDC TEST DATE ADJUSTMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.1(C).
3. This is an Annual NDC Test Date Adjustment Notice.
4. The Revised Notified Annual NDC Test Date is [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the reasons for the change from the Initial Notified Annual NDC Test Date to the Revised Notified Annual NDC Test Date.

Yours faithfully,

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

**Annual NDC Test Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – ANNUAL NDC TEST NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.1(D).
3. This is an Annual NDC Test Notice.
4. The net generating capacity demonstrated is [●]
5. The Annual Adjusted NDC is [●].
6. We enclose a copy of the Annual NDC Test Report.
7. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the information contained in or enclosed with this notice.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Annual NDC Test Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – ANNUAL NDC TEST RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.4.
3. This is an Annual NDC Test Response Notice in relation to the Annual NDC Test Notice dated [●].
4. ***[We [do not] agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]/[We consider that we have not been provided with sufficient Supporting Information to determine Annual Adjusted NDC]. We require the following Supporting Information: [●].]***

Yours faithfully,

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

**Further Annual NDC Test Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – FURTHER ANNUAL NDC TEST RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.5(C)(ii).
3. This is a Further Annual NDC Test Response Notice in relation to the Annual NDC Test Notice dated [●] and the Annual NDC Test Response Notice dated [●].
4. Following our receipt of the Annual NDC Test Supporting Information from you on [●], ***[We agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]/[We do not agree with Annual Adjusted NDC as specified in the Annual NDC Test Notice.]***

Yours faithfully,

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

**Annual NDC Test Access Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – ANNUAL NDC TEST ACCESS NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 7.11.
3. This is an Annual NDC Test Access Notice.
4. We [intend]/[nominate [●]] to exercise the Annual NDC Test Access Right.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

### Outage Relief Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

### DPA – OUTAGE RELIEF NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.5.
3. This is an Outage Relief Notice.
4. We consider that a [**Generation Outage Relief Event**]/[**Capture Outage Relief Event**] has occurred, the relevant details of which are: [●].
5. The [**Generation Outage Relief Event**]/[**Capture Outage Relief Event**] has had the following impact on the [**Net Dependable Capacity, Availability Generation and/or Achieved CO<sub>2</sub> Capture Rate**].
6. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to the foregoing.
7. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information evidencing, in reasonable detail, the steps that we [**have taken**]/[and]/[**propose to take**] to comply with Condition 46.3 and the Reasonable and Prudent Standard.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**



### Outage Relief Response Notice

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

### DPA – OUTAGE RELIEF RESPONSE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.7.
3. This is an Outage Relief Response Notice in relation to the Outage Relief Notice dated [●].
4. ***[We consider that you have [not] provided sufficient evidence in relation to [Generation Outage Relief Event]/[Capture Outage Relief Event] as specified in the Outage Relief Notice]/[ We consider that we have not been provided with sufficient Supporting Information as to whether a [Generation Outage Relief Event]/[Capture Outage Relief Event] has occurred. We require the following Outage Relief Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
 the **DPA Counterparty**

**Further Outage Relief Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – FURTHER OUTAGE RELIEF RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 9.8(C)(ii).
3. This is a Further Outage Relief Response Notice in relation to the. Outage Relief Notice dated [●] and the Outage Relief Response Notice dated [●].
4. Following our receipt of the Outage Relief Supporting Information from you on [●], [We consider that you have **[not]** provided sufficient evidence in relation to **[Generation Outage Relief Event]/[Capture Outage Relief Event] as specified in the Outage Relief Notice**].

Yours faithfully,

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

**Billing Statement Dispute Notice**

To: [●]

From: [●]

Dated: [●]

**DPA – BILLING STATEMENT DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [you]/[us] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 13.4.
3. This is a Billing Statement Dispute Notice. The Billing Statement[s] to which the Dispute relates [is]/[are] [●].
4. [Our]/[The Generator's] [name]/[unique identifier] is [●].
5. The [name]/[unique identifier] of 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 consider that the following Billing Statement dispute should be [consolidated with]/[joined to] this dispute: [●].]***
9. We consider the correct position is [●]. Our reasons for this are [●].
10. We intend to rely on the following Supporting Information, copies of which are enclosed: [●].
11. We enclose the following additional Information which we consider relevant in relation to the dispute: [●].

Yours faithfully,

.....  
For and on behalf of  
[●]

**Metering Breach Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – METERING BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.4.
3. This is a Metering Breach Notice.
4. ***[We consider that you are in breach of the following Metering Obligation: [●].]***
5. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence the breach of Metering Obligation.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Metering Breach Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – METERING BREACH RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.5(A) / 21.5(B).
3. This is a Metering Breach Response Notice in relation to the Metering Breach Notice dated [●].
4. We **[do not]** accept that there has been a breach of the Metering Obligation as specified in the Metering Breach Notice.
5. [The date from which there has been a breach of the Metering Obligation is: [●].]
6. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator Metering Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR METERING REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.7(C).
3. This is an Generator Metering Remediation Notice.
4. We successfully completed the implementation of the Metering Remediation Plan on [●].
5. We enclose the Supporting Information which we consider to be relevant and supportive of the foregoing.

Yours faithfully,

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

**Generator Metering Remediation Notice Information Request**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR METERING REMEDIATION NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.8.
3. This is a Generator Metering Remediation Notice Information Request.
4. We require the following Supporting Information in relation to the Generator Metering Remediation Notice dated [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

### Metering Schematic Obligation Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

#### DPA – METERING SCHEMATIC OBLIGATION NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.11(A).
3. This is a Metering Schematic Obligation Notice.
4. We have identified a Material Change to the Facility Metering Equipment: ***[insert reasons for and details of the Material Change]***.
5. This Material Change occurred on ***[insert date Material Change occurred]***.
6. ***[We enclose an updated version of the relevant metering schematic diagram referred to in paragraph [●] of [●] of Annex 1 of the Conditions.]***
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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



### Metering Inspection Notice

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

### DPA – METERING INSPECTION NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 21.16.
3. This is a Metering Inspection Notice.
4. [We]/[●], nominated by us in accordance with Condition 21.15, intend to exercise the Metering Access Right.
5. The date by which you must, in accordance with Condition 21.15, permit the exercise of the Metering Access Right, is [●].

Yours faithfully,

.....

For and on behalf of  
 the **DPA Counterparty**

### Capture Rate Breach Notice

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

### DPA – CAPTURE RATE BREACH NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.2.
3. This is a Capture Rate Breach Notice.
4. ***[We consider that you have breached the Minimum CO<sub>2</sub> Capture Rate Obligation for [three (3) consecutive AP Billing Periods]/[three (3) non-consecutive AP Billing Periods within six (6) consecutive AP Billing Periods].]***
5. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of our conclusions.
6. We hereby notify you that we may serve a Default Termination Notice in accordance with Condition 35.26 on [●].

Yours faithfully,

.....

For and on behalf of  
 the **DPA Counterparty**

### Capture Rate Breach Response Notice

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

#### DPA – CAPTURE RATE BREACH RESPONSE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.3.
3. This is a Capture Rate Breach Response Notice.
4. ***[We intend to rectify the breach of the Minimum CO<sub>2</sub> Capture Rate Obligation by achieving an Achieved and Declared CO<sub>2</sub> Capture Rate Average equal to or greater than eighty five per cent. (85%) for three (3) consecutive AP Billing Periods prior to the Capture Rate Breach Deadline]/[providing the DPA Counterparty with and implement a Capture Rate Breach Rectification Plan].***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Capture Rate Breach Rectification Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CAPTURE RATE BREACH RECTIFICATION REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.5(B).
3. This is a Capture Rate Breach Rectification Review Notice.
4. ***[We approve the draft Capture Rate Breach Rectification Plan submitted to us on [●].]/[We consider that we have not been provided with sufficient Supporting Information in relation to the draft Capture Rate Breach Rectification Plan, in order to determine whether or not to approve such plan. We require the following Supporting Information: [●].]/[We require the following amendments to be made to the draft Capture Rate Breach Rectification Plan: [●]]/[We do not approve the draft Capture Rate Breach Rectification Plan for the following reasons: [●].]***

Yours faithfully,

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

**Generator Capture Rate Breach Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR CAPTURE RATE BREACH REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 22.7(B).
3. This is a Generator Capture Rate Breach Remediation Notice.
4. We successfully completed the implementation of the Approved Capture Rate Breach Rectification Plan on [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence that the breach of the Minimum CO<sub>2</sub> Capture Rate Obligation has been remedied.

Yours faithfully,

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

**DPA Counterparty Declaration Breach Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DPA COUNTERPARTY DECLARATION BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition23.3.
3. This is a DPA Counterparty Declaration Breach Notice.
4. [We consider that you are in breach of the following Declaration Obligation: [●].]
5. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the breach of the Declaration Obligation.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator Outage Declaration Breach Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR DECLARATION BREACH NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.4.
3. This is a Generator Declaration Breach Notice.
4. [We consider that we are in breach of the following Declaration Obligation: [●].]
5. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the breach of Declaration Obligation.

Yours faithfully,

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

**Declaration Inspection Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DECLARATION INSPECTION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 23.10.
3. This is a Declaration Inspection Notice.
4. We [*intend*]/[*nominate* [●]] to exercise the Declaration Access Right.
5. The date by which you must, in accordance with Condition 23.11, permit the exercise of the Declaration Access Right, is [●].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**Supply Chain Report Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – SUPPLY CHAIN REPORT RESPONSE NOTICE**

Dear Sir/Madam,

6. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
7. We further refer you to Condition 25.3.
8. This is a Supply Chain Report Response Notice. [in relation to the Supply Chain Report dated [●]].
9. ***[We consider that the Supply Chain Report does [not] comply with the requirements set out in Annex [●] (Form of Supply Chain Report)/[We consider that you have failed to submit a Supply Chain Report by the Supply Chain Report Deadline.]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**DPA Counterparty QCiL Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DPA COUNTERPARTY QCIL NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.1.
3. This is a DPA Counterparty QCiL Notice.
4. We ***[enclose]/[set out]*** the following reasonable details of the Qualifying Change in Law which we consider ***[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]/[ : [●]]***.
5. The ***[QCIL Effective Date]/[Expected QCIL Effective Date] is [●]***.
6. We consider that the Change in Law ***[constitutes]/[will constitute]*** a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be ***[a Discriminatory]/[a Specific]/[an Other]*** Change in Law.
7. ***[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings].]***
8. ***[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings].]***
9. ***[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●].]***
10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event.]***
11. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event.]***

Yours faithfully,

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

**Generator QCiL Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR QCIL RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.2.
3. This is a Generator QCiL Response Notice in relation to the DPA Counterparty QCiL Notice dated [●].
4. *[We consider that the Notified Change in Law [constitutes]/[will constitute] a Qualifying Change in Law.]/[We do not consider that the Notified Change in Law [constitutes]/[will constitute] a Qualifying Change in Law and enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.]*
5. *[We agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the DPA Counterparty QCiL Notice.]/[We do not agree with the [QCIL Effective Date]/[Expected QCIL Effective Date] specified in the DPA Counterparty QCiL Notice and we consider the [QCIL Effective Date]/[Expected QCIL Effective Date] to be [●].]*
6. *[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
7. *[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/ [Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]*
8. *[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and this estimate.]*

9. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimates of the QCiL Construction Event Costs and QCiL Construction Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimates of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
11. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 which we consider to be relevant to evidence the impact of the Qualifying Change in Law on the Facility's:***
- (A) ***process heat and mass balance data;***
  - (B) ***cost base data and related process consumption parameters; and***
  - (C) ***load factor and short run marginal cost.]***
12. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
13. We enclose a Directors' Certificate certifying the matters specified in Condition 26.4.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL Response Notice Information Request**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCIL RESPONSE NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.6.
3. This is a Generator QCiL Response Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL Response Notice dated [●]]/[Revised Generator QCiL Response Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

## Generator QCiL Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

## DPA – GENERATOR QCIL NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.8.
3. This is a Generator QCiL Notice.
4. We **[enclose]/[set out the following]** reasonable details of the Qualifying Change in Law which we consider **[has been implemented, occurred or become effective]/[is shortly to be implemented, occur or become effective]/[: [●]]**.
5. The **[QCIL Effective Date]/[Expected QCIL Effective Date]** is [●].
6. We consider that the Notified Change in Law **[constitutes]/[will constitute]** a Qualifying Change in Law for the following reasons: [●]. We consider the Qualifying Change in Law to be **[a Discriminatory]/[a Specific]/[an Other]** Change in Law. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of that conclusion.
7. **[We consider that the Notified Change in Law will give rise to or result in QCiL Operating [Costs]/[Savings]. Our good faith estimate of the QCiL Operating [Costs]/[Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Operating [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]**
8. **[We consider that the Notified Change in Law will give rise to or result in QCiL Capital [Costs]/[Savings]. Our good faith estimate of the QCiL Capital [Costs]/ [Savings] is [●]. Our good faith estimates as to the profile of the [incurrence of]/[making or receipt of] such QCiL Capital [Costs]/[Savings] are [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]**
9. **[We consider that the Notified Change in Law will give rise to or result in an Adjusted Revenues Period. Our ARP Estimate is [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and this estimate.]**

10. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Construction Event. Our good faith estimates of the QCiL Construction Event Costs and QCiL Construction Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
11. ***[We consider that the Notified Change in Law will give rise to or result in a QCiL Operations Cessation Event. Our good faith estimates of the QCiL Operations Cessation Event Costs and QCiL Operations Cessation Event Savings are [●] and [●] respectively. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]. Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of this conclusion and these estimates.]***
12. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, listed in Appendix 1 which we consider to be relevant to evidence the impact of the Qualifying Change in Law on the Facility's:***
- (A) ***process heat and mass balance data;***
  - (B) ***cost base data and related process consumption parameters; and***
  - (C) ***load factor and short run marginal cost.]***
13. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
14. We enclose a Directors' Certificate certifying the matters specified in Condition 26.9.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Generator QCiL Notice Information Request**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCIL NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 26.11.
3. This is a Generator QCiL Notice Information Request.
4. We require the following Supporting Information in relation to the [**Generator QCiL Notice dated [●]/[Revised Generator QCiL Information received from you on [●]]: [●]**].

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**DPA Counterparty QCiL True-Up Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DPA COUNTERPARTY QCIL TRUE-UP NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.1.
3. This is a DPA Counterparty QCiL True-Up Notice in relation to **[identify relevant Qualifying Change in Law]**.
4. We hereby require you to confirm the QCiL True-Up Information.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator QCiL True-Up Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR QCIL TRUE-UP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.3.
3. This is a Generator QCiL True-Up Response Notice in relation to the DPA Counterparty QCiL True-Up Notice dated [●].
4. We enclose the QCiL True-Up Information.
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the information contained in or enclosed with this notice.
6. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

**Generator QCiL True-Up Response Notice Information Request**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCiL TRUE-UP RESPONSE NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.6.
3. This is a Generator QCiL True-Up Response Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL True-Up Response Notice dated [●]]/[Revised Generator QCiL True-Up Response Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Generator QCiL True-Up Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR QCIL TRUE-UP NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.8.
3. This is a Generator QCiL True-Up Notice in relation to *[identify Qualifying Change in Law]*.
4. We enclose the QCiL True-Up Information.
5. We confirm that *[we have not recovered (and are not entitled to recover) any amount pursuant to Conditions [46.6] and [46.7]/[we have recovered the amount of [●] pursuant to Conditions [46.6] and [46.7].*
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of our conclusions.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

**Generator QCiL True-Up Notice Information Request**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GENERATOR QCIL TRUE-UP NOTICE INFORMATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 29.11.
3. This is a Generator QCiL True-Up Notice Information Request.
4. We require the following Supporting Information in relation to the **[Generator QCiL True-Up Notice dated [●]]/[Revised Generator QCiL True-Up Information received from you on [●]]: [●]**.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**QSE Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – QSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 30.1.
3. This is a QSE Notice.
4. We consider that a Qualifying Shutdown Event has occurred, the relevant details of which are: [●].
5. The Qualifying Shutdown Event occurred on [●].
6. Our good faith estimates of the QCiL Operations Cessation Event Costs and the QCiL Operations Cessation Event Savings are [●] and [●] respectively.
7. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information evidencing, in reasonable detail, the Qualifying Shutdown Event and the steps that the Generator has taken and/or proposes to take to comply with Condition 46.3 and the Reasonable and Prudent Standard.
8. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – CIAL REQUEST NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.2.
3. This is a CiAL Request Notice.
4. We consider that a Change in Applicable Law ***[has been implemented, occurred or become effective]/[is expected to be implemented, occur or become effective]*** for the following reasons: [●].
5. The date on which the Change in Applicable Law ***[was implemented, occurred or became effective was]/[is expected to be implemented, occur or become effective is]*** [●].
6. We consider that the Change in Applicable Law ***[results]/[will result]*** in one (1) or more of the Required CiAL Amendment Objectives ceasing to be met for the following reasons: [●].
7. ***[We consider that the Required CiAL Amendment(s) are [●].]***
8. We enclose ***[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]*** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Request Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.5.
3. This is a CiAL Request Validity Notice.
4. The CiAL Request Criterion has been met.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**CiAL Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.6.
3. This is a CiAL Review Notice.
4. The following CiAL Review Trigger has occurred: [●].
5. The CiAL Review Response Deadline is: [●].

Yours faithfully,

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

**CiAL Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – CIAL REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.7.
3. This is a CiAL Review Response Notice in relation to the CiAL Review Notice dated [●].
4. We **[enclose]/[set out the following]** Supporting Information which we wish you to take account of in undertaking the CiAL Review: [●].
5. **[We consider that the Required CiAL Amendment(s) are [●].]**

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Review Outcome Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 32.9.
3. This is a CiAL Review Outcome Notice.
4. The outcome of the CiAL Review was as follows: [●]. **[The Required CiAL Amendments are as follows: [●].]**
5. **[The date from which the Required CiAL Amendments will take effect is: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**CiAL Dispute Notice**

**To:** [●] (the "DPA Counterparty")  
[Address]

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – CIAL DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 33.1.
3. This is a CiAL Dispute Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The [Condition]/[paragraph] [to which the Dispute relates]/[pursuant to which the Dispute arises] is [●].
7. We consider the correct position is [●]. Our reasons for this are [●].
8. *[We consider the following [claim[s]],[dispute[s]] arising out of another CCUS Programme DPA should be consolidated with or joined to the Dispute: [●].]*
9. *[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]*
10. The [relief]/[determination]/[remedy]/[recourse] that we seek in relation to the Dispute is [●].
11. We **[do not]** consider the Dispute should (without a Senior Representatives Settlement being reached) be referred for **[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]**.
12. Our Senior Representative is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**CiAL Dispute Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CIAL DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 33.3.
3. This is a CiAL Dispute Validity Notice in relation to the CiAL Dispute Notice dated [●].
4. The CiAL Dispute Threshold Criterion has been met.
5. We propose that the Proposed CiAL Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed CiAL Expert has the relevant expertise which qualifies the Proposed CiAL Expert to determine the relevant CiAL Dispute for the following reasons: [●].
6. We enclose an Expert Determination Notice in relation to the CiAL Dispute Notice.
7. We enclose a Consolidation Request in relation to the CiAL Dispute.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Pre-Start Date Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PRE-START DATE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.1.
3. This is a Pre-Start Date Termination Notice.
4. The Pre-Start Date Termination Date is [●].
5. **[The following Termination Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**Prolonged FM Event Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROLONGED FM EVENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.5.
3. This is a Prolonged FM Event Notice.
4. The following Prolonged FM Event has occurred: [●].
5. The Prolonged FM Trigger Date is: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the Prolonged FM Event.

Yours faithfully,

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

**Prolonged FM Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROLONGED FM TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.6.
3. This is a Prolonged FM Termination Notice.
4. The Prolonged FM Termination Date is [●].
5. **[The following Prolonged FM Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



**T&S Prolonged Unavailability Event Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY EVENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.8.
3. This is a T&S Prolonged Unavailability Event Notice.
4. The following T&S Prolonged Unavailability Event has occurred: [●]
5. We hereby notify you that the Generator T&S Prolonged Unavailability Response Deadline is: [●].
6. We hereby notify you that we may serve a T&S Prolonged Unavailability Termination Notice in accordance with Condition 35.21 on [●].
7. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence the T&S Prolonged Unavailability Event.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Prolonged Unavailability Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.9.
3. This is a T&S Prolonged Unavailability Response Notice in relation to the T&S Prolonged Unavailability Event Notice dated [●].
4. ***[We consider that the T&S Prolonged Unavailability Event is no longer continuing. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
5. ***[We consider that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
6. ***[We intend to provide an Alternative T&S Network Solution Plan.]***
7. ***[We consider that the T&S Prolonged Unavailability Event will not be remedied by the T&S Unavailability Remediation Deadline and we cannot provide a feasible Alternative T&S Network Solution Plan for the following reasons: [●].]***
8. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information evidencing, in reasonable detail, the steps that we ***[have taken]/[and]/[propose to take]*** to comply with Condition 46.3 and the Reasonable and Prudent Standard.
9. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....

For and on behalf of  
the **Generator**



**T&S Prolonged Unavailability Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.11.
3. This is T&S Prolonged Unavailability Review Notice.
4. ***[We consider that you have [not] delivered evidence, in form and content satisfactory to the DPA Counterparty, that the T&S Prolonged Unavailability Event is no longer continuing as at such date]***
5. ***[We consider that we have not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event is no longer continuing. We require the following Supporting Information: [●].]***
6. ***[We consider that you have [not] delivered sufficient evidence, that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline.]/[We consider that you cannot provide a feasible Alternative T&S Network Solution Plan.]***
7. ***[We consider that we have not been provided with sufficient Supporting Information to determine whether the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline and you cannot provide a feasible Alternative T&S Network Solution Plan. We require the following Supporting Information: [●].]***

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Prolonged Unavailability Further Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY FURTHER RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.12(B).
3. This is a T&S Prolonged Unavailability Further Response Notice in relation to the T&S Prolonged Unavailability Event Notice dated [●] and the T&S Prolonged Unavailability Response Notice dated [●].
4. ***[We consider that the T&S Prolonged Unavailability Event is no longer continuing. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
5. ***[We consider that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
6. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] a draft Alternative T&S Network Solution Plan together with Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***
7. ***[We consider that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and we cannot provide a feasible Alternative T&S Network Solution Plan for the following reasons: [●]. We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.]***

Yours faithfully,

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



**Alternative T&S Network Review Notice**

**To:** [●] (the "Generator")  
 [Unique reference number: [●]]

**From:** [●] (the "DPA Counterparty")  
 [Address]

**Dated:** [●]

**DPA – ALTERNATIVE T&S NETWORK REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.13(B).
3. This is an Alternative T&S Network Review Notice.
4. ***[We approve the draft Alternative T&S Network Solution Plan submitted to us on [●].]/[We consider that we have not been provided with sufficient Supporting Information in relation to the draft Alternative T&S Network Solution Plan, in order to determine whether or not to approve such plan. We require the following Supporting Information: [●].]/[We require the following amendments to be made to the draft Alternative T&S Network Solution Plan: [●].]/[We do not approve the draft Alternative T&S Network Solution Plan for the following reasons: [●].]***

Yours faithfully,

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

**Generator T&S Prolonged Unavailability Remediation Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR T&S PROLONGED UNAVAILABILITY REMEDIATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.17(B).
3. This is a Generator T&S Prolonged Unavailability Remediation Notice.
4. We successfully completed the implementation of the Alternative T&S Network Solution Plan on [●].
5. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice and which we consider to be relevant to evidence that the T&S Prolonged Unavailability Event has been remedied..

Yours faithfully,

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



**T&S Prolonged Unavailability Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S PROLONGED UNAVAILABILITY TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.21.
3. This is a T&S Prolonged Unavailability Termination Notice.
4. The T&S Prolonged Unavailability Termination Date is [●].
5. **[The following T&S Prolonged Unavailability Event has occurred: [●].]**

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**

**T&S Termination Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – T&S TERMINATION RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.22.
3. This is a T&S Termination Response Notice.
4. We consider the T&S Termination Payment is: [●]
5. The principal inputs used by us to calculate such T&S Termination Payment were: [●].
6. We enclose *[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]* Supporting Information listed in Appendix 1 to this notice which we consider to be necessary to enable you to calculate the T&S Termination Payment.
7. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

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

**Default Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DEFAULT TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.26.
3. This is a Default Termination Notice.
4. The Default Termination Date is [●].
5. The following Termination Event has occurred: [●].

Yours faithfully,

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

**Minimum Longstop Date Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – MINIMUM LONGSTOP DATE TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.28.
3. This is a Minimum Longstop Date Termination Notice.

Yours faithfully,

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

**QCIL Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – QCIL TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.30.
3. This is a QCIL Termination Notice.
4. The QCIL Termination Date is [●].

Yours faithfully,

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

**QCIL Compensation Termination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – QCIL COMPENSATION TERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 35.32.
3. This is a QCIL Compensation Termination Notice.
4. The QCIL Compensation Termination Date is [●].

Yours faithfully,

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

**T&S Termination Payment Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – T&S TERMINATION PAYMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 36.3(B).
3. This is a T&S Termination Payment Notice.
4. The T&S Termination Payment is [●].
5. The principal inputs used by us to calculate such T&S Termination Payment were: [●].
6. The T&S Termination Payment shall be payable *[as a lump sum]/[as staged payments]*.

Yours faithfully,

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

**Default Termination Payment Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – DEFAULT TERMINATION PAYMENT NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 36.9(B).
3. This is a Default Termination Payment Notice.
4. The Default Termination Payment is [●].
5. The principal inputs used by us to calculate such Default Termination Payment were: [●].

Yours faithfully,

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



### Dispute Notice

To: [●]

From: [●]

Dated: [●]

### DPA – DISPUTE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 39.3.
3. This is a Dispute Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The Condition to which the Dispute relates is [●].
7. We consider that the correct position is [●]. Our reasons for believing this is the correct position are [●].
8. ***[We consider that the following dispute or claim relating to or arising out of another CCUS Programme DPA should be [consolidated with]/[joined to] this Dispute: [●].]***
9. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
10. The ***[relief]/[determination]/[remedy]/[recourse]*** which we seek in relation to the Dispute is [●].
11. We ***[do not]*** consider the Dispute should (without a Senior Representatives Settlement being reached) be referred for ***[determination in accordance with the Expert Determination Procedure]/[resolution in accordance with the Arbitration Procedure]***.
12. Our Senior Representative is [●].

Yours faithfully,

.....  
For and on behalf of [●]

### Expert Determination Notice

To: [●]

From: [●]

Dated: [●]

### DPA – EXPERT DETERMINATION NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.1.
3. This is an Expert Determination Notice.
4. The subject matter of the Dispute is [●].
5. The issues to be resolved are [●].
6. The relevant Condition to which the Dispute relates is [●].
7. We consider that the correct position is [●]. Our reasons for this are [●].
8. ***[We consider that the following dispute or claim relating to or arising out of another CCUS Programme DPA should be [consolidated with]/[joined to] this Dispute: [●].]***
9. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
10. The ***[relief]/[determination]/[remedy]/[recourse]*** which we seek in relation to the Dispute is [●].
11. We propose that the Expert appointed be [●].
12. We propose that the proposed Expert be appointed on the basis of the following terms of reference: [●].
13. We believe that the proposed Expert has the relevant expertise which qualifies the proposed Expert to determine the relevant Expert Dispute for the following reasons: [●]

Yours faithfully,

.....

For and on behalf of

[●]

**Expert Determination Response Notice**

To: [●]

From: [●]

Dated: [●]

**DPA – EXPERT DETERMINATION RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 41.3.
3. This is an Expert Determination Response Notice.
4. We ***[do not]*** accept the Expert proposed in the Expert Determination Notice dated [●]. ***[We propose [●] as an alternative Expert.]***
5. We ***[do not]*** accept the terms of reference proposed in the Expert Determination Notice dated [●]. ***[We propose the following alternative terms of reference: [●].]***

Yours faithfully,

.....

For and on behalf of  
[●]

**Consolidation Request**

To: *[All the parties to a Connected Dispute]*

From: [●]

Dated: [●]

**DPA – CONSOLIDATION REQUEST**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 43.2.
3. This is a Consolidation Request.
4. The subject matter of the Dispute is [●].
5. We consider that the following dispute[s] *[is]/[are]* Connected Dispute[s]: [●].
6. Our reasons for considering that these disputes should be consolidated with the Connected Dispute[s] are [●].
7. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
8. This notice *[has been]/[will be]* copied to the *[Expert]/[Arbitrator(s)]* determining the Connected Dispute[s] ***[at the same time this notice was given to the addressees]/[forthwith upon appointment of the [Expert]/[Arbitrator(s)]]***.

Yours faithfully,

.....

For and on behalf of

[●]

**Performance Test Procedure Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – PERFORMANCE TEST PROCEDURE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Performance Test Procedure Notice.
4. We enclose the draft Performance Test Procedure we propose to be adopted for the purposes of the Performance Tests.
5. The Facility's pre-test uncertainty calculations for the instrumentation to be used for the performance test measurements in each Performance Test are [●].
6. The Proposed Corrections Curves are [●].
7. The Proposed Heat and Material Balance Diagram is [●].
8. ***[We enclose [(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)] Supporting Information listed in Appendix 1 to this notice which we consider to be relevant to evidence any changes relevant to this notice.]***
9. The proposed date to carry out such Performance Test is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**PTP Response Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PTP RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2 of Part A of Annex 2 (*Testing Requirements*).
3. This is a PTP Response Notice.
4. We **[do not]** approve the draft Performance Test Procedure proposed in the Performance Test Procedure dated [●]. **[We propose [●] as an alternative Performance Test Procedure.]**
5. We require the Generator to provide the following additional Supporting Information [●].
6. We require the following amendment[s] to the draft Performance Test Procedure [●].

Yours faithfully,

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

**Performance Test Date Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – PERFORMANCE TEST DATE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the DPA Counterparty and us as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.10 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Performance Test Date Notice.
4. We confirm that the Performance Test Date is [●].

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**Performance Test Access Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PERFORMANCE TEST ACCESS NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.12 of Part A of Annex 2 (*Testing Requirements*).
3. This is a Performance Test Access Notice.
4. We [intend]/[nominate [●]] to exercise the Performance Test Access Right.

Yours faithfully,

.....

For and on behalf of  
the **DPA Counterparty**



### Amendment Notification

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

From: [●] (the "DPA Counterparty")  
 [Address]

Dated: [●]

### DPA – AMENDMENT NOTIFICATION

Dear Sir/Madam,

1. We refer to the agreement dated [●] between you as the Generator and us as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Annex 4 (*Change Control Procedure*).
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] consider the Proposed Amendment to be a General Amendment.]/[We consider the Proposed Amendment to be a General Amendment and we [do not] consider that it applies to all CCUS Programme DPAs]/[consider that it applies only to those of [a specified category]/[specified categories], being [●]].]*
8. We enclose the following Supporting Information which we consider necessary to enable you to evaluate the Proposed Amendment: [●].

Yours faithfully,

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

**Material Amendment Response Notification**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – MATERIAL AMENDMENT RESPONSE NOTIFICATION**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2(B) of Annex 4 (*Change Control Procedure*).
3. This is a Material Amendment Response Notification.
4. We **[do not]** accept the Proposed Amendment proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative amendment.]**
5. **[We note that the Amendment Notification has not addressed the following consequential matters: [●].]**
6. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information listed in Appendix 1 to this notice which we consider necessary to enable you to evaluate the matters covered in this Material Amendment Response Notification.
7. We **[do not]** accept the Proposed Amendment Effective Date proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative effective date.]**

Yours faithfully,

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

**Technical Amendment Response Notification**

**To:** [●] (the "DPA Counterparty")  
[Address]

**From:** [●] (the "Generator")  
[Unique reference number: [●]]

**Dated:** [●]

**DPA – TECHNICAL AMENDMENT RESPONSE NOTIFICATION**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.6(B)(ii) of Annex 4 (*Change Control Procedure*).
3. This is a Technical Amendment Response Notification.
4. We **[do not]** accept the Proposed Amendment proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative amendment.]**
5. **[We note that the Amendment Notification has not addressed the following consequential matters: [●].]**
6. We **[do not]** accept the Proposed Amendment Effective Date proposed in the Amendment Notification dated [●]. **[We propose [●] as an alternative effective date.]**

Yours faithfully,

.....

For and on behalf of  
the **Generator**

**GRP Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GRP PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.2 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Request Notice.
4. We believe the calculation of the Gas Reference Price does not comply with the following GRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the GRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 4[and 5] above.

Yours faithfully,

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

**GRP Principles Request Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.5 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Request Validity Notice.
4. The GRP Principles Request Criterion has been met.

Yours faithfully,

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

**GRP Principles Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.8 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Notice.
4. The following GRP Principles Review Trigger has occurred: [●].
5. The GRP Principles Review Response Deadline is: [●].

Yours faithfully,

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

**GRP Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.9 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Response Notice in relation to the GRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the GRP Principles Review: [●].
5. ***[We propose that the GRP Principles Review Trigger should be addressed as follows: [●].]***

Yours faithfully,

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

**GRP Principles Review Outcome Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.12 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Principles Review Outcome Notice.
4. We ***[enclose a]/[set out the following]*** summary of the outcome of the GRP Principles Review[:[●]]. ***[The GRP Principles Review Proposals are as follows: [●].]***
5. ***[We enclose a summary of the reasons for determining that it is not possible to effect any GRP Mechanism Amendment (or combination of GRP Mechanism Amendments) in a manner which complies with all of the GRP Principles. We consider that the following GRP Principles will be complied with by virtue of the GRP Mechanism Amendments being effected: [●].]***
6. The GRP Principles Review Implementation Date is: [●].

Yours faithfully,

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



## GRP Dispute Notice

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

## DPA – GRP DISPUTE NOTICE

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part B of Annex 6 (*Gas Reference Price*).
3. This is a GRP Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The [Condition]/[paragraph] to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. ***[We consider the following [claim(s)/dispute(s)] arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]***
8. ***[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]***
9. The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].
10. We ***[do not]*** consider that the Dispute should (without 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  
the **Generator**

**GRP Dispute Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – GRP DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.3 of Part B of Annex 6 (*Gas Reference Price Review*).
3. This is a GRP Dispute Validity Notice in relation to the GRP Dispute Notice dated [●].
4. The GRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed GRP Expert appointed by [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed GRP Expert has the relevant expertise which qualifies the Proposed GRP Expert to determine the relevant GRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the GRP Dispute.

Yours faithfully,

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

**CMRP Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – CMRP PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.2 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Request Notice.
4. We believe the calculation of the Carbon Market Reference Price does not comply with the following CMRP Principle[s]: [●].
5. ***[We propose that the non-compliance with the CMRP Principle[s] should be addressed as follows: [●].]***
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 5 *[and 6]* above.

Yours faithfully,

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

**CMRP Principles Request Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.5 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Request Validity Notice.
4. The CMRP Principles Request Criterion has been met.

Yours faithfully,

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

**CMRP Principles Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.8 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Notice.
4. The following CMRP Principles Review Trigger has occurred: [●].
5. The CMRP Principles Review Response Deadline is: [●].

Yours faithfully,

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

**CMRP Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.9 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Response Notice in relation to the CMRP Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the CMRP Principles Review: [●].
5. **[We propose that the CMRP Principles Review Trigger should be addressed as follows: [●].]**

Yours faithfully,

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

**CMRP Principles Review Outcome Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.12 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Principles Review Outcome Notice.
4. We ***[enclose a]/[set out the following]*** summary of the outcome of the CMRP Principles Review[:[●]]. ***[The CMRP Principles Review Proposals are as follows: [●].]***
5. ***[We enclose a summary of the reasons for determining that it is not possible to effect any CMRP Mechanism Amendment (or combination of CMRP Mechanism Amendments) in a manner which complies with all of the CMRP Principles. We consider that the following CMRP Principles will be complied with by virtue of the CMRP Mechanism Amendments being effected: [●].]***
6. The CMRP Principles Review Implementation Date is: [●].

Yours faithfully,

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

**CMRP Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – CMRP DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.1 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The [Condition]/[paragraph] to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. **[We consider the following [claim(s)/dispute(s)] arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]**
8. **[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]**
9. The [relief]/[determination]/[remedy]/[recourse] which we seek in relation to the Dispute is [●].
10. We **[do not]** consider that the Dispute should (without 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  
the **Generator**



**CMRP Dispute Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – CMRP DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.3 of Part B of Annex 7 (*Carbon Market Reference Price Review*).
3. This is a CMRP Dispute Validity Notice in relation to the CMRP Dispute Notice dated [●].
4. The CMRP Dispute Threshold Criterion has been met.
5. We propose that the Proposed CMRP Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed CMRP Expert has the relevant expertise which qualifies the Proposed CMRP Expert to determine the relevant CMRP Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the CMRP Dispute.

Yours faithfully,

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

**Proposed Energy Consultant Determination Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – PROPOSED ENERGY CONSULTANT DETERMINATION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 1.5 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Proposed Energy Consultant Determination Notice.
4. We propose that the Proposed Energy Consultant appointed be [●].
5. We propose that [s]he be appointed on the basis of the following terms of reference: [●].
6. We believe that the Proposed Energy Consultant meets the Energy Consultant Appointment Criteria for the following reasons: [●]
7. We consider that the Proposed Terms of Reference are [materially] consistent with the Minimum Terms of Reference Requirements for the following reasons: [●]

Yours faithfully,

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

**Generator Objection Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – GENERATOR OBJECTION NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project v(the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 1.6 of Part A of Annex 8 (*Reference Plant Review*).
3. This is a Generator Objection Notice.
4. We do not accept the appointment of the Proposed Energy Consultant proposed in the Proposed Energy Consultant Determination Notice dated [●] for the following reasons: [●]
5. We enclose **[(by way of upload(s) to the DPA Counterparty data room on the dates set out in Appendix 1 to this notice)]** Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the foregoing.

Yours faithfully,

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

**Reference Plant Criteria Review Outcome Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT CRITERIA REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 1.15 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Criteria Review Outcome Notice.
4. ***[We [enclose a]/[set out the following] summary of the reasons for determining that the Reference Plant meets the Reference Plant Criteria.]/[We consider that the Reference Plant does not meet the Reference Plant Criteria for the following reasons: [●]. [The Base Performance Assumptions will be adjusted as follows: [●]. The Reference Plant Criteria Review Implementation Date is: [●]]/[We consider that no Plant meets the Reference Plant Criteria.]***
5. We enclose a copy of the Reference Plant Criteria Review Report.

Yours faithfully,

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

**Reference Plant Principles Request Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REQUEST NOTICE**

Dear Sir/Madam

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.2 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Request Notice.
4. We believe the [Reference Plant]/[Base Performance Assumptions] do[es] not comply with the following Reference Plant Principle[s]: [●].
5. **[We propose that the non-compliance with the Reference Plant Principle[s] should be addressed as follows: [●].]**
6. We enclose the following Supporting Information, in reasonable detail, which we consider to be relevant to and supportive of the matters in paragraph[s] 5 [and 6] above.

Yours faithfully,

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

**Reference Plant Principles Request Validity Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REQUEST VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.5 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Request Validity Notice.
4. The Reference Plant Principles Request Criterion has been met.

Yours faithfully,

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

**Reference Plant Principles Review Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.8 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Notice.
4. The following Reference Plant Principles Review Trigger has occurred: [●].
5. The Reference Plant Principles Review Response Deadline is: [●].

Yours faithfully,

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

**Reference Plant Principles Review Response Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW RESPONSE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.9 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Response Notice in relation to the Reference Plant Principles Review Notice dated [●].
4. We enclose the following Supporting Information which we wish you to take account of in undertaking the Reference Plant Principles Review: [●].
5. ***[We propose that the Reference Plant Principles Review Trigger should be addressed as follows: [●].]***

Yours faithfully,

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



**Reference Plant Principles Review Outcome Notice**

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

From: [●] (the "DPA Counterparty")  
[Address]

Dated: [●]

**DPA – REFERENCE PLANT PRINCIPLES REVIEW OUTCOME NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 2.12 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Principles Review Outcome Notice.
4. We ***[enclose a]/[set out the following]*** summary of the outcome of the Reference Plant Principles Review:[●]. ***[The Reference Plant Principles Review Proposals are as follows: [●].]***
5. ***[We enclose a summary of the reasons for determining that it is not possible to effect any Reference Plant Mechanism Amendment (or combination of Reference Plant Mechanism Amendments) in a manner which complies with all of the Reference Plant Principles. We consider that the following Reference Plant Principles will be complied with by virtue of the Reference Plant Mechanism Amendments being effected: [●].]***
6. The Reference Plant Principles Review Implementation Date is: [●].

Yours faithfully,

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

**Reference Plant Dispute Notice**

To: [●] (the "DPA Counterparty")  
[Address]

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

Dated: [●]

**DPA – REFERENCE PLANT DISPUTE NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the DPA Counterparty and [●] as the Generator in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.1 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant [*Criteria Review*]/[*Principles Review*] Dispute Notice.
4. The subject matter of the Dispute is [●]. The issues to be resolved are [●].
5. The [*Condition*]/[*paragraph*] to which the Dispute relates is [●].
6. We consider the correct position is [●]. Our reasons for this are [●].
7. **[We consider the following [claim(s)/dispute(s)] arising out of other CCUS Programme DPA Contracts should be consolidated with or joined to the dispute: [●]]**
8. **[We intend to rely on the following Supporting Information, copies of which we enclose: [●].]**
9. The [*relief*]/[*determination*]/[*remedy*]/[*recourse*] which we seek in relation to the Dispute is [●].
10. We [**do not**] consider that the dispute should (without 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  
the **Generator**

**Reference Plant Dispute Validity Notice**

**To:** [●] (the "Generator")  
[Unique reference number: [●]]

**From:** [●] (the "DPA Counterparty")  
[Address]

**Dated:** [●]

**DPA – REFERENCE PLANT DISPUTE VALIDITY NOTICE**

Dear Sir/Madam,

1. We refer to the agreement dated [●] between [●] as the Generator and [●] as the DPA Counterparty in relation to the [●] Project (the "**Agreement**"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to paragraph 3.3 of Part B of Annex 8 (*Reference Plant Review*).
3. This is a Reference Plant Dispute Validity Notice in relation to the Reference Plant Dispute Notice dated [●].
4. The Reference Plant Dispute Threshold Criterion has been met.
5. We propose that the Proposed Reference Plant Expert appointed be [●]. We propose that [s]he be appointed on the following terms: [●]. We believe that the Proposed Reference Plant Expert has the relevant expertise which qualifies the Proposed Reference Plant Expert to determine the relevant Reference Plant Dispute for the following reasons: [●].
6. We enclose a Consolidation Request in relation to the Reference Plant Dispute.

Yours faithfully,

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

## ANNEX D



Department for  
Business, Energy  
& Industrial Strategy

# Carbon Capture, Usage and Storage

Dispatchable Power Agreement business  
model summary and consultation

Closing date: 10 June 2022



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Any enquiries regarding this publication should be sent to us at: [powerccusconsultation@beis.gov.uk](mailto:powerccusconsultation@beis.gov.uk)

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# Introduction

The summary set out in this document outlines the key design aspects of the Dispatchable Power Agreement (“DPA”) developed following our initial consultation on possible new business models for carbon capture usage and storage (CCUS) held in July 2019<sup>1</sup>.

We subsequently developed the DPA design, articulated in updates released between December 2020 and November 2021 following engagement with CCUS expert groups, industry and relevant regulators. The proposed business model summarised in this document incorporates a number of additional positions developed subsequent to the October 2021 update. Alongside this document we have also published for consultation the draft DPA Front End Agreement, draft DPA Contract, and proposed gainshare schedule. These documents should be read in conjunction with the earlier December 2020, May 2021, October 2021 and November 2021 DPA business model updates.

We are now seeking views from stakeholders on the proposed form of the DPA and draft DPA Contract prior to the negotiation / due diligence phase of the Track-1 Phase-2 of the Cluster Sequencing for Carbon Capture Usage and Storage Deployment process<sup>2</sup>. This consultation is being published alongside an update to the Industrial Carbon Capture (ICC) business model, which is designed to incentivise the deployment of carbon capture technology for industrial users in hard to abate industrial sectors.

A number of the proposed DPA contractual provisions have been outlined in the previous business model updates and, where relevant, references to those updates and the additional information and policy rationale they provide have been included. Any new provisions included in the draft DPA Contract, that were not included in the October draft Heads of Terms or articulated in the earlier DPA Business Model updates, are highlighted in this document in grey boxes for ease of reference.

This consultation sets out questions relating to the government’s current proposals for the business model for power CCUS. The proposals, as set out in the document, in whatever form they are expressed, are indicative only and do not constitute an offer by government and do not create a basis for any form of expectation or reliance. They remain subject to further development by the government, and approval by Ministers, in response to this consultation and in consultation with relevant regulators and the devolved administrations, as well as the development and Parliamentary approval of any necessary legislation, and completion of necessary contractual documentation. We reserve the right to review and amend all provisions within the document, for any reason and in particular to ensure that proposals provide value for money (VfM) and are consistent with the current subsidy control regime.

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<sup>1</sup> [Business models for carbon capture, usage and storage: Consultation \(July 2019\)](#)

<sup>2</sup> [Cluster sequencing for carbon capture, usage and storage \(CCUS\) deployment: Phase-2 guidance \(November 2021\)](#)

---

In the Net Zero Strategy we announced our ambition to begin competitive allocation for power CCUS Projects in the 2020s. We intend to launch a call for evidence later this year to gather views and evidence on how we can best achieve this ambition and support the continued deployment of power CCUS Projects into the 2030s. Please note that any such call for evidence is separate to this consultation, which focuses on the proposed business model to support the initial power CCUS Projects.



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# General information

## Why we are consulting

This consultation sets out the proposed business model and associated draft DPA Contract developed since the publication of the initial DPA business model update<sup>3</sup> in December 2020 which set out the principles of the model design along with provisional Heads of Terms<sup>4</sup>.

The proposed DPA business model and contract follows on from the consultation in 2019 on possible new business models for carbon capture usage and storage and the government response to that consultation<sup>5</sup> which set out the following key principles to guide the CCUS business model designs:

- Decarbonisation – our policies should incentivise efficient capture, utilisation and storage of CO<sub>2</sub> where production is necessary but should not incentivise production of CO<sub>2</sub> or result in perverse outcomes.
- Sustainable financing – our policies should instil confidence among investors and attract new domestic and international entrants to the market in a sustainable manner and have the potential to become subsidy free.
- Economy – our policies should create value to the UK economy and support high-value jobs.
- Cost reductions – our policies should harness opportunities to drive down cost through innovation, learning by doing and competition as appropriate.
- Market and flexibility – our policies should be market based and minimise distortions in existing markets. They should be compatible with existing market frameworks but retain the flexibility to respond to market conditions and public needs as markets and the economy evolve.
- Value for money – our policies should be cost-efficient, providing value for money for taxpayers and consumers, and provide a risk-adjusted fair return to investors whilst recognising the first of a kind nature of the sector that with industry, we need to develop.
- Fair and reflective costs – the cost of deploying CCUS should be reflective and fair, and not undermine UK industrial competitiveness

In response to consultation feedback regarding power CCUS, the government set out its aims for a power CCUS revenue mechanism that:

- incentivises power CCUS to operate flexibly, dispatching after renewables and nuclear, but ahead of other unabated power plants as part of a flexible electricity system;

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<sup>3</sup> [Carbon capture, usage and storage: an update on business models \(December 2020\)](#)

<sup>4</sup> [Dispatchable power agreement \(DPA\) - heads of terms: December 2020 update \(Annex D\)](#)

<sup>5</sup> [Business models for carbon capture, usage and storage: Response \(September 2019\)](#)

- has the capacity to be competitively allocated;
- provides fair return on investment with appropriate risk allocation and without overcompensation; and
- ensures that the costs are affordable for electricity consumers. Any power CCUS business model would be subject to value for money and affordability assessments. In making such assessments, government will assess the total system costs of power CCUS.

Government expressed that it was minded to develop a business model with a revenue mechanism consisting of a payment for availability of low carbon generating capacity and a variable payment, the combination of which should enable a plant to operate flexibly, providing value to a low carbon electricity system whilst providing sufficient certainty to investors.

This consultation sets out the proposed business model and resulting contract upon which we invite views. We will consider the responses received to determine whether any issues identified necessitate further development to ensure the business model meets policy aims. External advisors may assist with analysis of responses.

## Consultation details

**Issued:** 12 April 2022

**Respond by:** 10 June 2022 at 23:59 hours.

**Enquiries to:**

Carbon Capture Usage and Storage Policy Team

Department for Business, Energy and Industrial Strategy

3rd Floor

1 Victoria Street London

SW1H 0ET

Email: [powerccusconsultation@beis.gov.uk](mailto:powerccusconsultation@beis.gov.uk)

**Consultation reference:** Carbon Capture Usage and Storage – Dispatchable Power Agreement Business Model Summary and Consultation.

**Audiences:**

The government welcomes responses from anyone with an interest in the policy area. We envisage that the consultation will be of particular interest to those considering the development of new low carbon energy projects in Great Britain, electricity traders and suppliers, businesses operating in the power, renewables and bioenergy sector, and consumer

and environmental groups with an interest in the electricity sector. Should you wish to be involved in any future stakeholder events in connection with the Dispatchable Power Agreement please contact us via email at [powerccusconsultation@beis.gov.uk](mailto:powerccusconsultation@beis.gov.uk).

### **Territorial extent:**

The DPA is designed to operate in Great Britain only initially. This consultation therefore applies to Great Britain.

Electricity Generation is a devolved policy area in Northern Ireland, with responsibility resting with the Department for the Economy.

## How to respond

Your response will be most useful if it is framed in direct response to the questions posed, and with evidence in support wherever possible. Further comments and wider evidence are also welcome. When responding, please state whether you are responding as an individual or representing the views of an organisation.

We encourage respondents to make use of the online e-consultation wherever possible when submitting responses as this is the Government's preferred method of receiving responses. However, responses in writing or via email will also be accepted. Should you wish to submit your main response via the e-consultation platform and provide supporting information via hard copy or email, please be clear that this is part of the same consultation response.

**Respond online at:** <https://beisgovuk.citizenspace.com/clean-electricity/ccus-dpa-business-model>

or

**Email to:** [powerccusconsultation@beis.gov.uk](mailto:powerccusconsultation@beis.gov.uk)

**Write to:**

Carbon Capture Usage and Storage Policy Team

Department for Business, Energy and Industrial Strategy

3rd Floor

1 Victoria Street

London

SW1H 0ET

A response form is available on the GOV.UK consultation page:

<https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-dispatchable-power-agreement-business-model>

When responding, please state whether you are responding as an individual or representing the views of an organisation.

## Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#). External advisors may assist with analysis of responses.

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

## Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: [beis.bru@beis.gov.uk](mailto:beis.bru@beis.gov.uk).

## Disclaimer

The proposed terms, in this consultation and the associated draft DPA (includes DPA Front End Agreement, DPA Terms and Conditions, and DPA Gain Share Schedule) will be reviewed in light of this consultation but also remain subject to further development by the government in consultation with relevant regulators and the devolved administrations as well as subject to Parliamentary approval of any necessary legislative amendments and to ensure consistency with subsidy control principles. The proposals, as set out in this consultation document, do not therefore constitute an offer by government and do not create a basis for any form of expectation or reliance.

The draft DPA does not constitute definitive drafting of the DPA's terms. A number of the provisions and terms which require particular consideration and development have been square bracketed (with footnotes) in the DPA. BEIS reserves the right to review and amend these square bracketed provisions, and all other provisions set out in the DPA.

The draft DPA does not indicate any willingness or agreement on the part of the BEIS to enter into, or arrange the entry into, the DPA. The DPA does not constitute an offer and is not capable of acceptance.



# The proposals

## Introduction

### What is the DPA

This consultation sets out our current proposed positions but these positions, regardless of how they are expressed, are not final and will remain subject to review and amendment, if required, including as a result of this consultation process. The capitalised terms used in this document are as defined in the draft DPA Contract (attached to this consultation) unless otherwise defined in this document.

The DPA is the proposed contractual framework for power CCUS, it is based on the Contracts for Difference (CfD) for Allocation Round 4 (CfD AR4) standard terms and conditions but adapted to enable natural gas fired power CCUS facilities (“Project”) to play a mid-merit role in meeting electricity demand, displacing unabated thermal generation plants. The DPA proposes an Availability Payment, linked to facility performance, to incentivise the availability of low carbon, non-weather dependant dispatchable generation capacity. The Availability Payment will be calculated and paid regardless of whether a facility is dispatching, and so will not incentivise facilities to displace lower cost and lower carbon sources of generation such as renewables and nuclear.

To ensure that a power CCUS Facility generates electricity ahead of higher carbon alternatives, we propose that a Variable Payment will account for the additional cost of generation for a power CCUS Facility compared to an unabated Reference Plant, which is intended to be a CCGT with the highest defined thermal efficiency, assessed on a lower heating value (LHV)<sup>6</sup> basis operating on the GB electricity system.

### Phase 2 allocation

The DPA has been developed as part of the wider CCUS Cluster Sequencing Process, and Projects were able to make submissions for a DPA in Phase-2<sup>7</sup> of this process. The application window for Phase-2 closed on 21 January 2022.

Projects that are selected following successful evaluation in Phase-2 of the CCUS Cluster Sequencing Process will be invited to participate in the due diligence and negotiations stage, and may ultimately receive a DPA subject to final government compliance checks and terms set out in section 7.9 of the Cluster sequencing Phase 2 guidance<sup>8</sup>.

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<sup>6</sup> See ‘Definition of Reference Plant’ section of this document.

<sup>7</sup> [Cluster sequencing for carbon capture, usage and storage \(CCUS\) deployment: Phase-2 guidance \(November 2021\)](#)

<sup>8</sup> See document in footnote 7.

### Energy Act 2013 and eligibility

It is intended that the Secretary of State will use the powers in Section 10 of the Energy Act 2013 to direct the DPA Counterparty to offer initial DPA contracts to generators that are selected through the Cluster Sequencing process. To enter into a DPA, a power CCUS Facility must meet the definition of an Eligible Generator which will be specified in the Contracts for Difference (Definition of Eligible Generator) Regulations 2014. In July 2021 we consulted on amendments to the Contracts for Difference (Definition of Eligible Generator) Regulations 2014 and Contracts for Difference (Allocation) Regulations 2014 to facilitate power CCUS<sup>9</sup> including an amendment to the definition of an Eligible Generator. The response to that consultation was published on 29 March 2022.

### Negotiation and consultation

We set out in the Phase-2 guidance<sup>10</sup> document that after the evaluation of submissions and shortlisting, in line with government business case approvals processes, government envisages that there will be a period of negotiation/due diligence in the CCUS Cluster Sequencing Process, when shortlisted Projects will engage with the Department on a variety of technical and commercial issues. The exact timetable for negotiations is to be confirmed, with the first projects expected to be awarded contracts from mid-2023.

The majority of the conditions in the DPA Contract are expected to be applied without modification and are not intended to be negotiable on a per-project basis. This is intended to provide a fair, transparent foundation for negotiations that is grounded in the successful precedents of the CfD models. These fixed components of the contract will, subject to the outcome of this consultation and any further necessary modifications to reflect the feedback from it, reflect the fundamental tenets of the business model that have been described in this and previous publications and have been discussed extensively with stakeholders through expert groups and workshops during the development of the business model.

We anticipate that the Project-specific terms included in the Front End Agreement (defined below) will be subject to discussion in this phase. HMG retains the right to draw additional aspects of the business model into negotiations on a discretionary basis.

The method by which initial recipients of support are to be identified is set out in the document with title Cluster Sequencing for Carbon Capture, Usage and Storage (CCUS) Deployment: Phase-2 Guidance.

The terms offered during negotiations will consider the wider impacts of final project selection on the risk profile and resilience of the Track-1 Cluster Plans. This includes taking into account the subsequent plans for the clusters and other additional emitters and ensuring the cost of extending the T&S network to each project remains satisfactory. Any decision to award support at any stage of this process will only be made subject to government being comfortable with:

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<sup>9</sup> [Carbon capture usage and storage: amendments to Contracts for Difference regulations \(July 2021\)](#)

<sup>10</sup> [Cluster sequencing for carbon capture, usage and storage \(CCUS\) deployment: Phase-2 guidance \(November 2021\)](#)

the application of subsidy control requirements, any balance sheet implications, the status of any relevant statutory consents and that the project represents value for money for the consumer and the taxpayer and is deliverable. It should also be noted that any decision to award support may be contingent on wider factors including finalisation of agreements with relevant T&S networks as well as the development and Parliamentary approval of any necessary legislation.

### Form of the DPA

The DPA business model is split into:

- (a) the “Front End Agreement”, which is the document between the Generator and the DPA Counterparty, which includes the bespoke values and definitions agreed prior to the Agreement Date, such as the description of the generation facility;
  - (b) the “DPA Contract”, which is a set of standard terms, which will be common for all DPA recipients; and
  - (c) the “Direct Agreement”, which is a further agreement which can be entered into by the DPA Counterparty, the Generator, and a Lender/Security Trustee. This sets out the rights of the Lender/Security Trustee in relation to the DPA and the form of this Direct Agreement is found in Annex 5 of the DPA Contract.
  - (d) the gain share schedule, which outlines the provisions of the proposed gain share mechanism which may be applied to the DPA.
- together known as (“the DPA”).

We have published drafts of these alongside this consultation. We have included at Annex 2 of the DPA Contract a proposed Testing Schedule which sets out the anticipated requirements for the Commissioning Tests and Annual NDC Test.

The summary of the terms of the DPA Contract in this document should be read in conjunction with the full form draft DPA Contract published alongside this document. If there is a conflict between the summary of terms in this document and the draft DPA Contract, the draft DPA Contract shall prevail.

### Parties

The DPA Contract is a private law, commercial contract between the Generator and the DPA Counterparty, which will be the Low Carbon Contracts Company Ltd.

### Term length

Initial Projects, regardless of whether they are new build, repowered or retrofit, will have flexibility to choose an appropriate term length that is between 10 and 15 years<sup>11</sup>. The intention

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<sup>11</sup> Policy on term length is set out in more detail on page 8 of the [Dispatchable power agreement \(DPA\) business model: October 2021 update](#)

is to provide flexibility across a range of different approaches to implementing power CCUS whilst also facilitating competitive pricing and term lengths that are proportionate to the remaining operational life of each respective Project.

## Commissioning

There are requirements which must be fulfilled by the Generator at various stages of the Facility's commissioning process. These are the Initial Conditions Precedent (ICPs), Milestone Requirement, Operational Conditions Precedent (OCPs) and the Longstop Date Commissioning Requirements.

### Initial Conditions Precedent

The ICPs are the first milestone of the DPA. These are specified legal / regulatory requirements and conditions which the Generator must fulfil no later than twenty Business Days following signature of the DPA. The ICPs that must be delivered by a Generator are specified in Part A (Initial Conditions Precedent), Annex 1 (Conditions Precedent) of the draft DPA Contract. These notably include key Project documents, and corporate approvals.

If any of the ICPs are not either fulfilled by the Generator or waived by the DPA Counterparty within twenty (20) Business Days of the Agreement Date, then the DPA Counterparty will have the right but not obligation to issue a Pre-Start Date Termination Notice to the Generator further detail in respect of which is set out below in the section 'Pre-Start Date Termination'.

### Milestone Requirement

Following the satisfaction (or waiver) of the ICPs, the Milestone Requirement is the next contractual milestone which must be fulfilled by the Generator. The Milestone Requirement in the DPA is designed to demonstrate commitment to and progression of the Project. The Generator will be required to demonstrate by the Milestone Delivery Date (see Milestone Delivery Date below) either:

- An actual spend of 10% of Total Project Pre-Commissioning Costs; or
- The satisfaction of specified Project Commitments.

More information about how each of the specific Milestone Requirements are satisfied is set out below.

### Total Project Pre-Commissioning Costs

This Milestone Requirement is satisfied by the Generator demonstrating that it, and its direct shareholders, have in aggregate spent ten percent (10%) or more of the Total Project Pre-Commissioning Costs. This figure will be determined on a bespoke basis using the data about costs supplied during the Track-1 Phase-2 evaluation and the due diligence and negotiation phase. Evidence may include invoices, payment receipts and other supporting information necessary to demonstrate those costs have been incurred in relation to the Project.

### Project Commitments

This Milestone Requirement is satisfied by the Generator providing evidence demonstrating that it meets the General and Technology Specific Project Commitments (“Project Commitments”), including demonstrating it has entered into commercially binding arrangements to acquire necessary Material Equipment to deliver the Project by the start of the Target Commissioning Window (TCW). Valid agreements may include engineering, procurement and construction agreements (EPC contracts, direct supply agreements or framework agreements with binding purchase orders). The Project Commitments are specified in Part A and B of Annex 3 (Project Commitments) of the Front End Agreement. The rationale for specifying Project Commitments is to deter speculative or underdeveloped Projects from applying for a DPA.

### Milestone Delivery Date

The Initial Milestone Delivery Date shall be eighteen months after the Agreement Date but this period may be extended in some specific circumstances such as Force Majeure, electricity/gas network connection delays and T&S commissioning delays. Details of these circumstances are set out in the definition of Milestone Delivery Date in the DPA Contract.

If the Generator does not satisfy the Milestone Requirement by the Milestone Delivery Date, then the DPA Counterparty will have the right but not obligation to terminate the DPA Contract, further detail in respect of which is set out below in the section ‘Pre-Start Date Termination’.

### Operational Conditions Precedent and Start Date

For the Start Date of the DPA to occur and for DPA payments to commence, a Generator must demonstrate to the DPA Counterparty that it has satisfied the Operational Conditions Precedent (OCPs). If the last day of the TCW<sup>12</sup> passes before the Generator has met the OCPs, the DPA Contract term will still commence from the last day of the TCW but payments will not commence until the OCPs are satisfied (“Start Date”) and so the DPA term will be eroded. This is to incentivise timely delivery of a Project and ensure that budget remains committed only to Projects that demonstrate sufficient progress.

The details of the OCP requirements are set out in full Part B (Operational Conditions Precedent), Annex 1 (Conditions Precedent) of the draft DPA Contract and include a requirement for a Generator to demonstrate in Commissioning Tests that the Facility meets thresholds in relation to its CO<sub>2</sub> Capture Rate, Net Dependable Capacity (NDC), Plant Net Efficiency and Start Up Times as set out in Table 1 (Summary of OCP thresholds) below.

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<sup>12</sup> More detail about the TCW is explained on page 8 of the [Dispatchable power agreement \(DPA\) business model: May 2021 update](#)

Criteria	Minimum OCP Commissioning Requirements
NDC	Evidence that an NDC of not less than eighty five per cent. (85%) of the Generators Net Dependable Capacity Estimate has been Commissioned.
Start Up Times	Evidence that Start Up Times of not more than the Required Start Up Times have been Commissioned while the CO <sub>2</sub> Capture Rate during the relevant overall test periods are equal to or greater than the OCP Required CO <sub>2</sub> Capture Rate. Required Start Up Times means one hundred and twenty five per cent. (125%) of the Generator's Start Up Time Estimates.
CO <sub>2</sub> Capture Rate	Evidence that the OCP Required Capture Rate has been Commissioned, meaning a Test Achieved CO <sub>2</sub> Capture Rate which is equal to or greater than the higher of: (i) ten (10) percentage points lower than the Generator's CO <sub>2</sub> Capture Rate Estimate; and (ii) eighty per cent. (80%).
Plant Net Efficiency	Evidence that a Plant Net Efficiency of not less than ninety per cent (90%) of the Generator's Plant Net Efficiency Estimate has been Commissioned.

**Table 1: Summary of OCP thresholds.**

Noting that the purpose of the DPA is to incentivise low carbon electricity generation, there is also an OCP requirement to demonstrate that the Facility has connected to a T&S Network, (i.e. which will ensure the transfer of captured CO<sub>2</sub> to permanent storage, a 'T&S Connection Confirmation CP'). This can be waived in some circumstances, further detail in respect of which is set out below in the section 'T&S Commissioning Delay Relief'.

## Target Commissioning Window

The Initial Target Commissioning Window shall be a twelve (12) month period which will be set out in the Front-End Agreement and determined in the negotiation and due diligence phase prior to the Agreement Date. This period may be extended in some specific circumstances which are set out in detail in the definition of Target Commissioning Window in the draft DPA Contract (and which include Force Majeure, electricity/gas network connection delays and T&S commissioning delays).

## Longstop Date<sup>13</sup>

The Longstop Period is the twelve (12) month period following the last day of the Target Commissioning Window, but this period may be extended in some specific circumstances which are set out in detail in the definition of Longstop Date in the draft DPA Contract (and which include Force Majeure, electricity/gas network connection delays and T&S

<sup>13</sup> More detail on the Longstop Date is set out on page 9 of the [Dispatchable power agreement \(DPA\) business model: May 2021 update](#).

commissioning delays). The Longstop Date is the last day of the Longstop Period (as extended by those circumstances).

If any of the OCPs are not fulfilled by the Generator or waived by the DPA Counterparty prior to the Longstop Date, the DPA Counterparty will have the right but not obligation to terminate the DPA, further detail in respect of which is set out below in the section 'Pre-Start Date Termination'. The purpose of the Longstop Date is to prevent consumer subsidies being committed to Projects which secure DPAs but which never fully commission and also to incentivise developers to accurately assess capacity and performance of the Projects they intend to construct and commission.

### Longstop Date Requirements<sup>14</sup>

In addition to the OCP requirements set out above, there is a further requirement for a Generator to demonstrate by the Longstop Date that the Facility meets the Minimum Longstop Date Commissioning Requirements as set out in Table 2 (Summary of the Minimum Longstop Date Commissioning Requirements) below. This is to ensure the Generator can capture carbon at the rate and deliver flexible low carbon generation capacity that it has proposed on its application for subsidy and therefore these steps ensure it is being properly offered.

Criteria	Minimum Longstop Date Commissioning Requirements
NDC	NDC demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Net Dependable Capacity, which is ninety per cent. (90%) of the Generator's Net Dependable Capacity Estimate.
Start Up Times	The Start Up Times demonstrated at the Longstop Date Performance Tests are equal to or lower than the Required Start Up Times at the same time as the CO <sub>2</sub> Capture Rate during the relevant overall test periods is equal to or greater than the Required CO <sub>2</sub> Capture Rate (discussed below). Required Start Up Times means one hundred and twenty-five per cent. (125%) of the Generator's Start Up Time Estimates.
CO <sub>2</sub> Capture Rate	The Test Achieved CO <sub>2</sub> Capture Rate demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required CO <sub>2</sub> Capture Rate. The Required CO <sub>2</sub> Capture Rate means a Test Achieved CO <sub>2</sub> Capture Rate which is equal to or greater than the higher of: (i) five (5) percentage points lower than the Generator's CO <sub>2</sub> Capture Rate Estimate; and (ii) eighty five per cent, (85%).

<sup>14</sup> More detail on the Longstop Date Commissioning Requirements is set out in the [Dispatchable power agreement \(DPA\) business model: October 2021 update](#).

Plant Net Efficiency	The Plant Net Efficiency demonstrated at the Longstop Date Performance Tests is equal to or greater than the Required Plant Net Efficiency. The Required Plant Net Efficiency is that not less than ninety five per cent. (95%) of the Generator's Plant Net Efficiency Estimate has been Commissioned.
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**Table 2: Summary of the Minimum Longstop Date Commissioning Requirements.**

If any of these Minimum Longstop Date Commissioning Requirements are not either fulfilled by the Generator or waived by the DPA Counterparty by the Longstop Date, the DPA Counterparty will have the right but not obligation to terminate the DPA, further detail in respect of which is set out below in the section 'Termination for failing to meet the Minimum Longstop Date Commissioning Requirements'.

### Summary of OCP and Longstop Date Thresholds

The following table summarises the respective thresholds for both the OCP Performance Tests and the Longstop Date Performance Tests, noting that failing to meet the thresholds could lead to the termination of the DPA Contract<sup>15</sup>.

Criteria	OCP Performance Test	Longstop Date Performance Test
NDC	85% of the Net Dependable Capacity Estimate	90% of the Net Dependable Capacity Estimate
Start Up Times	125% of the Start Up Time Estimates	125% of the Start Up Time Estimates
CO <sub>2</sub> Capture Rate	10 percentage points lower than the CO <sub>2</sub> Capture Rate Estimate (with a floor of 80%)	5 percentage points lower than the CO <sub>2</sub> Capture Rate Estimate
Plant Net Efficiency	90% of the Plant Net Efficiency Estimate	95% of the Plant Net Efficiency Estimate

**Table 3: Summary of OCP and LSD Performance test thresholds.**

### Testing Requirements

The Performance Tests must include a combination of Full Load Tests and Start Up/Shut Down Tests. These tests, which must be carried out in accordance with specified Test Performance Standards, will be required to demonstrate that the Minimum Commissioning Requirements have been satisfied. This is necessary to ensure a consistent minimum standard

<sup>15</sup> Termination provisions are summarised in the section 'Termination and Consequences of Termination' below.



is applied that ensures we have confidence in the information being provided upon which subsidy is offered.

We have further developed the Facility testing requirements following the proposed outline provided in the October 2021 DPA update. The proposed testing regime requirements for the Performance Tests are now set out in the Testing Requirements in annex 2 of the draft DPA Contract.

## T&S Commissioning Delay Relief

To mitigate against the risks that arise if the T&S Network is not completed to schedule, the DPA offers limited relief for T&S Commissioning Delay Events which are outside of the Generator's control. The Generator may, if it considers that a T&S Commissioning Delay Event has occurred and is continuing, request either:

- A day for day delay to one or more of the Milestone Delivery Date, the Target Commissioning Window and/or the Longstop Date for any delay the T&S Commissioning Delay Event causes the Project; or
- That the DPA Counterparty waives the T&S Connection Confirmation CP if the Generator T&S Connection Works have been fully completed.

Where the Generator and the DPA Counterparty agree that the Generator T&S Connection Works have been fully completed, such that the Generator would otherwise be ready to connect to the T&S Network if the T&S Network was available, the Generator's obligation to fulfil the T&S Connection Confirmation CP will be waived so that if all other OCPs have been fulfilled, the Generator can achieve its Start Date and begin to receive Availability Payments.

If the T&S Connection Confirmation CP is waived, the Generator will receive no further extensions to its TCW or Longstop Date in relation to any T&S Commissioning Delay Event.

The Generator must notify the DPA Counterparty promptly upon becoming aware the T&S Network is or will be available (the 'T&S Network Availability Date'), and must then use reasonable endeavours to fulfil the T&S Connection Confirmation Requirement as soon as reasonably practicable, and in any event before the date that falls 3 months after the T&S Network Availability Date.

However, if the Generator fails to fulfil the T&S Connection Confirmation Requirement by that date, notwithstanding the availability of the T&S Network, the DPA Counterparty will have the right but not obligation to terminate the DPA (a 'Termination for failing to satisfy the T&S Connection Confirmation CP'). Any relief for T&S Commissioning Delays is subject to the process for termination for 'Failure to Remedy a T&S Prolonged Unavailability Event'. Further details are set out below in the section 'Termination'.

## Payment Mechanism

As outlined above, the DPA will consist of two payments: (i); an Availability Payment for low carbon electricity generation capacity; and (ii) a Variable Payment to adjust the position of the Facility in the merit order relative to unabated Plants when demand cannot be met by low marginal cost technologies such as renewables or nuclear.

### Availability Payment

The Availability Payment (AP) is designed to incentivise the availability of low carbon electricity generation and is based on the Availability Payment Rate ( $APR_i$ , expressed in £) which will be discussed in the negotiation / due diligence phase and included in the Front End Agreement. The Availability Payment will be reduced proportionally to reflect any reduction to the Availability of Capture or the Availability of Generation, which represent the Facility's capture rate and any loss of availability caused by generation outages.

The Availability Payment is calculated for each AP Billing Period with the following formula:

$$AP = \sum (AG_i \times AC_i \times NDC \times APR_i) + TSCF + TSRF$$

Term	Definition	Source
$AP$	Availability Payment in the AP Billing Period (£)	Calculated
$AG_i$	Availability of Generation applicable to Settlement Unit i (%)	Calculated
$AC_i$	Availability of Capture applicable to Settlement Unit i (%)	Calculated
$NDC$	Net Dependable Capacity (MW)	Measured through the OCP Performance Test or (where relevant) by the Longstop Performance Test and then through the Annual NDC Tests
$APR_i$	Availability Payment Rate per Settlement Unit i (£/MW/Settlement Unit)	Agreed in DPA and fully indexed to CPI.

Term	Definition	Source
<i>TSCF</i>	T&S Capacity Fee in the AP Billing Period (£)	Calculated <sup>16</sup>
<i>TSRF</i>	T&S Residual Fee being the portion of any T&S residual charge relevant to the size of user's connection (£) in AP billing period.	Calculated <sup>17</sup>

**Table 4: Definition of terms in the Availability Payment rate formula.**

### Availability of Generation

The Availability of Generation is the net generating capacity of the Facility during an AP Settlement Unit, calculated in accordance with the following formula for each such unit:

- Where no Generation Outage Event (includes any derating event) occurs during an AP Settlement Unit:

$$AG_i = 1$$

- Where a Generation Outage Relief Event occurs during an AP Settlement Unit:

$$AG_i = 1$$

- Where a Generation Outage Event either starts, continues or ends during the relevant AP Settlement unit:

$$AG_i = AG_{OE_n} = 1 - \frac{\sum \left( (NAC_{OE_n} - NAC_j) \times \Delta T_j \right)}{NAC_{OE_n} \times \Delta T_{Settlement Units}}$$

Term	Definition
$AG_{OE_n}$	Availability of Generation during Generation Outage Event n
$NAC_j$	Net Available Capacity during time segment j (MW)
$\Delta T_j$	Duration of time segment j of the Generation Outage Event (hours)
$NAC_{OE_n}$	Net Available Capacity immediately preceding the Generation Outage Event n (MW)

<sup>16</sup> The calculation of the T&S Capacity Fee for the AP Billing Period is set out in the DPA Contract.

<sup>17</sup> The calculation of the T&S Residual Fee for the AP Billing Period is set out in the DPA Contract.

Term	Definition
$\Delta T_{Settlement\ Units}$	Generation Outage Event Duration (hours)

**Table 5: Definition of terms in the Calculation of Availability of Generation formula.**

For each term above the information will be derived from data declared on UK REMIT. If UK REMIT is unavailable at any time then this information shall be provided promptly to the DPA Counterparty directly as would have been provided had UK REMIT been available.

More information about the treatment of outages and the declarations system in the DPA Contract can be found below in the section 'Declarations'.

### Availability of Capture

The Availability of Capture is determined for each AP Settlement Unit based on the following principles:

- For an AP Settlement Unit where a Capture Outage Relief Event occurs (a Capture Plant Outage Event that occurs as a direct result of a T&S Outage Event not attributable to the Generator):

$$AC_i = DCR_i$$

- For an AP Settlement Unit where Metered Electricity Output is equal to or less than zero (a Non-Operational Period):

$$AC_i = DCR_i$$

- For an AP Settlement Unit where Metered Electricity Output is greater than zero and no Capture Outage Relief Event occurs (an Operational Period):

$$AC_i = ACR_{ph}$$

Term	Definition	Source
$ACR_{ph}$	Achieved CO <sub>2</sub> Capture Rate in the AP Billing Period (%)	Calculated (see further detail below)
$DCR_i$	Deemed CO <sub>2</sub> Capture Rate (%) for AP Settlement Unit (i)	Calculated (see further detail below)

**Table 6: Definition of terms in the Calculation of Availability of Capture formula.**

## Deemed CO<sub>2</sub> Capture Rate

The Deemed CO<sub>2</sub> Capture Rate for each AP Settlement Unit shall be the lower of the Deemed Rate (which is a rolling average of the Achieved CO<sub>2</sub> Capture Rate) and any Declared CO<sub>2</sub> Capture Rate. More detail is set out in relation to the Declared CO<sub>2</sub> Capture Rate below in the section 'Declarations'.

### Deemed Rate

The Deemed Rate is a measure of historic performance of the Facility, and is determined in one of three ways:

- where there has not yet been a single AP Billing Period with an Achieved CO<sub>2</sub> Capture Rate (for example in the first month of operation) the Deemed Rate shall be the value demonstrated at the relevant Performance Test (i.e. the OCP Performance Tests or the Longstop Date Performance Tests);
- where there have been between one (1) and twelve (12) AP Billing Periods with an Achieved CO<sub>2</sub> Capture Rate, the Deemed Rate shall be the Average Achieved CO<sub>2</sub> Capture Rate during a Deemed Calculation Period which is the period from the Start Date to the end of the most recent AP Billing Period as calculated below; or
- where there have been twelve (12) or more AP Billing Periods with an Achieved CO<sub>2</sub> Capture Rate, the Deemed Rate shall be the 'Average Achieved CO<sub>2</sub> Capture Rate' during a Deemed Calculation Period which is the period comprising the most recent twelve (12) AP Billing Periods where the Achieved CO<sub>2</sub> Capture Rate has been used to determine the Availability of Capture for at least one AP Settlement Unit within each AP Billing Period.

The Average Achieved CO<sub>2</sub> Capture Rate over a Deemed Calculation Period will be calculated by considering the sum of all CO<sub>2</sub> generated during the relevant period and the sum of all CO<sub>2</sub> sequestered into the T&S Network during the period, with all CO<sub>2</sub> generated and CO<sub>2</sub> sequestered during any T&S Outage excluded from the calculation. This is calculated with the following formula:

$$AACR_{ph} = \frac{CO2_{exp} - CO2_{expCORE}}{CO2_{gen} - CO2_{genCORE}}$$

Term	Definition	Source
$AACR_{ph}$	Average Achieved CO <sub>2</sub> Capture Rate (%)	Calculated
$CO2_{exp}$	Metered CO <sub>2</sub> Output in a Deemed Calculation Period (tCO <sub>2</sub> )	Metered on entry to T&S network at the CO <sub>2</sub> Delivery Points
$CO2_{expCORE}$	Metered CO <sub>2</sub> Output where a Capture Outage Relief Event occurs in a Deemed Calculation Period (tCO <sub>2</sub> )	Metered on entry to T&S network at the CO <sub>2</sub> Delivery Points
$CO2_{gen}$	Calculated CO <sub>2</sub> Generated in a Deemed Calculation Period (tCO <sub>2</sub> )	Calculated from Total Metered Fuel Consumption and the Fuel Composition using JEP <sup>18</sup> methodology
$CO2_{genCORE}$	Calculated CO <sub>2</sub> Generated where a Capture Outage Relief Event occurs in a Deemed Calculation Period (tCO <sub>2</sub> )	Calculated from Total Metered Fuel Consumption and the Fuel Composition using JEP methodology

**Table 7: Definition of terms in the Calculation of Average Achieved CO<sub>2</sub> Capture Rate formula.**

### Achieved CO<sub>2</sub> Capture Rate

The Achieved CO<sub>2</sub> Capture Rate is calculated for each AP Billing Period by considering the emissions during the AP Billing Period and the CO<sub>2</sub> sequestered into the T&S Network during the AP Billing Period, with all emissions and CO<sub>2</sub> sequestered during any T&S Outage excluded from the calculation. This is calculated with the following formula:

$$ACR_{ph} = \frac{CO2_{exp} - CO2_{expCORE}}{CO2_{gen} - CO2_{genCORE}}$$

<sup>18</sup> Joint Environmental Programme.

Term	Definition	Source
$ACR_{ph}$	Achieved CO <sub>2</sub> Capture Rate (%)	Calculated
$CO2_{exp}$	AP Metered CO <sub>2</sub> Output (over an AP Billing Period) (tCO <sub>2</sub> )	Metered on entry to T&S network at the CO <sub>2</sub> Delivery Points
$CO2_{exp_{CORE}}$	AP Metered CO <sub>2</sub> Output with Capture Outage Relief Event (tCO <sub>2</sub> )	Metered on entry to T&S network at the CO <sub>2</sub> Delivery Points
$CO2_{gen}$	AP Calculated CO <sub>2</sub> Generated (over an AP Billing Period) (tCO <sub>2</sub> )	Calculated from Total Metered Fuel Consumption and the Fuel Composition using JEP19 methodology
$CO2_{gen_{CORE}}$	AP Calculated CO <sub>2</sub> Generated with Capture Outage Relief Event (over an AP Billing Period) (tCO <sub>2</sub> )	Calculated from Total Metered Fuel Consumption and the Fuel Composition using JEP methodology

**Table 8: Definition of terms in the Calculation of Achieved CO<sub>2</sub> Capture Rate formula.**

## Net Dependable Capacity

The Net Dependable Capacity (NDC) means the net generating capacity (expressed in MW) of the Facility on a continuous and reliable basis available at the Electricity Delivery Point(s), at Reference Site Conditions. The NDC used in the Availability Payment calculation shall be the lower of: (i) the net generating capacity demonstrated at the most recent relevant Test; and (ii) the Net Dependable Capacity Estimate.

## Net Dependable Capacity Estimate

The Net Dependable Capacity Estimate, which acts as a cap on the NDC used in the Availability Payment, will initially be the Initial Net Dependable Capacity Estimate agreed in the negotiations and due diligence phase prior to the Agreement Date and defined in the Front End Agreement of the DPA Contract. The NDC cap ensures that there is proportionate budgetary control in the allocation and application of DPAs.

A Generator may reduce its Net Dependable Capacity Estimate by up to 10% prior to the Milestone Delivery Date ('a permitted reduction') by issuing a NDCE Adjustment Notice. A Generator may only make one Permitted Reduction, and any NDCE Adjustment Notice shall

<sup>19</sup> Joint Environmental Programme

be irrevocable. The Generator may not subsequently increase the Net Dependable Capacity Estimate.

### Annual NDC Test

There will be a requirement for a Generator to perform an Annual NDC Test demonstrating the NDC of the Facility. Such test will also need to be performed in accordance with the testing requirements detailed in the Testing Requirements annex of the draft DPA Contract. We are proposing that this test must be performed within the period between 1 June to 1 September but can be performed on any date that suits the Generator within that window. Each year the revised NDC shall then take effect on 1 October. The revised NDC will not exceed the Initial NDC estimate upon which budgetary control is based. Providing a window within which the test must be performed provides a degree of flexibility to Generators while preventing a scenario where there is an incentive to undertake planned Facility maintenance outages in winter months where market demand is foreseeably greatest.

### Transport and Storage fees in the Availability Payment

The January 2022 Transport and Storage (T&S) Business Model update<sup>20</sup> confirmed that T&S fees will have three elements comprising:

1. A Volumetric Fee based on the tonnes of CO<sub>2</sub> injected into the T&S network to cover T&S variable operational costs,
2. A Capacity Fee based on the users booked network capacity to cover T&S fixed capital cost, and
3. A Residual Fee to cover the remainder of user's share of the T&S allowed revenue which will be charged based on £/unit of size of user's connection and will be subject to a cap.

The DPA will cover the Capacity and Residual fees that are associated with operating the Facility through the TSCF and TSRF terms in the Availability Payment (as set out above). The Residual fee will be included in the Availability Payment because it is based on the size of a user's connection, which is not directly tied to the amount of CO<sub>2</sub> the Project injects into the T&S Network or the amount of electricity that the plant exports to the grid and so it would not be appropriate to include as a term in the Variable Payment. The Volumetric fee will form part of the Variable Payment calculation.

### Settlement Units and Billing Period for the Availability Payment

Each Settlement Unit for the AP will be a thirty-minute period aligning with the wider electricity market. The AP Billing Period will be one calendar month.

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<sup>20</sup> [Transport and storage business model: January 2022 update](#)



### Suspension of payments

In the October 2021 update we set out that the DPA Counterparty may suspend Payments under the DPA where the Generator:

- Fails to achieve minimum CO<sub>2</sub> capture rate of 50% for a prolonged period (i.e. any 3 whole consecutive or non-consecutive AP Billing periods within a rolling 6-month period). A Generator must demonstrate an Achieved and Declared CO<sub>2</sub> Capture Rate Average of no less than 85% for 3 whole consecutive AP Billing Periods to lift the suspension. Where a Generator fails to lift the suspension and the DPA Counterparty terminates the DPA then all suspended payments shall be withheld (although the value of the suspended payments will be set off against the Termination Payment that the Generator is required to make to the DPA Counterparty).

The DPA Counterparty may also suspend payments where the Generator:

- Is in breach of the metering schematic obligations (i.e. the requirement to notify the DPA Counterparty of material changes to metering equipment);
- Fails to provide the DPA Counterparty with metering access rights (i.e. the requirement to grant necessary rights of access to the Facility);
- Fails to provide Declaration Capacity Data;
- Fails to allow the DPA Counterparty to exercise its Declaration Access Right;
- Fails to undertake an Annual NDC Test;
- Fails to provide the DPA Counterparty with Annual NDC Test Access Rights;
- Fails to comply with a SCADA Systems Obligations;
- Fails to comply with the Compliance of Technology undertaking;
- Fails to comply with a T&S Prolonged Unavailability Procedure Obligation.

In all cases, the payments that can be suspended must relate to the period of breach and the DPA Counterparty must notify the Generator of the intention to suspend payments before such payment suspension takes effect. In all cases, a Generator has the opportunity to rectify the breach, following which payments will resume (without interest being payable by the DPA Counterparty).

### Variable Payment

The Variable Payment (VP) will be calculated by comparing the difference in gas costs, carbon costs, other variable costs and T&S costs incurred by the Facility, and those incurred by the Reference Plant which should represent the unabated combustion plant with the highest lower heating value efficiency on the GB electricity system. This is achieved by calculating the higher gas costs, lower CO<sub>2</sub> emissions costs, T&S Volumetric Fees and Other Extra Variable Costs incurred by the Facility relative to the Reference Plant, to ensure that the Facility's overall short run marginal costs are less than those incurred by the unabated Reference Plant.

The Variable Payment is calculated for each VP Billing Period in accordance with the following formulae:

$$VP = \sum (VPR \times MWh)$$

$$VPR = GC + CC + OC + TSVP_{CR}$$

Term	Definition	Source
<i>VP</i>	Variable Payment in the VP Billing Period (£)	Calculated
<i>VPR</i>	Variable Payment Rate for the VP Billing Period (£/MWh)	Calculated
<i>MWh</i>	Metered Day Electricity Output for the VP Billing Period (MWh)	Adjusted for line loss, metered at entry to electricity transmission / distribution network, and reported by a BSC company (or agent) to the DPA Counterparty.
<i>GC</i>	Gas Cost Differential due to CCUS (£/MWh)	Calculated <sup>21</sup>
<i>CC</i>	CO <sub>2</sub> Cost Differential due to CCUS (£/MWh)	Calculated <sup>22</sup>
<i>OC</i>	Other Extra Variable Costs due to CCUS (£/MWh)	Agreed in DPA and indexed to inflation
<i>TSVP<sub>CR</sub></i>	T&S Volumetric Payment Charging Rate (£/MWh)	Calculated <sup>23</sup>

**Table 9: Definition of terms in the Variable Payment Formula**

<sup>21</sup> The calculation of the Gas Cost Differential is specified on page 20 of the [Dispatchable power agreement \(DPA\) - detailed explanation and examples: December 2020 update \(Annex C\)](#)

<sup>22</sup> Calculation of CO<sub>2</sub> Cost Differential specified on page 20 of the [Dispatchable power agreement \(DPA\) - detailed explanation and examples: December 2020 update \(Annex C\)](#)

<sup>23</sup> Calculation of T&S Volumetric Payment Charging Rate is set out in the DPA Contract.

## Gas Cost Differential and Gas Reference Price

The Gas Cost Differential is based on the thermal efficiency of the Facility vs the Reference Plant. The Gas Reference Price will be the settlement price for day ahead natural gas contracts for delivery at the UK National Balancing Point. The Gas Cost Differential in respect of the Facility (expressed in £/MWh) in VP Settlement Unit (i) will be calculated in accordance with the following formula:

$$GC_i = \frac{GP_i}{100} \times (GU_{CCUS} - GU_{Ref})$$

Term	Definition
$GC_i$	Gas Cost Differential (£/MWh) in VP Settlement Unit (i)
$GP_i$	Gas Price (pence/therm) in VP Settlement Unit (i)
$GU_{CCUS}$	Facility Gas Consumption (therms/MWh)
$GU_{Ref}$	Reference Plant Gas Consumption (therms/MWh)

**Table 10: Definition of terms in the gas cost differential.**

The Gas Reference Price may be reviewed and subsequently amended pursuant to the Gas Reference Price Review procedure detailed in Annex 6 of the draft DPA Contract. The review procedure broadly follows that for BMRP and IMRP in CfD AR4.

## CO<sub>2</sub> Cost Differential and Carbon Price

A carbon price indicator is used in the calculation of the CO<sub>2</sub> Cost Differential between the power CCUS plant and unabated Reference Plant. The CO<sub>2</sub> Cost Differential in respect of the Facility (expressed in £/MWh) for a VP Settlement Unit (i), will be calculated in accordance with the following formula:

$$CC_i = CP_i \times (CO2E_{CCUS} - CO2E_{Ref})$$

Term	Definition
$CC_i$	CO <sub>2</sub> Cost Differential in VP Settlement Unit (i) (£/MWh)
$CP_i$	Carbon Price in VP Settlement Unit (i) (£/t CO <sub>2</sub> )

Term	Definition
$CO_2E_{CCUS}$	Facility CO <sub>2</sub> Emissions in VP Settlement Unit (i) (tCO <sub>2</sub> /MWh)
$CO_2E_{Ref}$	Reference Plant CO <sub>2</sub> Emissions in VP Settlement Unit (i) (tCO <sub>2</sub> /MWh)

**Table 11: Definition of terms in CO<sub>2</sub> cost differential.**

The Carbon Price used in the CO<sub>2</sub> Cost Differential calculation will be equal to the sum of the prevailing: (i) Carbon Support Price; and (ii) Carbon Market Reference Price, for such VP Settlement Unit.

The Carbon Support Price is the price (expressed in £/tCO<sub>2</sub>) as published by HM Treasury pursuant to Finance Act 2000, Schedule 6 (Climate Change Levy); and

The Carbon Market Reference Price is the price (expressed in £/tCO<sub>2</sub>) for a UKA Futures December Contract as reflected in a UKA Futures Index (ICE Futures Europe Index)

The Carbon Market Reference Price may be reviewed and subsequently amended pursuant to the Carbon Market Reference Price Review procedure detailed in Annex 7 of the draft DPA Contract. The review procedure broadly follows that for BMRP and IMRP in CfD AR4.

The Other Extra Variable Costs component of the Variable Payment Rate are those costs, other than gas costs, carbon emissions savings, and T&S fees incurred from operating the Facility compared to the Reference Plant. The Generator will need to demonstrate that the costs it proposes to include as Other Extra Variable Costs – which will be subject to negotiation and agreement with BEIS prior to the Agreement Date – would not have been incurred by the Reference Plant and are specific to operation of the carbon capture plant only, for example, consumables such as cooling water for the carbon capture plant.

### Definition of Reference Plant

The proposed Initial Reference Plant shall be a CCGT with a defined thermal efficiency of 62.4% on a lower heat value basis (LHV). The same Reference Plant shall be applied to all initial DPA Generators including retrofit and new build Projects. This is to ensure that DPA Facilities are incentivised to dispatch ahead of unabated thermal power generation facilities.

The DPA Counterparty will be required to review and update the Reference Plant definition for all DPA Generators no more frequently than every 5 years commencing no later than 2027. This may result in updates to the Base Performance Assumptions and subsequently the Variable Payment calculation. It is expected that the Base Performance Assumptions of the Reference Plant can only improve (i.e. in a way which leads to the calculation of a higher short run marginal cost differential) via the Reference Plant Review Procedure.

The Reference Plant Review Procedure will be undertaken as follows:

- The DPA Counterparty shall procure an Energy Consultant (i.e. an internationally recognised, leading energy consultant experienced in advising clients in the UK electricity generation sector including in relation to the design, engineering, procurement and construction of Plants) to conduct a Reference Plant Criteria Review every 5 years. If the Energy Consultant determines that changes to the Reference Plant are not required then a Reference Plant Criteria Review will be conducted by the DPA Counterparty in each subsequent year until such time as the Energy Consultant determines that an amendment to the Reference Plant is required.
- The DPA Counterparty shall propose the identity of the Energy Consultant to all DPA Generators at least 180 days prior to the Reference Plant Criteria Review commencement date.
- Generators can object to the DPA Counterparty's proposed Energy Consultant on limited grounds (e.g. where the proposed Energy Consultant does not meet specified 'Energy Consultant Appointment Criteria').
- The Energy Consultant shall commence their review on 01 August and provide a report to the DPA Counterparty no later than 01 November.
- The DPA Counterparty shall notify all Generators of the outcome of the relevant Reference Plant Criteria Review no later than 1 December.
- Any change to the Reference Plant and consequent changes to the Base Performance Assumptions utilised to calculate the Variable Payment rate will take effect from 01 January in the year immediately following the Relevant Reference Plant Criteria Review Commencement Date.
- Further detail of this procedure can be found at Annex 8 (Reference Plant Review) of the draft DPA Contract.

### Settlement and Billing for the VP

The VP Settlement Unit and VP Billing Period will be set at one day from 00:00 through to 23:59. The DPA Counterparty will use the BSC interim settlement run to produce a Billing Statement within 7 working days with payment made within 28 calendar days of the relevant settlement unit day.

The gas day runs from 06:00 to 06:00 therefore this will necessitate applying two day-ahead gas prices to each VP Settlement Unit calculation – the first running from 00:00 to 05:59 and the second running from 06:00 to 23:59.

The VP will not be paid for those full half hour periods in which there is a Full Capture Outage Event or a Full T&S Outage Event.

## Representations and Warranties

### Metering Undertakings

Contractual provisions relating to metering undertakings are set out in Part 7 section 21 of the draft DPA Contract. Electricity and gas metering undertakings follow established industry practice and in the case of electricity metering reflects the provisions in the CfD AR4 contract. The DPA Contract introduces the additional requirement for CO<sub>2</sub> metering.

Accurate metering is important for determining the Achieved CO<sub>2</sub> Capture Rate, CO<sub>2</sub> quality and quantity of CO<sub>2</sub> captured by the Facility and delivered to the T&S Network. Such factors are important for ensuring that accurate payments between parties across the CCUS chain are made, including payments made by the DPA Counterparty to each Generator under DPA Contracts.

With effect from the Start Date, the Generator will be required to install, configure, register, operate and maintain CO<sub>2</sub> meters in accordance with the requirements of the CO<sub>2</sub> metering specification. CO<sub>2</sub> metering standards are subject to further development – it is expected that such standards will be consistent with the requirements of direct monitoring requirements under the UK ETS regime but this will be further clarified prior to the entry into the first DPA Contracts.

### Generator Declaration Obligations

#### **Notification of Generation Declaration Capacity Data (including Generation Outage Events)**

The Generator shall submit to the DPA Counterparty electricity generation capacity data declarations and details of Generation Outage Events, including;

- Net Available Capacity immediately preceding a Generation Outage Event;
- Net Available Capacity during each time segment of a Generation Outage Event;
- Generation Outage Event durations; and
- The reason for any Generation Outage Event (including, if applicable, a Generation Outage Relief Event).

In all cases, unless UK REMIT is unavailable, all relevant submissions shall be in accordance with UK REMIT<sup>24</sup> (Regulation on wholesale energy markets integrity and transparency) requirements.

If UK REMIT is unavailable at any time the Generator must promptly provide the Generation Declaration Capacity Data to the DPA Counterparty directly.

<sup>24</sup> Following the UK's departure from the EU, REMIT is retained under national legislation by effect of the European Union (Withdrawal) Act 2018 and amended by the Electricity and Gas (Market Integrity and Transparency) (Amendment) (EU Exit) Regulations 2019 (SI 2019/534)

### **Notification of Full Capture and Full T&S Outages**

The Generator shall submit to the DPA Counterparty details of the duration, start time and end time of any Full Capture Outage Event and/or Full T&S Outage Event to the nearest minute. A Generator must declare a Full Capture Outage Event and/or a Full T&S Outage Event if:

- the Metered Electricity Output is greater than zero (0); and
- the Metered CO<sub>2</sub> Output is equal to or less than zero (0)

for 2 or more consecutive AP Settlement Units.

### **Notification of Declared CO<sub>2</sub> Capture Rate**

The Generator shall submit the Declared CO<sub>2</sub> Capture Rate in respect of all AP Settlement Units where: (i) the Metered Electricity Output is equal to or less than zero (0); and/or (ii) a T&S Outage Event occurs, in a form and content satisfactory to the DPA Counterparty (acting reasonably) and with the frequency that the Declared CO<sub>2</sub> Capture Rate is required to be provided in accordance with a methodology and framework to be determined.

If any Declaration Capacity Data (i.e. relating to Generation Declaration Capacity Data, Full Capture or T&S Outages and/or Declared CO<sub>2</sub> Capture Rates) that a Generator provides is misleading in any respect, or the Generator's failure to provide such Declaration Capacity Data is misleading in any respect, then the DPA Counterparty will have the right (but not the obligation) to terminate the DPA Contract.

### **Minimum CO<sub>2</sub> Capture Rate Undertaking**

If a Generator fails to achieve a Minimum CO<sub>2</sub> Capture Rate Average, that being a Achieved and Declared CO<sub>2</sub> Capture Rate Average of seventy percent ( $\geq 70\%$ ), for three (3) consecutive AP Billing Periods (months) or three (3) non-consecutive AP billing periods within six (6) rolling AP Billing Periods (months), then the DPA Counterparty may give a Capture Rate Breach Notice to the Generator. Such notice will include a Capture Rate Breach Deadline which is eighteen (18) months after the date of the Capture Rate Breach Notice upon which the DPA Counterparty may terminate the DPA unless the Minimum CO<sub>2</sub> Capture Rate breach has been rectified.

Within twenty (20) business days of receiving a Capture Rate Breach Notice the Generator shall submit to the DPA Counterparty a Capture Rate Breach Response Notice where it sets out how it will rectify the failure to achieve the Minimum CO<sub>2</sub> Capture Rate, by achieving an Achieved and Declared CO<sub>2</sub> Capture Rate Average greater than eighty five percent (85%) for three (3) consecutive AP Billing Periods before the 18-month Capture Rate Breach Deadline occurs.

If rectification may take longer than 18 months the Generator will have the option to provide the DPA Counterparty with a Capture Rate Breach Rectification Plan. The Generator must inform the DPA Counterparty of its intent to submit this plan within twenty (20) business days of receiving a Capture Rate Breach Notice and then submit its Rectification Plan within sixty (60)

Business Days thereafter. The DPA Counterparty must then confirm to the Generator whether it approves the Rectification Plan or requires further information to assess the plan.

Where a Rectification Plan is approved by the DPA Counterparty, the Generator must start to implement the Rectification Plan within sixty (60) business days after the Rectification Plan approval date to remedy the Minimum CO<sub>2</sub> Capture Rate Breach.

Where the Generator fails to remedy the Minimum CO<sub>2</sub> Capture Rate Breach then a Capture Rate Termination Event will be deemed to have occurred. See 'Termination and Consequences of Termination' section of this document for further information.

Please see the discussion above on page 29 in relation to the DPA Counterparty's right to suspend payments under the DPA Contract if the Generator's Achieved and Declared CO<sub>2</sub> Capture Rate Average is less than fifty per cent (50%) for either three (3) consecutive AP Billing Periods or three (3) non-consecutive AP Billing Periods within six (6) rolling AP Billing Periods.

### Information Undertaking

We have adapted the Information Provision requirement of the CfD AR4 to reflect the mechanics of the DPA. Notably, Generators will need to provide estimates of Net Dependable Capacity, Plant Net Efficiency and, Start-Up Times on the Agreement Date and estimates of the Achieved CO<sub>2</sub> Capture Rate and Availability of Generation for the first AP Billing Period after the Start Date.

The Generator must also provide the DPA Counterparty with reports and supporting information detailing the progress of the Pre-Operation activities at the Facility from the Agreement Date until the Start Date.

In addition, the Generator must ensure that: (i) a SCADA System is installed, and maintained in accordance with the Reasonable and Prudent Standard; and (ii) the DPA Counterparty has full access to all Information from the SCADA System at the Facility (including live operational data) by a data communications link or other applicable data-link as agreed between the Parties (such agreement not to be unreasonably withheld or delayed by the Generator).

### Subsidy Control

As in the CfD AR4, the Generator will be required to make undertakings to the DPA Counterparty regarding the provision of information and declaration of no cumulation of subsidy, state aid and /or union funding other than that provided through the DPA Contract. This is to ensure there is no overcompensation and to facilitate consistency with the subsidy control principles. If a Generator provides misleading information or fails to comply with its contractual undertakings regarding receipt of subsidies, its payments under the DPA Contract may be suspended. Further detail on these provisions is set out in condition 24 of the draft DPA Contract.



## Supply Chains

### **Economic benefits and supply chain reporting**

In November 2021 we provided an update on the DPA and ICC business models<sup>25</sup> clarifying our intention to include a requirement for participants to report on the economic benefits and CCUS supply chains associated with the development of their CCS capture plant projects. The purpose of this is to provide BEIS with key economic, technical and commercial data around the supply chain and the value drivers that underpin it.

Here we provide an update on the proposed submission process and fees associated with non-compliance. Ahead of the start of Phase-2 negotiations, we plan to provide a template for the report, which would be completed at each of the reporting milestones, and guidance on what will need to be reported.

### **Report submission**

The first report will have to be submitted to the DPA Counterparty by the deadline of 18 months after contract signature aligning with the Milestone Delivery Date (if there is a delay to the Milestone Delivery Date, the first report would also be delayed), the second report by the third anniversary of the Project Start Date, then third and final report by its seventh anniversary of the Start Date. Reports will be accepted within the preceding 6 months of the dates noted above; for example, the first report must be submitted between 12 and 18 months after contract signature. All reports should be accompanied by a Directors' Certificate to provide the DPA Counterparty with comfort that the information submitted is accurate and complete.

The DPA Counterparty must respond to the Generator within 20 Business Days of the deadline to confirm receipt of a satisfactory report or to notify the Generator of its non-compliance. A non-compliance notice will be issued if the report is not submitted before the relevant reporting deadline. Additionally, a non-compliance notice can be issued if the submitted report is not valid. For example, this could include if any fields in the template are blank, are completed with information that is not relevant to the question asked, or does not adhere to restrictions on the type of data that can be entered/number of words. BEIS will consider further the exact criteria for this.

The DPA Counterparty will pass this information to BEIS, who may look to publish some extracts from these reports in order to share information with wider industry and to support implementation of a CCUS supply chain. Before doing so, any information deemed by the Department to be commercially sensitive would be removed.

### **Nominal fees for non-compliance**

Our current proposal is that, if the DPA Counterparty has issued a non-compliance notice, the Generator will be required to pay the nominal fees set out in table 12:

<sup>25</sup> [November 2021: Updates on the industrial carbon capture and dispatchable power agreement business models](#)

Months of non-compliance	Maximum monthly fee
1	£1,000
2	£1,000
3	£1,000
4	£2,500
5 or more	£5,000

**Table 12: Summary of fees for non-compliance.**

The DPA Counterparty would have the right to set-off any fees due to it against any payments due to the Generator under DPA Contract.

Any fees due in respect of the first report will not need to be paid until the Start Date has occurred and payments under the DPA Contract have commenced. If the Start Date never occurs, such that payments under the DPA Contract never commence, and a pre-start date termination occurs, then the Generator would not pay any fees accrued.

We set out below, some worked examples of non-compliance fees that could apply under the DPA Contract:

- After 3 months of non-compliance, the Generator will have incurred fees totalling £3,000 (which, assuming that payments had not been suspended for any other reason, would be deducted from payments due to the Generator assuming that the Start Date had occurred).
- After 6 months of non-compliance, the Generator will have incurred fees totalling £15,500 (which, assuming that payments had not been suspended for any other reason, would be deducted from payments due to the Generator assuming that the Start Date had occurred).

For the non-compliance procedure to end, and for the Generator to stop incurring the non-compliance fees, the Generator would need to submit a valid report to the DPA Counterparty (see above).

## Qualifying Change in Law (QCiL)

The DPA Contract contains qualifying change in law provisions, following the approach taken in the CfD AR4, in order to provide fair and proportionate protection to Generators in respect of three categories of change in law:

- 1 Discriminatory Change in Law. This is a change in law which specifically applies to A) the particular Project, B) the particular Facility or C) the particular Generator.
- 2 Specific Change in Law. This is a change in law that specifically applies to generating facilities deploying CO<sub>2</sub> capture technology (or their holding companies) forming part of such generating facilities and not to other generating facilities.
- 3 Other change in law. This is a change in law which, whilst not specifically applying to Generators deploying CO<sub>2</sub> capture technology, has an undue and discriminatory effect on the costs incurred by them compared to one of four comparator groups defined below:
  - Comparator group A: All other Generators operating generating facilities deploying CO<sub>2</sub> capture technology.
  - Comparator Group B: All Generators operating generation facilities with the same or similar (combustion process) as the facility but not deploying CO<sub>2</sub> Capture Technology
  - Comparator Group C: all Generators operating generating facilities deploying one or more material generation technologies which is any generating technology accounting for at least 1% of installed generation capacity in the UK; or
  - Comparator Group D: all Generators operating generation facilities deploying CO<sub>2</sub> capture technology other than the relevant Generators CO<sub>2</sub> capture technology.

QCiL protection is not available to Generators in respect of a Foreseeable Change in Law<sup>26</sup>.

### QCiL Compensation

QCiL compensation will be based on the general principle that the Generator impacted by the QCiL should be no better and no worse off than before the QCiL. The provision can have effect both ways whereby the Generator will be entitled to compensation if the QCiL results in net costs for the Generator, and the DPA Counterparty will be entitled to compensation if the QCiL results in net savings for the Generator. The main categories of compensation will be payable to/from a Generator relate to QCiLs that:

- Permanently prevent the construction of a Facility;
- Affect a Generator's capex;

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<sup>26</sup> The definition of Foreseeable Change in Law was set out in annex B of the [Dispatchable power agreement \(DPA\) business model: May 2021 update](#).

- Affect a Generator's opex;
- Affects a Generator's Availability of Generation, Availability of Capture and/or Net Dependable Capacity;
- Affect's a Generator's ability to generate electricity; or
- Permanently prevents a Facility from operating.

Where a QCiL occurs after the Agreement Date and before the Start Date which will permanently prevent the Generator, acting to a Reasonable and Prudent Standard, from Commissioning the Facility, because some aspect of the QCiL in question renders the construction, conversion, testing, completion or commissioning which is left to be done illegal, the following costs would be payable to the Generator (subject to any netting of QCiL Construction Event Savings): (i) development and pre-development costs in respect of the Facility; (ii) decommissioning costs for any portion of the Facility already constructed; (iii) any break costs which the Generator will incur by virtue of a contract which it holds with a third party or its financiers; and (iv) costs which are wholly attributable to the construction, installation, testing, completion or commissioning of the Facility. The compensation will be paid either as a lump sum or as a series of staged payment, at the DPA Counterparty's discretion.

Where a QCiL results in net capex costs or savings, the Generator or the DPA Counterparty will receive compensation in respect of such capex (subject to certain qualifications that are set out in the draft DPA Contract). Compensation may be paid as a lump sum, staged payments or daily payments.

Where a QCiL results in net opex costs or savings, the Generator or DPA Counterparty will receive compensation in respect of such opex. Such compensation will be payable as staged payments or daily payments.

Where a QCiL reduces or increases a Facility's Availability of Generation, Availability of Capture and/or Net Dependable Capacity with consequential impacts on the quantum of payments made under the DPA: i) the Generator will be compensated for lost Availability Payments and Variable Payments on a retrospective basis and ii) these figures will be adjusted on a forward-looking basis for the purposes of calculating future Availability Payments under the DPA Contract.

A period of reduced or increased electricity generation by the Facility as a consequence of a QCiL will result in a "QCIL Adjusted Revenues Payment" being made to the Generator or DPA Counterparty. Compensation will be payable retrospectively as either a lump sum, staged payments or daily payments based on an assessment of the revenue that the Generator would have generated (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) but for the QCiL, with input from an internationally recognised, leading energy market consultancy firm.

Compensation will be available for a Generator where a QCiL permanently prevents the Generator from operating the Facility as a result of i) the Facility's operation becoming illegal, ii) a CiL which the Generator can demonstrate imposes a requirement that permanently prevents the Facility from operating or constitutes the refusal or failure to give approval to a

request for consent to re-start the operation of the Facility for a period which is likely to exceed twenty four (24) months. Payments in these circumstances will be made to the Generator by the DPA Counterparty as a lump sum payment or staged payments. Such compensation (minus any savings resulting from such event) will comprise an amount equal to: i) all irrecoverable and unavoidable out-of-pocket costs (including tax liabilities and break costs) which have been or will be incurred by the Generator in respect of the Facility arising directly from the relevant QCiL or CiL (but excluding certain costs), plus revenue that the Generator would have received (including wholesale electricity market revenue, balancing system services revenue and ancillary services revenue) from electricity that the Facility would have generated but for the occurrence of the QCiL from the date of the QCiL until the expiry of the Term, with input from an internationally recognised, leading energy market consultancy firm.

### Cap on QCiL Payment

Where a QCiL affects a Facility's: capex; opex; Availability of Generation, Availability of Capture or Net Dependable Capacity or Metered Day Electricity Output; or any combination thereof, the total QCiL compensation due to the Generator will be capped by reference to:

- the QCiL Construction Event Payment that would have been payable to the Generator had a QCiL Construction Event occurred (pre-Start Date); or
- the QCiL Operations Cessation Event Payment that would have been payable to the Generator had a QCiL Operations Cessation Event occurred (post-Start Date).

Where the DPA Counterparty is required to pay QCiL compensation to a Generator which is equivalent to either the QCiL Construction Event Payment or QCiL Operations Cessation Event Payment, the DPA Counterparty may elect to terminate the DPA with no obligation to pay the Generator any additional compensation.

## Termination and Consequences of Termination

It is standard for a contract of this type to include termination events/rights. This section includes further information on the minded to DPA Contract termination provisions. The DPA Counterparty shall have the right, but not the obligation, to terminate a DPA Contract where:

### Pre-start date termination

- The Generator fails to satisfy the ICPs;
- At any time prior to the Start Date, any Directors' Certificate provided to satisfy a Milestone Requirement is not true, complete or accurate in any material respect or is misleading as at the date it is provided;
- A Termination Event occurs and is continuing (further detail on Termination Events is set out in the section 'Default termination' below)

- The Generator fails to satisfy a Milestone Requirement before Milestone Delivery Date; or
- Longstop Date: The Generator fails to satisfy the OCPs by the Longstop Date.

Other points to note:

- Both the Milestone Delivery Date and the Longstop Date will be adjusted day-for-day for any delays which occur due to Force Majeure and/or for any delays that are due to the additional circumstances that are described in the 'Milestone Requirement' section above (e.g. electricity/gas network connection delays). These positions largely mirror those within the CfD AR4, with certain capture technology-specific adaptations being made for the DPA.
- As confirmed in the December 2020<sup>27</sup> update, a Pre-Start Date termination will be on a no-liability basis.

### Termination for failing to satisfy the Minimum Longstop Date Commissioning Requirements

In addition to termination for a failure to meet the OCPs by the Longstop Date, a Generator will also have to demonstrate that the Facility meets the Minimum Longstop Date Commissioning Requirements by such date (as detailed in Table 2 (Summary of Minimum Longstop Date Commissioning Requirements)).

If a Generator fails to meet these requirements by the Longstop Date, then the DPA Counterparty will have the right (but not obligation) to terminate the DPA. Such a termination event will be on a no-liability basis.

### Termination for failing to satisfy the T&S Connection Confirmation CP

If the DPA Counterparty has temporarily waived the T&S Connection Confirmation CP and the T&S Connection Confirmation Requirement is not fulfilled by the Generator on or before the T&S Connection Confirmation Deadline, (the date falling three (3) months after the T&S Network Availability Date), the DPA Counterparty will have the right, but not the obligation, to terminate the DPA Contract. Termination in these circumstances will also be on a no-liability basis given it is the Generator's responsibility to construct and commission its capture plant and connection to the T&S network appropriately.

### Termination for Prolonged Force Majeure

A Prolonged Force Majeure event is where the Generator's Project is significantly delayed due to a continuing, unresolved Force Majeure.

The prolonged Force Majeure termination right will arise where a continuing, unresolved Force Majeure event, that first occurs between the date of signing the DPA Contract and the date the

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<sup>27</sup> [Dispatchable power agreement \(DPA\) - detailed explanation and examples: December 2020 update \(Annex C\)](#)

Generator satisfies the Milestone Requirement, prevents or delays the development, construction, completion, testing or commissioning of the Facility for at least eighteen (18) months. Where such an event occurs, the DPA Counterparty will have the right (but not obligation) to terminate the DPA while the Prolonged FM event still ongoing.

As set out in the October 2021 business model update we have shortened the window in which the Prolonged FM Event must first occur so that such window ends on the date the Generator satisfies the Milestone Requirement, rather than at the end of the Target Commissioning Window (as initially proposed in the December 2020 Update).

The Prolonged FM Event termination will be on a no-liability basis given the non-fault nature of the event.

### Termination for T&S Prolonged Unavailability Event

We set out in previous updates that, where an event which is not the fault of the Generator prevents the Facility from accessing the T&S Network for a continuous period (with such period to be determined) we were considering whether to give the DPA Counterparty the right to terminate the DPA Contract.

This termination right is intended to account for circumstances where an issue with a T&S Network causes that T&S Network to be taken offline permanently or prevents a Project from exporting its CO<sub>2</sub> to the T&S Network for a prolonged period of time. The right seeks to ensure that the subsidy only encourages low carbon electricity generation whilst allowing an appropriate period for the fault in the relevant T&S Network to be rectified, or, if that's not possible, for an Alternative T&S Network Solution Plan to be put in place.

Where a T&S Prolonged Unavailability Event occurs, such as:

- A Full T&S Outage Event which lasts for at least [6 months]<sup>28</sup>;
- A T&S Commissioning Delay which lasts for at least [6 months]; or
- A T&S Cessation Event, which means the occurrence of any one of the following:
  - a notice of discontinuation is issued by the Secretary of State to the T&S Operator pursuant to the discontinuation agreement entered into between the T&S Operator and the Secretary of State;
  - the licence of the T&S Operator to operate the T&S Network is (i) revoked; and (ii) is not transferred to a substitute T&S Operator, such that the T&S Network ceases to operate or the Generator is no longer able to connect to the T&S Network; or
  - a determination is made by the relevant Competent Authority that the Generator's connection to the T&S network is no longer viable;

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<sup>28</sup> BEIS are still considering the appropriate timelines so we have marked these timescales with square brackets to signal they could change.

the DPA Counterparty can give a T&S Prolonged Unavailability Event Notice to the Generator which shall specify the date on and from which the DPA Counterparty has a right (but not obligation) to terminate the DPA Contract, which is the T&S Prolonged Unavailability Remediation Deadline ([30 months] after the T&S Prolonged Unavailability Event Notice). Information about compensation for this termination event is set out below.

We have set out a process that must be followed if a T&S Prolonged Unavailability Event has occurred and the DPA Counterparty has notified the Generator of the same (as described above) and summarise it below. We recognise that there are multiple interdependencies that could impact decision-making in the future and a clear framework for sharing information across interdependent organisations will be set out to enable effective and coordinated decision-making.

Within [6 months] of the T&S Prolonged Unavailability Event Notice, the Generator must provide the DPA Counterparty with a T&S Prolonged Unavailability Response Notice, along with supporting information and evidence<sup>29</sup>, specifying that:

- (i) The T&S Prolonged Unavailability Event is no longer continuing;
- (ii) The Generator considers that the T&S Prolonged Unavailability Event will be remedied by the T&S Prolonged Unavailability Remediation Deadline ([30 months] after the T&S Prolonged Unavailability Event Notice), and attaching supporting evidence (we anticipate this will include evidence from the relevant T&S Operator) to demonstrate this; or
- (iii) The Generator intends to provide the DPA Counterparty with an Alternative T&S Network Solution Plan by [18 months] after the T&S Prolonged Unavailability Event Notice; or
- (iv) The Generator considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and that the Generator cannot provide a feasible Alternative T&S Network Solution Plan for one or more of the following reasons (each a 'No Alternative T&S Solution Reason'):
  - It is not technically feasible for the Generator, acting in accordance with a Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage site;
  - The implementation of an Alternative T&S Network Solution Plan would be illegal;
  - It is not economically feasible for the Generator, acting in accordance with a Reasonable and Prudent Standard, to connect the Facility to an alternative CO<sub>2</sub> Delivery Point and T&S Network or permanent storage of CO<sub>2</sub> from the Facility;

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<sup>29</sup> If, when the Generator delivers a T&S Prolonged Unavailability Response Notice, the DPA Counterparty determines that the Generator has not delivered satisfactory accompanying evidence, then the Generator must provide a T&S Prolonged Unavailability Further Response Notice to the DPA Counterparty, accompanied by sufficient supporting evidence.



- There are no feasible alternative T&S Networks which can permanently store the CO<sub>2</sub> from the Facility; and/or
- Any other reason which will or is reasonably likely to justify the decision not to provide an Alternative T&S Network Solution Plan.

If the Generator becomes aware of something which will, or is likely to, significantly affect the accuracy of any T&S Prolonged Unavailability Response Notice or T&S Prolonged Unavailability Further Response Notice, including any accompanying Supporting Information, then the Generator must provide a notice to the DPA Counterparty.

It is our minded-to position that if a Generator fails to comply with a T&S Prolonged Unavailability Procedure Obligation, such as:

- a Generator fails to give a T&S Prolonged Unavailability Response Notice by [6 months] after the T&S Prolonged Unavailability Event Notice;
- if applicable, a Generator fails to give a T&S Prolonged Unavailability Further Response Notice by the Alternative T&S Network Solution Plan Deadline;
- a Generator gives a notice pursuant to (iii) above specifying that it intends to provide the DPA Counterparty with an Alternative T&S Network Solution Plan, and then does not provide such a plan by [18 months] after the T&S Prolonged Unavailability Event Notice;
- if the DPA Counterparty asks for additional supporting information via an Alternative T&S Network Review Notice and a Generator fails to provide this within [twenty Business Days]; or
- if a Generator fails to give an amended draft Alternative T&S Network Solution Plan which includes the amendments specified by the DPA Counterparty in an Alternative T&S Network Review Notice within [twenty Business Days];

then the DPA Counterparty may, after notifying the Generator, elect to suspend payments of any amounts to the Generator. If the Generator subsequently cures by complying with the relevant T&S Prolonged Unavailability Procedure Obligation then the DPA Counterparty will pay any amounts which were suspended, without interest, to the Generator.

If a Generator submits a T&S Prolonged Unavailability Response Notice pursuant to (iv) above specifying that it considers that the T&S Prolonged Unavailability Event will not be remedied by the T&S Prolonged Unavailability Remediation Deadline and that it cannot provide a feasible Alternative T&S Network Solution Plan because of a No Alternative T&S Solution Reason, along with sufficient supporting information to verify this, then it is our minded to position that the DPA Counterparty will have the right (but not obligation) to give a notice specifying the date on which termination of the DPA Contract is designated to take effect. This right would ensure that DPA Contracts do not continue when there is no realistic prospect of the Generator resuming capture and permanent storage of CO<sub>2</sub>.

In addition, if the T&S Prolonged Unavailability Event is continuing after the T&S Prolonged Unavailability Remediation Deadline, no Alternative T&S Network Solution Plan has been agreed, or an Alternative T&S Network Solution Plan has been agreed but the Generator has

failed to implement such a plan in accordance with its terms (in order to remedy the T&S Prolonged Unavailability Event) the DPA Counterparty will have the right (but not obligation) to issue a notice specifying the date on which termination of the DPA Contract is designated to take effect.

### **Alternative T&S Network Solution Plan**

We recognise that when faced by a T&S Prolonged Unavailability Event it may be possible for a Generator to find a practical alternate route to permanent storage for its captured CO<sub>2</sub>, and that if the Generator can do so, it should not face termination.

A Generator can give a T&S Prolonged Unavailability Response Notice specifying, pursuant to (iii) above, that it will provide an 'Alternative T&S Network Solution Plan' within [18 months] of the T&S Prolonged Unavailability Event Notice.

Such a plan must set out the required milestones and actions in order to connect the Generator to an alternative CO<sub>2</sub> Delivery Point and T&S Network [or alternative permanent storage] (either directly by pipeline, or indirectly by other means of transportation) in order to remedy a T&S Prolonged Unavailability Event.

Upon receipt of an Alternative T&S Network Solution Plan, the DPA Counterparty will have [6 months] to assess this plan to consider the deliverability of the plan, while also assessing the impact the plan would have on the Project's original T&S network as well as information from the T&S Operator and the relevant authorities on the progress towards returning the T&S network the Generator is currently using to service.

The DPA Counterparty will confirm whether it (i) approves the plan (without amendment), (ii) requires more information, (iii) requires amendments to or (iv) in its sole and absolute discretion, rejects the plan (along with such supporting information it considers necessary to evidence the reasons for such rejection). If the response is (ii), (iii) or (iv), the Emitter can then, within [twenty Business Days], submit additional supporting information or an amended draft plan and the review process will be repeated.

If the DPA Counterparty approves such a plan, and the Generator implements or is implementing the Approved Alternative T&S Network Solution Plan in accordance with its terms (which includes meeting specified milestones and carrying out certain actions) in order to remedy the T&S Prolonged Unavailability Event, then the DPA Contract will not be terminated.

### **Compensation**

In the event a Termination for T&S Prolonged Unavailability Event occurs, we propose that a Generator will receive compensation for irrecoverable and unavoidable out-of-pocket costs which have been, will be or are reasonably likely to be incurred in respect of the Project arising directly from a T&S Prolonged Unavailability Event occurring and comprised of:

- development and pre-development costs (e.g. surveys and EIAs);
- decommissioning costs;

- financing and contractual break costs (but excluding any other finance costs); and
- construction costs.

in all cases incurred in relation to the DPA for the Facility, with such compensation reduced to reflect i) any savings made by the Generator in relation to the T&S unavailability event, ii) the residual economic value of the Facility (including any market revenues that can be generated from continued unabated operation) and iii) the repayment or amortisation of the relevant construction costs (where the DPA terminates after the Start Date).

### Termination for Minimum CO<sub>2</sub> Capture Rate Breach

From the Start Date, if a Generator's "Achieved and Declared CO<sub>2</sub> Capture Rate Average" (which shall be the average of their Achieved CO<sub>2</sub> Capture Rate weighted by the number of AP Settlement Units to which the Achieved CO<sub>2</sub> Capture Rate has been applied, and their Declared CO<sub>2</sub> Capture Rates, weighted by the number of AP Settlement Units to which the Deemed CO<sub>2</sub> Capture Rates have been applied) falls below 70% in any three (3) whole AP Billing Periods (whether consecutive or not) within a rolling six (6) month period, then the DPA Counterparty may issue a notice of termination to the Generator.

Following the notice of termination, the DPA Counterparty may terminate the DPA after 18 months have passed from the date of that notice unless:

- the Generator demonstrates an Achieved and Declared CO<sub>2</sub> Capture Rate Average of no less than 85% for three (3) whole, consecutive AP Billing Periods within such eighteen 18-month period; or
- the Generator implements a rectification plan that has been agreed with the DPA Counterparty, and which is expected to enable the Generator to demonstrate an Achieved and Declared CO<sub>2</sub> Capture Rate Average of no less than eighty five (85%) for three (3) whole, consecutive AP Billing Periods (although this may take longer than eighteen (18) months following the notice of termination);

in which case the notice of termination will be revoked.

Further details of the capture rate breach, response and resolution or termination are set out in the draft DPA Contract and in the October 21 Business Model Update<sup>30</sup>.

The Generator will be relieved from liability and deemed to not be in breach of the Minimum CO<sub>2</sub> Capture Rate obligation if the failure is directly attributable to a Force Majeure event.

### Generator Default Termination Events

If, at any time on or after the Start Date, a Termination Event has occurred and is continuing, the DPA Counterparty will have the right to terminate the DPA Contract.

The Termination Events are:

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<sup>30</sup> [Dispatchable power agreement \(DPA\) business model: October 2021 update](#)

- Generator insolvency;
- Non-payment which is not rectified within a specified cure period;
- Breach of key obligations (including breaches of undertakings relating to the ownership of the Facility and fraud);
- Metering: A Technical Compliance Termination Event or a Metering Access Termination Event;
- Minimum CO<sub>2</sub> Capture Rate: A Capture Rate Termination Event (as discussed in Termination for Minimum CO<sub>2</sub> Capture Rate Breach above); and
- Declarations: A Misleading Declaration Termination Event or a Declaration Access Termination Event (see Generator Declaration Obligations above).

The DPA Counterparty will have the right but not the obligation to terminate the DPA Contract if these events occur. In these circumstances, the Generator will be obliged to pay the DPA Counterparty a termination fee (discussed below).

### Termination fees

The termination fees payable by a defaulting Generator will be calculated as follows:

Default Termination Payment = Net Dependable Capacity Estimate × Termination Fee Rate

A Termination Fee Rate of £35,000 per megawatt of the Facility's Net Dependable Capacity Estimate (as adjusted by a Permitted Reduction) will apply for all Termination events. We set out the rationale for the Termination Payment calculation in the October 2021 update<sup>31</sup>.

A Generator will not be liable to pay more than one Default Termination Payment. In the event that more than one termination event applies, a single fee of £35,000/MW will apply.

If the DPA Counterparty terminates the DPA for a prolonged Minimum CO<sub>2</sub> Capture Rate Breach, the Default Termination Payment due to the DPA Counterparty will be reduced by any unpaid amounts which the DPA Counterparty has suspended.

The Termination Fees rate will be indexed to CPI, in line with the rest of the DPA Contract where CPI indexing applies. The application of indexation to CPI is to ensure that over the course of the DPA Contract term the Termination Fees Rate remains proportionate to the total subsidy received by a Generator and remains a deterrent throughout the course of the term.

### Lenders Direct Agreement

The DPA includes a form of a lender Direct Agreement, (LDA) which follows the CfD AR4 template. This is a tripartite agreement entered into by a lender or a security trustee on its behalf, the Generator and the DPA Counterparty.

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<sup>31</sup> [Dispatchable power agreement \(DPA\) business model: October 2021 update](#)

In order to be eligible to enter into a LDA with the DPA Counterparty, a party must be a Lender or Affected Person (or an agent or Security Trustee of the Affected Person) with the benefit of first ranking security overall, or substantially all, of the assets of the Generator, and in whose favour the Generator assigns its rights under the DPA Contract. The LDA safeguards the interests of the Lender, Affected Person or Security Trustee (as the case may be), and entitles them to step in to prevent (or at least delay) the contract from being terminated should the Generator fail to meet their contractual obligations.

The definition of “DPA Counterparty Enforcement Action”, based on the equivalent definition in the CfD AR4, has been adapted to take into account the additional suspension rights and termination events applicable in the DPA Contract that are not included within the AR4 CfD LDA (e.g. Prolonged Force Majeure Event, failure to comply with Minimum CO<sub>2</sub> Capture Rate Obligation).

## Confidentiality

Under Regulation 60 of The Contracts for Difference (Allocation) Regulations 2014, if the CfD Counterparty offers a CfD in accordance with a direction given under section 10(1) of the Energy Act 2013 and subsequently enters into that CfD, the CfD Counterparty is required to publish any CfD contract subject to exclusions for confidential information as defined in Regulation 60(3) and (4). But the regulations are clear that the strike price and reference price must be published.

In the absence of a strike price and reference price or any value in the DPA which is akin to a strike price or reference price, we propose that the most effective market comparator value in the DPA is the APRi (Availability Payment Rate per Settlement Unit) and the VPR (Variable Payment Rate for the day in the billing period (£/MWh)). We intend to publish these values for each Generator to ensure transparency.

In addition to publishing these terms we also anticipate publishing other contractual information set out in the LCCC CfD Register which are present in the DPA Contract, see condition 73 of the DPA Contract. This information would be published along with information contained within the Front End Agreement of the DPA.

## Gain share

In the October 2021 Dispatchable Power Agreement business model update we noted that we were considering whether the introduction of gain share provisions to the DPA Contract may be necessary to ensure that the DPA reflects value for money for the consumer. We have now developed a gain share mechanism which we are minded to apply to the initial DPA Contracts. The government may consider (at its discretion) that such a mechanism is not required for certain DPA Contracts where a Project can demonstrate that there is a sufficiently low risk of overcompensation arising under the terms of the DPA Contract and where the government is

satisfied that this would be consistent with subsidy control rules and would still reflect value for money for consumers.

The gain share mechanism provides for two types of gain share if a Generator's profits exceed an agreed equity IRR threshold:

- 'Project gain share' for which Projects would be required to periodically pay 30% of profits above the agreed equity IRR threshold to the DPA Counterparty every 5 years; and
- 'Sale gain share' where the sale of a material (direct or indirect) economic interest in the Generator before the later of 5 years from the Start Date, and the date on which the aggregate economic interests of an investor group in the Generator falls below 60% of its original level, shall also result in a 30% share of the profits on that disposal above the agreed equity IRR threshold being due to the DPA Counterparty.

If gain share provisions are included in the DPA, the Generator will be required to provide collateral of an amount equal to £35,000/MW in respect of its gain share obligations in the final years of the contract. An additional Generator Default Termination Event which would occur if such credit support requirements were not met would therefore be added to the DPA where gain share provisions are included.

Our 'minded to' position in relation to any gain share provisions to be included in a DPA Contract is summarised in Annex A to this business model consultation. We invite views on this as part of the business model consultation – please see consultation questions 10, 11 and 12.

## Consultation questions

Principles guiding the design of the power CCUS business model were specified in the December 2020 DPA update. The following questions seek to establish the extent to which the proposed business model and draft contract meet those principles:

- 1. Do you agree that the proposed Availability Payment component of the DPA Contract incentivises efficient decarbonisation and best in class carbon capture technology selection? If not, what changes do you think are necessary to facilitate this?**
- 2. Do you agree that the proposed Availability Payment and Variable Payment in the DPA Contract will ensure that a power CCUS Facility reacts to electricity market price signals and provide dispatchable output without incentivising it to generate at all times thereby displacing lower cost and lower carbon generation sources such as renewables and nuclear? If not, what amendments do you consider necessary to achieve this objective?**
- 3. The objective of the Variable Payment is to incentivise a power CCUS Facility to dispatch ahead of an unabated reference Plant. Do you agree that the proposed Variable Payment mechanism achieve this? If not, what further amendments do you consider necessary to achieve this objective? Please provide your reasoning.**
- 4. Are there any additional hurdles to a power CCUS Facility retaining the flexibility to respond to market conditions and consumer needs over the term of the DPA Contract considering foreseeable evolution of the power generation composition and demand profile over this time?**
- 5. Do you agree that the standard terms and those project specific terms in the Front End Agreement of the DPA Contract are capable of equally incentivising investment in new build, re-powering and retrofit Projects alike? Alternatively, are there particular provisions which you consider require modification to facilitate investment in a particular type of Project (please explain why this is the case in your response)?**
- 6. Do you consider risk is appropriately allocated to enable investment in Projects and value for money for consumers? If not, please indicate the aspects of the contract where you believe risk is not appropriately allocated and why.**
- 7. Power CCUS projects will be part of a wider CCUS network. A T&S Prolonged Unavailability Event would have a significant impact on any project connected to the network, including those projects holding DPA Contracts. We need to consider how to best manage this interface risk. We have set out an initial minded to position on the termination right where there is a T&S Prolonged Unavailability Event, which seeks to balance the risk held by investors in the power CCUS**

**project and investors in transport and storage and the wider network. Do you consider that there is a fair allocation of risk between the different interests in relation to Termination for T&S Prolonged Unavailability Events? If not, please provide your rationale.**

- 8. We have proposed testing requirements specified in annex 2 “Testing Requirements” of the draft DPA Contract to provide clarity on what is expected from Generators during the Performance Tests detailed in the DPA. We have sought to align these requirements with industry standards and expectations. Does the proposed Testing Requirements strike the right balance between robustly assessing the performance of a Facility and not being overly onerous on a Generator? If not, what amendments do you think are necessary to determine performance of the Facility against?**
- 9. Do you consider the proposal to enable the publication of certain contractual information by the DPA Counterparty to be proportionate and reasonable in light of our policy objective? If not, please provide your reasoning and which elements should be published in the alternative.**
- 10. As outlined, do you agree that the inclusion of a gain share mechanism in the DPA Contract is a proportionate measure to mitigate the risk of overcompensation and to facilitate compliance with subsidy control principles? If you believe the inclusion of a gain share mechanism is a disproportionate measure to achieving our objectives, or could significantly inhibit investment in the DPA, please provide your rationale.**
- 11. The proposed gain share schedule would provide for two types of gain share, ‘Project gain share’ and ‘sale gain share’, in each case where such profits exceed a certain defined threshold.**

**At what level of Equity Internal Rate of Return (Equity IRR) do you consider that gains should be shared under the gain share mechanism? Please provide context and evidence in your response.**

- 12. At what level of Equity IRR for a power CCUS Project do you consider that the risk of overcompensation under the DPA is low enough that the gainshare mechanism outlined here should not be required in order to mitigate that risk? Please provide context and evidence in your response.**



## Next steps

The purpose of the consultation is to ensure that the proposals and ongoing policy development in relation to the business model takes in to account all relevant considerations in meeting the policy objectives that government initially set out and summarised above and that all stakeholders have the opportunity to provide relevant feedback on the draft business model design. We will use the responses to identify if we have overlooked any aspects that may inhibit the application of the business model and address any relevant points in the final form of the DPA contract to ensure it can fully achieve the policy aims. We intend to publish a response to this consultation which would be accompanied by a summary of the responses received to this consultation.

## Glossary

Term	Description
AR4	Allocation Round Four (referring to the fourth Contract for Difference allocation round for renewable technologies).
AP	Availability Payment
BEIS	Department for Business, Energy and Industrial Strategy
BMRP	Baseload Market Reference Price - calculated on a seasonal basis pursuant to condition 15 of the Contract for Difference Standard Terms and Conditions.
Capex	Capital expenditure
CCGT	Combined Cycle Gas Turbine
CCUS	Carbon Capture, Usage and Storage
CCS	Carbon Capture and Storage
Cluster	Transportation and storage network (incorporating the onshore and offshore network and offshore storage facility) and an associated first phase of carbon capture projects.

CfD	Contract for Difference
CIF	CCS Infrastructure Fund
CM	Capacity Market
CO <sub>2</sub>	Carbon Dioxide
DPA	Dispatchable Power Agreement
December 2020 update	Carbon capture, usage and storage: an update on business models (December 2020), available at: <a href="https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models">https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models</a>
FEED	Front End Engineering Design
FID	Final Investment Decision
FOAK	First-Of-A-Kind
GB	Great Britain
HHV	Higher Heating Value
HMG	Her Majesty's Government
HoTs	Heads of Terms (for the Dispatchable Power Agreement) October 2021.
ICC	Industrial Carbon Capture
IMRP	Intermittent Market Reference Price is the GB Day Ahead Hourly Price published by the Intermittent Day Ahead Indices.
JEP	Joint Environmental Programme
LHV	Lower Heating Value - the products of combustion contains the water vapor and the heat in the water vapor is not recovered.

May 2021 update	The Carbon Capture, Usage and Storage (CCUS): business models update published in May 2021.  <a href="https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models">https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models</a>
MW	Megawatt
MWh	Megawatt hours
NDC	Net Dependable Capacity
NTS fuel mix	The fuel mix used in the National Transmission System.
OCP	Operational Conditions Precedent
October 2021 update	The Carbon capture, usage and storage (CCUS): business models update published in October 2021:  <a href="https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023071/dpa-business-model-october-2021.pdf">https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1023071/dpa-business-model-october-2021.pdf</a>
Opex	Operating expenditure
QCiL	Qualifying Change in Law
UK REMIT	Regulation on Wholesale Energy Market Integrity and Transparency
Storage	Geological store for the captured CO <sub>2</sub> from the end of the injection well.
SCADA	Supervisory Control and Data Acquisition system to control industrial processes.
TCW	Target Commissioning Window
T&S	Transport and Storage
T&SCo	A company licensed to provide transport and storage services
UK	United Kingdom of Great Britain and Northern Ireland

## Referenced publications

Business models for carbon capture, usage and storage: Consultation (July 2019), available at <https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-business-models>

Business models for carbon capture, usage and storage: Response (September 2019), available at <https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-ccus-business-models>

Carbon capture, usage and storage: an update on business models (December 2020), available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

Dispatchable power agreement (DPA) - detailed explanation and examples: December 2020 update (Annex C), available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

Dispatchable power agreement (DPA) - heads of terms: December 2020 update (Annex D), available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

Cluster sequencing for CCUS deployment: Phase-1 – guidance (May 2021), available at: <https://www.gov.uk/government/publications/cluster-sequencing-for-carbon-capture-usage-and-storage-ccus-deployment-phase-1-expressions-of-interest>

Dispatchable power agreement (DPA) business model: May 2021 update, available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

Carbon capture usage and storage: amendments to Contracts for Difference regulations (July 2021), available at: <https://www.gov.uk/government/consultations/carbon-capture-usage-and-storage-amendments-to-contracts-for-difference-regulations>

Dispatchable power agreement (DPA) business model: October 2021 update, available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

Dispatchable Power Agreement (DPA) provisional Heads of Terms (Annex A): October 2021 update, available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

November 2021: Updates on the industrial carbon capture and dispatchable power agreement business models, available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models/november-2021-updates-on-the-industrial-carbon-capture-and-dispatchable-power-agreement-business-models>

Cluster sequencing for carbon capture, usage and storage (CCUS) deployment: Phase-2 guidance (November 2021), available at: <https://www.gov.uk/government/publications/cluster-sequencing-for-carbon-capture-usage-and-storage-ccus-deployment-phase-2>

Transport and storage business model: January 2022 update, available at: <https://www.gov.uk/government/publications/carbon-capture-usage-and-storage-ccus-business-models>

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This consultation is available from: [www.gov.uk/beis](http://www.gov.uk/beis)

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