

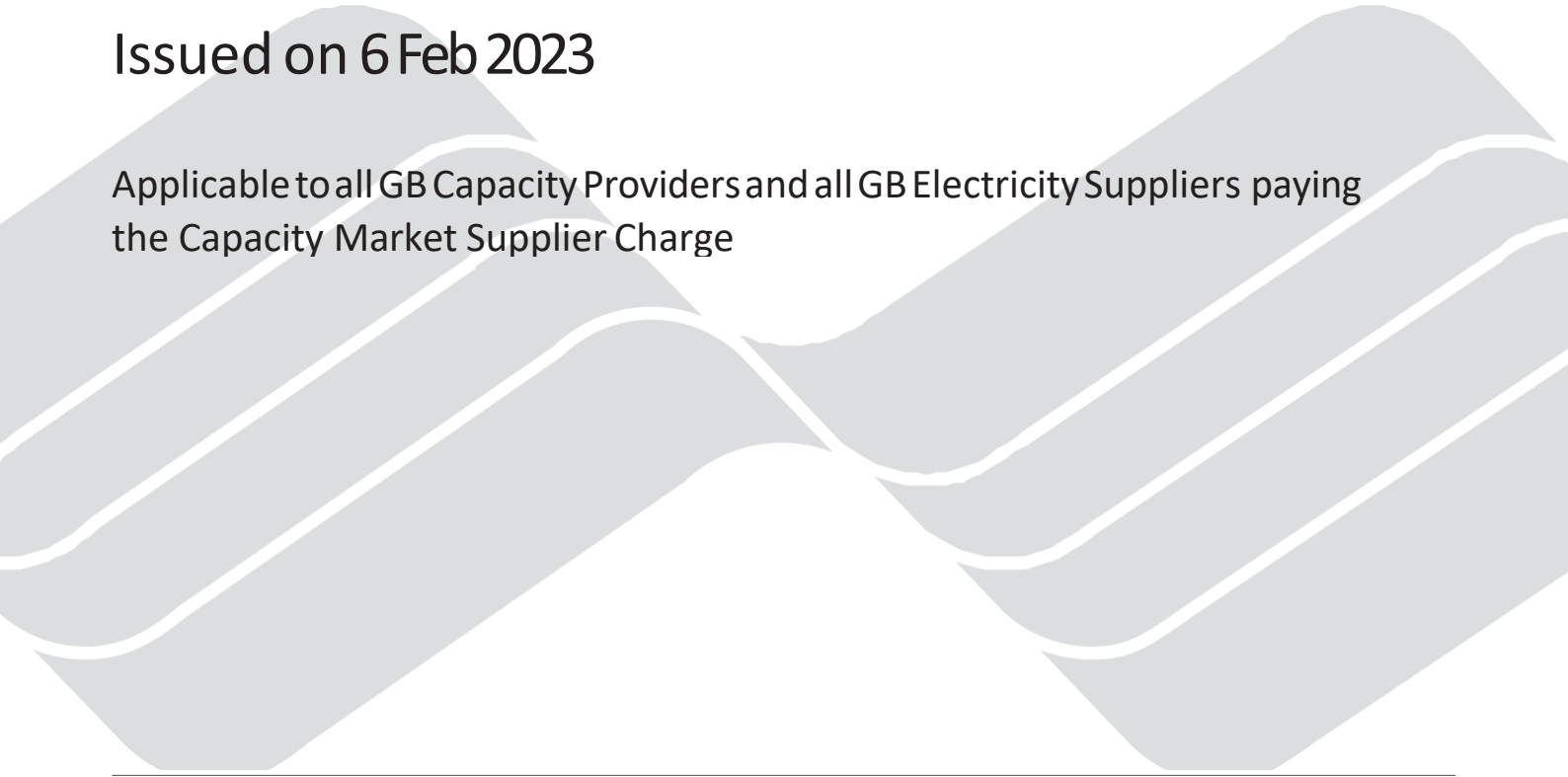
# Capacity Market Dispute Resolution

## Process for Payment Disputes and Metering Test Disputes

Version 2.0

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Applicable to all GB Capacity Providers and all GB Electricity Suppliers paying the Capacity Market Supplier Charge



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#### Disclaimer

*This guidance does not and is not intended to supersede or replace the Capacity Market Regulations or Rules. This guidance does not constitute legal or investment advice and should not be relied upon as such. Capacity Providers and Suppliers should consult their professional advisors where they require advice, whether legal or otherwise. ESC further reserves the right to amend this guidance and any associated guidance from time to time.*

## Section 1: Introduction

This document outlines ESC's dispute processes in relation to invoice **payment calculation disputes** raised by a supplier or capacity provider under the Capacity Market regulations and **metering test disputes** raised by a capacity provider under the Capacity Market Rules.

- 1.1 **Payment calculation disputes** must be raised by the capacity provider or supplier issuing a disputes notice within 28 days of receiving the relevant invoice or notice of payment calculation. ESC may engage an independent person to consider the disputed matter. ESC will make its determination within 28 days of either receiving the disputes notice or the independent person's report or audit if one was commissioned.
- 1.2 **Metering test disputes** must be raised by notifying ESC in writing within 5 working days of receiving a notice from ESC that it has not passed a metering test. Within 15 working days of the notice from ESC, the capacity provider must provide written representations stating why it believes a metering test certificate should have been issued. Within 5 working days of receipt of the written representations, ESC must convene a meeting to seek to resolve the dispute. If it cannot be resolved, it will be referred to an expert for determination under the expert determination procedure set out in the Capacity Market Rules.

## Section 2:Background

- 2.1 Electricity Settlement Company Ltd (“**ESC**”) was set up by the Department of Business Energy and Industrial Strategy (“**BEIS**”)<sup>1</sup> to be the settlement body for the capacity market regime. ESC’s functions are set out in the various capacity market rules<sup>2</sup> and regulations<sup>3</sup>.
- 2.2 ESC’s functions, as the settlement body, include the calculation, collection and payment of monies to and from electricity suppliers and capacity providers, the reconciliation of payments, and the calculation and collection of credit cover from electricity suppliers, capacity providers and potential participants in the Capacity Market auctions. ESC obtains capacity market settlement services from EMR Settlement Limited (“**EMRS**”).
- 2.3 ESC has a role in dispute resolution in the following two areas:

### a) **Category 1 - Payment calculation disputes**

Capacity provider and supplier payment disputes - ESC is required under Regulations 74 to 76 of the Electricity Capacity Regulations 2014 (the “**Capacity Regulations**”) to resolve and determine disputes regarding payment calculations raised by capacity participants and/or electricity suppliers under Parts 6 and 7 of the Capacity Regulations.

Supplier payment disputes - ESC is also required under Regulation 32 of the Electricity Capacity (Supplier Payment etc.) Regulations 2014 (the “**Supplier Payment Regulations**”) to resolve and determine disputes regarding payment calculations raised by electricity suppliers under the Supplier Payment Regulations in accordance with the procedures set out in Regulations 74 to 76 of the Capacity Regulations.

Section 3 of this document sets out the processes and procedures that ESC will follow in order to resolve these payment calculation disputes.

### b) **Category 2 - Metering test disputes**

The process for the resolution of metering test disputes is set out under Rule 13.3.9 of the Capacity Market Rules 2014 (“**Capacity Market Rules**”). ESC is required to convene a meeting to seek a resolution to the dispute. If no resolution is agreed, the disputes shall be submitted to an expert for determination.

Section 4 of this document sets out the processes and procedures that ESC will follow in order to resolve these metering test disputes.

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<sup>1</sup>Formerly, the Department of Energy and Climate Change (“**DECC**”)

<sup>2</sup> <https://www.ofgem.gov.uk/electricity/wholesale-market/market-efficiency-review-and-reform/electricity-market-reform/capacity-market-cm-rules>

<sup>3</sup> The Electricity Capacity Regulations 2014 can be found at the following link: [http://www.legislation.gov.uk/uksi/2014/2043/pdfs/uksi\\_20142043\\_en.pdf](http://www.legislation.gov.uk/uksi/2014/2043/pdfs/uksi_20142043_en.pdf) Note that they have been amended. The Electricity Capacity (Supplier Payment etc.) Regulations 2014 can be found at the following link: <https://www.legislation.gov.uk/uksi/2014/3354/contents/made> Note that they have been amended.

## Section 3: Payment Calculation Disputes

### Types of payment calculation disputes to be determined by ESC

#### Capacity provider and supplier payment disputes

3.1 The procedure, including ESC's function in determining disputes regarding payment calculations, is set out in Regulations 74 to 76 of the Capacity Regulations. These Regulations set out the procedure to be followed for disputes by capacity providers and/or electricity suppliers in relation to any calculation or determination made by ESC under Part 6 (Payments) or Part 7 (Credit Cover) of the Capacity Regulations.

To give some practical examples, this may include disputes relating to the calculation or determination by ESC of:

- the adjusted load-following capacity obligation;
- net output;
- adjusted net output;
- capacity payments;
- settlement calculations;
- penalty charges;
- over-delivery payments;
- termination fees;
- settlement costs levy;
- the amount of credit cover to be drawn down by ESC; and
- whether credit cover provided is approved, partially approved or not approved.

Please note that Regulation 74(2) states that certain disputes cannot be dealt with under the procedure in Regulations 74 to 76 of the Capacity Regulations. These excluded disputes relate to the correctness of any data used in making a calculation or determination which has been provided to ESC by another person under the Capacity Regulations or Capacity Market Rules (except for non-BSC data provided by or on behalf of a capacity provider). As an example, disputes relating to information contained in the Capacity Market Register which is managed by the delivery body, National Grid, cannot be dealt with under this procedure.

## Supplier payment disputes

3.2 Regulation 32 of the Supplier Payment Regulations provides that electricity suppliers may also use the procedure in Regulations 74 to 76 of the Capacity Regulations to dispute any calculation or determination made by ESC under the Supplier Payment Regulations.

To give some practical examples, this may include disputes relating to the calculation or determination by ESC of:

- the supplier settlement calculations;
- mutualisation payments;
- mutualisation credits;
- settlement cost levy payments; and
- settlement cost levy refund.

Please note that Regulation 32(2) states that certain disputes cannot be dealt with under the procedure in Regulations 74 to 76 of the Capacity Regulations. These excluded disputes relate to the correctness of data provided to ESC by another person under the Supplier Payment Regulations, the Capacity Regulations, or the Capacity Market Rules. As an example, disputes relating to BSC data, which is provided by Elexon, cannot be dealt with under this procedure.

## Amicable resolution - steps to avoid the need to raise a dispute

3.3 If an electricity supplier or capacity provider has a query in relation to a calculation or determination, it would be useful if, in the first instance, you could contact EMRS as soon as possible in order to discuss and resolve the query before the relevant payments are processed. EMRS can be contacted at: [contact@emrsettlement.co.uk](mailto:contact@emrsettlement.co.uk)

3.4 If the matter falls within the relevant dispute provisions, you can raise a dispute with ESC in accordance with Regulations 74 to 76 of the Capacity Regulations, the procedure for which is set out in paragraphs 3.5 to 3.7 below. **Please note the deadline for bringing a dispute – see paragraph 3.6 below.**

## Dispute Procedure

### Raising a dispute

#### 3.5 Disputes Notice

An electricity supplier or capacity provider may raise a dispute with ESC in respect of any payment calculation or determination referred to in paragraphs 3.1 and 3.2 above. To do so, please email a disputes notice to [Accounts@electricitysettlementscompany.uk](mailto:Accounts@electricitysettlementscompany.uk) setting out:

- a) the matters giving rise to the dispute, and
- b) the outcome you are seeking<sup>4</sup>,

(“**Disputes Notice**”). There is a pro forma ‘*Capacity Market Calculation Disputes Notice*’ attached at [Appendix 1](#) which you are encouraged to use.

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<sup>4</sup> Regulation 75(2)(a) of the Capacity Regulations

3.6 The Disputes Notice is required under Regulation 75(2)(b) to be given to ESC no later than 28 days after the date on which you have received notice of the calculation or determination which you are disputing. If you miss this deadline, your Disputes Notice will not be accepted and you will lose the right to raise a dispute.

3.7 Please ensure that the Disputes Notice is signed by an authorised signatory of your company.

### ESC Response to Disputes Notice

3.8 Within 5 working days of our receipt of a Disputes Notice, we will give you written notice<sup>5</sup> setting out:

#### 3.8.1. whether ESC:

- a) has rejected the Disputes Notice on the basis that it does not comply with the procedural requirements of Regulation 75(2) of the Capacity Regulations. (Regulation 75(2) requires a Disputes Notice to set out the matters giving rise to the dispute and the outcome sought by you and, as mentioned above, the Disputes Notice must be received by ESC within 28 days of you receiving the original notice of the calculation or determination giving rise to the dispute); or
- b) is considering the disputed matter. If the Disputes Notice is compliant with Regulation 75(2), ESC will re- view the disputed calculation or determination and decide whether to uphold it or to substitute a different calculation or determination; and

#### 3.8.2. if ESC is considering the disputed matter:

- a) the timetable and the expected procedure that will apply to our review (the “Procedure”). Please note the following in relation to the Procedure:
  - i) We may subsequently issue a revised Procedure (including timetable) should we consider this to be appropriate.
  - ii) The Procedure will set out whether we require information, documents, evidence or representations (either oral or written) from you in relation to the dispute (“Information”) and the timetable within which these must be provided.
  - iii) If you think that you will have any difficulty in providing the Information by the time set out in the timetable, you must notify ESC as soon as possible, giving reasons for the difficulty, stating the Information to which the difficulty relates and stating the date by which you will be able to provide the Information.
  - iv) ESC will consider any representations made by you in relation to the timetable and may, if it considers it appropriate, issue a revised timetable.
  - v) You are required to comply with the timetable issued by ESC and provide the Information within the time set out in the timetable. If you fail to provide the required Information in accordance with the timetable, ESC may decide the dispute against you, including on the basis that you have not provided adequate Information to support your case. Please note that ESC is required to decide a

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<sup>5</sup> Regulation 76(3) of the Capacity Regulations

dispute within the deadlines set out in paragraph 3.9 below.

- vi) ESC may, during the course of its review, request further Information from you (in which case paragraphs ii) to v)) above shall apply) and from EMRS and/or other relevant parties, as appropriate.
- b) whether ESC has appointed an 'independent person' to consider the disputed matter. Please note the following in relation to the independent person:
  - i) Regulation 76(2) states that, to assist it in determining a dispute, ESC may decide to appoint an 'independent person' to consider the matter in dispute and to provide a report on the matter or an audit of any calculation. An 'independent person' is defined in Regulation 76(6) as including a panel of persons, either established under an industry code or appointed by ESC for the purposes of considering disputes under Regulations 74 to 76 of the Capacity Regulations, provided that all the panel members who consider the dispute are independent from ESC and the disputing party.
  - ii) ESC will decide whether or not to appoint an 'independent person' on a case by case basis by reference to the facts of the particular dispute.
  - iii) Where ESC decides to appoint an 'independent person', ESC will require the 'independent person' to review the matter, including the Disputes Notice, and to provide a report or audit on the matter. ESC will review the independent persons' report or audit and may request you to make representations in relation to any matter including any matter raised in the report or audit. Any such request for representations will be included in a revised Procedure (including timetable).

### Decision

3.9 ESC is required under Regulation 76(4) to determine the dispute no later than (i) 28 days after receiving the Disputes Notice or, (ii) if ESC has commissioned a report or audit from an independent person, no later than 28 days after receiving the report or audit.

3.10 In accordance with Regulation 76(5), ESC shall notify you in writing of its determination together with its reason(s) for making the determination.

### Rectification

3.11 If ESC determines that there has been a payment calculation error, ESC will promptly request EMRS to rectify the matter by correcting the calculation and issuing a revised invoice to you showing the correct amount. Where you have made overpayments to ESC, EMRS will issue you with a credit note for the amount of the overpayment.

3.12 If ESC determines that there has not been any payment calculation error, your payment obligation remains out- standing and you will be required to promptly pay the outstanding amount to ESC together with interest on late payment. Interest on late payment is required to be paid under, as applicable, Regulation 46 of the Capacity Regulations and Regulation 11 of the Supplier Payment Obligations, as amended.



## Section 4: Metering Test Disputes

- 4.1 As mentioned, ESC was set up by BEIS to be the settlement body for the Capacity Market regime.
- 4.2 ESC's role in the capacity market includes its role under Rule 13.3 of the Capacity Market Rules in the conducting of metering tests and the resolution of metering test disputes. This document sets out ESC's role in the process for metering test dispute resolution.
- 4.3 Capitalised terms in this section 4 have the meaning ascribed to them in the Capacity Market Rules.

### Metering Tests

- 4.4 As stated in Rule 13.3.1, a 'Metering Test' is a test conducted by ESC<sup>6</sup> to determine whether or not the metering arrangements for each Generating Unit or DSR CMU Component comprised in a CMU, or the Electricity Interconnector comprised in an Interconnector CMU, constitutes an 'Approved Metering Solution'<sup>7</sup>.
- 4.5 Following the Metering Test, if ESC determines that the metering arrangements constitute an 'Approved Metering Solution', ESC will issue a Metering Test Certificate in accordance with Rule 13.3.6.
- 4.6 However, if ESC notifies the Capacity Provider that one or more Generating Units or DSR CMU Components comprised in the CMU or the Electricity Interconnector comprised in the Interconnector CMU, has failed a Metering Test, Rule 13.3.7 requires the Capacity Provider to notify ESC, within 5 Working Days of receipt of the notice from ESC, whether or not it accepts the decision of ESC. If the Capacity Provider does not notify ESC within the relevant time period, the Capacity Provider will be deemed to have accepted ESC's decision.

### Disputes Procedure

#### Raising a dispute

- 4.7 If the Capacity Provider notifies ESC within the relevant time period stating that it does not accept ESC's decision, there is a "dispute". Rule 13.3.9 sets out the process for resolving such disputes.

#### Written representations

- 4.8 The Capacity Provider must submit to ESC within 15 Working Days of receipt of the notice from ESC (referred to in paragraph 4.6 above), written representations setting out the reasons why the Capacity Provider believes that a Metering Test Certificate should have been issued together with supporting information from an independent metering specialist – see Rule 13.3.9(a).

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<sup>6</sup> At the current time, these metering tests are arranged by EMRS as ESC's metering subcontractor.

<sup>7</sup> "Approved Metering Solution" is defined in the Capacity Rules, as amended.

### Dispute resolution meeting

- 4.9 Within 5 Working Days of receiving the representations and supporting information, ESC will convene a meeting with the Capacity Provider and the independent metering specialist to seek a resolution to the dispute – Rule 13.3.9(b).
- 4.10 Please note that ESC may also decide to engage its own metering specialist to review the representations submitted by the Capacity Provider and the supporting information from the Capacity Provider’s independent metering specialist. ESC may request its metering specialist to attend the dispute resolution meeting.

### Expert determination

- 4.11 If no resolution is agreed by the parties, Rule 13.3.9(d) states that the dispute shall be referred to an expert for de-termination in accordance with the ‘Expert Determination Procedure’ which is set out at Schedule 5 of the Capacity Market Rules.
- 4.12 The ‘Expert Determination Procedure’ sets out the detailed procedure for the submission of a dispute to an expert including the appointment of the expert. It provides that the determination of the expert is final and binding, except in the case of fraud or manifest error.
- 4.13 For ease of reference, a copy of the Expert Determination Procedure is set out at [Appendix 2](#). Note that the Capacity Market Rules, including the Expert Determination Procedure, may change from time to time therefore the most recent version of the Expert Determination Procedure should be consulted and reliance should not be placed on the version at Appendix 2.
- 4.14 Following the determination by the expert in accordance with the Expert Determination Procedure, Rule 13.3.9(e) states that either ESC will issue a Metering Test Certificate or Rule 13.3.8 will apply as applicable. Rule 13.3.8 sets out a process for the Capacity Provider to submit and implement a rectification plan with respect to the relevant Metering Test failure.

# Appendix 1: Capacity Market Payment Calculation Disputes Notice

To be used for disputes raised by electricity suppliers and capacity providers in relation to payment calculations or determinations made by Electricity Settlements Company Limited pursuant to the Electricity Capacity Market Regulations 2014 and Electricity Capacity (Supplier Payment etc.) Regulations 2014<sup>8</sup>

To be completed by the party raising the dispute and emailed to: [Accounts@electricitysettlementscompany.uk](mailto:Accounts@electricitysettlementscompany.uk)

Date of submission of Disputes Notice	
Name of disputing party – provide full company name	
Company role – i.e. electricity supplier, capacity provider	
Company registered number	
Contact name of person dealing with the dispute	
Telephone number of contact person	
Email address of contact person	
Description of the payment calculation/ determination being disputed please include as much detail as possible and alternative calculations/ basis for determination of disputed calculation, if available	
Date and reference of the invoice or other notice of the calculation/ determination in dispute	
Any other information and description of supporting attachments	

<sup>8</sup> This notice is the form for Payment Calculation Disputes. It is not intended to be used for metering disputes under Rule 3.3.9 of the Capacity Market Rules.

## Appendix 2: Extract from Capacity Market Rules

### “Schedule 5: Expert Determination Procedure”

#### 1.0 Purpose of expert determination procedure

*If a Capacity Provider does not accept a decision of the CM Settlement Body pursuant to Rule 13.3.6(b) and no resolution is agreed pursuant to Rule 13.3.9(b), the Capacity Provider may submit the dispute to expert determination in accordance with Rule 13.3.9(d) and the procedure set out in this Schedule 5 (the “Expert Determination Procedure”).*

#### 2.0 Submission of dispute to expert determination

2.1 *In order to submit the dispute to expert determination in accordance with Rule 13.3.9(d), the Capacity Provider must give a notice (an “Expert Determination Notice”) to the CM Settlement Body, no later than 10 Working Days after the meeting held under Rule 13.3.9(b), which includes:*

2.1.1 *a statement that the Capacity Provider considers that the dispute should be referred for expert determination in accordance with Rule 13.3.9(d) and the Expert Determination Procedure;*

2.1.2 *a description of the subject matter of the dispute and the issues to be resolved;*

2.1.3 *where the Capacity Provider considers it appropriate, copies of any supporting information on which the Capacity Provider intends to rely; and*

2.1.4 *a proposal as to the identity, and terms of reference, of the person to be appointed in accordance with the Expert Determination Procedure to determine the dispute (“Expert”) and the relevant expertise that the Capacity Provider considers qualifies the Expert to determine the relevant matter.*

2.2 *Any Expert appointed to determine a dispute in accordance with this procedure shall be required to have an appropriate level of experience in relation to matters of the same general description as the matter in dispute.*

2.3 *The CM Settlement Body must, within 10 Working Days of service of the Expert Determination Notice, give notice to the Capacity Provider which specifies whether or not the CM Settlement Body accepts:*

2.3.1 *the Expert proposed by the Capacity Provider (and, if the CM Settlement Body does not accept the Expert proposed by the Capacity Provider, it shall specify an alternative Expert for consideration by the Capacity Provider); and*

2.3.2 *the terms of reference for the Expert proposed by the Capacity Provider (and, if the CM Settlement Body does not accept the terms of reference for the Expert proposed by the Capacity Provider, it shall propose alternative terms of reference for the Expert for consideration by the Capacity Provider).*

#### 3 Appointment of Expert

3.1 *If the Capacity Provider and CM Settlement Body fail to agree on the identity of the Expert within 20 Working Days of the date of service of the Expert Determination Notice, either the Capacity Provider or the CM Settlement Body may request that the Expert be nominated by the London Court of International Arbitration (“LCIA”), which shall be requested to choose a suitably qualified and experienced Expert for the dispute in question. The LCIA’s nomination shall, subject to paragraph 3.2.1(i), be binding on the Capacity Provider and CM Settlement Body.*

3.2 *The Capacity Provider and the CM Settlement Body must:*

3.2.1 *use reasonable endeavours to procure that within 10 Working Days of them agreeing the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with paragraph 3.1):*

- a) *the Expert confirms in writing to the Capacity Provider and CM Settlement Body that:*
  - i) *he is willing and available to act in relation to the dispute; and*
  - ii) *he has no conflict of interest which prevents him from determining the dispute;*
- b) *(subject to the confirmation referred to in paragraph (i) having been given) the terms of appointment and the terms of reference of the Expert are agreed between the Capacity Provider, CM Settlement Body and the Expert (and an appointment letter entered into among them), such terms:*
  - i) *to include an undertaking that the Expert shall not disclose to any person any supporting information disclosed or delivered by the Capacity Provider or CM Settlement Body to the Expert in consequence of, or in respect of, his appointment as the Expert; and*
  - ii) *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;*

3.2.2 *instruct the Expert:*

- a) *to act fairly and impartially;*
- b) *to take the initiative in ascertaining the facts and the law, including by:*
  - i) *considering any supporting information submitted to him by the Capacity Provider or CM Settlement Body;*
  - ii) *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;*
  - iii) *requiring the Capacity Provider and CM Settlement Body to produce any supporting information (excluding any of the foregoing which would be privileged from production in court proceedings); and*
  - iv) *if requested by either the Capacity Provider or the CM Settlement Body in writing, to provide reasons for his decision, which shall be communicated to the Capacity Provider and CM Settlement Body;*

3.2.3 *afford the Expert the discretion to establish the procedure (including the timetable) for the determination of the dispute, it being agreed by the Capacity Provider and CM Settlement Body that:*

- a) *the Expert shall be requested to confirm to the Capacity Provider and CM Settlement Body the proposed procedure for the relevant dispute as soon as reasonably practicable after the appointment of the Expert and, in any event, within 10 Working Days of such appointment and, in so doing, the Capacity Provider and CM Settlement Body agree that:*
  - i) *the Expert shall be requested to afford the Capacity Provider and CM Settlement Body the opportunity to address him in a meeting at which both the Capacity Provider and CM Settlement Body shall have the right to be present, where either the Capacity Provider or CM Settlement Body 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 dispute, with the format and procedure applicable to any such meeting being a matter for the Expert to decide in his sole and absolute discretion; and*
  - ii) *the Expert may (without limitation) modify the time periods provided for in paragraph 3.3 and otherwise modify the procedure contemplated by that paragraph;*
- b) *all submissions made to the Expert (including all supporting information provided to him) shall, contemporaneously with such submissions being made to the Expert, be provided to the Capacity Provider or the CM Settlement Body, as applicable; and*
- c) *the Capacity Provider and CM Settlement Body shall (without prejudice to paragraph 3.2.3(i) request the Expert to determine the dispute within the earlier of:*
  - i) *30 Working Days following the date on which a reply to the First Submission has been provided by each of the Capacity Provider or the CM Settlement Body; and*

*ii) 60 Working Days after the deadline specified in paragraph 3.3.2 for the First Submission; and*

*3.2.4 afford the Expert all supporting information and assistance which the Expert requires to determine the dispute (and, if either the Capacity Provider or the CM Settlement Body fails to produce any such supporting information or assistance, the Expert may continue the determination process without that supporting information or assistance).*

*3.3 Subject to paragraph 3.2.3:*

*3.3.1 the Capacity Provider shall provide the Expert with a copy of the Expert Determination Notice no later than 10 Working Days after the appointment of the Expert;*

*3.3.2 each of the Capacity Provider or the CM Settlement Body may, but is not obliged to, provide a written statement of its case, together with any supporting information, to the Expert (the "First Submission") within 20 Working Days of the Expert receiving the Expert Determination Notice and, without limitation, the First Submission may cover any of the matters required to be contained in the Expert Determination Notice pursuant to paragraphs 2.1.2 to 2.1.4 (inclusive) and a copy of such First Submission shall be provided to the other at the same time as it is provided to the Expert; and*

*3.3.3 each of the Capacity Provider or the CM Settlement Body may submit a reply, together with any supporting information, to the other's First Submission within 30 Working Days of receipt of the First Submission.*

*3.4 The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or his determination or the procedure by which he reaches his determination.*

*3.5 If the Expert is at any time unable or unwilling to act, either the Capacity Provider or the CM Settlement Body may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served. The provisions of the Expert Determination Procedure shall apply, mutatis mutandis, to any replacement Expert and the replacement Expert shall be authorised to determine any dispute which was submitted to his predecessor but which his predecessor had not determined at the time when his predecessor became unable or unwilling to act.*

*3.6 The Expert's determination shall be final and binding upon the Capacity Provider and CM Settlement Body, except in the event of fraud or manifest error.*

*3.7 The Expert may, in his determination, provide that one or other or both of the Capacity Provider and CM Settlement Body 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 he may specify on the general principle that the allocation of costs should reflect the relative success of the Capacity Provider and CM Settlement Body and failure in the Expert Determination Procedure. Without such a direction, each of the Capacity Provider and CM Settlement Body shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the Capacity Provider and CM Settlement Body.*

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