

POWER PURCHASE AGREEMENT

Terms and Conditions for Embedded Generation v2



Terms and Conditions

The definitions and interpretations set out in the Glossary apply to these Terms and Conditions

1 Commencement and Term

- 1.1 This Agreement commences on the Commencement Date.
- 1.2 This Agreement is, at all times, subject to:
 - 1.2.1 the Generator having a Connection Agreement for each Generating Station;
 - 1.2.2 the Generator having a generation Licence or exemption (as applicable);
 - 1.2.3 the Generator and each Generating Station being compliant with Industry Rules;
 - 1.2.4 the MPAS operator confirming each Meter Point is registered to EDF Energy; and
 - 1.2.5 where applicable and indicated in the Contract Information Pack that a Generating Station is accredited under the FIT scheme, the Generator having submitted a valid FIT Opt Out Notification to, and ensured that it has been processed by, its FIT Licensee, and not submitting a FIT Opt In Notification for any period within the Term.
- 1.3 EDF Energy may, in its discretion, on written notice by the Generator that it cannot fulfil any requirement in Condition 1.2, waive or vary such requirement by written confirmation to the Generator.
- 1.4 If any requirement of Condition 1.2 is not maintained, and provided EDF Energy has not waived such requirement(s) or been the direct cause of its failure, EDF Energy may treat such failure as an Event of Default.

2 Sale and purchase of the Products

- 2.1 The Generator grants EDF Energy the sole and exclusive right to purchase the Products in accordance with this Agreement.
- 2.2 In consideration of the Generator transferring the Products to EDF Energy, EDF Energy shall pay the Product Price.

3 Payments

- 3.1 EDF Energy shall provide a Billing Statement for the preceding Billing Period to the Generator within 10 Business Days of its receipt of all the details of the Relevant Metered Output (and other Products if applicable) for that Billing Period. If EDF Energy fails to produce a Billing Statement within this time the Generator may notify EDF Energy of this failure, and if such failure is not remedied within 5 Business Days the Generator shall (as its sole remedy in relation to such failure) be entitled to produce an Invoice utilising actual data obtained from the Authorised Meter Operator. If there is any discrepancy between the data used to generate the Invoice and the data that would have been used by EDF Energy to produce the Billing Statement, any subsequent Billing Statement that is produced by EDF Energy may include any reconciliation amount that EDF Energy considers necessary. This shall be without prejudice to Condition 3.3.
- 3.2 EDF Energy may use an estimate of Relevant Metered Output to prepare the Billing Statement (and Invoice if applicable) for the relevant Billing Period and this shall be binding in the absence of more accurate data becoming available.
- 3.3 Where EDF Energy, within 18 months of a Billing Period:
 - (i) receives more accurate data, relating to the Products purchased under this Agreement only; or
 - (ii) becomes aware of a change in any other information used to calculate a Billing Statement,which means that EDF Energy was previously overcharged, EDF Energy may issue a revised Billing Statement. EDF Energy shall promptly issue an Invoice in accordance with Condition 3.5, which shall be payable in accordance with Condition 3.7. This Condition 3.3 shall survive termination or expiration of this Agreement."
- 3.4 Subject to Condition 3.3, within 20 business days of expiration or termination of this Agreement, EDF Energy may submit to the Generator a final Billing Statement detailing any amounts still outstanding under the Agreement.
- 3.5 EDF Energy shall be responsible for the issuance of all Invoices and the Debtor Party shall be responsible for paying the Creditor Party the amount due under that invoice in accordance with Condition 3.7

- (i) EDF Energy will:
 - a. issue self-billed Invoices for all Products supplied to them until expiry of the Term;
 - b. complete self-billed Invoices showing the Creditor Party's name, address and Creditor Party VAT Number, together with all the other details which constitute a full VAT invoice; and
 - c. inform the Creditor in the event that the EDF Energy VAT Number changes;
 - (ii) the Generator will:
 - a. accept Invoices raised by EDF Energy on their behalf until expiry of the Term;
 - b. not raise any Invoices for the transactions covered by this Agreement;
 - c. to notify EDF Energy immediately if they:
 - A. change their VAT Number; or
 - B. cease to be VAT registered.
- 3.6 Unless otherwise specified, payments stated in the Price Guide, or the Contract Information Pack as being payable at a frequency other than monthly in arrears shall be included in the Invoice for the Billing Period in which they arise or are first ascertained.
- 3.7 Invoices shall be payable by the Debtor Party according to the Payment Terms by direct bank transfer to such account as the Creditor Party notifies to the Debtor Party in writing, or as the Parties agree.
- 3.8 The Debtor Party may in good faith dispute any Invoice promptly following receipt. Undisputed amounts shall be payable in accordance with Condition 3.7. Amounts wrongly withheld shall incur interest under Condition 3.9.
- 3.9 Any money due under the Agreement shall, if not paid when due, bear interest at the Default Rate. Interest shall be payable on demand and shall accrue from day to day, compounded monthly from the date payment was due until the date of payment in full (including interest).
- 3.10 Condition 3.9 constitutes a substantial remedy for late payment of any sum due under the Agreement. To the extent that they may be excluded, the Late Payment of Commercial Debts (Interest) Act 1998, and any orders or regulations pursuant thereto, shall not apply.
- 3.11 Amounts payable under this Agreement are exclusive of VAT. On any payment being made under the Agreement, the payer shall also pay to the payee (against production of an appropriate VAT invoice) any attributable VAT .
- 3.12 Where EDF Energy is the Debtor Party, no payment period shall commence until it receives by email (at generationsettlements@edfenergy.com) a vendor request form (to be provided by EDF Energy) stating the Generator's account details to which payment should be made.

4 Representations and Warranties

- 4.1 Each Party warrants and represents, as at and from the Commencement Date, to the other that:
- 4.1.1 it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant, in good standing);
 - 4.1.2 it has the power and authority to perform its obligations under this Agreement and in doing so does not violate or conflict with any law, any provision of its constitutional documents, any order or judgment of any court or other agency of government or any contractual restriction applicable to it or any of its assets;
 - 4.1.3 any authorisations required to enable the Party to fulfil its obligations under this Agreement have been obtained, complied with and are in full force and effect (and in the case of the Generator this includes all authorisations required for the ownership and operation of each Generating Station);
 - 4.1.4 its obligations under this Agreement are legal, valid and binding, enforceable in accordance with their respective terms subject to applicable reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);

- 4.1.5 it is complying with and will continue to comply with all applicable Industry Rules;
 - 4.1.6 it is a party to all necessary agreements, including a Connection Agreement and the other agreements referred to in the Industry Rules, required in order to perform its obligations under the Agreement;
 - 4.1.7 it shall maintain at all times an operational email address which allows it to receive email from the Authority;
 - 4.1.8 no Event of Default has occurred or could occur with respect to it and no such event would occur as a result of its entering or performing this Agreement;
 - 4.1.9 no litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened that is likely to affect the legality, validity or enforceability of the Agreement or its ability to perform its obligations; and
 - 4.1.10 it is not relying upon any representations of the other Party other than those expressly set out in the Agreement and the other Party has not given any advice, representation, assurance or guarantee as to the expected performance, benefit or result of the Agreement.
- 4.2 The Generator warrants to EDF Energy as at the Effective Date and for the Term that:
- 4.2.1 it is entitled to use and manage each Generating Station for the purpose of supplying the Relevant Metered Output to the relevant Meter Point(s);
 - 4.2.2 it is the holder of a Licence or exemption authorising it to generate and supply electricity to each Meter Point;
 - 4.2.3 it has in place insurance in respect of each Generating Station (including business interruption insurances) in accordance with Prudent Operating Practice;
 - 4.2.4 it shall provide all information as EDF Energy or any regulatory or governmental body shall request;
 - 4.2.5 each Generating Station is located in Great Britain or the adjacent territorial waters and is connected to the local Distribution System or the national transmission system;
 - 4.2.6 it will not, unless required by Industry Rules, cease, suspend or restrict the generation or export of electricity by any Generating Station to obtain, or if as a consequence it would obtain, any payment under Industry Rules or otherwise from the Local Distribution Company, NGC or any Competent Authority or enter into any arrangement regarding the output of the Generating Stations (directly or indirectly) without the prior written consent of EDF Energy;
 - 4.2.7 it will not, unless EDF Energy otherwise agrees in writing or it is required to do so under Industry Rules, become a party to the BSC; and
 - 4.2.8 the Meter Points will remain within the Supplier Volume Allocation.
- 4.3 The Generator shall indemnify EDF Energy against all costs, claims, damages, expenses, losses, liabilities and penalties incurred in respect of:
- 4.3.1 the death or personal injury of any of EDF Energy's officers, employees, agents or sub-contractors caused by the Generator or a third party;
 - 4.3.2 any loss or damage to the property or assets of EDF Energy, or its officers, employees, agents or sub-contractors caused by the Generator or a third party; and
 - 4.3.3 any loss or damage arising from the Generator's failure to perform any of its obligations under this Agreement.
- 4.4 EDF Energy warrants and represents to the Generator as at the Effective Date and for the Term that it will not supply electricity purchased from the Generator under this Agreement to any premises located outside of Great Britain or the adjacent territorial waters.
- 4.5 EDF Energy shall indemnify the Generator against all costs, claims, damages, expenses, losses, liabilities and penalties incurred in respect of:
- 4.5.1 the death or personal injury of the Generator's officers, employees, agents or sub-contractors caused by EDF Energy;
 - 4.5.2 any loss or damage to the property or assets of the Generator, or its officers, employees, agents or sub-contractors caused by EDF Energy performing its obligations under this Agreement; and
 - 4.5.3 any loss or damage arising from the EDF Energy's failure to perform any of its obligations under this Agreement.

5 Metering Equipment and Data Collection

- 5.1 The Generator must at all times be party to a Meter Operator Agreement, under which the Authorised Meter Operator accurately and compliantly records the Relevant Metered Output and allows EDF Energy or

its agents to read the metering equipment remotely.

- 5.2 EDF Energy is not required to install or maintain any Metering Equipment at a Generating Station.
- 5.3 Each Party shall procure that all information and data held by it relating to the Relevant Metered Output shall be provided on request to the other Party or the Authority.
- 5.4 The Relevant Metered Output shall be delivered at the Meter Point for the relevant Generating Station.
- 5.5 All risks and costs in respect of Metered Output up to the Meter Point shall be the sole responsibility of the Generator.
- 5.6 All risks, costs and benefits accruing after the Meter Point in respect of Relevant Metered Output shall be the sole responsibility, and for the sole benefit, of EDF Energy.
- 5.7 All risks, costs and benefits accruing after the Meter Point in respect of Metered Output which is not Relevant Metered Output shall be the sole responsibility and for the sole benefit of the Generator. The Generator indemnifies EDF Energy against all such risks and costs save to the extent that they arise from the negligence or wilful default of EDF Energy.
- 5.8 The Generator shall grant to EDF Energy and/or its agents the right to access at all reasonable times such plant, property or assets owned, occupied or controlled by the Generator in order to inspect, install and/or maintain the Metering Equipment and to measure the Metered Output.
- 5.9 If the Generator installs a SCADA System in respect of the Generating Station, then with effect from the later of (i) the Commercial Operations Date; and (ii) the date on which the SCADA System is fully operational, the Generator shall, on the request of EDF Energy, provide EDF Energy with live (or near live) data from the SCADA System showing the Metered Output of the Generating Station from time to time (over 10 minute periods or less, if available) in a format to be agreed between the Parties (such agreement not to be unreasonably withheld or delayed).
- 5.10 If the Generator is required to provide EDF Energy with data from the SCADA System in accordance with Condition 5.9 above and that SCADA System fails, the Generator shall take all reasonable steps in accordance with Prudent Operating Practice to remedy the failure as soon as reasonably practicable.
- 5.11 Where a SCADA System is not installed, EDF Energy may at any time during the Term install and operate a SCADA System and the Generator shall provide all reasonable assistance as EDF Energy requires.
- 5.12 The Generator shall act at all times in compliance with Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency. The Generator shall not be relieved of any obligation to provide information to EDF Energy within any of the timescales specified in this Agreement in order to do so, and shall put in place any measures necessary to ensure it complies with both this Agreement and that regulation.

6 Power Forecast

- 6.1 The Generator shall:
- 6.1.1 Give as much notice as reasonable practicable and in any event no less than 20 Business Days' notice confirming the timing and duration of any planned maintenance or planned outage, including full details of such maintenance or outage; and
- 6.1.2 give notice as soon as practicable of any unplanned maintenance or outage, containing as many details as practicable concerning the duration and effect on output of such maintenance or outage.
- 6.2 Not less than 10 Business Days before the Effective Date, the Generator shall provide the Metered Output Forecast to EDF Energy, for its agreement. If EDF Energy does not agree with that Metered Output Forecast, or if the Metered Output Forecast has not been received by 10 Business Days prior to the Effective Date, the Parties shall rely on a Metered Output Forecast prepared by EDF Energy (with a copy to be provided to the Generator on or before the Effective Date). All Metered Output Forecasts shall be prepared in an agreed format and in good faith.
- 6.3 If the Generator considers that the Metered Output Forecast no longer accurately reflects the likely Relevant Metered Output, the Generator will, as soon as reasonably possible, provide EDF Energy with an amended Metered Output Forecast for its agreement. If EDF Energy does not agree to that amended Metered Output Forecast the Parties shall rely on an amended Metered Output Forecast prepared by EDF Energy.
- 6.4 Clauses 6.1 and 6.3 shall not apply for Contract Types Clarity and Choice in respect of any periods in which the System Sell Price will apply to all Relevant Metered Output.

7 Default and Termination

- 7.1 The occurrence of any of the following shall constitute an "**Event of Default**" by the relevant "**Defaulting Party**" (the Party not responsible shall be the "**Non-Defaulting Party**")

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- 7.1.1 in relation to either Party:
- 7.1.1.1 that Party failing to perform or comply with any material obligation contained in the Agreement (other than due to a Force Majeure Event) or any representation or warranty given by it ceasing to be true in all material respects and, if capable of remedy, such failure or cessation not being remedied within 30 days after notice from the other Party;
- 7.1.1.2 an Insolvency Event; or
- 7.1.1.3 an Extended Force Majeure Event;
- 7.1.2 in relation to the Generator only:
- 7.1.2.1 any of the conditions in Condition 1.2 are not maintained during the Term, subject to Condition 1.3;
- 7.1.2.2 the Generating Station is not successfully Commissioned for full operational use by the Proposed Commercial Operations Date,
- 7.1.2.3 the Generating Station is disconnected by the Local Distribution Company from its Distribution System and remains disconnected for a period of 5 or more Business Days;
- 7.1.2.4 the aggregate amount of Liquidated Damages paid or payable exceeds the Liquidated Damages Threshold;
- 7.1.2.5 the Meter Points become registered to another supplier other than as a direct result of breach by EDF Energy;
- 7.1.2.6 a change in the Control of the Generator occurs and EDF Energy has not given its prior written consent under Clause 12.7;
- 7.1.2.7 the Generator consolidates or amalgamates with, or merges with, or transfers all or substantially all its assets to, another entity and, at the time:
- (i) the resulting, surviving or transferee entity fails to assume all the Generator's obligations by law or by an agreement reasonably satisfactory to EDF Energy; or
- (ii) the creditworthiness of the resulting, surviving or transferee entity is materially weaker than the higher of the Generator's creditworthiness either: at the date of this Agreement; or immediately prior to such action;
- 7.1.2.8 if there is:
- (i) a default, event of default or similar (however described) in respect of the Generator under any agreement or instrument relating to Indebtedness in an aggregate amount of not less than the Cross Default Threshold resulting in that Indebtedness being due and payable, or becoming capable of being due and payable, before it would otherwise have been due and payable; or
- (ii) a default by the Generator in making any payment on a due date under those agreements or instruments in an aggregate amount of not less than the Cross Default Threshold (after any applicable notice requirement or grace period);

subject to Condition 7.6, on the occurrence of an Event of Default the Non-Defaulting Party may, by serving notice to the Defaulting Party, terminate this Agreement from the Termination Date.

- 7.2 Where the Agreement is terminated in accordance with Condition 7.1 a "**Termination Payment**" shall be payable as follows:

- 7.2.1 if the Generator is the Defaulting Party, an amount equal to:

A-B+C+D-E

shall be payable by the Generator to EDF Energy, where:

A = the market price from time to time of each of the Products multiplied by the volume of the relevant Product which would, according to the Metered Output Forecast, have been transferred under the Agreement from and including the Termination Date until the Expiry Date, had the Agreement not been terminated. The Non-Defaulting Party may determine such amount acting reasonably and in good faith, and may do so by reference to prices offered by Reference Market Makers;

B = an amount equivalent to the Product Price which would have been payable under the Agreement in respect of the volume of Products referred to in A above, from and including the Termination Date until the Expiry Date, had the Agreement not been terminated;

provided that:

1. where this Agreement is terminated due to the occurrence of an Extended Force Majeure Event, references in the definitions of components 'A' and 'B' above to the "Termination Date" shall instead be to the "Extended Force Majeure Trigger Date"; and in all cases,
 2. if A-B is a negative number it shall be deemed to be zero.
- C = the Non-Defaulting Party's direct costs, losses, and expenses arising from the early termination (other than those included in A-B);
- D = any amounts due and owing but not paid as at the Termination Date by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party, whether under the Agreement or otherwise; and
- E = any amounts due but not paid as at the Termination Date by the Non-Defaulting Party or any of its Affiliates to the Defaulting Party, whether under the Agreement or otherwise; and
- 7.2.2 if EDF Energy is the Defaulting Party, an amount equal to:
B-A+C+D-E
shall be payable by EDF Energy to the Generator, and shall be construed in accordance with 7.2.1 save that any references to A-B shall be changed to B-A and, if B-A returns a negative number it shall be deemed to be zero.
- 7.3 Subject to Condition 7.6, the Termination Payment shall be payable within 10 Business Days of receipt of the Termination Payment calculation from the Non-Defaulting Party, which shall be made by it in good faith and in a commercially reasonable manner.
- 7.4 Where the Agreement ends, EDF Energy and the Generator shall use reasonable endeavours to procure that EDF Energy is deregistered from the Meter Points. For so long as EDF Energy remains registered in respect of the Meter Points after the Agreement ends:
- 7.4.1 for the Relevant Metered Output still provided by the Generator EDF Energy shall pay 80% of the applicable System Sell Price less all costs EDF Energy reasonably incurs in connection with such Relevant Metered Output (including Distributed Use of System Charges levied by the Local Distribution Company);
 - 7.4.2 EDF Energy's payment of amounts under Condition 7.4.1 constitutes good consideration for all other Products associated with the Relevant Metered Output or otherwise to be transferred to EDF Energy under this Agreement, which the Generator shall transfer to EDF Energy.
- 7.5 The Generator irrevocably waives any rights it may have against EDF Energy to be paid for any Products transferred (other than for Relevant Metered Output provided to EDF Energy pursuant to Condition 7.4) after the Termination Date.
- 7.6 If the Defaulting Party disputes the Event of Default, the Non-Defaulting Party shall not take action in respect of that Event of Default until 5 Business Days after the date on which the matter is resolved in accordance with the Dispute Resolution procedure at Condition 11, provided that on that date the Event of Default still subsists.
- 7.7 Termination or expiry of this Agreement shall not affect any rights or obligations which may have accrued prior to termination. Conditions 4.3, 11, 12.1, 12.8, 12.89.8 and 12.9.9 and the obligations of either Party which are expressed to survive termination or to take effect on termination shall continue in full force and effect notwithstanding termination.

8 Change in Law

- 8.1 If a Change in Law makes performance of all or part of this Agreement illegal or unenforceable or materially adversely affects the ability of either Party to comply with any of its obligations:
- 8.1.1 either Party may give notice to the other to suspend performance of the affected obligations;
 - 8.1.2 the Parties shall meet no later than 5 Business Days following receipt of such notice to agree the occurrence and effect of the Change in Law; and
 - 8.1.3 if the Parties agree the occurrence and effect of the Change in Law, they shall, in good faith, seek to agree such amendments as may be required so that (i) the overall balance of their benefits; rights; liabilities; obligations and risk is in substantially the same position as prior to the Change in Law; and (ii) performance of the Agreement is legal and enforceable.
- 8.2 If the Parties cannot agree on the occurrence or effect of the Change in Law or upon the required amendments in accordance with Condition 8.1 then either may refer the issue(s) to an Expert. Where a Product is affected by a Change in Law, only the part of this Agreement that relates to that Product will be amended and the remaining provisions will remain unchanged and in full force and effect.

- 8.3 Amendments made to this Agreement in accordance with Condition 8.1 shall be binding on both Parties from the effective date of the relevant variation.
- 8.4 In the event that an Expert determines that it is not possible for the Agreement to be amended in order to achieve the outcomes described in Condition 8.1.3, either Party may terminate this Agreement by giving the other party not less than 5 Business Days' written notice.
- 8.5 Where this Agreement is terminated by either party serving notice to the other under Condition 8.4, a "**Close Out Payment**" calculated by EDF Energy as follows:

A-B+D-E

shall be payable by the Generator to EDF Energy, provided that if the result of this calculation is a negative number it shall be deemed to be zero. For the purposes of the calculation in this Condition 8.4, components A, B, D and E have the meanings given in Condition 7.2, except that references to "Non-Defaulting Party" shall be to EDF Energy and references to "Defaulting Party" shall be to the Generator.

9 Force Majeure Event

- 9.1 On the occurrence of a Force Majeure Event the Affected Party may notify the other Party (the "**Non-Affected Party**") of its effect and shall be excused from performing the affected obligations for so long as the Force Majeure Event continues. The Affected Party shall not be deemed to be in breach of the Agreement and shall not incur any liability under Condition 10.4 to the extent that such breach is caused by such Force Majeure Event. The Affected Party shall use all reasonable endeavours to continue to perform its obligations and minimise the adverse effects. The Affected Party shall update the Non-Affected Party on the status of the Force Majeure Event and steps it is taking to minimise its effects.
- 9.2 The obligations of the Non-Affected Party to pay money accrued prior to the Force Majeure Event shall not be excused due to the Force Majeure Event.
- 9.3 If a Force Majeure Event is or becomes an Extended Force Majeure Event, Condition 7.1 shall apply.

10 Exclusions and Liquidated Damages

- 10.1 Except as provided for in this Agreement, neither Party shall be liable to the other Party in respect of any Consequential Loss and each Party undertakes not to sue the other Party in respect of Consequential Loss. Each Party declares that it holds the benefit of this Condition 10.1 on trust for itself and its officers, employees and agents.
- 10.2 Each Party shall take all reasonable measures to mitigate any loss which has or may occur as a result of a breach of contract or arising on a right to be indemnified in accordance with this Agreement.
- 10.3 If any Generating Station is not Commissioned by the Proposed Commercial Operations Date, other than as a result of:
- 10.3.1 a breach by EDF Energy of the Agreement; or
 - 10.3.2 a Force Majeure Event;
- the Generator shall pay EDF Energy Liquidated Damages (without prejudice to any other rights or remedies EDF Energy has) equal to:
- 10.3.3 the Replacement Cost of the Relevant Metered Output and the cost of not having the Relevant Embedded Benefits during the relevant periods;
- less
- 10.3.4 the amount of the Product Price which relates to the Relevant Metered Output and Relevant Embedded Benefits which would have been payable if all Relevant Metered Output and Relevant Embedded Benefits had been sold to EDF Energy,
- which shall accrue on each Business Day from the Proposed Commercial Operations Date until the Commercial Operations Date.
- 10.4 **Liquidated Damages**
- 10.4.1 If the Generator:
 - 10.4.1.1 sells any of the Relevant Metered Output other than to EDF Energy; and/or
 - 10.4.1.2 sells any of the Relevant Embedded Benefits other than to EDF Energy,except due to:
 - (a) a breach by EDF Energy of the Agreement; or
 - (b) a Force Majeure Event; or
 - (c) EDF Energy's written agreement,

- the Generator shall pay EDF Energy Liquidated Damages calculated in accordance with Condition 10.4.2.
- 10.4.2 The Liquidated Damages shall be equal to:
- (a) the Replacement Cost of the Relevant Metered Output and the cost of not having the Relevant Embedded Benefits during the relevant periods;
 - less
 - (b) the amount of the Product Price which relates to the Relevant Metered Output and Relevant Embedded Benefits which would have been payable if all Relevant Metered Output and Relevant Embedded Benefits had been sold to EDF Energy
- provided that if the result of such calculation is negative, its value shall be zero.
- 10.5 EDF Energy shall issue an Invoice specifying the amount of Liquidated Damages as and when they arise. The Generator shall pay such Invoice within 5 Business Days following receipt.
- 10.6 Each Party acknowledges and agrees that the Termination Payment, Close Out Payment and Liquidated Damages reflect the legitimate expectations of the Party affected, in light of the anticipated harm it would suffer, and hereby waives the right to contest those payments.
- 10.7 If the Generator fails to pay any sum due under any agreement between it and EDF Energy or any of its Affiliates (a "**Due and Payable Sum**"), EDF Energy may set off the Due and Payable Sum against payments due to the Generator under any other agreement between it or any of its Affiliates and the Generator. Any set off shall not prevent EDF Energy from terminating this Agreement in accordance with Condition 7.

11 Disputes

- 11.1 Any dispute between the Parties in relation to this Agreement shall be dealt with in accordance with this Condition 11, unless otherwise stated in this Agreement.
- 11.2 Either Party may provide written notice to the other of a dispute. The dispute shall first be discussed by the Parties. If no resolution is achieved within 10 Business Days of first written notice of the dispute, the matter will be referred to the following persons in the following order:
- 11.2.1 the Generator's Representative and the EDF Energy's Representative; failing agreement within 10 Business Days
 - 11.2.2 a senior manager of each Party; and failing agreement within 10 Business Days
 - 11.2.3 the managing directors of the Parties.
- 11.3 Any discussions are without prejudice to any right or remedy which any Party may have should the dispute not be resolved by such discussions.
- 11.4 Where the Parties do not resolve a dispute following the process in Condition 11.2, the Parties shall refer such dispute to an Expert.
- 11.5 The Expert is not an arbitrator. The Expert's decision, given in writing, shall be final and binding (save in the case of fraud or manifest error) and shall promptly be given effect by the Parties.
- 11.6 The fees of the Expert shall be payable as the Expert determines or, if not determined, in equal shares.
- 11.7 Subject to any other rights expressly set out in this Agreement, Condition 11 shall be the sole and exclusive remedy of the Parties in respect to any disputes, save for the right to sue in the Courts to enforce any Expert's decision.

12 Miscellaneous

- 12.1 Neither Party may disclose Confidential Information about the other Party during the Term and for 2 years thereafter without the other's written consent, unless:
- 12.1.1 disclosure is to such Party's officers, employees, agents, sub-contractors or Affiliates as necessary to enable it to perform its obligations under this Agreement provided that such parties are bound by confidentiality obligations no less onerous than those contained in this Agreement; or
 - 12.1.2 the Confidential Information:
 - 12.1.2.1 was in the public domain at the time of disclosure other than by breach of this Agreement;
 - 12.1.2.2 was acquired from a third party who is not in breach of any obligation of confidentiality in disclosing it;
 - 12.1.2.3 is in relation to credit, debt, invoicing or payment and is shared by the receiving Party with any Group Company, factoring provider, finance provider, debt collection agency, credit insurer or credit reference agency as reasonably required;
 - 12.1.2.4 is required to be disclosed by law, a Competent Authority, the Industry Agreements,

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- a bank or other financial institution or ratings agency in relation to the financing or credit support of either Party's business, or any insurer under a policy of insurance referred to in the Agreement or in a proposal for such insurance; or
- 12.1.2.5 is required by an Expert to determine a dispute.
- 12.2 Each Party shall use its reasonable endeavours to procure the awareness and observance of the restrictions in this Condition 12 by any Person to whom it discloses Confidential Information.
- 12.3 Any notice connected with the Agreement:
- 12.3.1 must be provided in writing and delivered either by hand, by email or posted by recorded delivery to the contact person and address shown in the Contract Information Pack or such substitute as notified in writing by the other Party by not less than 5 Business Days' notice;
- 12.3.2 will be deemed to be received if it is:
- 12.3.2.1 sent by email, on the Business Day after it is sent; or
- 12.3.2.2 posted, after two Business Days; or
- 12.3.2.3 delivered by hand, on the day of delivery if on a Business Day, failing which the following Business Day; and
- 12.3.3 shall be irrevocable.
- 12.4 Each Party shall bear its own costs incurred in the preparation, negotiation and entry into the Agreement.
- 12.5 The Parties acknowledge that they have each entered into this Agreement based solely on its representations, warranties and undertakings as set out in this Agreement.
- 12.6 Each right, power or remedy connected with the Agreement:
- 12.6.1 will not be waived by a Party if it delays or fails to wholly or partly exercise it; and
- 12.6.2 may be exercised any number of times.
- 12.7 Any change in the Control of the Generator shall be subject to:
- 12.7.1 the prior written consent of EDF Energy; and
- 12.7.2 EDF Energy's right to terminate the Agreement if it does not consent to the proposed change in Control,
- provided that EDF Energy shall not be permitted to refuse consent where:
- 12.7.3 the new Controller is not an EDF Energy Competitor; and
- 12.7.4 the new Controller has an equal or greater financial standing than that of the Generator, and, if requested by EDF Energy, this is demonstrated to EDF Energy's reasonable satisfaction; and
- 12.7.5 the new Controller is not identified on a current list published by the Office of Financial Sanctions Implementation as a person subject to financial sanctions imposed by the UK government; and
- 12.7.6 the change in Control does not expose EDF Energy to an enhanced risk (above normal business risk) of being complicit with any fraudulent activity.
- 12.8 This Condition 12.8 shall have precedence over any other provision of the Agreement addressing changes in law. If following the date of this Agreement:
- 12.8.1 any change is made to:
- 12.8.1.1 any statutory levy, charge, tax, tariff or similar or if any new statutory levy, charge, tax, tariff or similar is introduced; and/or
- 12.8.1.2 any obligation, cost or benefit arising out of any Change in Law (including the introduction of new laws),
- where, in either case, such change:
- 12.8.1.3 is primarily applicable to Industry Participants (or any sub-set of Industry Participants) or any Party; or
- 12.8.1.4 affects Industry Participants (or any sub-set of Industry Participants) more significantly than other persons, and this is due (directly or indirectly) to their being Industry Participants; or
- 12.8.1.5 is based (in whole or in part), on the volume of energy generated, transmitted, distributed, stored, supplied or consumed by a person, or on a volume of emissions produced or reduced (directly or indirectly) by a person, or is similar to either of the foregoing;
- and/or
- 12.8.2 any change is made to the Supply Licence, the relevant Transmission Licence, the Act, the BSC, the Regulations, the Distribution Connection and Use of a System Agreement, the Statement of the Use of System Charging Methodology and/or any other relevant electricity supply industry documents or agreements; and/or

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- 12.8.3 any change is made to the methodology used for calculating any amounts which may be a cost or a benefit to EDF Energy; and/or
- 12.8.4 there is any change in the methodology that the Generator's Local Distribution Company, or the National Grid, uses to calculate any amount which may arise as a cost or a benefit to EDF Energy,
- EDF Energy may vary the Product Price or any element of it by such amount(s) as will enable EDF Energy to recover the additional cost or reduction in benefit.
- 12.9 The Agreement:
- 12.9.1 constitutes the entire agreement between the Parties with respect to the subject matter of the Agreement and supersedes any prior written or oral agreement between them with respect to the subject matter;
- 12.9.2 may be executed in various counterparts which together form the Agreement;
- 12.9.3 may be novated, transferred or assigned by EDF Energy, and EDF Energy may subcontract or delegate the performance of any of its obligations or duties without requiring the Generator's consent;
- 12.9.4 must not be novated, transferred or assigned or otherwise dealt with by the Generator without EDF Energy's prior written approval, not to be unreasonably withheld or delayed;
- 12.9.5 may be varied by both Parties agreeing in writing only;
- 12.9.6 consists of provisions which are each separate and severable, and if one is found to be invalid, unlawful or unenforceable, the others remain in force;
- 12.9.7 is not intended to constitute a partnership between the Parties, nor any other arrangement between the Parties, and no Party shall have any authority to bind the other Party as its agent or otherwise;
- 12.9.8 is not intended to be in any part enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to it (or an approved assigned party); and
- 12.9.9 is governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English Courts.
- 12.10 In the Agreement, except to the extent that the context requires otherwise:
- 12.10.1 references to a statute, treaty or legislative provision shall be construed as including a reference to any modification, extension or re-enactment at any time then in force and to all subordinate legislation made from time to time under it;
- 12.10.2 the Interpretation Act 1978 shall apply;
- 12.10.3 headings shall be ignored in construing the Agreement;
- 12.10.4 references to an agreement, deed, instrument, licence, code, document or directive other document (including this Agreement), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;
- 12.10.5 unless this Agreement states otherwise, in computing any period of time the day of the act, event or default from which such period begins shall be included. If the last day of a period is not a Business Day then the period shall run until the end of the next Business Day;
- 12.10.6 references to this "Agreement" includes the Price Guide, (where the Contract Information Pack lists Relevant ROCs as a Product) the Renewable Certificate Terms – ROCs, (where the Contract Information Pack lists Relevant REGOs as a Product) the Renewable Certificate Terms – REGOs, and any schedules to any of the foregoing;
- 12.10.7 to the extent that there are inconsistencies between the provisions of the Agreement and the Contract Information Pack, the Contract Information Pack shall prevail;
- 12.10.8 a reference to "writing" includes an email and any means of reproducing words in a tangible and permanently visible form (but excluding a facsimile transmission);
- 12.10.9 a reference to a "day" means a calendar day; and
- 12.10.10 the words "include" and "including" are to be construed without limitation.

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