



LOW CARBON
CONTRACTS COMPANY

Direct Agreement Guidance for CFD Generators

Version 1.0

Issued on 09 April 2018

Applicable to Investment Contracts and CFD Agreements (based on CFD Standard Terms and Conditions issued in August 2014 and March 2017)

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Disclaimer

This guidance does not and is not intended to supersede or replace the provisions of the CFD. This guidance does not constitute legal or investment advice and should not be relied upon as such. Generators should consult their professional advisors where they require advice, whether legal or otherwise. LCCC further reserves the right to amend this guidance and any associated guidance from time to time.

Section 1: Introduction

- 1.1 This guidance has been prepared by Low Carbon Contracts Company Ltd (“**LCCC**”) to assist Generators in understanding the process that should be followed including the information that should be provided to LCCC for the grant of a Direct Agreement (“**DA**”) by LCCC pursuant to Condition 79.6 (*Permitted assignment by the Generator*) of the CFD.
- 1.2 Defined terms used in this guidance and not defined herein should be given the meaning provided in the “CFD” (which is comprised of the CFD Agreement and the CFD Standard Terms and Conditions as published by the Department of Energy and Climate Change on 29 August 2014¹ and in March 2017²). This guidance is also applicable to Investment Contracts. However, Generators with Investment Contracts are advised to review the equivalent clauses.
- 1.3 This guidance and any associated guidance is subject to change from time to time.
- 1.4 To help ensure the smooth running of this process we strongly recommend that Generators engage with us at the earliest opportunity to discuss their plans for financial close in circumstances where they will require a DA.

Section 2: Definitions

2.1 The terms 'Lender' and 'Affected Person' (used above) are each defined in the CFD as follows:

*“**Lender**” means any bank or financial institution (excluding any affiliate of the Generator) which provides debt financing or refinancing in relation to the Facility;”*

*“**Affected Person**” means any direct or indirect shareholder of the Generator who is able to evidence to the satisfaction of the CFD 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;”*

Section 3: Relevant CFD provisions

Condition 79.6(A): Assignment of CFD as security

3.1 The Generator is generally not entitled to transfer or assign the CFD to any person without the consent of LCCC. However, Condition 79.6(A) provides that the Generator can, without the consent of LCCC, assign all (but not part only) of its rights and benefits under the CFD by way of security to or in favour of (i) a Lender; (ii) any Affected Person; (iii) any parent undertaking of the Generator which provides funding in relation to the Facility; or (iv) any agent or security trustee on behalf of any Lender or Affected Person or any parent undertaking of the Generator referred to in (iii) above.

Condition 79.6(B): Right to a DA

3.2 The Generator is also entitled to request, and LCCC is required to enter into, a DA with the person that has been assigned the CFD as security in accordance with Condition 79.6(A), provided that they meet the other 'qualification criteria' set out in Condition 79.6(B).

3.2.1 Condition 79.6(B) provides that:

"The CFD 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):

(i) (a) who is a Lender with the benefit of first ranking security over all of substantially all of the assets of the Generator (including its rights in respect of the Facility and under the Contract for Difference); and

(b) 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 Contract for Difference); and

(ii) in whose favour the Generator assigns its rights under the Contract for Difference and any other CFD Document in accordance with Condition 79.6(A)."

3.3 The 'qualification criteria' set out in Condition 79.6(B) make it clear that the DA is intended to benefit third party lenders that are funding the project. In addition, although direct or indirect shareholders of the Generator are not generally eligible for a DA, under the definition of "Affected Persons", such shareholders can be eligible if they are either (A) controlled in terms of their exercise of rights under a DA by a third party lender that is funding the project, or, (B) party to an agreement with a shareholder that falls within category (A).

3.4 In addition to being a Lender or Affected Person (or security trustee/ agent on its or their behalf), in order to 'qualify' for a DA, such person must have **first ranking security over substantially all of the assets of the Generator**, including in respect of the Facility and the CFD. As mentioned above, they must also be **granted an assignment of the CFD by way of security**.

3.5 LCCC is primarily concerned with ensuring that it enters into a DA only with such persons that qualify for a DA under Condition 79.6(B). This guidance sets out the process and timings for the Generator to provide LCCC with the information and assurances it needs in order to satisfy itself that the proposed Lender or Affected Person (or security trustee/agent on its or their behalf) is eligible for a DA.

Section 4: A four stage process

4.1 We broadly follow a four (4) stage process for the grant of a DA:

Stage 1: Notice of planned financial close and CFD security assignment

the Generator provides LCCC with notice of the security assignment of the CFD, as well as notice of its planned financial close date (or date it requires a signed DA, if different). The Generator also provides a draft DA (in LCCC's current standard template, attached at Annex 1) and other information (detailed in paragraph 5.4 below) including an explanation of how the relevant person qualifies for a DA;

Stage 2: Supply and review of finance documents and escrow arrangements

the Generator provides the finance documents to LCCC and, if required, a draft escrow letter (in LCCC's current standard form, attached at Annex 2);

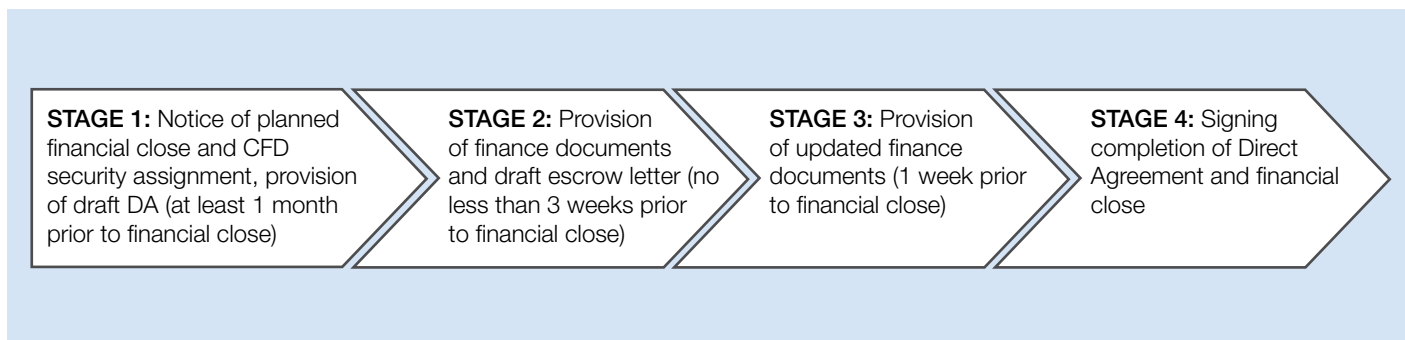
Stage 3: Updated Finance Documents

the Generator provides updated finance documents clearly showing (in redline) any changes from the previous versions provided; and

Stage 4: Completion of the Direct Agreement and financial close

signing/completion of the DA and financial close.

The four (4) stages are more particularly described in the following sections of this guidance.



Section 5: Stage 1 - Notice of planned financial close and CFD security assignment

Notice of security assignment

- 5.1 If a Generator plans to assign all (but not part only) of its rights and benefits under the CFD by way of security to a person eligible for such security assignment under Condition 79.6(A), it must give not less than ten (10) Business Days written notice to LCCC prior to effecting the assignment. The Generator is required to specify in such notice the identity of the assignee and provide such details in relation to the assignee as LCCC may reasonably require having received the notification.
- 5.2 As mentioned above, the Generator is entitled (but not obliged) to request that LCCC enter into a DA with the person to whom the CFD has been (or is to be) assigned as security, provided that person is 'eligible' for a DA under Condition 79.6(B). As mentioned above, to be eligible, that person must be a 'Lender' or 'Affected Person' (or agent or security trustee on the relevant person's behalf) with the benefit of first ranking security over all, or substantially all, of the assets of the Generator (including the Facility and CFD) and in whose favour the Generator assigns its rights under the CFD.

Required information

- 5.3 In order to assess the relevant person's eligibility for a DA, LCCC requires the information set out in paragraphs 5.4 to 5.6 below from the Generator. This information should be provided as soon as possible and at the very least one (1) month prior to the expected date of financial close (or date it requires a signed DA, if different). This is to assist with a smooth running of the process and timely grant of the DA. If the financing structures are complex, we strongly recommend providing this information earlier.

General information

- 5.4 The information the Generator should provide includes:
- (i) a timeline to the expected financial close which indicates when the DA is required to be executed and whether escrow arrangements are needed for the release and completion of the DA;
 - (ii) an organogram of the intended finance structure identifying the Generator and, as applicable, the security trustee, Lenders, Affected Persons, shareholders and any relevant associated project companies;
 - (iii) a written overview of the funding plan setting out the source and nature of the third party financing, a list of the creditors and financiers within each category of financing proposed, (even if actual amounts to be allocated are not yet confirmed as we understand that financiers may not be credit approved at this stage), hedging requirements and any other relevant information;
 - (iv) an explanation of the relevant person's eligibility for a DA under Condition 79.6(B) including confirmation that the intended security trustee and/or Lenders (as applicable) are not affiliates of the Generator;
 - (v) a list of the finance documents;
 - (vi) a letter from the Generator's external solicitors (see paragraph 5.5 below); and
 - (vii) a draft DA in LCCC's updated standard form (see paragraph 5.6 below).

External solicitor's letter

5.5 The Generator is expected to provide a clear letter from the external solicitors who are acting for it in relation to the financing, setting out the following:

- (i) the identity of the intended security trustee, Lender(s) and/or Affected Person(s), as applicable;
- (ii) the eligibility of the relevant person to a DA under Condition 79.6(B) including a detailed explanation of the basis for such eligibility, having due regard to Condition 79.6(B) and the relevant definitions of Lender and Affected Persons;
- (iii) confirming that, in the case of a Lender and/or security trustee, neither are affiliates of the Generator; and
- (iv) confirming, in the case of an Affected Person (or security trustee/agent acting for an Affected Person), whether such person falls within limb (A) or (B) of the definition of Affected Person.
 - If limb (A) applies, an explanation of the relevant document (and relevant provisions of same) under which that person is contractually obliged to exercise the rights under the DA in accordance with the instructions of one or more Lenders.
 - If limb (B) applies, an explanation of the 'agreement' referred to in limb (B) (and relevant provisions of same) which that person has with the Affected Person falling under limb (A). A limb (A) explanation (as per the first bullet point above) will also be required to explain how the limb (A) Affected Person qualifies through limb (A).

This explanation should also:

- confirm that there are no circumstances in which a shareholder of the Generator could exercise any rights under the CFD unilaterally and without taking instructions from one or more Lenders; and
- set out the ranking of liabilities to shareholders relative to the liabilities to lenders, noting that the CFD requires, in the case of an Affected Person, the Affected Person to have 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 CFD).

We recommend that this letter is provided in draft form so that we have an opportunity to review it before it is finalised.

Form of DA

5.6 The Generator should provide a draft DA to LCCC for review in the form of our updated standard template DA attached at Annex 1. Please note that there is a standard template in use. The only changes that the Generator should make are changes that are necessary for the DA to conform to the particular underlying funding arrangements. For example, although the template DA refers to the main finance document as being a 'Facility Agreement', if this is not in fact the case, the name of the other document may be substituted for Facility Agreement. Similarly, the recitals to the DA may be expanded on to provide further information on the financing structure. We do not expect any changes or negotiation of the principles or provisions of our standard DA.

5.7 We have updated our standard DA to include a concept of "Non-Qualification Event" ("NQE"). The principle behind 'NQE' is that if the person that entered into the DA is no longer eligible for a DA under Condition 79.6(B), (i.e. there has been an 'NQE'), the DA will terminate. Before the relevant person exercises its rights under the DA, and at any time at the request of LCCC, the relevant person must provide evidence to LCCC that an NQE has not taken place. The evidence that is required is set out in the updated DA and consists of two letters - a letter from the external solicitors of the security trustee/ Lender/ Affected Person (as applicable), and a letter from the security trustee/ Lender/ Affected Person themselves, each of which set out certain confirmations and information as specified in the DA. LCCC can also request up-to-date copies of the relevant finance documents.

Section 6: Stage 2 - Supply and review of finance documents and escrow arrangements

Finance Documents

- 6.1 The finance documents should be provided to LCCC by the Generator, or its solicitors, as soon as possible and **no later than three (3) weeks prior** to the expected date of financial close (or date a signed DA is required, if different). LCCC will carry out a high level due diligence of the finance documents with the primary focus of verifying that the person entering into the DA is 'eligible' for a DA under Condition 79.6(B).
- 6.2 We recommend that the Generators provides a document list to identify all the finance documents and keep track of the relevant version numbers which would be updated each time amended versions are subsequently provided.
- 6.3 LCCC expects the finance documents to typically include:
- (i) common terms agreement (or similar);
 - (ii) facility agreement(s) for all tranches of financing;
 - (iii) accounts agreement;
 - (iv) account mandate;
 - (v) hedging agreements;
 - (vi) assignment;
 - (vii) intercreditor agreement and relevant security documentation;
 - (viii) shareholder agreement
 - (ix) shareholder support agreement; and
 - (x) any other relevant documents including any side letters in relation to any finance document.
- 6.4 Following receipt of the finance documents, LCCC will carry out a high level review of them to verify that the financing structure and financing parties are consistent with the explanation given by the Generator and letter from the Generator's external solicitor during Stage 1 as to how the relevant person is entitled to a DA. We may request additional information as we consider necessary to ensure that the relevant conditions of the CFD are adhered to.
- 6.5 The Generator should highlight to us as soon as reasonably possible any changes to the financing structure or to the finance documents which impact on any part of the information given during Stage 1 (or subsequently). Any such changes must be further reviewed and verified by LCCC.

Escrow arrangements

- 6.6. If the Generator requires an escrow arrangement to govern the completion and release of the DA, the Generator should provide a draft escrow letter to LCCC in the form attached at Annex 2. The escrow letter is a letter from LCCC to the Generator's external solicitors which sets out the conditions under which a DA which has been pre-signed by LCCC (but not dated or completed) can be dated/ completed and released. One such condition is that the final finance documents are the same in form and content as those that were sent to LCCC for review, and, if there are any subsequent changes to those documents, these changes must be signed off by LCCC in writing.

Section 7: Stage 3 - Updated Finance Documents

- 7.1 LCCC understand that the finance documents (which are likely to have been provided in draft) may continue to change up until financial close. At least one (1) week prior to the expected financial close date (or date a signed DA is required, if different), the Generator should provide updated finance documents to LCCC which clearly show (in redline) the changes that have been made since the last versions that were provided to LCCC. We encourage the Generator to include an updated finance documents list (see paragraph 6.2 above) to include updated version numbers of the finance documents.
- 7.2 If any of the changes to the finance documents affect any information provided to LCCC in Stage 1 (or subsequently), the Generator should explain the changes and provide updated information to LCCC and confirm whether any such changes impact the general financing structure or eligibility of the relevant person to a DA. In particular, if there are changes that impact the content of the Generator's external solicitor's letter, an updated external solicitor's letter should be provided.
- 7.3 At least three (3) days prior to the expected date of financial close (or the expected date a signed DA is required, if different), the Generator or its solicitors should provide to LCCC:
- (i) the latest finance documents including any changes since the last versions provided clearly shown (in redline);
 - (ii) the final finance documents list including updated version numbers;
 - (iii) an explanation of any changes in the financing structure from that previously proposed or confirmation that there are no changes to the financing structure; and
 - (iv) confirmation from the Generator's external solicitor that the information contained in the external solicitor's letter given to LCCC during Stage 1 (or subsequently) remains true accurate and complete and, if not, an explanation of any changes together with an updated version of the letter.

Section 8: Stage 4 - Completion of the Direct Agreement and financial close

- 8.1 After the three (3) preceding stages, assuming an escrow arrangement is required, LCCC will sign (but not date) the DA in triplicate (so that there will be a copy for each party to the DA). We will send the DA in triplicate to the Generator's external solicitor, together with the escrow letter setting out the conditions under which we authorise the dating/completion and release of the DA.
- 8.2 Following completion of the DA, LCCC expect to receive an original DA duly signed by all parties and dated.
- 8.3 During the term of the DA, we expect the Generator to keep LCCC informed of any changes to the financing arrangements that may affect the ongoing eligibility of the relevant counterparty to the DA.

Annex 1 - Template Direct Agreement

DATED: [•]

LOW CARBON CONTRACTS COMPANY LTD

as CFD Counterparty and

[•]

as [Lender(s)]/[Security Trustee]¹

and

[•]

as Generator

DIRECT AGREEMENT

in relation to a Contract for Difference for [•]

¹Note 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 Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX and whose company number is 08818711 (the “**CFD Counterparty**”);
- (2) [•] a company incorporated under the laws of [•] whose registered office is [•] and whose company number is [•] [(the “**Lender(s)**”)/[in its capacity as security trustee for and on behalf of the Finance Parties (the “**Security Trustee**”)]; and
- (3) [•], a company incorporated under the laws of [•] whose registered office is [•] and whose company number is [•] (the “**Generator**”).

BACKGROUND

- (A) The CFD 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

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 CfD 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;

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

“**CFD Counterparty Enforcement Action**” means:

- (a) the termination or revocation of the Contract by the CfD Counterparty (including the giving of any notice under or pursuant to Condition 51.1 (Pre-Start Date termination) or 51.6 (Default termination) of the Contract by the CfD Counterparty to the Generator terminating the Contract, but excluding the giving of any notice under or pursuant to Condition 51.8 (Qualifying Change in Law termination) of the Contract by the CfD Counterparty to the Generator terminating the Contract and the subsequent termination of the Contract under that Condition);

- (b) the suspension or withholding (as applicable) by the CfD Counterparty of payments under or pursuant to Condition 31.11 (Failure to comply with Electrical Schematic Obligation) or 31.17 (Failure to provide Metering Access Right) or 30.2(A) (Failure to comply with Eligibility Criteria undertaking) of the Contract or paragraph 3.4 (Failure to comply with FMS Audit Right) of Part A of Annex 7 or paragraph 5.4 (Failure to comply with SC Audit Right) of Part C of Annex 7 to the Contract; or
- (c) the commencement by the CfD Counterparty of any proceedings for, or the petitioning by the CfD Counterparty for, the winding-up, administration, dissolution or liquidation of the Generator (or the equivalent procedure under the law of the jurisdiction in which the Generator is incorporated, domiciled or resident or carries on business or has assets);

“CfD Counterparty Enforcement Notice” means a notice given by the CfD Counterparty to the [Lender(s)]/[Security Trustee] specifying the CfD Counterparty Enforcement Action which the CfD Counterparty intends to take and, in reasonable detail, the grounds for such intended action;

“CfD Documents” has the meaning given to that term in the Contract;

“CfD Settlement Required Information” has the meaning given to that term in the Contract;

“CfD Settlement Services Provider” has the meaning given to that term in the Contract;

“Contract” means the contract for difference dated [X] and made between the CfD 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, has the right to exercise, or actually exercises, dominant influence or control over that entity.

and **“Controlled”** shall be construed accordingly;

“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;

“Facility” has the meaning given to that term in the Contract;

“Facility Agent” means the Facility Agent appointed under the Facilities Agreement;

“Finance Documents” means the Facilities Agreement and the other documents defined as Finance Documents in the Facilities Agreement;

“Finance Parties” means the parties with the benefit of security under the Security Documents and “Finance Party” means any of them;

“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 CfD 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 (or an agent or security trustee on the relevant person’s behalf) who is:

- (a) a Lender 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 CfD Document in accordance with Condition 79.6(A) 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 CfD Document in accordance with Condition 79.6(A) of the Contract;

PROVIDED that there shall not be a Non-Qualification Event where a person who previously satisfies subparagraph (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”**) but who otherwise continues to satisfy subparagraph (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 CfD 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 CfD Counterparty Enforcement Notice.]^{2/}

[means the Lender(s) ceasing, in respect of the rights afforded to [it]/[them] under this Deed, to be a person who is:

- (a) a Lender 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 CfD Document in accordance with Condition 79.6(A) of the Contract,

PROVIDED that there shall not be a Non-Qualification Event where a person who previously satisfies subparagraph (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”**) but who otherwise continues to satisfy subparagraph (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 CfD 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 CfD Counterparty Enforcement Notice.]³

“Novation Agreement” means a novation agreement entered into pursuant to Clause 9.3 (*Substitution Procedure*) between the CfD Counterparty, the Generator and the Substitute substantially in the form set out in

² Retain wording in square brackets if there is a Security Trustee.

³ Retain wording in square brackets if there is a Lender but no Security Trustee

Annex 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(s)]/[Security Trustee] to the CfD Counterparty pursuant to Clause 9.1 (*Proposed Substitution*) specifying:

- (a) the identity of the proposed Substitute; and
- (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) (unless, in the case of 3.4(D)(i), the [Lender(s)]/[Security Trustee] has remedied the failure or non-compliance prior to such date) or the date of receipt by the CfD Counterparty of a notice delivered pursuant to Clause 11.1;

“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 CfD 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 CfD 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 CfD Counterparty of any CfD 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 CfD Counterparty in accordance with this Deed and the Contract;

“**Step-In Undertaking**” means an undertaking substantially in the form set out in Annex 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.

1.1 Interpretation

- (a) Unless a contrary indication appears, any reference in this Deed to:
- (i) the “**CfD 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 “**Annex**” is a reference to a clause or paragraph of, or an annex 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 CfD 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 CfD Counterparty acknowledges receipt of notice of, and consents to, the grant of the security interests referred to in paragraph (a) above.

- (c) The CfD Counterparty acknowledges that neither the [Lender(s)]/[Security Trustee] nor any Finance Party shall have any obligations or liabilities to the CfD 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 CfD 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 CfD 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]/[Security Trustee] irrevocably authorises and instructs the CfD Counterparty, and the CfD 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 CfD 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 CfD 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 CfD 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 CfD 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 CfD 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 CFD COUNTERPARTY

3.1 Notification of Default

- (a) The CfD 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 CfD Counterparty on the Generator.
- (b) The CfD Counterparty shall have no obligation to notify the [Lender(s)]/[Security Trustee] of a default under the Contract where the CfD 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 CfD Counterparty Enforcement Action

Subject to Clause 7.2 (*CfD Counterparty Enforcement Action during a Step-In Period*), the CfD Counterparty shall not take any CfD Counterparty Enforcement Action without first giving a CfD 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 CfD Counterparty Enforcement Notice; or
- (ii) any notice from the CfD 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 CfD 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 CfD Counterparty, the evidence provided shall be:

(a) a clear letter to the CfD Counterparty from the external legal advisors to the [Lender(s)]/[Security Trustee] (the "**NQE Confirmation**"):

- (i) 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]⁴;
- (ii) [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;]⁵
- (iii) [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]⁶ confirming whether [such person]⁷/[the Lender]⁸ is a Security Shareholder and, if so, when they became a Security Shareholder;
- (iv) confirming that the external legal advisors are not aware of a Non-Qualification Event having occurred; and
- (v) 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]⁹ since the last letter provided under this Clause

⁴ Words in square brackets to be retained if there is a Security Trustee.

⁵ Words in square brackets to be retained if there is a Security Trustee.

⁶ Words in square brackets to be retained if there is a Security Trustee.

⁷ Words in square brackets to be retained if there is a Security Trustee.

⁸ Words in square brackets to be retained in the case of a Lender and no Security Trustee.

⁹ Words in square brackets to be retained if there is a Security Trustee.

- 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
- (b) a clear letter to the CfD 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]¹⁰:
- (i) a Non-Qualification Event has not occurred;
 - (ii) [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]¹¹ whether [such person]¹²/[the Lender]¹³ is a Security Shareholder;
 - (iii) if a breach, non-compliance or failure has occurred which is or may be the subject of a CfD 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;
 - (iv) 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
 - (v) 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
- (c) if requested by the CfD 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 CfD 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)(c), request clarification of the contents of the NQE Confirmation, Further NQE Confirmation and/or documentation referred to in Clause 3.4(B)(c). If the [Lender(s)]/[Security Trustee] receives such a request, it shall provide the requested clarification to the CfD 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; or
 - (ii) notifies the CfD Counterparty upon becoming aware of the occurrence of a Non-Qualification Event pursuant to Clause 10.3,

the CfD Counterparty may give a notice to the [Lender(s)]/[Security Trustee] that this Deed shall terminate on the date specified in which 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

¹⁰ Words in square brackets to be retained only if there is a Security Trustee.

¹¹ Words in square brackets to be retained if there is a Security Trustee.

¹² Words in square brackets to be retained if there is a Security Trustee.

¹³ Words in square brackets to be retained if there is a Lender and no Security Trustee.

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 and/or any contradiction between the Finance Documents and/or Security Documents and the NQE Written Confirmation and/or Further NQE Confirmation.

Where the [Lender(s)]/[Security Trustee] complies with Clause 3.4(A) by the Qualification Demonstration Deadline, the CfD 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 CfD Counterparty's rights to take any CfD Counterparty Enforcement Action or any of its other rights regarding such CfD Counterparty Enforcement Action and the giving of a CfD 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 CfD 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 CfD 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 CfD Counterparty under the Contract.

5. **STEP-IN DECISION PERIOD**

5.1 **Suspension of Rights and Remedial Action**

During a Step-In Decision Period the CfD Counterparty shall not take any CfD Counterparty Enforcement Action (other than any CfD 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 CfD Counterparty shall give the [Lender(s)]/[Security Trustee] a statement of any amounts owed by the Generator to the CfD Counterparty and any outstanding performance obligations of the Generator under the Contract of which the CfD Counterparty is aware as at the date of the CfD Counterparty Enforcement Notice.

(b) For the avoidance of doubt, a failure by the CfD 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 CfD 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 CfD Counterparty shall be entitled to take CfD Counterparty Enforcement Action without serving a further CfD Counterparty Enforcement Notice if the default, event or circumstance in respect of which the CfD Counterparty gave the CfD 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 CfD Counterparty (a "**Step-In Notice**") specifying:
 - (i) the Appointed Representative who will give a Step-In Undertaking to the CfD 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 CfD Counterparty, provided that the relevant Step-In Decision Period shall be deemed to have expired on delivery of such notice to the CfD Counterparty.

6.2 Step-In Undertaking

Unless otherwise agreed by the CfD 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 CfD Counterparty on the Proposed Step-In Date.

7. STEP-IN PERIOD

7.1 Step-In Period

During the Step-In Period:

- (a) the CfD Counterparty shall deal only with the Appointed Representative and not the Generator and the CfD 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 CfD Counterparty agrees that payment by the Appointed Representative to the CfD 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 CfD Counterparty shall owe its obligations under the Contract to the Generator and the Appointed Representative jointly but performance by the CfD Counterparty in favour of the Appointed Representative alone shall be a good discharge *pro tanto* of its obligations under the Contract.

7.2 CfD Counterparty Enforcement Action during a Step-In Period

- (a) During the Step-In Period, the CfD Counterparty shall be entitled to take CfD 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 CfD Counterparty to take the relevant CfD Counterparty Enforcement Action under or in connection with the Contract.

(b) The provisions of Clause 3.3 (*CfD Counterparty Enforcement Action*) shall not apply to any CfD 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 CfD 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 CfD 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 CfD 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 CfD 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 CfD 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 CfD 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 CfD Counterparty.

(b) The [Lender(s)]/[Security Trustee] shall give the CfD Counterparty not less than fifteen (15) Business Days' prior notice of the Proposed Novation Date.

9.2 Objection to Substitute

The CfD 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 CfD Counterparty gives notice of its objection to the [Lender(s)]/[Security Trustee] within ten (10) Business Days of receipt by the CfD 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 CfD 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 CfD Counterparty having received, in form and content satisfactory to the CfD 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 CfD Documents;
 - (ii) the CfD Counterparty having received a legal opinion addressed to the CfD Counterparty, in form and content reasonably satisfactory to the CfD 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 CfD Documents;
 - (iii) the CfD Counterparty having received written confirmation from the CfD Settlement Services Provider that:
 - (A) it has received the CfD 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 CfD 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 under Condition 55 (*Collateral Requirement*) or 56 (*Acceptable Collateral*) of the Contract having been provided by or on behalf of the Substitute.
- (c) The CfD 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 CfD Counterparty shall, subject to and in accordance with Condition 79.6(B) (*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 CfD Counterparty of the occurrence of the Finance Party Discharge Date.

10.3 The [Lender(s)]/[Security Trustee] shall promptly notify the CfD 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

Save as provided in Clause 9 (Novation) or Clause 11.3 (Assignment by the 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 respective rights under this Deed to any successor [Lender(s)]/[Security Trustee] without the consent of the CfD 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 under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

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) **CfD Counterparty**
 Address: Low Carbon Contracts Company, Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX
 Attention: Head of Commercial
- (b) **[Lender(s)]/[Security Trustee]**
 Address: [•]
 Attention: [•]
- (c) **Generator**
 Address: [•]
 Attention: [•]

or any substitute address or department or officer as the Party may notify to the other Parties on not less than five (5) Business Days' notice.

13. MISCELLANEOUS

13.1 Limited Recourse

Notwithstanding any other provision of this Deed:

- (a) the liability of the CfD Counterparty pursuant to this Deed shall not exceed the aggregate of:
- (i) the amounts from time to time received and held by the CfD Counterparty, and allocated to this Deed, pursuant to the Supplier Obligation Regulations; and
- (ii) any other funds of the type referred to in Condition 71.3(E) (CfD Counterparty payment undertakings) of the Contract from time to time received and held by the CfD Counterparty, and allocated to this Deed whether pursuant to the Supplier Obligation Regulations or otherwise; and
- (b) the CfD 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 CfD 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] 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.

SIGNATURE PAGES OF DIRECT AGREEMENT

CfD 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 duly authorised signatory)

.....

in the presence of

Signature:

Print Name:

Address:

Occupation:

SIGNATURE PAGES OF DIRECT AGREEMENT

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:

Annex 1**Form of Step-In Undertaking**

From: *[Appointed Representative]*

To: Low Carbon Contracts Company Ltd
[insert address]

For the attention of: Head of Commercial

Date: insert date]

Dear Sirs,

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]

Annex 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 Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX and whose company number is 08818711 (the “**CfD 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 CfD 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. **CfD Counterparty Release and Discharge**

With effect from the Novation Date, the CfD 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 CfD Counterparty and arising out of or in respect of the Contract, save for the Generator's obligations under Condition 72 (*Confidentiality*) of the Contract.

3. **Generator Release and Discharge**

With effect from the Novation Date, the Generator releases and discharges the CfD 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. **CfD Counterparty Agreement to Perform**

The CfD 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 CfD Counterparty Claims**

The CfD Counterparty shall not take any CfD Counterparty Enforcement Action by reason of any event notified in a CfD 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 CfD Counterparty's remedies (including without limitation the right to take CfD Counterparty Enforcement Action) in respect of:

- (A) outstanding amounts properly due and payable to the CfD Counterparty on the Novation Date and which remain unpaid on the expiry of three (3) Business Days' notice from the CfD 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 CfD 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 80 (Notices)¹⁵ of the Contract and to:

[insert Substitute contact details]

¹⁵ Note to draft: cross reference relevant notices provisions of the Contract.

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.¹⁶

¹⁶Note to draft: execution blocks to be amended as appropriate.

SIGNATURE PAGES OF NOVATION AGREEMENT

CfD 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:

SIGNATURE PAGES OF NOVATION AGREEMENT

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 2 - Template Escrow letter



**LOW CARBON
CONTRACTS COMPANY**

[Date]

[Generator's solicitors] [Draft subject to final agreement of LCCC]

Address

Address

For the attention of: [name of individual lawyer]

Direct Agreement[(s)] – [Investment Contract]/[Contract for Difference] for [Project name(s)]

Dear Sirs,

The following is provided to make clear our expectations and requirements for financial close on [Project name]. We understand that financial close is planned to happen on or around [expected date of financial close].

We refer to: (1) the [Investment Contract]/[Contract for Difference] dated [date] between [Generator name as set out in the CfD] (“**Generator**”) and Low Carbon Contracts Company Limited as the CfD counterparty (“**LCCC**”), relating to [name of Project] (“**CfD**”)¹; (2) the [name of relevant document by which the CfD is assigned as security] dated [date of the assignment document] pursuant to which the Generator assigns all of its rights under the CfD by way of security (“**the Assignment**”); (3) the direct agreement[(s)]² between LCCC, [name of Security Trustee/Lender/Affected Person(s) entering into the direct agreement] [(“**Security Trustee**”)]/[(“**Lender**”)]/[(“**Affected Person**”)] and the Generator in respect of the CfD (“**Direct Agreement[(s)]**”); and (4) letter from [name of Generator’s solicitors] dated [date of solicitor’s letter] confirming the eligibility of the [Security Trustee]/[Lender]/[Affected Person] to a direct agreement in accordance with Condition [77.7(B)]/[79.6(B)]⁴ of the CfD. Unless otherwise defined herein, capitalised terms used in this letter shall have the meanings given to them in the CfD and/or the Direct Agreement[(s)].

We have provided three (3) counterparts of [each of]⁵ the Direct Agreement signed by the LCCC (but undated) to [name of Generator’s solicitors that are coordinating financial close]. Until the Direct Agreement[(s)] [is]/[are] dated, released and delivered in accordance with (f) below, the Direct Agreement[(s)] shall not have any force or effect. We authorise [name of Generator’s solicitors coordinating financial close] as legal advisers to the Generator, without further notice or consent from us, to date the Direct Agreement[(s)], release our signed counterparts, compile [a] fully executed [copy]/[copies] of [each of] the Direct Agreement[(s)] and release and deliver a single fully executed copy of [each]/[the] Direct Agreement to each of the Generator, [Security Trustee]/[Lender]/[Affected Person] and LCCC. This authorisation is given subject to satisfaction of the following conditions:

¹ For phased contracts, the contract for each phase should be listed.

² There may be more than one direct agreement if the project is a phased offshore wind project.

³ Use if the contract is an Investment Contract.

⁴ Use if the contract is a CfD granted in allocation round 1 or 2.

⁵ Delete if not a phased contract.

- (a) [name of solicitors coordinating financial close] holds three (3) counterparts of [each of] the Direct Agreement[(s)] signed (but undated) by each of the Generator, [Security Trustee]/[Lender]/[Affected Person] in the agreed form;
- (b) the [Security Trustee]/[Lender]/[Affected Person] remains as identified in the documents listed in Schedule 1 of this letter (“**Finance Documents**”).
- (c) written confirmation from [name of Generator’s solicitors coordinating financial close] to LCCC no less than one (1) business day before the date that the Direct Agreement[(s)] [is]/[are] expected to be dated and released of the identity of the [Security Trustee]/[Lender]/[Affected Person] and secured creditors and that the conclusions set out in [name of Generator’s solicitors coordinating financial close]’s letter dated [date of letter], confirming the eligibility of the [Security Trustee]/[Lender]/[Affected Person] to [each of] the Direct Agreement[(s)] in accordance with Condition [77.7(B)]/[79.6(B)] of the CfD, remain unchanged; and
- (d) the form and content of the Finance Documents remain consistent with the drafts forwarded to LCCC at [time] on [date] save for:
- (i) changes to the Finance Documents signed-off in writing by LCCC (or its solicitors) by email after the date and time set out in this paragraph (d); and
 - (ii) completion of gaps contemplated in the Finance Documents.
- (e) the Finance Documents are dated and released no later than [longstop date]; and
- (f) provided that all of the conditions above have been satisfied, [each of] the fully executed Direct Agreement[(s)] shall be dated, released and delivered by [name of Generator’s solicitor coordinating financial close] upon the dating and release of the Finance Documents.

The Direct Agreement[(s)] will take effect only when dated, released and delivered in accordance with (f) above.

[name of solicitors coordinating financial close] will provide to LCCC (by sending to [LCCC emails]) as soon as possible and in any event within one (1) business day after the Direct Agreement[(s)] [is]/[are] dated, released and delivered in accordance with (f) above:

- an electronic pdf. copy of [each of] the Direct Agreement[(s)]; and
- an electronic pdf. copy of final Finance Documents list

[name of solicitors coordinating financial close] will send by secure method of delivery to “Low Carbon Contracts Company, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX” (marked for the attention of [name of LCCC contract manager]) as soon as possible and in any event within three (3) business days after the Direct Agreement[(s)] are dated, released and delivered in accordance with (f) above:

- an original paper copy of [each of] the fully executed Direct Agreement.

Yours faithfully,

Lead Commercial Manager
Low Carbon Contracts Company Ltd

© Low Carbon Contracts Company Ltd
Fleetbank House
2-6 Salisbury Square
London EC4Y 8JX
lowcarboncontracts.uk
e: info@lowcarboncontracts.uk
Company registration number: **08818711**