

Introduction to the Low Carbon Hydrogen Agreement: indicative Heads of Terms*

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Note: this slide pack reflects, and builds on, the positions set out in the LCHA HoTs published on 8 April 2022. All positions are subject to change as BEIS develops the design of the Hydrogen Business Model.

Contracts for Difference (CfD) – Renewable Electricity

OVERVIEW OF KEY CONCEPTS

LONG-TERM CONTRACTS	CfDs are long-term, private law contracts with a Government counterparty the “LCCC”, pursuant to which low carbon generators are paid a top-up above the wholesale price (the “ Market Reference Price ”) up to a set “ Strike Price ”.
START DATE	Payments under CfDs do not commence until the relevant generator has “commissioned” its Facility. There are contractual consequences for late / failed commissioning.
TWO-WAY PAYMENTS	CfDs include a two-way payment mechanism. This means that if the MRP is higher than the Strike Price, the generator is required to make a payment back to the CfD counterparty.
LEVY-FUNDED	CfDs are funded by a levy imposed on licensed electricity suppliers; this means that the cost is passed down to consumers.
ALLOCATION PROCESS	Strike Prices are set using an administrative process and CfDs are allocated through competitive auctions, meaning that generators may not necessarily receive the maximum Strike Price or even receive a CfD at all.

CfD – Renewable Electricity

KEY TERMS

- Conditions Precedent and Milestone Requirement
- Strike Price and MRP
- Metering of output
- Billing and payments
- Payment mechanics
- Representations and Warranties
- Change in Law
- Strike Price Reopeners: curtailment, balancing/transmission charges, generation tax
- Termination
- Provision of collateral
- Force Majeure
- Other provisions dealing with issues such as assignment and dispute resolution

Low Carbon Hydrogen Agreement (LCHA) – Hydrogen Production

OVERALL STRUCTURE

The LCHA will likely adopt a similar structure to the AR4 CfD, DPA and ICCC, comprising:

- (1) the **LCHA Front-End Agreement (FEA)**: which will contain project-specific information relating to each Producer; and
- (2) the **LCHA Standard Terms and Conditions (T&Cs)**: which will be based on the terms and conditions for the renewable CfD and CCUS Programme Contracts (DPA/ICCC) and which will be identical for all Producers (except where modified by the FEA).

FEA Project-Specific Information:

Placeholders are included for project-specific information (e.g. to describe the relevant hydrogen production technology, dates, length of term, strike price etc.)

Disclaimer: The Heads of Terms are preliminary and indicative draft terms for the LCHA. They provide a framework for the principal terms and conditions that will or are expected to be included in the LCHA for initial projects and do not constitute definitive drafting of the LCHA's terms.

The proposals, as set out in this presentation, do not constitute an offer from government and do not create a basis for any form of expectation or reliance.

LCHA Standard T&Cs - Conditions Precedent (CPs)

CPS AND INTERACTION WITH TERM/TERMINATION

- **Initial CPs** – these must be satisfied within [x] **Business Days of the agreement date**:
 - Legal opinion, KYC documentation, Facility description
 - Key documents: project, constitutional and financial documents
- **Operational CPs** – these must be satisfied **before payments can commence** and include:
 - Satisfying the commissioning requirements
 - Producing hydrogen that meet the requirements of the Low Carbon Hydrogen Standard
 - Complying with specified metering requirements

The Target Commissioning Window and Longstop Date can be extended by Force Majeure, where the Producer is affected and subject to conditions.

If the Producer has not satisfied the Operational CPs:

- by the end of the [x] month Target Commissioning Window, the [10-15] **year term will start to erode** but **payments will not commence**; and
- by the Longstop Date, the Counterparty has the right (but not the obligation) to **terminate** the LCHA.

LCHA Standard T&Cs – Milestone Requirement (MR)

MR AND INTERACTION WITH TERM/TERMINATION

MR – the Producer will have until the Milestone Delivery Date (MDD), which will be **[x]** **months** from the date of the agreement, to fulfil one of two milestone requirements:

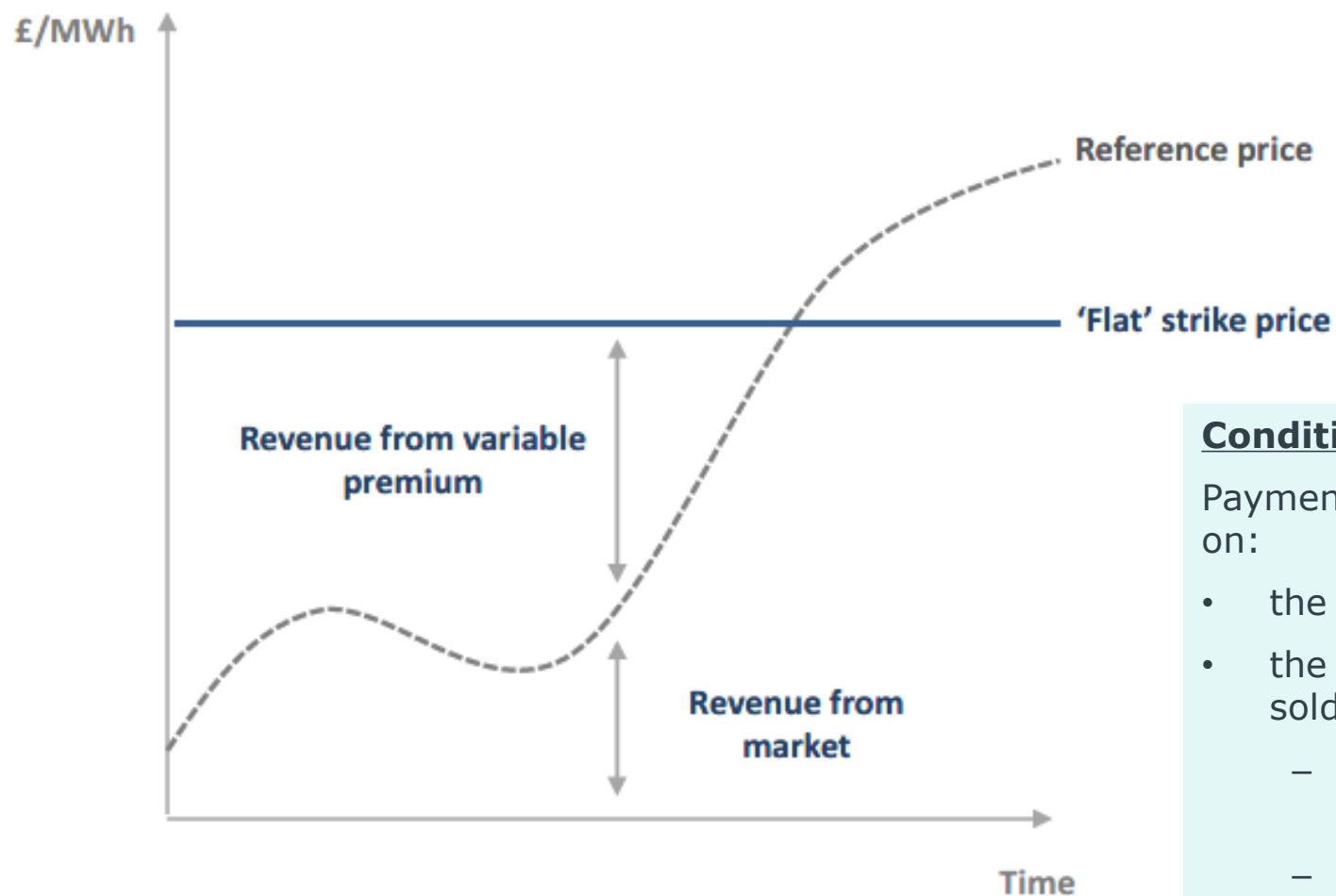
1. Evidence that the Producer and its direct shareholders have in aggregate spent [x]% or more of the Total Project Pre-Commissioning Costs on the Project; or
2. Evidence that specified project commitments (e.g. sufficient financial resources, relevant consents, EPC contracts and other direct supply agreements) have been complied with or fulfilled.

The MDD can be extended by Force Majeure, where the Producer is affected and subject to conditions.

If the Producer has not satisfied one of the Milestone Requirements by the MDD, the Counterparty has the right (but not the obligation) to **terminate** the LCHA.

LCHA Standard T&Cs – Payment

DIFFERENCE AMOUNT



Conditions of Payment

Payment under the LCHA will be conditional on:

- the sale of hydrogen; and
- the volumes of hydrogen produced and sold:
 - complying with the Low Carbon Hydrogen Standard; and
 - being sold to Qualifying End Users.

LCHA Standard T&Cs – Change in Law

QUALIFYING CHANGE IN LAW

BEIS is considering whether to provide a level of cost and revenue protection for Producers in respect of Qualifying Changes in Law that could fall within one of the categories below:

- 1. Discriminatory Change in Law:** specifically applies to the particular Producer or Project (and not to other Producers or Projects).
- 2. Specific Change in Law:** specifically applies to facilities with an LCHA or using a particular low carbon hydrogen technology (and not to other facilities).
- 3. Other Change in Law:** does not specifically apply to the Producer/Project/facility, but has an undue, discriminatory effect on a Producer's costs (measured against certain comparator groups).

Compensation: may be payable on the basis of the 'no better, no worse' principle (i.e. to place the parties in the position they would have been in had the QCiL not occurred).

LCHA Standard T&Cs – Metering and LCHS

METERING UNDERTAKINGS

BEIS is considering whether suspension of payments (or an alternative remedy) may be available to the Counterparty in certain circumstances, including where the Producer fails to comply with specified metering requirements.

These may include:

- hydrogen metering requirements; and
- additional metering requirements, for example relating to compliance with the Low Carbon Hydrogen Standard.

LOW CARBON HYDROGEN STANDARD (LCHS)

BEIS is considering the interaction between the LCHS and the LCHA, including how requirements deriving from the LCHS will be included in the LCHA.

One key point is that the Producer will only receive payments under the LCHA for volumes of hydrogen produced and sold if those volumes meet the LCHS. BEIS is developing the detail of how to assess compliance and the consequences of non-compliance.

The LCHS is likely to develop over time but the Producer will not be required to comply with any future amendments to the LCHS after the date the LCHA is entered into.

BEIS is also considering how the LCHA will interact with a potential future LCHS certification scheme.

LCHA Standard T&Cs – Force Majeure (FM)

DEFINITION AND RELIEF

An **event or circumstance** including:
an unforeseeable change in law
or
resulting from an act/omission of the
settlement services provider

(1) Beyond the reasonable control
of the affected party

(2) Could not reasonably have been
avoided or overcome by the affected
party

(3) Is not due to the affected
party's fault or negligence

FM RELIEF

The affected party is (subject to conditions):

- **relieved of liability** and will not be in breach of the LCHA
- entitled to a **day-for-day extension** of key contractual milestones (i.e. LSD/LSP, MDD etc.)

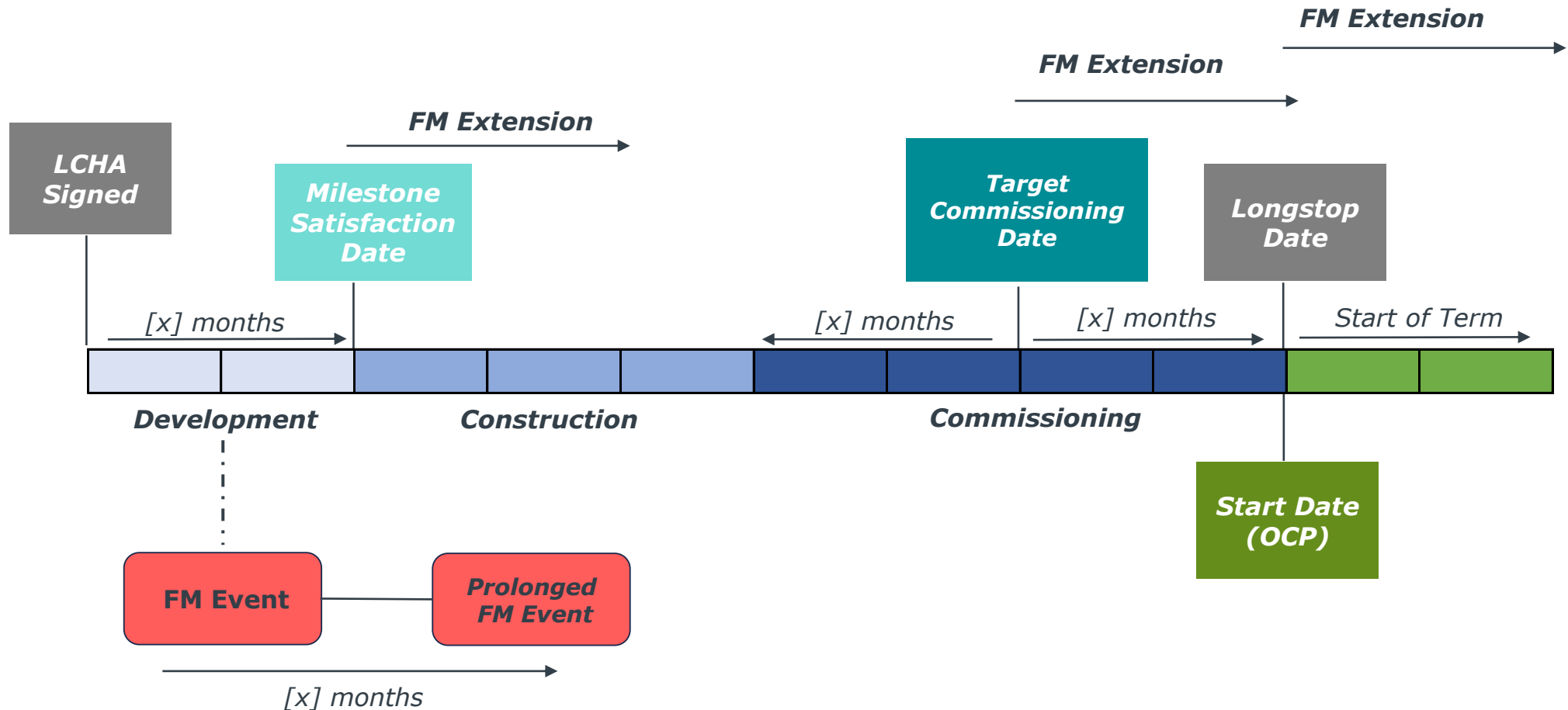
LCHA Standard T&Cs – Termination (I)

TERMINATION EVENTS AND CONSEQUENCES

TERMINATION EVENTS	CONSEQUENCES
➤ Pre-Start Date breaches (e.g. failure to satisfy CPs)	LCHA terminated: <ul style="list-style-type: none">• no termination payment payable• neither party entitled to make a claim
➤ Prolonged Force Majeure	
➤ Prolonged CO ₂ T&S unavailability event (if the Facility is CCUS-enabled)	<i>BEIS is still considering the approach.</i>
➤ Producer Default termination events (e.g. Producer insolvency, breach of key obligations)	<i>BEIS is still considering the approach.</i>
➤ Qualifying change in law termination	<i>BEIS is still considering the approach.</i>

LCHA Standard T&Cs – Termination (II)

PROLONGED FM TERMINATION



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