



**LOW CARBON
CONTRACTS COMPANY**

POWERING NET ZERO

No Cumulation of Subsidy, State Aid or Union Funding

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Disclaimer

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

This guidance should not be viewed as in any way restricting LCCC in the nature, type and/or amount of evidence, information, and documentation it will require to satisfy itself of the Generator's fulfilment of the Operational Conditions Precedent, nor as to the nature, level and timing of our consideration or reconsideration of the evidence that is provided. LCCC reserves the right at any time to request further or additional evidence, and to review or reconsider the evidence already provided.



1. Introduction

This guidance has been prepared by Low Carbon Contracts Company Ltd (“LCCC”) to provide Generators awarded a CfD from the Fourth Allocation Round (“AR4”)¹ onwards with an overview of the provisions in the CfD template dated 16 March 2023² (the “AR5 CFD”). These provisions prevent the cumulation of Subsidy received under a CfD with other types of Subsidy, State aid and/or Union Funding received in relation to the costs of the Project. In particular, this document provides guidance on the Subsidy Declaration Operational Condition Precedent (“OCP”) which the Generator is required to fulfil before the Project can start to receive CfD payments.

- 1.1 Defined terms used in this guidance and not defined herein should be given the meaning provided in the AR5 CfD. This guidance is subject to change by LCCC from time to time.
- 1.2 Generators are encouraged to consult with LCCC and discuss their plan for satisfying the new Subsidy Control confirmation requirement, the Subsidy Declaration OCP and any queries or concerns they have at the earliest opportunity.

¹ Those Generators with pre-AR4 CfDs should refer to the earlier LCCC [No Cumulation of State Aid](#) Guidance dated 29 January 2018

² The CfD template is the CfD template final version applicable to CfD Allocation Round 5 as published by the Department for Energy Security and Net Zero (“DESNZ”) on 16 March 2023: <https://www.gov.uk/government/publications/contracts-for-difference-cfd-allocation-round-5-standard-terms-and-conditions>. The CfD is comprised of the CfD Agreement (being the front section) and the FiT Contract for Difference Standard Terms and Conditions (“Conditions”).



2. Background and context

Subsidy and State Aid Rules

- 2.1 The United Kingdom left the European Union on 31 January 2020 and since then, the UK Government has implemented the UK Subsidy Control Regime, the framework for which is set out in the Subsidy Control Act 2022. In its public consultation for Allocation Round 4, the Government confirmed its policy on cumulation of Subsidy, State aid and/or Union Funding³. Essentially this policy remains unchanged from the previous State aid regime such that the CfD scheme requires there to be no cumulation of financial assistance to ensure that projects are not overcompensated and in order to ensure a level playing field, as well as value for money for consumers and taxpayers. Since Allocation Round 2 in 2017, where cumulation occurs, the terms of the CfD have required that any other financial assistance that constitutes Subsidy, State aid or Union Funding has to be repaid or set-off prior to receipt of CfD payments⁴.

Concept of 'no cumulation'

- 2.2 The CfD contract is designed to prevent cumulation of financial assistance and other forms of aid or public support with the CfD subsidy. The CfD scheme currently does not allow Generators to cumulate CfD subsidy with any other forms of Subsidy, State aid or Union Funding granted in respect of the same eligible project costs for which CfD subsidy has been awarded. Generators must repay any such aid received, with interest. If the recipient is unable to repay the aid (for example, because the awarding body is unable to accept it back or no longer exists), the LCCC will deduct the value of the aid, plus interest, from the generator's CfD payments until the liability is fully discharged.

³ [Contracts for Difference for Low Carbon Electricity Generation: Consultation on further drafting amendments to the CfD contract for Allocation Round 4 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

⁴ <https://www.gov.uk/government/consultations/consultation-on-amending-the-cfd-contract-and-regulations>



3. The CfD Scheme and the ‘No Cumulation’ Rule

- 3.1** Prior to the UK leaving the European Union, payments from LCCC to Generators under CfDs were classified as State aid⁵. CfD payments are now also classified as a form of Subsidy under the UK’s Subsidy Control Act 2022⁶. The original EU State aid approval for the CfD scheme in July 2014⁷ was subject to the condition that there could be no cumulation with any other aid⁸. The CfD itself ensures that projects are not overcompensated by receiving multiple forms of Subsidy or aid. It also means that Generators cannot receive any other or additional forms of Subsidy, State aid and/or Union funding in relation to the costs of the Project.
- 3.2** Regulation 14 of the Contracts for Difference (Allocation) Regulations 2014 prohibits projects from applying for a CfD if they are in receipt of support from other subsidy schemes, such as the Renewables Obligation, Feed-in Tariff or Capacity Market. However, as Subsidies and State aid can be provided in many different forms (including as grants, subsidies, loans and tax exemptions), the AR2 CfD introduced provisions to prevent the cumulation of State aid under the CfD with aid not necessarily captured by these exclusions. The Department for Business, Energy and Industrial Strategy (BEIS) issued a public consultation in May 2016⁹ proposing amendments to the CfD template to prevent such cumulation. BEIS published its decision in February 2017¹⁰ and the AR2 CfD, including such amendments, in March 2017.
- 3.3** Overall responsibility for the CfD scheme now sits with the Department for Energy Security and Net Zero (DESNZ). The general principle in the DESNZ AR5 CfD is that Generators must repay any such Subsidy, State aid and/or Union Funding together with interest to the grantor of that aid or funding and, if they are unable to repay it, an equivalent amount plus interest will be deducted from their CfD payments. The operation of the relevant CfD provisions is explained in more detail below.

⁵ See Paragraph 48 of the CfD State Aid Approval, available online here: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36196

⁶ [Subsidy Advice Unit: Report on Contracts for Difference](#) - GOV.UK

⁷ See above.

⁸ Paragraph 77 of the CfD State Aid Approval states “the aid granted by means of the CfD auction will not be cumulated with any other aid”. See also paragraph 40 to 46.

⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521976/May_2016_CFD_Contract_Changes_Consultation.pdf

¹⁰ FINAL_-_Government_Response_to_the_CFD_Contract_Changes_Consultation.pdf (publishing.service.gov.uk)

How Do I know if I have Subsidy, State aid and/or Union Funding

- 3.4 The definition of “Subsidy” in the CfD cross-refers to the definition in the Subsidy Control Act 2022 which is broad, and includes any financial assistance which:
- is given, directly or indirectly, from public resources by a public authority,
 - confers an economic advantage on one or more enterprises,
 - is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and
 - has, or is capable of having, an effect on (i) competition or investment within the UK, (ii) trade between the UK and another country or territory outside the UK, or (iii) investment between the UK and another country or territory outside the UK.
- 3.5 It is the Generator’s responsibility to make enquiries within the Generator company and any related or connected companies including companies within the same group, affiliates, previous owners and relevant subcontractors, to check whether any other Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project. We recommend that Generators seek legal advice where required as Subsidy Control is a complex area of law.
- 3.6 We have provided a list of illustrative examples of financial assistance that we consider would be likely to constitute Subsidy, State aid and/or Union Funding at Table 1 of Annex 1 – i.e. situations that might potentially be problematic in relation to the ‘no cumulation’ rule relating to AR5 CfDs.

In relation to the costs of the Project

- 3.7 Subsidy, State aid or Union Funding that is not allowed to be cumulated with the CfD is limited to financial assistance received “*in relation to the costs of the Project*”. The “*Project*” is defined in the CfD as meaning, “*the design, development, construction, conversion, installation, completion, testing, commissioning, operation, maintenance and decommissioning of the Facility*”.¹¹
- 3.8 Therefore, if you have received Subsidy, State aid and/or Union Funding for costs which are entirely unrelated (i.e. which do not overlap either partly or fully) to the Project, then they would not be subject to the rules which

¹¹ Condition 1.1 of AR4/AR5 Terms and Conditions (Definitions)

prevent cumulation of Subsidy, State aid and/or Union Funding with aid granted under the CfD. Only in circumstances when aid is received that covers the same costs as Project costs, is it intended that cumulation will occur.

Research funding

- 3.9 For example, funding for research, development or innovation (**R&D&I**) is unlikely to be considered to be for the same eligible costs if it covers costs unrelated to the Project e.g. for the funding of early stage fundamental research into new renewable technologies. However, where it covers costs that are related to the Project, such funding is likely to be subject to the cumulation rules. It is worth noting the BEIS consultation response¹² on R&D&I funding for the purposes of the ‘no cumulation’ provisions in the AR2 CfD. BEIS said at paragraph 33 of the consultation response that:

“We believe that most State aid or Union funding received for research, development or innovation would not be considered cumulative because this type of funding is usually aimed at covering the additional costs associated with developing new technologies or processes for wider industry benefit, rather than specifically for low carbon electricity generation at one site. The CFD does not primarily support research, development or innovation – the aim of the scheme is to support the deployment of large-scale renewable and low carbon electricity projects on a commercial basis. However, we consider that cumulation would occur where such funding is received for costs specific to the Project (for example, to conduct environmental studies necessary to secure planning con- sent)”.

- 3.10 We have provided illustrative examples of Subsidy / State aid that we consider is unlikely to be considered a cumulation of Subsidy / State aid with the AR5 CfD at Table 2 at Annex 1 below.

¹² See footnote 10 above



4. The AR5 CfD provisions preventing the cumulation of Subsidy, State Aid and/or Union Funding

Summary of AR5 CfD provisions

4.1 The provisions in the AR5 CfD relating to cumulation can be grouped as follows:

- Provision of Subsidy, State aid and/or Union Funding Confirmation – contained in Conditions 3.33 and 3.34 of the AR5 CfD and further explained below in Section 5 below.
- Subsidy Declaration OCP – contained in paragraph 2.6 of Part B of Schedule 1 to the AR5 CfD and further explained in Section 6 below.
- No cumulation of Subsidy representation and warranty – contained in Condition 32.4 of the AR5 CfD and further explained in Section 7 below.
- No cumulation of Subsidy, State aid or Union Funding undertaking – contained in Condition 32.5 of the AR5 CfD and further explained in Section 8 below.
- Suspension of CfD payments – contained in Conditions 32.6 to 32.10 of the AR5 CfD and further explained in Section 9 below.
- Subsidy Interest – contained in Condition 32.11 of the AR5 CfD and further explained in Section 6.17 below.





5. Provision of Subsidy, State Aid and/or Union Funding Confirmation

5.1 Generators are required under Condition 3.33 to provide confirmation as to whether or not Subsidy, State aid and/or Union Funding has been received (unless Condition 3.34 applies). This confirmation is required at least three months before the Generator's intended Start Date.

5.2 Condition 3.33 states that:

"3.33 Subject to Condition 3.34, not less than three (3) months before the Generator's intended Start Date, the Generator shall give the CfD Counterparty a written confirmation, in form and content satisfactory to the CfD Counterparty (acting reasonably), of whether any Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project, and, where applicable, details of all such Subsidy, State aid and/or Union Funding, accompanied by a Directors' Certificate in relation to the confirmation and the information accompanying it."

However, under Condition 3.34 the Generators do not have to provide this confirmation if they have previously fulfilled the Subsidy Declaration OCP or if such OCP has been waived by LCCC under Condition 3.28 - see Section 6 below for further detail on the Subsidy Declaration OCP.

Whether Generators are required to provide the confirmation or whether, alternatively, they opt to satisfy the Subsidy Declaration OCP, they will need to investigate whether any Subsidy, State aid and/or Union Funding has been received by the Generator or any other person connected to the Project in relation to the costs of the Project.

5.3 For the purposes of the 'no cumulation' provisions in the AR5 CfD, Generators are required to take appropriate steps to investigate and satisfy themselves whether any Subsidy, State aid and/or Union Funding has been received by the Generator or any other person in relation to the costs of the Project. This should include:

- making all necessary enquiries within the Generator company and any other person connected with the Project;
- giving careful consideration to the provisions of the AR5 CfD that relate to Subsidy, State aid and/or Union Funding and the meaning of these terms; and

- seeking independent legal advice where necessary.
- 5.4 We attach a pro forma 'Subsidy/State Aid/Union Funding Confirmation' at Annex 2 which Generators should use to submit the required information. A Directors' Certificate is also required, a pro forma for which is set out in Annex 8 (Pro forma notices) of the CfD. We recommend that Generators submit these documents to us in draft form first. To assist Generators, a checklist of documents for the submission is attached at Annex 6.



6. Subsidy Declaration OCP

- 6.1 This Section provides guidance on the Subsidy Declaration OCP¹³ set out in paragraph 2.6 of Part B of Schedule 1 of the AR5 CfD.
- 6.2 The general requirements for OCPs set out in Condition 3 of the CfD also apply to the Subsidy Declaration OCP. Condition 3 includes the requirement for Generators to give an Operational CP Notice to LCCC in respect of each OCP together with Supporting Information to evidence the fulfilment of that OCP¹⁴. Each Operational CP Notice is required to be accompanied by a Directors' Certificate¹⁵. As with all OCPs, the Subsidy Declaration OCP must be satisfied before the Generator can start to receive CfD payments. In addition, Condition 3.6 requires the Generator to use reasonable endeavours to fulfil or procure the fulfilment of all OCPs as soon as reasonably practicable, and in any event, before the Longstop Date.
- 6.3 For ease of process, we encourage you to submit your OCP Notice and Supporting Information (including a declaration in the form set out at Annex 3 or Annex 4) to LCCC in draft form first before you proceed with the formal submission.
- 6.4 The Subsidy Declaration OCP requires Generators to provide a written confirmation in form and content satisfactory to LCCC that:
- no Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project, except Subsidy arising under the CFD – see paragraph 6.6 below; or
 - such Subsidy, State aid and/or Union Funding has been received by the Generator or any other person in relation to the costs of the Project and has been repaid (together with interest) to the grantor of the subsidy, aid and/or funding – see paragraph 6.7 below.

The full text of the Subsidy Declaration OCP is as follows:

“2.6 Delivery to the CfD Counterparty of a written confirmation from the Generator, in form and content satisfactory to the CfD Counterparty (acting reasonably), that either:

¹³ For guidance on other OCPs, please speak to your Contract Manager or write to info@lowcarboncontracts.uk

¹⁴ Condition 3.8(B).

¹⁵ Condition 3.9

(A) no Subsidy, State aid or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the subsidy arising under this Contract for Difference); or

(B) Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the Subsidy arising under this Contract for Difference), and that such Subsidy, State aid and/or Union Funding (as applicable) (adjusted for interest in accordance with Condition 32.11) has been repaid to the granter of the subsidy, aid or funding in full.”

- 6.5 In a similar way to the situation where a Subsidy confirmation is given under Condition 3.33, in order to fulfil the Subsidy Declaration OCP, you will need to investigate whether or not any Subsidy, State aid or Union Funding has been received by the Generator or any other person in relation to the costs of the Project. See paragraphs 3.4 – 3.6 above for guidance in relation to investigations and what constitutes Subsidy, State aid and Union Funding for the purposes of the AR5 CfD.

Subsidy Declaration OCP (2.6(A)) – no Subsidy, State aid or Union Funding received

- 6.6 To fulfil the Subsidy Declaration OCP where no other Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project, we expect Generators to provide a declaration stating this and confirming that they have reviewed and considered the relevant provisions of the CfD restricting the cumulation of Subsidy, State aid and/or Union Funding, have sought legal advice where necessary (i.e. to resolve any issues or uncertainty over how the cumulation rules apply to the Project) and have made all due and careful enquiries of the Generator company and other persons connected with the Project. A pro forma ‘Subsidy Declaration’ for OCP 2.6(A) is attached at Annex 3.

Subsidy Declaration OCP (2.6(B)) – Subsidy, State aid and/or Union Funding has been received

- 6.7 To fulfil the Subsidy Declaration OCP where Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project, we expect Generators to provide a declaration that such Subsidy, State aid and/or Union Funding has been received, together with details of same, but has been repaid in full to the granter of that subsidy, aid or funding together with interest (see paragraph 6.17 below for details in relation to interest calculations).

A pro forma ‘Subsidy Declaration’ for OCP 2.6(B) is attached at Annex 4.

- 6.8 Generators are required to provide Supporting Information in relation to the OCP2.6(B) (i.e. evidencing the repayment). Supporting Information that is likely to satisfy LCCC that this OCP 2.6(B) has been fulfilled includes:
- evidence of the original amount of subsidy, aid or funding given from the granter of that subsidy, aid or funding, e.g. a grant offer letter or funding agreement;
 - evidence from the granter of the subsidy/aid/funding that they have received repayment of the subsidy/aid/funding in full (together with interest in accordance with Condition 32.11), such as a receipt and a bank statement; and
 - calculations showing how the interest has been calculated.
- 6.9 To assist Generators, a checklist of documents for the submission is set out at Annex 6.

Waiver and Set Off

- 6.10 LCCC is required under Condition 3.28 to waive the Subsidy Declaration OCP if a Generator has received Subsidy, State aid and/or Union Funding in relation to the costs of the Project but the granter refuses or is unable to accept repayment (as adjusted for interest) in full or in part. Such waiver is not required to be granted by LCCC unless the Generator provides evidence to LCCC's satisfaction that the granter refuses or is unable to accept such repayment. Condition 3.28 states that:

“3.28 The CfD Counterparty shall agree by notice to the Generator to waive the fulfilment of the Subsidy Control Declaration Operational CP if the Generator evidences to the satisfaction of the CfD Counterparty that the granter(s) of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 32.11), in full or in part. If the Generator seeks a waiver of the Subsidy Control Declaration Operational CP, the Generator shall:

- (A) provide the CfD Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment, in accordance with this Condition; and*
- (B) provide the CfD Counterparty with such additional Supporting Information as the CfD Counterparty reasonably requires, as soon as reasonably practicable, and in any event no later than*

ten (10) Business Days following receipt of the CfD Counterparty's request,

in each case accompanied with a Directors' Certificate in respect of such Supporting Information."

6.11 If the Generator considers that Condition 3.28 applies, LCCC would expect to receive a formal written request for a waiver of the Subsidy Declaration OCP which sets out:

- details of the nature and amount(s) of the subsidy/aid/funding,
- details of the recipient and granter,
- date of grant and receipt of the subsidy/aid/ funding,
- details of the efforts of the Generator to repay the subsidy/aid/funding (with interest) to the granter, and
- a detailed explanation of the reasons why the repayment could not be made.

A pro forma '*Declaration relating to a Request for Waiver of Subsidy Declaration OCP*' is attached at Annex 5.

6.12 The Generator is also required to provide Supporting Information to evidence that the granter refuses or is unable to accept the repayment. This Supporting Information must be accompanied by a Directors' Certificate. Supporting Information that is likely to satisfy LCCC that the granter refuses or is unable to accept the repayment includes:

- clear and unequivocal written confirmation from the granter of the subsidy/aid/funding that they unconditionally refuse or are unable to accept the repayment of the Subsidy, State aid and/or Union Funding in full and the reasons for same; and
- evidence to show that they were in fact the granter of the aid (e.g. a grant agreement, loan agreement, receipt, invoice).

6.13 For ease of process, we encourage Generators to submit their request for waiver and Supporting Information to LCCC in draft form first before proceeding with the formal submission. To assist Generators, a checklist of documents for the submission is attached at Annex 6.

- 6.14 LCCC is not required to waive the Subsidy Declaration OCP unless it is satisfied that the requirements of Condition 3.28 have been met.¹⁶
- 6.15 Please note that, notwithstanding that the Subsidy Declaration OCP may have been waived, the Subsidy, State aid and/or Union Funding still needs to be repaid to avoid cumulation. LCCC will, therefore, then “set off” the relevant amounts from your CfD payments in accordance with the requirements of Condition 3.31, which states:

“3.31 The Previous Subsidy (as adjusted for interest in accordance with Condition 32.11) shall be set off against any amounts payable to the Generator under this Contract for Difference, so that no payment shall be made to the Generator until such amount has been set off in its entirety.”

- 6.16 If LCCC agrees to waive the Subsidy Declaration OCP, we are required to notify you of the amount of Subsidy, State aid, and/or Union Funding (as adjusted for interest) which has not been repaid and the Subsidy Interest Rate currently applicable.¹⁷ This will assist you to understand the amount to be set off.

Subsidy Interest

- 6.17 Under Condition 32.11 of the AR5 CfD, interest will be due and payable in relation to any amount of Subsidy, State aid and/or Union Funding which has been received by the Generator or any other person in relation to the costs of the Project as follows:
- interest shall accrue on the outstanding balance of any such Subsidy, State aid and/or Union Funding at the Subsidy Interest Rate from (and including) the date that the Subsidy, State aid and/or Union Funding was received, but excluding:
 - the date of repayment with interest in full to the granter;
 - where Condition 32.16 (Recovery) applies, the date that payments equivalent to the amount of the Subsidy, State aid and /or Union Funding are recovered in full; or
 - where Condition 3.31 or 32.15 (Set-Off) apply, the date of Set-Off;
 - interest shall accrue from day to day and shall be calculated on the basis of the actual number of days elapsed and a year comprising of 365 days;

¹⁶ Condition 3.30

¹⁷ Condition 3.29 (A)

- the “Subsidy Interest Rate” shall be either:
 - the interest rate set out by the UK awarding body of the Subsidy;
 - the interest rate set out in any recovery order issued by a Subsidy Control Competent Authority; or
 - in the case of State aid or Union Funding only, the interest rate that applies to recovery under the relevant State aid or Union Funding scheme,

in each case as applicable, and if none is applicable, the interest rate determined by the CfD Counterparty in accordance with the Interest Rate Methodology¹⁸; and

- to the extent that interest accrues for more than a year, the Subsidy Interest Rate shall be recalculated on an annual basis by LCCC in accordance with applicable methodology, and interest shall be compounded annually, so that interest accruing in the previous year shall be subject to interest in any subsequent year.

¹⁸ “Interest Rate Methodology” means the average of the Bank of England Sterling Overnight Index Average (SONIA) Compounded Index, plus 1 percentage point, from the date the Generator receives the Subsidy for the period interest is required to run under Condition 32.11, and subject to Condition 32.11(C).



7. Representation and Warranty

- 7.1 The Generator represents and warrants under Condition 32.4 that, as at the Start Date or (if later) as at the Subsidy Declaration Date, no Subsidy, State aid or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid or funding is received by the Generator or by any other person) other than that specified in Condition 32.4.

Condition 32.4 states as follows:

“32.4 The Generator represents and warrants to the CfD Counterparty that, as at the Start Date or (if later) as at the Subsidy Declaration Date, the following statement is true, accurate and not misleading:

(A) no Subsidy, State aid or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid or funding is received by the Generator or by any other person), other than:

- (i) the subsidy arising under this Contract for Difference; or*
- (ii) any Subsidy, State aid and/or Union Funding notified to the CfD Counterparty in accordance with the process for the satisfaction or waiver of the State Aid Declaration Operational CP¹⁹.”*

¹⁹ Note, LCCC understands that this reference to the “State Aid Declaration Operational CP” is an error in the AR5 CfD and should refer to “Subsidy Declaration Operational CP”.

8. Undertaking – relating to Subsidy after the OCP Notice

8.1 The Generator is also required under Condition 32.5 to provide undertakings in relation to the receipt of any future Subsidy, State aid and/or Union funding in relation to the Project. These undertakings are effective from the ‘Subsidy Declaration Date’ (being the date the Operational CP Notice relating to the Subsidy Declaration OCP is submitted to LCCC or the date the Generator requests a waiver of same). The undertakings can be summarised as follow:

- a) to ensure at all times that no Subsidy, State aid and/or Union Funding is received in relation to the costs of the Project²⁰ (regardless of whether such subsidy, aid or funding is received by the Generator or by any other person);
- b) to notify LCCC as soon as reasonably practicable in the event that any Subsidy, State aid and/or Union Funding is received;
- c) to provide supporting information regarding compliance or non-compliance with the undertaking at Condition 32.5(A) as LCCC may reasonably require. This evidence must be provided as soon as reasonably practicable and, in any event, no later than 30 business days following receipt of a request from LCCC. The Supporting Information must be accompanied by a Directors Certificate; and
- d) to repay or procure the repayment of any Subsidy, State aid and/or Union Funding received in relation to the costs of the Project to the granter of that subsidy, aid or funding together with interest.

8.2 Condition 32.5 states that:

“32.5 With effect from the Subsidy Declaration Date, the Generator undertakes to the CfD Counterparty as follows:

(A) the Generator shall at all times ensure that no Subsidy, State aid or Union Funding is received in relation to the costs of the Project (regardless of whether such subsidy, aid or funding is

²⁰ Note for the sake of clarity this warranty does not refer to State aid arising under the CfD itself

received by the Generator or by any other person), other than the subsidy arising under this Contract for Difference;

(B) Notification: the Generator shall:

- (i) give notice to the CfD Counterparty as soon as reasonably practicable upon becoming aware that any Subsidy, State aid and/or Union Funding has been received in relation to the costs of the Project (regardless of whether such subsidy, aid and/or funding is received by the Generator or by any other person, or is received before, on or after the Subsidy Declaration Date) (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 32.4(A)(i) and 32.4(A)(ii); and*
 - (ii) provide the CfD Counterparty with such Supporting Information regarding compliance or non-compliance by the Generator with the undertaking in Condition 32.5(A) as the CfD Counterparty reasonably requires, as soon as reasonably practicable and in any event no later than thirty (30) Business Days following receipt of the CfD Counterparty's request. Any Supporting Information provided by a Generator to the CfD Counterparty under this Condition 32.5(B)(ii) shall be accompanied by a Directors' Certificate in respect of such Supporting Information; and*
- (C) Repayment: the Generator shall repay or procure the repayment of any Subsidy, State aid and/or Union Funding which has been received in relation to the costs of the Project (regardless of whether such subsidy, aid or funding is received by the Generator or by any other person or is received before, on or after the Subsidy Declaration Date) (as adjusted for interest in accordance with Condition 32.11) to the granter of such subsidy, aid or funding (other than any Subsidy, State aid and/or Union Funding of the types described at Condition 32.4(A)(i) and 32.4(A)(ii))."*

- 8.3** Under Conditions 32.12 – 32.14 of the AR5 CfD, a similar waiver situation applies in the period after the Subsidy Declaration OCP as applies in relation to waiver of the Subsidy Declaration OCP under Condition 3.28 (as set out in paragraphs 6.10 to 6.16 above). LCCC is required under Condition 32.12 to waive the Generator's obligation to repay the subsidy, aid or funding under Condition 32.5(C) if the Generator evidences to the satisfaction of LCCC that

the granter of the Subsidy, State aid or Union Funding refuses or is unable to accept the repayment of that aid, together with interest.

- 8.4 If the Generator seeks this waiver, the information that LCCC would require is similar to the information required for a Subsidy Declaration OCP waiver request – see paragraphs 6.10 to 6.16 above for details.
- 8.5 As with Condition 3.31 (see paragraph 6.15 above), it is still necessary for the Subsidy/State aid/ Union Funding (adjusted for interest) to be repaid to avoid cumulation. LCCC is therefore required to set-off these amounts from your CfD payments in accordance with Condition 32.15. Any suspension of CfD payments will cease when these amounts have been set-off.²¹

²¹ Conditions 32.13 - 32.15



9. Suspension of CfD payments

9.1 LCCC is required to suspend CfD payments under Condition 32.6 of the AR5 CfD if a Generator:

- breaches the representation and warranty at Condition 32.4 which (in summary) states that as at the Start Date or (if later) as at the Subsidy Declaration Date, no Subsidy, State aid or Union Funding has been received, or
- fails to comply with the undertakings at Condition 32.5(A) which states that at all times the Generator shall ensure no Subsidy, State aid or Union Funding is received.

Such suspension of CfD payments is required to be from the date LCCC becomes aware that the Generator has breached or failed to comply with any of the Conditions mentioned above. LCCC is required to notify Generators of any such suspension as soon as reasonably practicable.

9.2 If the Generator evidences to the satisfaction of LCCC that the Subsidy, State aid and/or Union Funding together with interest, has been repaid in full to the granter of the subsidy/aid/funding, the suspension shall be lifted and amounts that were suspended shall be paid. LCCC may elect to make such payment as a lump sum, staged payments or daily basis and no interest will be payable on such amounts. A Directors' Certificate is required in relation to the evidence provided.

9.3 LCCC is also required under Condition 32.9 to suspend CfD payments if the Generator fails to provide Supporting Information requested by LCCC under Condition 32.5(B)(ii). Such suspension is required from the date LCCC becomes aware of the failure by the Generator to comply. LCCC will notify the Generator of any such suspension as soon as reasonably practicable. The suspension shall be lifted, and amounts that were suspended shall be paid, if the Generator subsequently provides LCCC with the Supporting Information that was requested under Condition 32.5(B)(ii). LCCC may elect to make such payment as a lump sum, staged payments or daily basis and no interest will be payable on such amounts. A Directors' Certificate is required in relation to the evidence provided.

10. Recovery

- 10.1** LCCC has a right of recovery under Condition 32.16 in circumstances where the CfD expires or terminates and the Generator has not yet repaid to the grantor any amount of Subsidy, State aid and/or Union Funding together (with interest) under Condition 32.5(C) or such amount has not been set off from CfD payments in full under Condition 3.31 or 32.15. In that case, LCCC is entitled to recover any payments made to the Generator under the AR5 CfD up to the value of the outstanding amount.



Annex 1 - Subsidy/Cumulation Illustrative examples

Table 1: Examples of financial assistance that would likely Constitute Subsidy

- A grant from the Government to the Generator or parent company or subsidiary company to buy wind turbines (or parts of turbines) that are used for the Project.
- Grant towards the costs of the Project, such as towards gaining planning consent.
- The purchase of land from a Local Authority at a discount or below market rate for the Project site or for use while building the Project.
- An exemption from paying a levy relating to the Project or Project site that is imposed by a Local Authority.
- Preferential terms for the use or lease of land or facilities for the Project from a public authority or arm's length body.
- A Government guarantee for a loan obtained from an international financial institute that is used to wholly or partly finance the Project.
- Subsidy received for the costs of a particular product or service used for the Project or to research a particular product for use by the Project. For instance, the purchase of equipment which is a requirement of the Project's required authorisations (for example, installing equipment to prevent environmental deterioration of a local area).
- Investment under a venture capital scheme (e.g. VCT, EIS, SEIS, SITR). These schemes have been approved by the European Commission as State aid. The entire investment in the investment fund that is received by the Generator is considered to be Subsidy, and therefore if the investment has been spent on the Project, this will be aid to the Project.
- A grant towards the costs of a demonstration or pilot project which also has a CfD or forms part of a wider project that has a CFD.
- A grant awarded by an EU regional development fund.
- A grant towards the costs of the construction of the offshore transmission assets.
- A less than market value of transmission costs charged to generators.
- Free or subsidised consultancy advice in relation to the Project.

Table 2: Examples of Subsidy that are Unlikely to be Considered Cumulative

- Subsidy received by a technology provider for the development of their product, which is then sold to the Generator on a commercial arm's length basis for use as part of the Project.
- Subsidy is received for the costs of an additional product or service at a CfD site (e.g. to build an education centre) that is not a requirement for the Project to be delivered under the CfD contract.



-
- Subsidy received to undertake research at the Project site or to research a particular product at the CfD site, which is not a requirement of the Project's authorisations and not a requirement for the Project to be delivered.
 - Subsidy for research and development to develop new technologies or processes for wider industry benefit that are not funding the cost of constructing the Facility.
 - Eligible cost contributions from the Crown Estate that are an investment by the Crown Estate on market value terms.
-



Annex 2 – Subsidy/State Aid/Union Funding Confirmation

[Generator Name]

[Unique Reference Number: [•]]

(the “Generator”)

CONTRACT FOR DIFFERENCE – SUBSIDY CONFIRMATION

To: Low Carbon Contracts Company

10 South Colonnade

Canary Wharf

London E14 4PU

(the “CfD Counterparty”)

[Date]

1. We refer to the agreement dated [*insert date*] between you as the CfD Counterparty and us as the Generator in relation to [*name of Project*] (the “Agreement”). Terms and expression defined in or incorporated into the Agreement have the same meanings when used in this confirmation.
2. We further refer you to Condition 3.33.
3. **We confirm that, as of this date, which is not less than three months before our intended Start Date, [no Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the Subsidy arising under the Agreement)] / [Subsidy, State aid and/or Union Funding has been received by the Generator or by another person in relation to the costs of the Project (excluding the Subsidy arising under the Agreement)]. Details of the same are set out below:**

[insert details of the subsidy/aid/funding which includes:

- description of the subsidy/aid/funding including the value
- names of grantor and recipient of the subsidy/aid/funding



- **date the subsidy/aid/funding was granted**
- **any other relevant information].**

4. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this confirmation is in all material respects true, complete and accurate and not misleading.

This confirmation is governed by and construed in accordance with English law.

.....

Name: [•]

Position: Dated: [•]





Annex 3 – Subsidy Declaration – no Subsidy/State aid/ Union Funding received²²

Subsidy Declaration

[Generator Name]

[Unique Reference Number: [•]]

(the “Generator”)

CONTRACT FOR DIFFERENCE – SUBSIDY DECLARATION

To: Low Carbon Contracts Company

10 South Colonnade

Canary Wharf

London E14 4PU

(the “CfD Counterparty”)

[Date]

1. We refer to the agreement dated **[insert date]** between you as the CfD Counterparty and us as the Generator in relation to **[name of project] (the “Agreement”)**. Terms defined in or incorporated into the Agreement have the same meanings when used in this declaration.
2. We further refer you to the Subsidy Declaration Operational CP at paragraph 2.6(A) of Part B of Schedule 1 to the Agreement.
3. We hereby declare on behalf of the Generator that:
 - a) having reviewed and considered the provisions of the Agreement restricting the cumulation of Subsidy, State aid and/or Union Funding with Subsidy arising under the Agreement;

²² Drafting Note: This declaration is intended as evidence of you fulfilling the OCP requirement, but you will still need to provide an OCP Notice (see page 423 of your CfD) and Directors’ Certificate (see page 421 of your CfD). The list of Supporting Information, which should include this declaration, should be annexed to the OCP Notice.



- b) having carefully considered the meanings of Subsidy, State aid and Union Funding, seeking appropriate legal advice where necessary; and
- c) having made all due and careful enquiries, including of the Generator and other persons connected with the Project, as relevant,

no Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the Subsidy arising under the Agreement).

This Declaration is governed by and construed in accordance with English law.

.....

Name: [•]

Position: Dated: [•]

.....

Witness's name: [•]

Occupation: [•]

Address: [•]

Dated: [•]



Annex 4 – Subsidy Declaration – Subsidy/State aid/ Union Funding has been received

Subsidy Declaration

[Generator Name]

[Unique Reference Number: [•]]

(the “Generator”)

CONTRACT FOR DIFFERENCE – SUBSIDY DECLARATION

To: Low Carbon Contracts Company

10 South Colonnade

Canary Wharf

London E14 4PU

(the “CfD Counterparty”)

[Date]

1. We refer to the agreement dated [insert date] between you as the CfD Counterparty and us as the Generator in relation to [name of project] (the “Agreement”). Terms defined in or incorporated into the Agreement have the same meanings when used in this declaration.
2. We further refer you to the Subsidy Declaration Operational CP at paragraph 2.6(B) of Part B of Schedule 1 to the Agreement.
3. We hereby declare on behalf of the Generator that:
 - a) having reviewed and considered the provisions of the Agreement restricting the cumulation of Subsidy, State aid and/or Union Funding with Subsidy arising under the Agreement;
 - b) having carefully considered the meaning of Subsidy, State aid and Union Funding, seeking appropriate legal advice where necessary; and



c) having made all due and careful enquiries, including of the Generator and other persons connected with the Project, as relevant,

Subsidy, State aid and/or Union Funding has been received by the Generator or by another person in relation to the costs of the Project (excluding the Subsidy arising under the Agreement),

[and that such Subsidy, State aid and/or Union Funding (as applicable) (as adjusted for interest in accordance with Condition 32.11) has been repaid in full to the granter of the subsidy, aid or funding. Details of the same are set out below: [Insert details of the subsidy/aid/funding and repayment including:

- **description of the nature and amount(s) of the subsidy/aid/funding**
- **names of the recipient and granter**
- **date of receipt of the subsidy/aid/funding**
- **date of the repayment and the amount repaid (including the interest amount repaid)**
- **any other relevant information]**

This Declaration is governed by and construed in accordance with English law.

.....

Name: [•]

Position: Dated: [•]

in the presence of:

.....

Witness's name: [•]

Occupation: [•]

Address: [•]

Dated: [•]

Annex 5 – Subsidy Declaration relating to a Request for Waiver of [Subsidy Declaration OCP] / [Generator’s obligation to repay Subsidy, State aid and/or Union Funding under Condition 31.4(C)]²³

[Generator Name]

[Unique Reference Number: [•]]

(the “Generator”)

CONTRACT FOR DIFFERENCE – DECLARATION²⁴ RELATING TO A REQUEST FOR WAIVER OF [SUBSIDY DECLARATION OCP]/[OBLIGATION TO REPAY UNDER CONDITION 31.4(C)]²⁵

To: Low Carbon Contracts Company

10 South Colonnade

Canary Wharf

London E14 4PU

(the “CfD Counterparty”)

[Date]

1. We refer to the agreement dated **[insert date]** between you as the CfD Counterparty and us as the Generator in relation to **[name of project] (the “Agreement”)**. Terms defined in or incorporated into the Agreement have the same meanings when used in this declaration.
2. We further refer you to **[the Subsidy Declaration Operational CP at paragraph 2.6(B) of Part B of Schedule 1 to the Agreement] / [the requirement for the Generator to repay Subsidy, State aid and/or Union Funding pursuant to Condition 32.5(C) of the Agreement]**.²⁶

²³ Delete as applicable depending on which waiver is being requested.

²⁴ Drafting Note: This declaration is intended as evidence of you fulfilling the OCP requirement, but you will still need to provide an OCP Notice (see page 423 of your CfD) and Directors’ Certificate (see page 421 of your CfD). The list of supporting information, which should include this declaration, should be annexed to the OCP Notice.

²⁵ Delete as applicable depending on which waiver is being requested.

²⁶ Delete as applicable depending on which waiver is being requested



4. We hereby declare on behalf of the Generator that:

- a) having reviewed and considered the provisions of the Agreement restricting the cumulation of Subsidy, State aid and/or Union Funding with Subsidy arising under the Agreement;
- b) having carefully considered the meaning of Subsidy, State aid and Union Funding, seeking appropriate legal advice where necessary; and
- c) having made all due and careful enquiries, including of the Generator and other persons connected with the Project, as relevant,

Subsidy, State aid and/or Union Funding has been received by the Generator or by another person in relation to the costs of the Project (excluding the Subsidy arising under the Agreement), however we have been unable to repay such Subsidy, State aid and/or Union Funding (as applicable) in full together with interest to the grantor of the subsidy, aid or funding.

Details of the same are set out below:

[Please set out detailed information regarding the aid/funding and repayment to include:

- **description of the nature and amount(s) of the subsidy/aid/funding**
- **amount of the interest and the calculations of same**
- **names of the recipient and grantor**
- **date of receipt of the subsidy/aid/funding**
- **details of the efforts of the Generator to repay the subsidy/aid/funding together with the interest to the grantor**
- **detailed explanation of the reasons why the repayment could not be made**
- **any other relevant information**

We attach the following Supporting Information:

[Insert list]

This Declaration is governed by and construed in accordance with English law.

.....



Name: [•]

Position: Dated: [•]

in the presence of:

.....

Witness's name: [•]

Occupation: [•]

Address: [•]

Dated: [•]





Annex 6: Checklist of documents

Requirement	Expected Supporting Information
<p><u>Confirmation provision – Condition 3.33</u></p> <p><i>Subject to Condition 3.34, not less than three (3) months before the Generator's intended Start Date, the Generator shall give the CfD Counterparty a written confirmation, in form and content satisfactory to the CfD Counterparty (acting reasonably), of whether any Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project, and, where applicable, details of all such Subsidy, State aid and/or Union Funding, accompanied by a Directors' Certificate in relation to the confirmation and the information accompanying it.</i></p>	<ul style="list-style-type: none"> • Written confirmation from the Generator and, if applicable, details of all Subsidy/State aid/ Union Funding received (a pro forma confirmation is set out at Annex 2); and • Directors' Certificate (see CfD for pro forma) in relation to the written confirmation (and information accompanying it).
<p><u>OCP - Schedule 1, Part B, 2.6 (A)</u></p> <p><i>Delivery to the CfD Counterparty of a written confirmation from the Generator, in form and content satisfactory to the CfD Counterparty (acting reasonably), that no Subsidy, State aid or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the Subsidy arising under this Contract for Difference).</i></p>	<ul style="list-style-type: none"> • Operational CP Notice (see CfD for the pro forma) listing the declaration (mentioned in next bullet point below) as the Supporting Information. • Acceptable 'written confirmation' would be a signed declaration from the Generator (a pro forma declaration is set out at Annex 3) • Directors' Certificate (see CfD for pro forma) in relation to the OCP Notice and declaration.
<p><u>OCP - Schedule 1, Part B, 2.6 (B)</u></p> <p><i>Delivery to the CfD Counterparty of a written confirmation from the Generator, in form and content satisfactory to the CfD Counterparty (acting reasonably), that Subsidy, State aid and/or Union Funding has been received by the Generator or by any other person in relation to the costs of the Project (excluding the State aid arising under this Contract for Difference) but that such Subsidy, State aid and/or Union Funding (as applicable) (adjusted for interest in accordance with Condition 32.11) has been repaid to the granter of the subsidy, aid or funding in full..</i></p>	<ul style="list-style-type: none"> • Operational CP Notice (see CfD for a pro forma) listing the Supporting Information is required. • Acceptable 'written confirmation' would be a signed declaration from the Generator which contains details of the aid/funding received and details of the repayment of same (pro forma is set out at Annex 4) <p>Acceptable Supporting Information could be:</p> <ul style="list-style-type: none"> • Evidence of the original amount of aid given from the granter of that aid, e.g., a grant offer letter or funding agreement. • Evidence from the granter of the subsidy/aid/ funding that they have received and repayment of the aid/ funding in full together with interest in accordance with Condition 32.11, such as a receipt and a bank statement. • Calculations showing how the interest has been calculated.



Request for waiver of OCP – Condition 3.28

The CfD Counterparty shall agree by notice to the Generator to waive the fulfilment of the Subsidy Control Declaration Operational CP if the Generator evidences to the satisfaction of the CfD Counterparty that the granter(s) of such Subsidy, State aid and/or Union Funding refuses or is unable to accept the repayment of the Subsidy, State aid and/or Union Funding (as adjusted for interest in accordance with Condition 32.11), in full or in part. If the Generator seeks a waiver of the Subsidy Control Declaration Operational CP, the Generator shall:

- (A) *provide the CfD Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment, in accordance with this Condition; and*
- (B) *provide the CfD Counterparty with such additional Supporting Information as the CfD Counterparty reasonably requires, as soon as reasonably practicable, and in any event no later than ten (10) Business Days following receipt of the CfD Counterparty's request,*

in each case accompanied with a Directors' Certificate in respect of such Supporting Information.

- Written request from the Generator for a waiver accompanied by the following:
- Declaration from the Generator which sets out details of the subsidy/aid/ funding received, of the efforts of the Generator to repay such subsidy/aid/funding to the granter of the subsidy/aid/funding and of the reasons why the granter has refused or is unable to accept the repayment (pro forma is attached at Annex 6).
- Supporting Information could be:
 - clear and unequivocal written confirmation from the granter of the subsidy/aid/funding that they unconditionally refuse or are unable to accept the repayment of the Subsidy, State aid or Union Funding in full and the reasons for same; and
 - evidence to show that they were in fact the granter of the aid (e.g. a receipt, invoice etc.).
 - Director's Certificate in relation to the Supporting Information (see CfD for pro forma).

State aid and/or Union Funding at Condition 32.12

The CfD Counterparty shall agree by notice to the Generator to waive the Generator's obligation under Condition 32.5(C) if the Generator evidences to the satisfaction of the CfD Counterparty that the granter of such State aid or Union Funding refuses or is unable to accept the repayment of the State aid or Union Funding (as adjusted for interest in accordance with Condition 31.10), in full or in part. If the Generator seeks a waiver, the Generator shall:

- a) *provide the CfD Counterparty with such Supporting Information as the Generator considers to be relevant to evidence that the granter refuses or is unable to accept repayment in accordance with this Condition; and*
- b) *provide the CfD Counterparty with such additional Supporting Information as the CfD Counterparty reasonably requires, as soon as reasonably practicable, and in any*

- Written request from the Generator for a waiver accompanied by the following:
- Declaration from the Generator which sets out details of the aid/ funding received, of the efforts of the Generator to repay such aid/funding to the granter of the aid/funding and of the reasons why the granter has refused or is unable to accept the repayment (pro forma is attached at Annex 6).
- Supporting Information could be:
 - clear and unequivocal written confirmation from the granter of the aid/funding that they unconditionally refuse or are unable to accept the repayment of the State aid or Union Funding in full and the reasons for same; and
 - evidence to show that they were in fact the granter of the aid (e.g., a receipt, invoice etc.).
 - Director's Certificate in relation to the Supporting Information (see CfD for pro forma).



<p><i>event no later than ten (10) Business Days following receipt of the CfD Counterparty's request,</i></p> <p><i>in each case accompanied by a Directors' Certificate in respect of such Supporting Information</i></p>	
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