



Guidance Note to the CBAM-compliant Power Purchase Agreement

PPA Version 1.0, published 25 June 2025



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Disclaimer

- The template Power Purchase Agreement (“**PPA**”) and its Country Specific Annexes (“**CSA**”) have been developed by the I-TRACK Foundation, DLA Piper and local counsel exercising all reasonable care and based on available legislation and guidance in respect of EU CBAM compliance at the date of its publication, in particular on the basis that a CBAM-compliant **PPA** for hydrogen would be treated by the EU Commission on no less stringent criteria than for a PPA for hydrogen as a renewable fuel of non-biological origin pursuant to Regulation (EU) 2023/1184. However, the I-TRACK Foundation, DLA Piper and local counsel involved in its preparation and approval shall not be liable or otherwise responsible for its use and any damages or losses resulting out of its use in any individual case and in whatever jurisdiction.
- It is therefore the responsibility of each Party wishing to use this template PPA and its CSAs to ensure that its terms and conditions under the agreed governing law are legally binding, valid and enforceable, compliant with the EU CBAM requirements (as updated from time to time) and best serve to protect the user's legal interests. Users of this template PPA and its CSAs are urged to consult their own counsel during negotiations and prior to signature.
- The I-TRACK Foundation and DLA Piper reserve the exclusive right to adapt the template PPA and its CSAs from time to time to align with updates in legislation and formal guidance from the EU Commission and other relevant authorities. I-TRACK, DLA Piper and local counsel involved in the preparation and approval shall not be liable or otherwise responsible for previous versions, and users are recommended to consult such amendments from time to time to ensure that any signed copies of the template PPA and its CSA remain compliant with such updates in legislation and formal guidance.
- The template Power Purchase Agreement was shared with the European Commission in April 2025, but at the time of publishing, the legislative process for the Implementing Act pursuant to Art 7(7) was ongoing, and the Commission could not provide comments at this stage. We will conduct a further review once this process is complete. The template Power Purchase Agreement has been drafted based on the principles of the Regulation to which the Delegated Act will align, and major changes to the structure of the template are not expected.
- This guidance note is intended as an informal guide for the users of the template PPA and the CSAs, review of their terms prior to negotiation and signature. Where there is a conflict of terms between this guidance note and the template PPA, the term in the PPA (as may be amended by the Parties) shall prevail.
- Any questions and comments regarding the template PPA, the CSAs, and any guidance may be directed to secretariat@trackingstandard.org and andreas.gunst@dlapiper.com and kenneth.wallace-mueller@dlapiper.com

Introduction: I-TRACK Foundation

- The International Tracking Standard Foundation (I-TRACK Foundation) is a non-profit organisation that provides a robust standard for developing attribute tracking systems. Recognised by major reporting frameworks such as the Greenhouse Gas Protocol (GHGP), CDP, and RE100, it serves as a reliable backbone for credible and auditable tracking instruments. The I-TRACK Foundation is committed to ensuring unbiased access to product information, allowing end-users to confidently procure products with well-documented and transparent origins—empowering informed energy consumption choices and supporting claims of generation, ownership, and history.
- This is achieved through the implementation of the I-TRACK Foundation's International Attribute Tracking Standard, which embeds global best practices and strict requirements for transparency, fairness, and equity. These standards ensure that all market facilitators operate in a way that provides equal opportunities to all market players while also upholding high-quality systems designed to prevent double-counting, double certificate issuance, and double attribute claims. Through robust governance and adherence to these principles, the I-TRACK Foundation supports the integrity and reliability of tracking instruments and the markets they serve.
- For more information, visit www.trackingstandard.org.



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Introduction: DLA Piper

- DLA Piper is one of the world's largest law firms, with a presence in over 40 countries across the Americas, Asia Pacific, Europe, Africa, and the Middle East and over 4,300 lawyers worldwide. It's dedicated Energy and Natural Resources (ENR) sector practice helps clients navigate the complexities of a rapidly evolving industry. We understand the challenges posed by a volatile market, increasing regulation and transactional risk, and the need for innovative legal and technical solutions.
- DLA Piper's ENR practice has been voted as the number one law firm for advising on power purchase agreements since 2021, and its lawyers are experienced in advising clients along the entire value chains for electricity and gas (including biomethane and hydrogen), biofuels and e-fuels, in the voluntary carbon markets and emissions trading schemes, as well as on various questions regarding CBAM and the role of PPAs.
- DLA Piper is a pioneer in the energy sector as it was the first law firm to sign a corporate power purchase agreement as buyer to cover electricity demand in its European offices. It is also one of the first members of the Legal Charter 1.5, a group of international law firms committed to reducing their Scope 1, 2 and 3 emissions in line with Science Based Targets, and contributing to limiting global temperature increases to 1.5°C above 1990 levels.

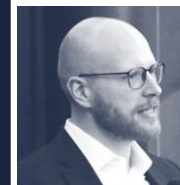


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Thank you to local counsel

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Your contributions are greatly appreciated.

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CBAM background & role of PPAs

Background to EU ETS & CBAM

- The EU Emissions Trading System (**EU ETS**) was launched in 2005.
- Cap-and-trade compliance scheme affecting specific energy intensive industries (**EII**).
- By every 30 April, obligated EIIs must submit a number of Allowances, each of which entitles EIIs to emit 1 tonne/CO₂e of specific greenhouse gases (**GHG**) – excess can be traded.
- The production of various goods outside the EU in “third countries” and then subsequent import for consumption in the EU has resulted in “carbon leakage” under the EU ETS.
- The EU’s Carbon Border Adjustment Mechanism (**CBAM**) entered into force in May 2023.
 - Introduce a border tax on carbon associated with the production of specific goods; and
 - Aim to avoid carbon leakage on production of EU consumed goods.
- CBAM goods = **electricity, hydrogen, aluminium, iron & steel, cement, fertiliser**.
- Importers need to purchase and surrender CBAM certificates covering the goods’ carbon content.

Definitive Phase from 1 January 2026

- Authorisation to import CBAM goods
 - CBAM goods can only be imported by “authorised declarants”.
- Reporting obligation
 - By 31 May each year, the authorised declarant submits a CBAM declaration.
 - Covers the **total quantity of goods imported during the calendar year**, *multiplied by* the (direct and indirect) **embedded emissions** of each good.
- Surrendering obligation
 - By 31 May each year, the authorised declarant must surrender CBAM certificates to cover the embedded emissions declared and verified for the **previous year**.
 - CBAM certificate price linked to the weekly average closing price of EUA auctions.
 - Penalty be equivalent to three times the average price of CBAM certificates in the previous year for each non-surrendered CBAM certificate.

Relevance of PPAs regarding indirect emissions (1)

- The CBAM Regulation defines a power purchase agreement as a: “**contract under which a person agrees to purchase electricity directly from an electricity producer**”.
- A CBAM PPA can be used for the calculation of actual embedded emissions in relation to:
 - indirect emissions (i.e. emissions from the production of electricity which is consumed during the production processes of goods) (Art. 7(4), Annex IV(6) of CBAM Regulation); and
 - imported electricity (Art. 7(3), Annex IV(5) of CBAM Regulation), **provided that** the “Additional Criteria” have been cumulatively met.
- The CBAM declarant **may apply actual embedded emissions** (instead of default emission values) if the amount of electricity for which the use of actual embedded emissions is claimed is actually covered by the PPA - the use of a renewable PPA would therefore reduce the declarant’s indirect emissions.
- From provided definition, it can be understood that a CBAM PPA must be:
 - a legal contract,
 - directly between a generator and offtaker (the CBAM declarant),
 - each located in a non-EU third country, and
 - involving the injection and consumption of electricity from a specific energy source.

Relevance of PPAs regarding indirect emissions (2)

- At the time of writing, limited further guidance exists on conditions for a CBAM-compliant PPA. Nevertheless, an understanding on minimum requirements of a CBAM PPA is of critical relevance to CBAM declarants due to the CBAM definitive period commencing on 1 January 2026.
- Guidance may be sought from other EU legislation, in particular the criteria for recognition of PPAs used to produce renewable fuels of non-biological origin (“**RFNBO**”) under Regulation (EU) 2023/1184 (“**RFNBO Regulation**”).
- We note that further requirements or guidance for the CBAM PPA may be introduced may be published after the time of writing. However, in the absence of these, the template CBAM PPA has been prepared on the guiding principle that a CBAM PPA for the production of hydrogen (as a CBAM good) would be treated by the EU Commission on a similar basis to a PPA used for the production of hydrogen under the RFNBO Regulation.

Relevance of PPAs regarding indirect emissions (3)

- Whilst not expressly required by CBAM, it is generally recognised market practice that a claim of production and consumption of renewable source electricity is best evidenced through environmental attribute certificates (“**EACs**”).
- In respect of PPAs under the RFNBO Regulation, recent recognition guidance by certification bodies such as ISCC and REDcert places a strong emphasis on the usage of EACs, as – where issued and tracked under a high-quality EAC scheme – the procurement and consumption of EACs by an offtaker ensures that the principles of additionality, temporal and geographical correlation, as well as no-double-counting rules are fulfilled in respect of renewable source electricity sold under the PPA.
- The CBAM-compliant PPA template has therefore been designed on the basis of these principles. Users are however **strongly recommended** to individually review the PPA with legal counsel to ensure they are comfortable that its structure and provisions remains compliant with the CBAM PPA requirements and guidance issued and updated from time to time.
- *For the avoidance of doubt*, it is not the intent of the I-TRACK Foundation, DLA Piper or local counsel to expressly link the RFNBO PPA requirements for the formal recognition of a CBAM-compliant PPA. The association of these requirements is, in the absence of any further official requirements, intended to merely offer informal guidance of what may be reasonably expected as minimum criteria for a CBAM-compliant PPA.

Structure of the CBAM-compliant CPPA template (1)

Main agreement

1. Facility operation
2. Sale and purchase (electricity and EACs)
3. Price and payment
4. Taxes
5. Change in law and standard
6. Force majeure
7. Term and termination
8. Representations & warranties
9. Liability
10. Assignment & transfer
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Country
specific
annexes

Annex 5: New facility (construction & COD)

Annex 6: Availability guarantee

Annex 7: Credit support

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Structure of the CBAM-compliant CPPA template (2)

- The CBAM CPPA has been designed on the basis of experience from developed PPA markets, drawing on internationally recognised market provisions.
- The main CPPA template is comprised of generic provisions related to PPA operation, with seven annexes relating to commercial and project-specific requirements, designed to be amended for specific transactions.
- The CPPA template has been designed for international usage – users should review and make the necessary amendments needed to comply with local market requirements. Several **Country Specific Annexes** have been prepared together with local legal counsel, which have already been adapted for key CBAM-impacted third countries.
- Users may wish to add, amend or delete any provision within the main agreement; however, this is done at the sole risk of the users. Users are strongly recommended to seek independent legal advice to ensure the CBAM CPPA is compliant with local law requirements and market structures.
- It is worth noting that, where fewer amendments are made to the main agreement, the CBAM PPA becomes easier to recognise by counterparties and the EU Commission and national competent authorities in its evaluation for CBAM compliance.

Main Agreement

Clause 1: Operation of the facility

- The Seller must operate and maintain the generation Facility during the full term of the CPPA in accordance with applicable law and good electricity industry practice.
- The Seller must not (i) repower or increase or decrease the capacity of the generation Facility, or (ii) install any equipment (such as a co-located battery) which may impact the output of the Facility, without prior consent of the Buyer.
- The Seller must monitor the CO₂ emissions of the generation Facility in compliance with the CBAM regulation.
- Any planned outages of the generation Facility must be notified to the Buyer at half-yearly intervals and done during periods of low forecast generation.
- The number of unplanned outages must be minimised, and upon occurrence, promptly remedied by the Seller.
- An export meter must be installed, operated and maintained by the Seller in accordance with applicable law and good energy industry practice. The provision includes procedures for meter testing and errors.
- The Seller must keep relevant records on generation and its performance under the PPA for a 2 year period and provide the Buyer access to this data for compliance purposes.
- The Seller must obtain and maintain various insurance policies in respect of the generation Facility.

Clause 2: Sale and Purchase

- **Electricity**

- During the term of the PPA, the Seller shall sell the full output of the generation facility to the Buyer and make this available to the electricity grid. This reflects a “pay as produced” model, as required by the CBAM Regulation.
- Delivery is to be made in each “Delivery Period”, a period of time to be specified in **Annex 2**.
- Further delivery obligations are set out in **Annex 3**.

- **Environmental Attributes**

- During the term of the PPA, the Seller shall sell and deliver all EACs issued in respect of the full output of the generation facility to the Buyer. The Buyer has exclusive rights to these EACs and all future EACs. This is aligned with the “pay as produced” electricity delivery model noted above.
- Delivery is to be made in each “Delivery Period”, a period of time to be specified in **Annex 2**.
- Under the CBAM regulation, EACs are not recognised for the determination of emission factors of renewable generation. However, the PPA sets out EAC transfer provisions to ensure full ownership attribution of the renewable generation to the Buyer, as well as enforcing the principles of no double counting in alignment with good practice.
- Further delivery obligations are set out in **Annex 4**.

Clause 3: Price and payment

- **Electricity**

- Users may agree on an Electricity Price for each MWh delivered, to be specified in **Annex 2**.
- Within 15 days after the Delivery Period for electricity, the Seller shall issue an invoice for the electricity delivered, payable within 60 days by the Buyer.

- **Environmental attributes**

- Users may agree on an EA Price for each MWh of EAs delivered, to be specified in **Annex 2**.
- In some PPAs, users may agree that EAs are priced into the electricity price. In such a case, the EA Price may be specified as zero, and the EA invoices provisions disapplied.
- Within 15 days after the Delivery Period for EAs, the Seller shall issue an invoice for the EAs delivered, payable within 60 days by the Buyer.
- Other amounts owed between the Parties under the PPA may be included in an invoice.
- In the case of a disputed payment, the undisputed part shall be payable and the matter referred to expert determination.

Clause 4: Taxes

- Clause 4 sets out the attribution of various taxes between the Seller and Buyer, based on common market principles.
- All sums payable under the PPA are exclusive of sales taxes (such as VAT), and Clause 4 provides a mechanism to correct where any sales tax is payable.
- The provisions on taxes are necessarily generic due to the diverse tax treatment of electricity, Environmental Attributes, as well as other factors across various countries. Users are strongly recommended to consult tax advisors on the application of sales tax and any other local taxes in relation to any transaction using the CBAM PPA.

Clause 5: Change in law and standard

- The PPA relies on several legal assumptions which may change during its term. A relevant change is defined as a “Change in Law and Standard”, and examples may include a change in the CBAM Regulation, national electricity market laws or structures, changes to the EA scheme, as well as a Party becoming subject to sanctions.
- Clause 5 sets out six trigger events, which require the Parties to meet and negotiate in good faith amendments to the PPA to overcome this Change in Law and Standard whilst preserving the originally intended operation and effect of the PPA.
- Where amendments cannot be agreed upon between the Parties, either may refer the matter to expert determination. Where this cannot be agreed within a specific time (set by default to 6 months continuously), either Party may terminate the PPA at no liability to the other, except for any amounts outstanding.
- Users may wish to review and amend the definition of “Change in Law and Standard” to cover or exclude specific laws, the trigger list in Clauses 5.1.1 to 5.1.6, as well as remedies.

Clause 6: Force majeure

- A Force Majeure Event is an event which is considered outside a Party's reasonable control, which cannot be avoided or mitigated against, making it impossible for that Party to perform its obligations under the PPA.
- The precise definition is set out in Clause 6.1, with specific examples of Force Majeure Events set out in Clause 6.2 and excluded events set out in Clause 6.3.
- Where a Force Majeure Event is properly invoked using the process under Clause 6.4, the "Claiming Party" is excused for any delay or failure of the performance of its affected obligations.
- Users may wish to review and amend the list of examples and carve-outs, which may be specific to the project, the project country and the electricity market structures.

Clause 7: Term, Default and Termination (1)

- Clause 7 sets out the term of the agreement, being from the Execution Date until the agreed Expiry Date, unless terminated due to an event of default.
- These address among others: non-performance or payment, insolvency, breach of other material provisions, delay of Facility commercial operations past the COD Longstop Date, the maintenance of credit support, default of a credit support provider, breach of representation and warranty, and events of poor performance of the Facility.
- Some events are subject to a cure period, during which the defaulting Party may remedy the event of default, and each is subject to an event of force majeure or breach of the other Party.
- For ease of use, default events are divided into:
 - Seller Events of Default; and
 - Buyer Events of Default.

Clause 7: Term, Default and Termination (2)

- Upon the occurrence of an event of default, the other Party, may give written notice setting out a termination date which must be no less than 30 calendar days after such notice being given.
- Upon termination following an event of default, the defaulting Party shall pay to the non-defaulting Party the Termination Amount. In the case of a new build Facility under **Annex 5**, certain termination events require the Seller to pay to the Buyer the Early Termination Amount.
- These termination amounts are largely based on a mark-to-market calculation, being the sum of the terminating Party's Losses and Costs less the Gains incurred following termination (each term as defined in **Annex 1**).
- A dispute resolution mechanism is provided for events relating to the calculation of the (Early) Termination Amount.
- Users may wish to review and amend the events of default, adjust the applicable cure periods, as well as the (Early) Termination Amount calculation subject to commercial agreement.
- Users are urged to seek legal advice regarding the admissibility of certain termination events as well as the right of set-off, including but not limited to termination for insolvency.

Clause 8: Representations, warranties and undertakings

- Clause 8 sets out various representations and warranties of the Seller and the Buyer. These can be largely described as assumptions under which the Parties enter into the PPA. These include confirming the proper existence of a Party as a legal entity, its ability to enter and perform the PPA, and its compliance with relevant law.
- A breach of any representation and warranty by a Party is an event of default and gives the other Party the right to terminate the PPA.
- Users may wish to review and amend this list of representations and warranties to reflect the commercial agreement and various technical and regulatory aspects of the Facility. Additional representations and warranties regarding Environmental Attributes are set out in **Annex 4**.

Clause 9: Liability

- Clause 9 sets out a list of liability sources which cannot be limited, e.g. by a general liability cap. These include payment obligations and liquidated damage payments, however these include liability which cannot be limited under the Governing Laws.
- Liability for certain cases of consequential / indirect loss has been excluded.
- Users are strongly urged to seek legal advice regarding the admissibility of any liability limitations and exemptions under the applicable Governing Law.

Clause 10: Disposal

- Clause 10 governs the conditions under which Parties to the PPA may transfer their rights and obligations under the PPA. Generally, neither Party can dispose of their rights or obligations without the prior written consent of the other Party, which cannot be unreasonably withheld. Any disposal made in violation of this Clause is deemed void.
- However, there are specific allowances for disposals:
 - Parties may freely transfer obligations to an affiliate if the affiliate's creditworthiness is equal to or greater than the transferring Party at the time of the assignment, the affiliate is incorporated in the same jurisdiction, and any necessary credit support has been amended to cover the affiliate;
 - The Seller is permitted to assign the PPA to its financiers; and
 - Parties must provide at least thirty days' prior written notice to the other Party before any disposal.
- Additionally, any Party making a disposal under these conditions remains liable for obligations incurred before the transfer, unless explicitly released in writing by the other Party.

Clause 11: Confidentiality

- Clause 11 sets out confidentiality requirements applicable from the Execution Date until two years following the Expiry Date. This includes a prohibition against disclosing confidential information without prior written consent, except under specified exceptions.
- Clause 11 specifies scenarios where confidentiality is not required, such as when information is already public, obtained from non-Party sources legally, required by regulatory bodies, necessary for compliance with laws, or essential for business operations with bound advisors or potential investors.
- Immediate action is required upon any unauthorised disclosure, including notification of the other Party and measures to prevent further breaches. Public communication about the Agreement is restricted without mutual consent.
- Legal remedies such as injunctions and specific performance are highlighted as appropriate responses to breaches, underscoring the insufficiency of damages alone.

Clause 12: Governing law and dispute resolution

- Clause 12 sets out a regime setting out the governing law and dispute resolution mechanisms, the latter set by default to arbitration.
- Users may freely agree on the applicable governing law and dispute resolution details by amendments in **Annex 2**. Users should however note that the template PPA has been drafted on the basis of English law, with certain PPA provisions being based on English law principles. Users are therefore strongly urged to seek legal counsel to ensure that the PPA's agreed terms are enforceable under the elected governing law.
- In the event of a dispute, the Parties are required to attempt resolution through direct negotiations between the Parties prior to escalation to a formal dispute resolution process.
- Parties may opt for expert determination or arbitration as outlined in the PPA. Disputes suitable for expert review are handled by an internationally recognised and independent expert, while more complex disputes may be resolved through arbitration under a set of rules agreed upon the Parties..
- All proceedings, whether negotiation, expert determination, or arbitration, are strictly confidential, and decisions rendered by the arbitration body are final and binding.

Clause 13: Reputation

- Clause 13 outlines the responsibilities regarding the management of reputational risks related to the PPA. Each Party must promptly notify the other of any negative press, public commentary, or third-Party complaints that could materially impact their ability to fulfill the PPA's obligations. The clause restricts both Parties from issuing significant public statements about the PPA without mutual consent, which cannot be unreasonably withheld.
- In response to negative reports, the Parties are required to collaborate effectively and in good faith to mitigate any potential damage to the Facility or their reputations. This cooperative approach ensures that both Parties actively manage and protect their standing in a manner consistent with the PPA's objectives.

Clause 14: Notices

- Clause 14 specifies the protocols for delivering notices and communications under the PPA. All notices must be in writing and can be delivered by hand, registered post, courier, or email, except for notices related to disputes or termination, which cannot be served via email. The details for these communications, including addresses and acceptable methods, are provided in **Annex 2** or as updated by subsequent notifications.
- Notices are considered served upon direct delivery if by hand or courier, the second day after posting if by registered mail, upon successful delivery to the server if by email (without an error message), and at the time of confirmed transmission if by fax. Any notice received after 8:00 PM local time or on a non-business day is deemed received at 9:00 AM on the next business day.
- Additionally, all communications must be in English and presented in a typed or legibly written format.

Clause 15: Miscellaneous

- Clause 15 sets out various provisions which ensure proper operation of the PPA. These include:
 - Non-waiver of rights;
 - Duty to mitigate loss or damage;
 - No third party rights to enforce terms of the PPA;
 - Remedies cumulative;
 - Sole recourse;
 - Relationship of the Parties;
 - Survival of obligations post termination;
 - Entire agreement;
 - Amendments to be signed and in writing;
 - Costs of negotiating the PPA; and
 - Counterparts of PPA for signature process.
- Users are urged to seek legal advice, as depending on the choice of governing law and means of execution (e.g. electronic signature), users may be required to add, amend or delete the provisions under Clause 15 to ensure proper operation and enforceability of the PPA.

Annexes

Annex 1: Definitions and interpretation

- Part 1, "Definitions and Acknowledgements" of the PPA sets out a comprehensive list of definitions for capitalised terms used throughout the document.
 - Subject to transaction specific definitions amended in Annexes 2, 3 and 4, users may wish to review these and make any amendment necessary to align with transaction and regulatory requirements.
- Part 2, "Interpretation" sets out interpretation rules for the PPA, including the treatment of gender references, the non-binding nature of headings, the inclusivity of the term "including", and the prevalence of Clauses in the PPA over terms in the annexes.
 - It is unlikely that these interpretation rules need amendment, however users may wish to review these for clarity to align with any local governing law requirements.

Annex 2: Commercial terms and conditions

- Annex 2 offers fields for users to fill in transaction and project details. These are linked to definitions used in the PPA, allowing for easy customisation without the need to make material amendments to the PPA text itself.
- Terms which can be customised in Annex 2 include (but are not limited to):
 - Facility and replacement facility (if any) details;
 - Electricity and Environmental Attribute prices and delivery dates;
 - Contract Currency and Default Interest Rate in case of late payments;
 - Facility dates, such as Target Start Date, COD Longstop Date;
 - Agreement dates, such as the Supply Commencement Date and the Expiry Date;
 - Governing law, arbitration body, and arbitration location; and
 - Contact details for delivery of notices.
- It is anticipated that users would only need to fill in the relevant details, however some terms may be disapplied if not relevant, such as Guaranteed Availability and Minimum Availability (if no availability guarantee is required), Buyer's Fraction, Replacement Facility, or credit support terms.

Annex 3: Delivery of electricity (1)

- Annex 3 offers two standard options for electricity delivery. These are both based on a “pay as produced” model, as required by the CBAM Regulation. Users should select one option and delete the other, subject to regulatory requirements of the local electricity market.
- ***Delivery Option 1:***
 - The Seller is required to deliver the full generated output to the Buyer at the Facility connection point to the electricity network, ensuring it is free from third-Party claims. The Seller is required to handle all nominating, scheduling, and confirming processes (as applicable).
- ***Delivery Option 2:***
 - This is a simpler delivery option, where the Seller is obliged to make the electricity available on the grid. This option may be more appropriate in markets with central pools or single suppliers, rather than those which allows bilateral trading. Both options outline responsibilities for annual forecasting, balancing services and cost-sharing at the connection point, ensuring clarity and compliance with industry practices.
- Users are strongly urged to consult with local lawyers to review and ensure that the most appropriate delivery option has been selected, and that the electricity delivery mechanism is compliant with local electricity market rules *as well as* CBAM PPA requirements.

Annex 3: Delivery of electricity (2)

- The PPA includes several pre-formulated “Country Specific Annexes” for key CBAM-affected jurisdictions, split into Annexes 3 and 4. These can be found on the I-TRACK Foundation website.
- For electricity, the Country Specific Annex 3 may offer multiple delivery options depending on local requirements.
- Users wishing to use a Country Specific Annex should delete the standard Annex 3 in full and replace this with Annex 3 of the relevant Country Specific Annex. (This may most effectively be done by, prior to signature, converting the entire PPA into PDF format, deleting the pages of Annex 3 and replacing these with a PDF of Annex 3 of the Country Specific Annex.)
- Despite being prepared by local lawyers using reasonable care, users of a Country Specific Annex are strongly urged to consult with local lawyers to review and ensure that the most appropriate delivery option has been selected, and that the electricity delivery mechanism is compliant with local electricity market rules *as well as* CBAM PPA requirements.

Annex 4: Environmental attributes (1)

- Annex 4 of the PPA outlines the terms for the sale, purchase, and management of Environmental Attributes derived from the electricity generated by the Facility. These are commonly in tradable electronic certificate form, such as I-REC(E)s.
- We note that the CBAM Regulation does not (at the date of publication) recognise Environmental Attribute certificates for the purposes of CBAM. However, their usage in PPAs is recognised internationally.
- In Annex 4, the Seller shall sell all Environmental Attributes issued in respect of the generated output from the Facility to the Buyer, ensuring they are free from third-Party claims. This is essential to ensure no double counting claims (i.e. that only the holder of the certificate can claim the environmental benefits associated with renewable source electricity generation over non-renewable sources).
- The Annex sets out processes for accreditation, creation, registration, and the transfer of these attributes, including provisions for handling breaches of obligations.
- It also sets out the responsibilities for both Parties in managing the transfer or retirement of Environmental Attributes and establishes procedures for addressing revocations and failures to deliver or accept Environmental Attributes.
- Additionally, it clarifies the financial responsibilities associated with maintaining accounts in the Renewable Energy Tracking System and handling related expenses.

Annex 4: Environmental attributes (2)

- Various Environmental Attribute certificate systems exist around the world. However, these may differ in their quality, in particularly regarding double counting safeguards. To ensure that the Buyer has a strong claim in respect of the Environmental Attributes, Annex 4 includes specific representations and warranties regarding the Environmental Attribute certificates themselves and the broader Environmental Attribute certificate system (such as I-REC(E)). These are aligned with international good industry practice, and a breach is deemed an event of default under **Clause 7**.
- The PPA includes several pre-formulated “Country Specific Annexes” for key CBAM-affected jurisdictions, split into Annexes 3 and 4.
- Users wishing to use a Country Specific Annex should delete the standard Annex 4 in full and replace this with Annex 4 of the relevant Country Specific Annex. (This may most effectively be done by, prior to signature, converting the entire PPA into PDF format, deleting the pages of Annex 4 and replacing these with a PDF of Annex 4 of the Country Specific Annex.)
- Despite being prepared by local lawyers using reasonable care, users of a Country Specific Annex are strongly urged to consult with local lawyers to review and ensure that the Environmental Attribute delivery mechanism is compliant with local market rules.

Annex 5: New facility

- Annex 5 sets out terms and conditions for the Seller when constructing a new Facility. For users which intend to sign a PPA for an existing Facility, this Annex 5 can be disappplied.
- Key points include:
 - **Construction obligations:** The Seller is responsible for constructing, testing, commissioning, and connecting the Facility to the network, ensuring that all government approvals are obtained.
 - **Commercial operation:** The Seller aims to achieve Commercial Operation by the targeted start date and must notify the Buyer of any delays.
 - **Delay damages:** If the Facility does not commence commercial operation by the targeted start date, the Seller shall pay delay damages to the Buyer. The PPA specifies conditions under which either Party may terminate the PPA if delays extend beyond the agreed COD Longstop Date.
 - **Capacity Shortfall:** Where the Facility is commissioned but not to the full Project Expected Capacity, the Seller shall pay damages to the Buyer and the Facility capacity under the PPA will be reduced accordingly.
 - **Financing:** Introduces a cooperation obligation between the Parties if the Seller must enter into a “direct agreement” with its lender for the Facility.
- Users may wish to amend these provisions to align with the specific project requirements. The specific project dates may be amended in **Annex 2**. However, provisions may be disappplied or amended.

Annex 6: Availability guarantee

- Annex 6 sets out terms and conditions to ensure the Buyer is made whole where the Facility's operational availability is lower than expected and is required to purchase the shortfall electricity from alternative sources. Relevant terms such as Available Hours, Daylight Hours, and Measured Availability are used to define the Facility's expected performance.
- The Seller must meet or exceed the defined Guaranteed Availability for each agreed Availability Period. Should the Seller anticipate or observe a shortfall in the Measured Availability, they must promptly notify the Buyer, detailing the situation and proposed mitigation strategies. If actual availability falls below the guaranteed level, the Seller must submit a detailed report to the Buyer and pay Availability Liquidated Damages for the shortfall.
- Annex 6 provides a dispute resolution mechanism in case of discrepancies on the damage calculations. Repeated failures to meet Minimum Availability standards over two consecutive Availability Periods may lead to a Seller Event of Default, allowing the Buyer to terminate the PPA.
- An availability guarantee is commonly linked to an equivalent guarantee offered to the Seller by a turbine or solar panel manufacturer or under an operation & maintenance agreement, allowing the Buyer to benefit from any compensation offered to the Sellers. Users may however disapply this provision, relying instead on a pure “pay as produced” electricity and Environmental Attribute delivery model.
- Users are recommended to consult with a commercial or technical advisor to determine a suitable availability guarantee regime specific to the Facility.

Annex 7: Credit support

- Annex 7 sets out terms and conditions for financial guarantees (“credit support”) to secure the obligations of both Parties under the PPA.
- Credit support must be provided by a Party (Seller and/or Buyer) if it is deemed not to be a Creditworthy Entity, i.e. with a credit rating below investment grade (below “Baa3” by Moody’s or “BBB-” by Standard and Poor’s/Fitch).
- Annex 7 sets out a process for establishing, maintaining, and, if necessary, drawing down on credit support, as well as for adjusting credit support in response to changes in the Parties' financial status.
- The form of credit support may be set out in **Annex 2**, commonly a bank guarantee, parent company guarantee, letter of credit or cash in escrow.
- Users may wish to amend the credit support regime so that credit support is provided regardless of its credit rating (if any), or require only one Party to provide credit support, or, if deemed an acceptable risk, to disapply the credit support provisions.
- Users are recommended to consult with internal credit/risk teams and/or a commercial or technical advisor to determine a suitable credit support regime for the PPA.

Annex 8: Compliance

- Annex 8 sets out terms and conditions requiring the Parties to comply with stringent ethical and legal standards, including ethical business practices, a zero-tolerance policy for bribery and corruption, and adherence to anti-corruption laws.
- Each Party must maintain compliance policies, ensure no involvement with sanctioned entities or jurisdictions, and indemnify each other against losses due to compliance breaches. They are also required to promptly notify each other of any potential or actual breaches of these obligations.
- A breach of these provisions will be deemed an event of default, leading to a termination right of the non-defaulting Party.
- Users may wish to amend the scope of relevant standard and/or legislation, or alternatively refer to their own compliance policies (if any).

