



**LOW CARBON
CONTRACTS COMPANY**

POWERING NET ZERO

Milestone Requirement Guidance

Based on CfD Agreement and CfD
Standard Terms and Conditions issued
on 25 November 2021

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1. Introduction

This guidance sets out how Generators can satisfy the Milestone Requirement (“MR”), by either the 10% spend route, or the project commitments route; the supporting information to provide; and how Low Carbon Contracts Company Ltd (“LCCC”) expects to work with Generators towards meeting the MR.

- 1.1 This guidance has been prepared by LCCC to support Generators that have been awarded a Contract for Difference (“CfD”) in their fourth Allocation Round (“AR4”) in fulfilling the MR at Condition 4.1. of the Standard Terms and Conditions as published by the Department for Energy Security and Net-Zero (formerly known as the Department for Business, Energy & Industrial Strategy on 25 November 2021 (“Conditions”).
- 1.2 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 generators should not rely on it as such. Generators should consult with professional advisors where they require advice, whether legal or otherwise, on the CfD.
- 1.3 This guidance and any associated guidance are subject to change from time to time.
- 1.4 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 requires to confirm fulfilment of the MR, nor as to the nature, level and timing of LCCC’s consideration or reconsideration of the evidence that is provided. LCCC reserves the right to request further or additional evidence, and to review or reconsider the evidence already provided.
- 1.5 Defined terms used in this guidance and not defined herein should be given the meaning provided in the CfD (which is comprised of the CfD Agreement (CfD Agreement) and the Conditions).
- 1.6 Generators are encouraged to consult with LCCC and provide and discuss their plan for satisfying the MR and any queries they have at the earliest opportunity. LCCC anticipate working closely with Generators in relation to the MR.



2. Milestone Requirement

2.1 Condition 4.1 of the Conditions provides that:

“No later than the Milestone Delivery Date, the Generator shall give a notice to the CfD Counterparty (the “Milestone Requirement Notice”) that the Generator considers that it has complied with and fulfilled a Milestone Requirement (MR). The Milestone Requirement Notice shall include either:

- A such invoices, payment receipts and other Supporting Information with respect to the Project as the Generator considers relevant to evidence that it and its direct shareholders have in aggregate spent ten per cent (10%) or more of the Total Project Pre-Commissioning Costs on the Project; or
- B such Information as is specified, identified or listed as the Project Commitments and such Supporting Information as the Generator considers relevant to evidence compliance with or fulfilment of the Project Commitments (and for this purpose, where the Project Commitments relate to Material Equipment, taking into consideration the need to demonstrate to the CfD Counterparty’s satisfaction that contracts, agreements and purchase orders relating to such Material Equipment constitute significant financial commitments that are real, genuine and made in good faith),(each, a “Milestone Requirement”).

For the purposes of paragraph (A) above:

- i. money spent by a direct shareholder of the Generator to acquire an interest in the Generator may be taken into account but only to the extent that the consideration paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which such acquisition took place; and
- ii. money spent by the Generator for the purpose of connecting the Facility to any relevant Transmission System (excluding any Offshore Transmission System) or Distribution System may be taken into account, notwithstanding that assets comprised or to be comprised within any such Transmission System or Distribution System do not form part of the Facility (and, for the avoidance of doubt, provided that money spent on such assets comprised or to be comprised within any Offshore Transmission System is not taken into account).”

2.2 A Generator therefore has two possible routes to achieve the MR: (A) the “10% spend” route; OR (B) the “Project Commitments” route.

- 2.3 The Milestone Delivery Date (“MDD”) is the date by which the MR must be satisfied. The MDD is defined in the CfD as being the date occurring eighteen (18) months after the Agreement Date.
- 2.4 LCCC encourages Generators to discuss their intended approach to the MR with LCCC at the earliest opportunity. This will help ensure smooth running of the process and assist us in considering Generator’s compliance. Similarly, in accordance with this guidance, LCCC welcome the early provision of proposed evidence toward fulfilment of the MR. The information and evidence provided must be clearly organised such that it can be easily reviewed. There are several templates which are attached as Annexes to this guidance and Generators are encouraged to use them. Please note that the templates are provided as an aid; they do not guarantee that the information set out in them is accurate, complete or exhaustive and they are subject to change. LCCC reserve the right to request further information from Generators as it requires.





3. The 10% Spend Route

- 3.1 If the Generator is following the ten per cent (10%) spend route, it must evidence that, by no later than the MDD, ten per cent (10%) or more of the Total Project Pre-Commissioning Costs (“TPPCC”) has been spent on the Project. TPPCC is a pre-determined cost which is different for each Facility Generation Technology and should be equal to the TPPCC listed in table I of the CfD Standard Terms Notice used on 25 November 2021.
- 3.2 To show actual spend has occurred, the Generator is required to provide invoices, payment receipts, and any other Supporting Information as may be required by LCCC. Supporting Information means “any and all calculations, confirmations, data, documentation, evidence (including expert’s reports), explanations, information, measurements, readings, reports (including expert’s reports), representations and statements (whether in written or documentary form)”.
- 3.3 It is important to note that only expenditure on the “Project” is counted towards the 10% spend requirement. “Project” means *“the design, development, construction, conversion, installation, completion, testing, commissioning, operation, maintenance and decommissioning of the Facility.”*

Calculating the Spend

- 3.4 In calculating the ten per cent (10%) spend amount:
- expenditure must have been “spent” which means that the monies must have actually been spent (i.e. disbursed). The monies must have been used and be unable to be used again. Generators should not include money due to be spent or committed to be spent;
 - the submitted spend shall comprise of the full price actually paid and/or cost incurred less any VAT, discounts, commissions, refunds, credit notes or such other deductions as these amounts cannot count towards the 10% spend amount. Supporting Information will be assessed in light of any conditions or caveats on expenditure which could result in expenditure being recovered, re-claimed or otherwise offset at a later date;
 - all information shall be in English unless otherwise agreed by LCCC;



- all expenditure shall be expressed in £GBP unless otherwise agreed by LCCC. Expenditure in other currencies (if accepted by us) shall be converted into £GBP at the HMRC monthly exchange rate applicable at the time of the relevant spend happening;
- all expenditure must have been spent directly on the Project. Money which is spent on something which is partly used or partly benefits the Project and is partly used or partly benefits something else must be brought to our attention. At the same time the Generator is required to provide the relevant apportionment methodology setting out the basis upon which it proposes allocating a portion of such spend to the Project, this must be agreed by the LCCC. While monies spent must be genuinely on the Project, there is no requirement for the money to be spent on assets that are or will be physically located on the Facility site nor, for that matter, that spend can only be on items that are or will be owned by the Generator; and
- there should be no “artificiality” in the spend that makes up the 10% spend amount. In other words, nothing must be inappropriately included within the 10% spend amount.

Supporting Information

- 3.5 Evidence of expenditure (i.e. Supporting Information) can be submitted in tranches and Generators are encouraged to submit this information in draft, for discussion with the LCCC as early as possible. For ease of process, LCCC recommends that tranches be for no less than two per cent (2%) of the 10% spend amount. The Generator shall provide additional Supporting Information, such as benchmarking of Project costs (or respond to benchmarking obtained by LCCC), as LCCC requires.
- 3.6 LCCC recommends that Generators organise expenditure into categories of spend. Common categories may include development design; planning; consenting; engineering; procurement; site investigations; grid connection; legal and professional fees; lease and land acquisition; staff costs; and acquisition costs.
- 3.7 The Generator is required to provide third party verification of expenditure such as a supplier invoice and a payment receipt and/or bank statement.
- 3.8 The Generator is required to provide, in writing from a relevant and authorised person, with each tranche of information, confirmation that the information provided is complete, accurate, and true.

Staff Costs and Overheads

- 3.9 Only those staff costs that are directly attributable to the Project are eligible toward the 10% spend amount. Staff costs that are partially (but not solely) dedicated to the Project must be brought to LCCC's attention and the relevant allocation toward the 10% spend amount agreed by LCCC.
- 3.10 LCCC considers that the nature of evidence of staff costs may vary between projects. LCCC's preference is to receive project specific timesheets identifying the individuals whose time is being put toward the 10% spend amount, their roles, rates, activity and time spent. Generators who do not use timesheets will have a better knowledge of their particular business and are better placed to identify an appropriate method of providing LCCC with the required evidence, which conforms to an appropriate standard. LCCC's preference is to discuss with these Generators in advance and at an early stage the form and nature of evidence that might be satisfactory.
- 3.11 In relation to internal overhead costs, Generators wanting to use capitalised timesheets or apportionment methodologies, LCCC would want to understand the basis on which it was being done in each case. LCCC would also expect to see some form of independent third party (e.g. an auditor's letter to LCCC) or other validation to demonstrate that it is fair, reasonable and has the appropriate level of reality and accuracy.

Acquisition Costs

- 3.12 As set out in Condition 4.1(A)(i) of the Conditions, money spent by a direct shareholder of the Generator to acquire an interest in the Generator can be taken into account toward the 10% spend amount but only to the extent that the amount paid for the acquisition exceeds the amount spent on the Project by the Generator and its direct shareholders in the period prior to the time at which the acquisition took place. All expenditure on the Project before the date of the acquisition must therefore be evidenced. Supporting Information for the acquisition costs must evidence that the transaction has been completed between a willing buyer and willing seller at arm's length. The Generator shall provide Supporting Information, such as an independent audit or third-party valuation of the transaction, to ensure the valuation and price paid is true and accurate, as required by LCCC.
- 3.13 The Generator is requested to provide an organogram for the project showing its corporate structure and any interdependency with affiliates, bearing in mind the importance of the buyer being independent of the Generator. Updated "know your customer" checks could be required where relevant.

Network Costs

- 3.14** As set out in Condition 4.1(A)(ii) of the Conditions, money spent by the Generator for the purpose of connecting the Facility to any relevant on-shore Transmission or Distribution System may be included. Grid connection costs (whether transmission network costs payable to National Grid or distribution network cost payable to a Distribution Network Operator (“DNO”)) for onshore technologies may be eligible to count towards the 10% spend amount, provided that these grid connection costs have been spent (see paragraph 3.3 above in relation to the meaning of “spent”) and, as with all 10% spent monies, such costs have not been and are not expected to be refunded or repaid prior to the Facility being Commissioned. Money spent on an Offshore Transmission System were not incorporated within the TPPCC calculation and cannot count towards the 10% spend amount.
- 3.15** Where a letter of credit, or equivalent security, is given to National Grid as “security” for grid connection costs, the cost of obtaining the letter of credit (but not the value of the letter of credit) may be eligible to be included toward the 10% spend amount.

Overview Table and Evidence Spreadsheet

- 3.16** When submitting data to LCCC for the MR, LCCC recommend that Generators provide an accompanying overview table setting out the information being provided. LCCC have prepared a pro forma table for this entitled “Milestone Requirement: 10% Spend Overview” which is attached at Annex A of this guidance.
- 3.17** LCCC encourage Generators to provide a spreadsheet to list, categorise and attach the invoices, payment receipts and other Supporting Information. LCCC have prepared a pro forma spreadsheet for this “10% Spend: Evidence Spreadsheet” which is attached at Annex B of this guidance. When complete please submit this template with the relevant Supporting Information.



4. The Project Commitments Route

- 4.1 There are two categories of evidence required to satisfy the Project Commitments route (as set out in Annex 5 of the CfD Agreement): (1) Part A: General Project Commitments; and (2) Part B: Technology Specific Project Commitments. All Generators must satisfy both categories, though only the commitment relating to the relevant Generation Technology is required for Part B.
- 4.2 For Part A: General Project Commitments, LCCC have prepared Template A in Annex C of this guidance, which LCCC encourages Generators to use.
- 4.3 For Part B: Technology Specific Project Commitments, LCCC have prepared Template B and C in Annex C of this guidance, which LCCC encourages Generators to use.
- 4.4 Generators are advised to inform LCCC of their expected timings for the Project's final investment decision ("FID"), where relevant, so that LCCC can endeavour to work with Generators to coordinate the timings of LCCC's Milestone Requirement (MD) due diligence and subsequent confirmation of the MR with the timings of the Project's FID.
- 4.5 Generators must provide LCCC with the following information listed in Part A and B below:

Part A General Project Commitments – (A) Board resolution

- 4.6 A copy of a resolution of the Generator's board of directors (or equivalent management committee or body) to:
 - a. undertake the Project;
 - b. approved the total financial commitment required to commission the Project (the Total Project Spend) – setting out the financial commitment approved by the board to date, this being no less than the TPPCC (as set out in the CfD);
 - c. approved a timetable or programme for undertaking the Project which demonstrates that the Facility can reasonably be expected to be Commissioned no later than the Longstop Date. LCCC expect the timetable approved in the board resolution to be the same timetable that is provided to LCCC.

The definition of "Project" includes all stages of the Project from design through to development, operation and decommissioning.

This requirement covers all phases for phased projects.

The board resolution should clearly show that there are no conditions on which board approval was given and/or caveats that could impact the Project.

Part A General Project Commitments – (B) Directors’ Certificate

- 4.7 The Generator is required to provide a Directors’ Certificate certifying the information set out in paragraph (B) of Part A of Annex 5 of the CfD Agreement. Generators should use the template Directors’ Certificate set out at Annex D of this guidance.

Part A General Project Commitments – (C) Supporting Information

- 4.8 The Generator is required to provide Supporting Information evidencing that:

- the Generator has or will have sufficient financial resources to meet the Total Project Spend; and
- evidencing the Facility Requirements which are the Project Commitments as set out at (B)(iii) to (vii) of Part A of Annex 5 of the CfD Agreement.

“(iii) the Generator has a leasehold or freehold interest in the site where the Facility is based (the "Facility Site") or a contract to obtain the same;

(iv) the Facility Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility Site for the purposes of the Project;

(v) there are available to the Facility Site such rights, easements and services as are necessary to undertake the Project and operate the Facility;

(vi) the Generator has identified all necessary consents and planning permissions to undertake the Project (the "Necessary Consents"); and

(vii) there is a credible strategy in place to obtain the Necessary Consents and the Necessary Consents are not subject to any condition for which there does not exist a plan to satisfy that condition, such that the Generator is not aware of any necessary consents and planning permissions which cannot be obtained or complied with,”

- evidencing the Facility Requirements which are the Project Commitments as set out at (C) of Part A of Annex 5 of the CfD Agreement

- 4.9 The Generator is required to provide Supporting Information evidencing (i) that the Generator has, or will have, sufficient financial resources to meet

the Total Project Spend and (ii) the Facility Requirements. Examples of the documents that Generators could use to satisfy these requirements are provided at Annex C of this guidance document. LCCC encourages Generators to review this list and talk to their contract managers if they have any questions.

- 4.10 LCCC will need to be satisfied that the Supporting Information is robust evidence of the Project Commitments having been fulfilled, bearing in mind that the purpose of the MR is to demonstrate to LCCC a Project's progress and deliverability in accordance with the CfD.

Part B Technology Specific Project Commitments

- 4.11 The Generator is required to fulfil the Technology Specific Project Commitment relevant to the Project's Generation Technology which will be one of the items identified in Part B of Annex 5 of the CfD Agreement. Please check the relevant provision of your CfD Agreement to ascertain which Technology Specific Project Commitment(s) apply to your project.

- 4.12 This guidance focuses on the Technology Specific Project Commitment set out in the generic CfD¹ for: Offshore Wind, Advanced Conversion Technologies ("ACT") (with or without CHP), Anaerobic Digestion (with or without CHP), Dedicated Biomass with CHP, Wave and Tidal Stream and Remote Island Wind². Part B, Annex 5 of the CfD Agreement states Generators are required to deliver evidence to LCCC satisfying one of the forms of Supporting Information listed below:

- (A) *Entry by the Generator into an engineering, procurement and construction contract for the Facility, providing for the supply and installation of the Material Equipment.*
- (B) *Entry by the Generator into an agreement for the supply of the Material Equipment.*
- (C) *Entry by the Generator into: (i) a framework agreement for the supply of the Material Equipment; and (ii) a binding purchase order for the Material Equipment.*

For the purpose of this section of Part B, the following definition shall apply to this Contract for Difference:

¹ Note that in addition to the generic CfD, there are specific CfDs, such as for phased offshore wind projects and projects with private network connections. Generators are advised to look at the terms of their specific CfD which may differ from the generic CfD.

² Technologies such as Biomass Conversion, Energy from Waste with CHP and Dedicated Biomass with CHP have additional requirements that must be satisfied as per Annex 5 of the CfD.



“Material Equipment” means such equipment, which, acting in accordance with a Reasonable and Prudent Standard, the Generator could reasonably be expected to have ordered and/or concluded a supply agreement in respect of in accordance with the Target Commissioning Date, and in any event, such equipment shall include [wind turbines]/[the gasifier or the pyrolyser]/[anaerobic digester]/[the turbines]/[the wave energy converter or generation engines].”

- 4.13 To satisfy this requirement, Generators should provide the LCCC with a Directors Certificate following the template set out in Annex E of this guidance, with confirmation of which form of Supporting Information it is planning to provide in respect of its Generation Technology.
- 4.14 The Generator is required to provide a comprehensive list of all equipment making up the “Material Equipment” having due regard to this definition as it applies to the relevant Generation Technology, together with a list of all relevant agreements covering the Material Equipment. To provide this information, Generators should follow Template B in Annex C of this guidance document. LCCC encourages Generators to provide this information well before the MDD, in order to agree what constitutes ‘Material Equipment’ for their project. Generators should provide a project schedule with the template.
- 4.15 The Generator is also required to provide copies of the agreement(s) that cover all of the equipment that makes up the Material Equipment. If a single agreement does not cover all of the equipment making up the Material Equipment, a number of agreements may be submitted. If all of the Material Equipment is covered by a number of agreements but the agreements do not all fall within the same Technology Specific Project Commitment option (for example, if not all of the agreements for Material Equipment are supply agreements and there is also a framework and purchase order for part of the Material Equipment), a combination of the agreements shall be submitted and the relevant parts identified. It must be clear which Technology Specific Project Commitment option each agreement falls within and any further requirement for that option must also be satisfied in respect of the Material Equipment to which it relates (for example, if an EPC contract is submitted it must cover the installation as well as the supply of the Material Equipment covered).
- 4.16 The Generator should identify any outstanding equipment contributing toward the Material Equipment that has not or will not be procured by the MDD and explain its reason for such equipment not being procured by the MDD, following Template C in Annex C of this guidance document. The Generator may be required to support its reasoning with an opinion from a third-party expert holding the relevant experience and capability of such projects.

- 4.17 The Generator should demonstrate that the Material Equipment is dedicated to the Project and will not be used for any other project(s) (for example, by showing that they have the exclusive use of the equipment in the contract), and the agreement(s) supplied is real, genuine and made in good faith and has been entered into on an arm's length basis with the intent that the subject matter of the agreement will be obtained pursuant to it. There should be no conditions precedent which may impact the Technology Specific Project Commitment and no side letter(s) or other agreement(s) which might impact the agreement(s). LCCC reserve the right to require Supporting Information, such as an independent audit, to confirm that contracts have been entered into on this basis and at arm's length.



5. Milestone Requirement Notice and Directors' Certificate

- 5.1 Condition 4.1 of the Conditions requires the Generator to provide a "Milestone Requirement Notice" confirming that the Generator considers that a MR has been fulfilled together with the relevant Supporting Information. Generators are encouraged to use the form of Milestone Requirement Notice set out at Annex F of this guidance.
- 5.2 Condition 4.2 of the Conditions requires that the Milestone Requirement Notice is accompanied by a Directors' Certificate certifying that the information contained in, and enclosed with, the Milestone Requirement Notice is true, complete and accurate in all material respects and is not misleading. The form of Directors' Certificate is set out in Annex 8 of the Conditions and is also attached at Annex G of this guidance.
- 5.3 Generators are recommended to submit the Milestone Requirement Notice and Directors' Certificate to LCCC in draft form for review and approval prior to submitting final signed versions.
- 5.4 LCCC intend to review the information and evidence that Generators submit to it as part of the MR process on an ongoing basis, as and when information is received by LCCC. However, at the time the final signed Milestone Requirement Notice together with the Directors' Certificate and the relevant Supporting Information is formally submitted to LCCC, a final review of all documentation submitted will still be needed. LCCC reserve the right to do this notwithstanding that the documentation may have been submitted to us at an earlier date. LCCC also reserves the right to require additional Supporting Information at this stage.

Service and deemed delivery of the Milestone Requirement Notice

- 5.5 The Milestone Requirement Notice may be sent electronically by email to contractmanagement@lowcarboncontracts.uk or by post or by hand.
- 5.6 If sent by email, the notice will be deemed to have been received when sent except if the sender receives a delivery failure notification. If delivered by hand, the notice will be deemed to have been received on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery. If sent by first class post within the

UK, the notice will be deemed to have been received on the third (3rd) Business Day after posting. If sent from one country to another, the notice will be deemed to have been received on the fifth (5th) Business Day after the day of posting. Any notice given outside of Working Hours³ shall be deemed not to have been given until the start of the next period of Working Hours.

- 5.7 From the date of receipt of your Milestone Requirement Notice, LCCC have twenty (20) Business Days to provide the Generator with a Milestone Assessment Response Notice specifying whether LCCC considers that:
- a. the Generator has complied with and fulfilled the MR in which case the Generator is deemed to have fulfilled your MR for the purposes of the CfD;
 - b. the Generator has not complied with and fulfilled the MR in which case the Generator is deemed not to have fulfilled your MR: “...unless and until a resolution or determination to the contrary is made pursuant to Dispute Resolution procedure”⁴; or
 - c. LCCC has not been provided with sufficient Supporting Information to determine whether the Generator has complied with and fulfilled the MR in which case we shall provide a list of the “Requested Milestone Supporting Information” setting out the additional Supporting Information required.
- 5.8 Generators are required to provide LCCC with the “Requested Milestone Supporting Information” as soon as reasonably practicable, and in any event no later than ten (10) Business Days after receipt of the Milestone Assessment Response Notice, unless LCCC specify a longer period. LCCC is required to, as soon as reasonably practicable, and in any event no later than twenty (20) Business Days after receipt of the Requested Milestone Supporting Information, give a Further Milestone Assessment Response Notice specifying whether or not LCCC consider that the Generator has complied with and fulfilled the MR.

Parent Entity for Phased Projects

- 5.9 This section only applies to CfD Phased Projects.

³ Working Hours being between 0900 and 1700 on a Business Day

⁴ Condition 4.4(B).

- 5.10 Condition 5.8 of the CfD Agreement for Phased Projects sets out that Condition 4 of the Conditions shall be deleted and replaced by the following provisions:
- *Condition 4.1: “No later than the Milestone Delivery Date, the Generator shall procure that the Generator[,]/[and] Project Company 2 [and Project Company 3] shall jointly give a notice to the CfD Counterparty (the “Milestone Requirement Notice”) that they consider that a Milestone Requirement has been complied with and fulfilled”.*
 - *Condition 4.3: “At the option of the Generator, a Milestone Requirement Notice pursuant to Condition 4.1 may be given by a Parent Entity on behalf of each of the Generator[,]/[and] Project Company 2 [and Project Company 3], in which case the Directors’ Certificate under Condition 4.2 shall be given on behalf of that Parent Entity”.*
- 5.11 A Generator that has a CfD for a Phased Project can therefore opt to provide the Milestone Requirement Notice from either:
- the Generator and the other project companies (i.e. Project Company 2 and/or Project Company 3) jointly; or
 - the Parent Entity, being the company which is the parent company of the Generator and each of the other project companies (i.e. Project Company 2 and/or Project Company 3, as applicable).
- 5.12 If the Milestone Requirement Notice is submitted by the Parent Entity, the Directors’ Certificates should also be provided by the Parent Entity. You will need to evidence that the Parent Entity is in fact the parent company of the Generator and other project companies.
- 5.13 Please note that Condition 4.3 which allows for the Parent Entity submission is set out only in the CfD which relates to the first phase of the Phased Project. The CfDs for the subsequent phases do not contain the provisions for the MR as it will have been dealt for all phases of the Phased Project in the CfD for the first phase.
- 5.14 There is a pro forma Milestone Requirement Notice at Annex 4 of the CfD Agreement which should be used for Phased Projects.

6. LCCC's approach to managing, assessing and monitoring a Generator's progress toward the Milestone Requirement

- 6.1 LCCC aims to ensure consistency in the way it assesses the progress of Generators towards achieving the MR. LCCC undertakes due diligence of the MR submissions of all Generators to assess whether the MR has been achieved.
- 6.2 LCCC will, over the period prior to the MDD, continually assess the risk of each Generator not achieving the MR by the MDD. The level of risk may change over time prior to the MDD.
- 6.3 LCCC has developed a Red, Amber, Green ("RAG") risk assessment to support its management of Projects endeavouring to fulfil the MR. Each Project is given a RAG status, the RAG status being derived from LCCC's assessment of the Generator's progress towards the MR and the likelihood of the MR being successfully achieved by the MDD. The RAG classification alerts LCCC to the fact that there are, or may be, issues with Projects and that the Project is an 'at risk' Project, with the resulting contractual consequences which arise if the Project is not brought back on track by the Generator. In assessing and making its decision as to which RAG status applies, LCCC approaches each case objectively and considers the individual facts of the situation.
- 6.4 Generators will be informed regularly of their Project's RAG status and will be given a brief explanation of the reasons for the classification. This information will be provided during regular meetings/calls between LCCC and the Generator (with any updates on status also being given during these meetings/calls). The Generator will be sent an email or letter setting out the status where a Project is assessed as being Amber or Red, together with a brief explanation of our reasons for the status. A further email or letter will be sent if the status changes. The communication of the RAG status to the Generator aims to assist with the establishment of a 'no surprises' environment and demonstrates that LCCC has brought its concerns to the Generator's attention.
- 6.5 Please note that LCCC's assessment and determination of Project RAG status is largely dependent on information provided by the Generator to LCCC.

Incomplete, partial, inaccurate, or overly optimistic information will contribute toward a higher classification of risk.

- 6.6 Irrespective of any RAG status from LCCC, the Generator should ensure that their Project is on schedule towards fulfilling the MR and that they have appropriate contingency plans to address issues that might arise. Generators must be alert to potential issues and risks with their Projects and should not rely on or use RAG status from LCCC as a sole indicator of risk, or lack thereof if the RAG status is Green. LCCC's RAG status is not a substitute for the Generator's own early warning processes and risk management.
- 6.7 If a Generator considers that LCCC has classified its Project with a RAG status where a different status would be more appropriate (for instance, Green when the Generator is aware that Amber or Red would be a more appropriate classification), the Generator should bring this to LCCC's attention as soon as possible. This will allow for a productive discussion about the measures the Generator is taking to ensure that the situation is addressed and, where relevant, allow for an adjustment of the classification.
- 6.8 LCCC reserves the right to change a RAG status at short notice or without prior notice to the Generator.
- 6.9 Generators shall not use the LCCC's RAG status to further its discussions with investors or other third parties.
- 6.10 The RAG assessment is implemented and monitored by LCCC's commercial team, who already act as first point of contact for Generators. Commercially sensitive material will be treated in confidence. Please do not hesitate to contact your contract manager if anything is unclear or you want to discuss these matters further.
- 6.11 The table below demonstrates LCCC's risk-based approach, as described above, in the form of a RAG table. LCCC reserves the right to change its assessment of the percentage probability relating to each classification from time to time, should it consider this to be appropriate. While being illustrative of the likelihood of a Generator successfully achieving the MR, the RAG status does not impact a Generator's ability to ultimately satisfy the MR.



Status	Reason for Status
Green	Probability of 60% or more of achieving MR by MDD.
Amber	Probability of between 20% and 60% of achieving MR by MDD. Amber status will also be awarded if the Generator has failed within six (6) months prior to the MDD to provide a credible programme demonstrating that it can achieve its MR by the MDD
Red	Probability of less than 20% of achieving MR by MDD. Under normal circumstances, at least in the period prior to the later stages of the MDD period, a Generator would be unlikely to be allocated a Red status if they have not already been Amber for one (1) month



Annex A: Milestone Requirement: “10% spend” overview

Ref	Requirement	Supporting information	Comments	Provided
[insert Evidence Reference]	Condition 4.1: Milestone Requirement Notice	Milestone Requirement Notice	[any comments, e.g. things to note or exceptions]	[insert Evidence Reference and file name] provided in [letter/email] dated: [insert date]
[insert Evidence Reference]	Condition 4.2: Directors' Certificate accompanying the Milestone requirement notice	Directors' Certificate, in file named [insert file name]	[any comments, e.g. things to note or exceptions]	[insert Evidence Reference and file name] provided in [letter/email] dated: [insert date]
[insert Evidence Reference]	Condition 4.1(A): Such invoices, payment receipts and other Supporting Information to evidence that the Generator and its direct shareholders have in aggregate spent 10% of more of the Total Project Pre-Commissioning Costs on the Project	['10% Spend Evidence Spreadsheet']	[see template 10% Spend Evidence Spreadsheet attached at Annex B of the Milestone Requirement guidance]	[insert Evidence Reference and file name] provided in [letter/email] dated: [insert date]



Annex B: “10% Spend” evidence spreadsheet⁵

[Project Name] Version:			Dates:					LCCC						
	Cost Category	Nature of payment	Payment description	Date	Supplier	Net Amount in EGBP	Generator comments	% of total pre-commissioning costs	supporting information provided	timing	comments	status	first review	peer review
1									i.e. list relevant invoices and supporting bank statements	Complete/TBC by [date]		Complete/ Not Yet Complete		[Contract Manager]
2														
3														
4														
5														
		Total Value of evidenced spent	N/A		N/A									

Total Value of evidenced spent	N/A	N/A	
--------------------------------	-----	-----	--

⁵ This template is an example of some cost categories that may be relevant for offshore wind, but it should be tailored to suit each Generation Technology and specific Project. We recommend increasing the page size to A3. LCCC can provide word versions of these templates.



Annex C: Milestone Requirement: Project Commitments overview

Part A: General Project Commitments – Template A

Part A- General Project Commitments

Template A

A (i). Copy of Resolution of Generator’s Board of Directors (or equivalent) to:

- undertake the project
- approve the total financial commitments required to commission the Project (the Total Project Spend)
- approve a timetable for undertaking the project which demonstrates the Facility shall be commissioned no later than the Longstop Date

Document	Date	File Name and Location
<i>Board Resolution covering all 3 points listed above</i>		
<i>Minutes of Board Meeting</i>		
<i>Project Programme</i>		

B. Director’s Certificate certifying information in Annex D of MDD Guidance

Document	Date	File Name and Location
<i>Directors Certificate following Annex D template</i>		

C (i) Supporting Information Evidencing Financial Requirements

Document	Date	File Name and Location
<p><i>Could be evidenced by:</i></p> <ul style="list-style-type: none"> - <i>Latest audited financial report and accounts demonstrating sufficient scale, profitability, net assets, liquidity etc. to demonstrate financial robustness historically</i> - <i>Any external evidence of credit standing (external ratings, rating agency reports, broker’s reports etc.) if available</i> - <i>Setting out the track record of experience in delivering projects of a similar size and complexity, including dates, financial commitment involved and a brief project description specifying the particular roles of the parties also involved with the current project</i> - <i>Setting out the proposed Sources and Uses for the planned project, clearly identifying third parties (e.g. lenders, other shareholders), their expected commitment and the stage of commitment reached (e.g. “not yet approached”, “indicative interest only” through to “fully credit approved”) and key suppliers (including evidence of their expected cost to deliver, maturity of discussions etc.)</i> <p><i>More specific documentation that could support evidence of financial resources might include copies of:</i></p> <ul style="list-style-type: none"> - <i>A financial model developed specifically for the project</i> 		



<ul style="list-style-type: none"> - <i>Commitment letters from prospective lenders/equity partners or evidence from existing financiers that there is sufficient headroom in existing credit lines to support the project cost to completion, including letter(s) as evidence of commitment to fund the construction contracts and Material Equipment</i> - <i>Any (draft) Shareholder Agreement demonstrating the relative commitment of shareholders</i> - <i>Any proposed parent company security support including draft guarantees if applicable</i> - <i>Any draft finance agreements, debt instruments, hedging commitments, intercreditor agreements etc. that evidence appropriate maturity of discussions</i> - <i>Evidence of any project expenditure to date including a breakdown of what this expenditure includes (if applicable)</i> - <i>Any (draft) Information Memorandum used (or to be used) to approach sources of third-party finance (debt or equity)</i> 		
--	--	--

C (ii) Supporting Information Evidencing Facility Requirements

Document	Date	File Name and Location
<p><i>For Offshore Wind farm:</i></p> <ul style="list-style-type: none"> • <i>Crown Estate Lease;</i> • <i>Generation Licence,</i> • <i>Development Consent Order;</i> • <i>Marine Licence;</i> • <i>Grid Connection Agreement & Sched 1 of CUSC Framework</i> • <i>Environmental Permits</i> • <i>Property Rights & Consents Matrix/Timetable.</i> 		
<p><i>For ACT Plant:</i></p> <ul style="list-style-type: none"> • <i>Planning Permission or Development Consent Order;</i> • <i>Generation Licence;</i> • <i>Grid Connection Agreement;</i> • <i>Waste Management Licence; Controlled Activities Authorisation; PPC Permit (if required);</i> • <i>Environmental Permits (construction and Operational)</i> • <i>Property Rights & Consents Matrix/Timetable.</i> 		
<p><i>For Remote Island Wind:</i></p> <ul style="list-style-type: none"> • <i>Planning Permission or S36 Consent;</i> • <i>Generation Licence;</i> • <i>Grid Connection Agreement;</i> • <i>Environmental Impact Assessment;</i> • <i>Waste Management Licence;</i> • <i>Controlled Activities Authorisation;</i> • <i>Approval of new Transmission Link;</i> 		





Part B: Technology Specific Project Commitments – Material Equipment Templates

Template B: Material Equipment proposed for the MDD Project Commitment Route *

Material Equipment	Name of Agreement relating to	Signed Contract Window
<i>e.g. Wind Turbine Monopile Foundations</i>	<i>Agreement for design, fabrication and supply of offshore foundations.</i>	<i>Jan-Mar 2021</i>

* If Option C is taken (Signed Framework Agreement for supply of ME and binding purchase order for ME), the binding purchase order must be submitted as well as the framework agreement.

A Project Schedule should be submitted with these templates.

Template C: Equipment not procured by MDD and not included in Material Equipment definition

Equipment	Signed Contract Window	Comments
<i>e.g. Harmonic filters</i>	<i>May-Jul 2021</i>	<i>Design dependant on analysis of preceding packages</i>

Annex D: Directors' Certificate: General Project Commitments

Directors' Certificate
 [Company Name]
 Unique Reference Number: []
 (the "Company")

CONTRACT FOR DIFFERENCE – DIRECTORS' CERTIFICATE

To: Low Carbon Contracts Company Ltd. (the "CfD Counterparty")

I, [], being a Director of the Company, refer to the contract for difference entered into by the Company and the CfD Counterparty on [] (the "Agreement"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries,

- (i) the Generator has, or will have, sufficient financial resources to meet the Total Project Spend; and
- (ii) any contract entered into and provided as Supporting Information pursuant to the Milestone Requirements Notice, in the reasonable opinion of the Generator by reference to the facts and circumstances then existing, is:
 - a. legal, valid and binding, and
 - b. entered into with one or more counterparties who are each able to perform their obligations under such contract;
- (iii) the Generator has a leasehold or freehold interest in the site where the Facility is based (the "Facility Site") or a contract to obtain the same;
- (iv) the Facility Site is not subject to any covenants, restrictions, agreements, planning obligations, estate contracts, options, rights of way or other encumbrances which materially inhibit the use of the Facility Site for the purposes of the Project;
- (v) there are available to the Facility Site such rights, easements and services as are necessary to undertake the Project and operate the Facility;
- (vi) the Generator has identified all necessary consents and planning permissions to undertake the Project (the "Necessary Consents"); and
- (vii) there is a credible strategy in place to obtain the Necessary Consents and the Necessary Consents are not subject to any condition for which there does not exist a plan approved by the Generator's board of directors to satisfy that condition, such that the Generator is not aware of any necessary consents and planning permissions which cannot be obtained or complied with.

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

.....
 Name: []
 Position: Director
 Dated: []



.....
Name: []
Position: Director
Dated: []

OR:

.....
Name: []
Position: Director
Dated: []

in the presence of:

.....
Witness's name: []
Occupation: []
Address: []
Dated: []



Annex E: Directors' Certificate – Technology Specific Project Commitment

[Note: This template has been drafted in relation to the Technology Specific Project Commitment for offshore wind. Generators should tailor this template depending on which one of the three Technology Specific Project Commitments it has elected to satisfy by deleting the text highlighted yellow that is irrelevant to their choice of Technology Specific Project Commitment.]

Milestone Requirement

Contract for Difference Annex 5 Part B: Technology Specific Project Commitment

Directors' Certificate: Support for Technology Specific Project Commitment

To: Low Carbon Contracts Company Ltd (the "CfD Counterparty")

10 South Colonnade,
London
E14 4PU

Date []

DIRECTORS' CERTIFICATE

IN RELATION TO THE [EPC CONTRACT FOR THE SUPPLY AND INSTALLATION [or] CONTRACT(S)
FOR THE SUPPLY [or] FRAMEWORK AGREEMENT AND PURCHASE ORDERS FOR THE SUPPLY] OF
MATERIAL EQUIPMENT

Dear Sirs,

1. I refer to the [engineering, procurement and construction contract [or] supply contract(s) [or] framework agreement(s) and binding purchase order(s)] entered into between the Generator and relevant [EPC contractor (the "EPC Contractor") [or] supplier (the "Supplier")] which are listed at Appendix 1 to this certificate, copies of same [are attached at Appendix 1/ have been provided to the CfD Counterparty], and a description of each of which is set out at Appendix 2 to this certificate, which relate to the Project as defined in the Contract for Difference for [name of Project] between the Generator and the CfD Counterparty dated [] (the "CFD"), (each a "Contract" and together the "Contracts").
2. Terms and expressions which are not otherwise defined within this certificate have the meaning given to them in the CfD.
3. I, [], being a Director of the Generator, hereby certify on behalf of the Generator that, having made all due and careful enquiries, as at the date of this certificate:
 - a) the following equipment comprises all of the Material Equipment as defined in the CFD:
 - i. [],
 - ii. [], and
 - iii. [etc.].
 - b) all of the equipment listed at paragraph 3(a) above, being the Material Equipment, is entirely dedicated to the Project and will not be used for any other project;
 - c) the Contracts relate to the supply [and installation] for the purposes of the Project of all of the equipment listed at paragraph 3(a) above and therefore represent [an engineering procurement and construction contract providing for the supply and installation of the Material Equipment [or] agreements for the supply of all of the Material Equipment [or] a framework agreement for the supply of the Material Equipment and a binding purchase order for the Material Equipment];

- d) the Contracts constitute a significant financial commitment to the Project which is real, genuine and made in good faith and each of the Contracts are real, genuine and made in good faith and are entered into on an arm's length basis by the Generator with the intent of obtaining the Material Equipment for the Project [and having it installed];
 - e) no side letter or other agreement has been entered into between the Generator and [EPC Contractor [or] any of the Suppliers], or is contemplated by the Generator and [EPC Contractor [or] any of the Suppliers], in relation to the subject matter of any of the Contracts which would undermine or affect the accuracy of the statements made in paragraph 3(d), misrepresent the position as set out in paragraph 3(d) or render any of the statements made in paragraph 3(d) misleading; and
 - f) so far as I am aware, no material circumstances exist in relation to any of the Contracts which should be brought to the CfD Counterparty's attention for the purposes of the CfD Counterparty's evaluation of the Contracts to verify that the Generator has entered into [an engineering procurement and construction contract providing for the supply and installation of the Material Equipment [or] agreements for the supply of all of the Material Equipment [or] a framework agreement for the supply of the Material Equipment and a binding purchase order for the Material Equipment] for the Project in accordance with the Generator's Technology Specific Project Commitments set out under Part B of Annex 5 of the CFD.
4. This certificate is governed and construed in accordance with English law.

.....
Name: []

Position: Director of Generator

Dated: []

.....
Name: []

Position: Director of Generator

Dated: []

[OR:]

.....
Name: []

Position: Director of Generator

Dated: []

In the presence of:

.....

Witness's name: []

Occupation: []

Address: []

Dated: []



Appendix 1

The Contract(s)

1. [Name of Contract] (copy provided to CfD Counterparty by email dated [d]).
2. [Repeat for each contract].

Appendix 2

Description of the Contracts

[Provide a brief description of each of the Contracts – including the following information for each:

- Name and date of the agreement and parties to it including addresses and company registration details of each party;
- Type of contract and subject matter of Contract, e.g. for engineering supply assembly and commissioning of [x number of wind turbines], each being [x number of MWs] for the [name of project];
- A brief description of the Contract, to include any relevant dates, e.g.

[This agreement covers storage, transportation and installation of monopoles, transition pieces and offshore substation jackets and topside at [the Project]. The monopoles are to be installed from [metres] in length and [mt] in weight. The installation work is scheduled to commence in [month/year] and to be completed in [month/year]

Annex F: Milestone Requirement Notice

Milestone Requirement Notice

To: [•] (the "CfD Counterparty")
[Address]

From: [•] (the "Generator")
[Unique reference number: [•]]

Dated: [•]

CONTRACT FOR DIFFERENCE – MILESTONE REQUIREMENT NOTICE

Dear Sirs,

1. We refer to the agreement dated [•] between you as the CfD Counterparty and us as the Generator (the "Agreement"). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this notice.
2. We further refer you to Condition 4.1.
3. This is a Milestone Requirement Notice.
4. [We enclose invoices, payment receipts and other Supporting Information with respect to the Project which we consider to be relevant to evidence expenditure by us and our direct shareholders of ten per cent. (10%) or more of the Total Project Pre-Commissioning Costs, being £ [•].][We enclose information as is listed as the Project Commitments and the following Supporting Information which we consider to be relevant to evidence compliance or fulfilment of the Project Commitments: [•].] An index of the information enclosed with this notice, and the means by which each item has been provided is set out in the table at Annex 1 hereto.
5. We enclose a Directors' Certificate certifying that the information contained in, and enclosed with, this notice is true, complete and accurate in all material respects and is not misleading.

Yours faithfully,

.....
For and on behalf of the Generator

Annex 1

Index of information and Supporting Information enclosed with this notice

Document name	Description of document	File Location
<i>e.g. Generation Licence</i>	<i>Generation Licence issued by Ofgem to satisfy Part A (c) (ii) of Project Commitments</i>	<i>Folder: Consents and Licences, subfolder Generation Licence</i>



Annex G: Directors' Certificate: Milestone Requirement Notice

Directors' Certificate

[Company Name]
Unique Reference Number: []
(the "Company")

CONTRACT FOR DIFFERENCE – DIRECTORS' CERTIFICATE

To: Low Carbon Contracts Company Ltd. (the "CfD Counterparty")

I, [], being a Director of the Company, refer to the contract for difference entered into by the Company and the CfD Counterparty on [] (the "Agreement"). Terms defined in or incorporated into the Agreement have the same meanings when used in this Certificate.

I hereby certify that, having made all due and careful enquiries, the information contained in, and enclosed with, the Milestone Requirement Notice dated [] is true, complete and accurate in all material respects and is not misleading, in each case by reference to the facts and circumstances then existing.

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

.....
Name: []
Position: Director
Dated: []

.....
Name: []
Position: Director
Dated: []

OR:

.....
Name: []
Position: Director
Dated: []

in the presence of:

.....
Witness's name: []
Occupation: []
Address: []
Date

© Low Carbon Contracts Company Ltd
10 South Colonnade
London E14 4PU
W: www.lowcarboncontracts.uk
E: info@lowcarboncontracts.uk

Company registration number: **08818711**

Author:
Low Carbon
Contracts Company