



**LOW CARBON**  
CONTRACTS COMPANY

## MINOR AND NECESSARY GUIDANCE

**Minor and Necessary Application to modify standard terms:  
Guidance on the form of an application and the information to be included in an application**

**Version 2 (2017 Allocation Round)**

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## Version Control Table

Version number	Date issued	Brief outline of amendments
1	29 August 2014	n/a
	24 September 2014	Updated dates deadlines
	26 September 2014	Updated dates for deadlines
2	13 March 2017	Updated for Second Allocation Round

## 1 Introduction

- 1.1 This guidance is published by Low Carbon Contracts Company Ltd (“LCCC”) in its capacity as the designated CFD Counterparty pursuant to the Contract for Difference (Counterparty Designation) Order 2014.
- 1.2 The Contract for Difference (Standard Terms) Regulations 2014 (the “Regulations”) allow a generator who is or who is considering making an application for a CFD to also apply to LCCC for a “minor and necessary modification” to the standard terms of the CFD Agreement and the FIT Contract for Difference Standard Terms and Conditions (the “Standard Terms”).
- 1.3 This document provides guidance on how an applicant may apply to LCCC for a minor and necessary modification to the Standard Terms once a notice establishing an allocation round has been published by the Secretary of State. It also sets out the application form and the information to be included in the application.
- 1.4 This guidance should not be viewed as in any way restricting the nature, type and/or amount of evidence, information and documentation which LCCC may request or consider in evaluating an application and does not and is not intended to supersede or replace the provisions of the Regulations. This guidance does not constitute legal advice and should not be relied upon as such. Applicants should refer to the Regulations in order to ensure that the process is fully understood and should consult their professional advisors where they require advice, whether legal or otherwise. LCCC reserves the right to amend this guidance from time to time.

## 2 Timeframe

- 2.1 Prospective applicants for a CFD in the next allocation round should review the Standard Terms applicable to such allocation round at the earliest opportunity. This will enable them to give early consideration to whether they wish to submit an application for any minor and necessary changes to the Standard Terms. The Standard Terms are available on the BEIS [website](#) and on the LCCC [website](#).
- 2.2 The Regulations require applications for minor and necessary modifications to be made promptly from the commencement date of the allocation round (13 March 2017). The closing date for CFD applications is specified in the relevant allocation round notice published by BEIS, being 21 April 2017. This means that the deadline for LCCC receiving applications for minor and necessary modifications for the 2017 allocation round is at or before 5 p.m. on 22 March 2017 (the “M&N Cut-off Date”).
- 2.3 Please note that a working day in this context means 9am to 5pm on Monday to Friday but excluding:
  - (a) bank holidays (as defined in the Banking and Financial Dealings Act 1971), including those bank holidays in part only of the UK;
  - (b) Good Friday; and
  - (c) when it falls on a day that would otherwise be a working day, Christmas Day.
- 2.4 An application, notice or request given on a non-working day will be treated as given on the next following working day.
- 2.5 Applicants should note that if modification applications are submitted on or shortly before the M&N Cut-off Date and contain insufficient information, the applicant may not have an opportunity to provide additional information before the M&N Cut-off Date and will not be able

to re-apply after the M&N Cut-off Date. LCCC therefore encourages early applications in order to provide LCCC with the opportunity to, if it considers it necessary or appropriate, request further information in relation to the modification request. If LCCC wishes to request further information, it will endeavour to do so as soon as reasonably practicable after receipt of a modification application.

### 3 Description of Process

- 3.1 The Regulations require all applications to set out a description of the proposed modification to the Standard Terms and an explanation as to how the effect of the modification is minor **and** why it is necessary – see Regulation 5(3).
- 3.2 The Regulations require LCCC to publish guidance on the form of the application and the information to be included in the application. They also state that LCCC may request such further information as it reasonably considers necessary to determine an application. The applicant must, to the extent that it holds the information, comply with such a request as soon as reasonably practicable.
- 3.3 LCCC has published a Minor and Necessary Request Form on its [website](#), a copy of which is set out in Appendix A to this document. All applicants must register on LCCC's website in order to download the Minor & Necessary Modification Request Form.
- 3.4 This Form requires as a minimum that the following information is provided in order to enable each application to be properly assessed. Please note that publication of this Form shall not limit LCCC's rights to request further information where it considers necessary:
  - a) Project and applicant contact details;
  - b) Clear description of the modification(s) being requested, including identifying to exactly which particular clauses of the CfD Agreement and/or Conditions of the FIT Contract for Difference Standard Terms and Conditions it applies;
  - c) The proposed new drafting, or drafting amendments, showing the changes to each clause and/or Condition of the Standard Terms which are proposed to give effect to the modification request. The proposed changes must be shown in tracked changes against the text of the relevant clauses or Conditions of the Standard Terms. Please note, however, that should LCCC be minded to accept a minor and necessary modification to the Standard Terms, LCCC shall treat such drafting as an indicative guide only to the amendment. The tracked drafting is provided to aid LCCC's understanding of the nature of the proposed modification;
  - d) Why the applicant considers that the modification requested is minor (taking into account those matters set out in Regulation 7) and any additional comments the applicant wishes to provide as to why the modification request is appropriate (including any supporting information which the applicant considers to be relevant); **and**
  - e) Why the applicant considers that the modification requested is necessary (taking into account those matters set out in Regulation 8) and any additional comments the applicant wishes to provide as to why the modification request is appropriate (including any supporting information which the applicant considers to be relevant).
- 3.5 Applicants should submit one form for each unconnected modification to the Standard Terms that they wish to request. Therefore, applicants who wish to request a number of unconnected

modifications to the Standard Terms should submit separate forms for each such requested modification.

- 3.6 For any issues or queries relating to the evaluation of applications please use: [contractmanagement@lowcarboncontracts.uk](mailto:contractmanagement@lowcarboncontracts.uk)

#### 4 What constitutes a minor and necessary change?

- 4.1 The concept of minor and necessary modifications is explained in Regulations 7 and 8 of the Regulations. It should be noted that the effect of the modification should be **both** minor **and** necessary.
- 4.2 In particular, applicants should note that Regulation 7 states that a proposed modification will not be “minor” if it decreases the generator’s liabilities under, or increases the generator’s commercial benefit of, a CFD.
- 4.3 LCCC is also required pursuant to Regulation 7(3) of the Regulations to determine that a proposed modification is not minor where it would be likely to cause LCCC (as CFD Counterparty) to incur costs above an amount specified by the Secretary of State pursuant to Regulation 7(6) of the Regulations. The amount specified by the Secretary of State in respect of the 2017 allocation round is £12,000. This amount was specified by the Secretary of State in a notice dated 13 March 2017 which is published on LCCC’s [website](#).
- 4.4 There are a number of other matters which will mean that a proposed modification is not minor. Please review Regulation 7 below for the full set of requirements.

#### **Regulation 7 - Minor modification**

*(1) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to decrease the liabilities of a generator under a CFD or increase the commercial benefit for a generator of a CFD.*

*(2) The CFD counterparty must determine that the effect of a modification is not minor where it would change provision for any of the following in the standard terms—*

- (a) the period during which a generator may start to receive payments under a CFD;*
- (b) the period during which the parties to a CFD must make payments under a CFD;*
- (c) the date by which a generator must—*
  - (i) notify the CFD counterparty that it has incurred a sum specified in the CFD in the development of the generating facility; or*
  - (ii) provide the CFD counterparty with certain documentation specified in the CFD concerning the development of the generating facility;*
- (d) any methodology which directly or indirectly affects the calculation of sums payable under a CFD;*
- (e) any time limit for invoicing or for making a payment under a CFD;*
- (f) which circumstances allow the CFD counterparty to use sums paid by a generator under a CFD as collateral; or*
- (g) any requirement to provide information to the CFD counterparty where the information is necessary for the performance of any of the CFD counterparty’s obligations to make payments to a generator under a CFD.*

*(3) The CFD counterparty must determine that the effect of a modification is not minor where, in the opinion of the CFD counterparty, it would be likely to cause the CFD counterparty to incur costs above an amount specified by the Secretary of State under paragraph (6) as a result of the*

*CFD counterparty—*

*(a) carrying out its obligations under a CFD; or*

*(b) making arrangements for the performance of new obligations required by a modification.*

*(4) Subject to paragraph (5), the CFD counterparty must determine that the effect of a modification is not minor where it would—*

*(a) affect any existing contractual arrangements between the CFD counterparty and third parties; or*

*(b) require the CFD counterparty to enter into any new contractual arrangements with third parties which are not provided for in a CFD.*

*(5) The CFD counterparty may determine that a modification described in paragraph (4) is minor where, in the opinion of the CFD counterparty, the modification would be likely to provide the CFD counterparty with a commercial benefit.*

*(6) At the same time as the Secretary of State gives an allocation round notice, the Secretary of State must give the CFD counterparty a notice setting out the specified amount for the purposes of paragraph (3).*

*(7) The CFD counterparty must publish the notice on its website as soon as reasonably practicable after it is received.*

4.5 The concept of “necessary” is set out in Regulation 8 of the Regulations. LCCC may determine that a modification application is necessary where in its opinion the applicant could not accept an offer of a CFD without such modification to the CFD. Applicants should note that LCCC cannot determine that a modification application is necessary simply because of the reason given for the modification is the circumstances of the ownership or control of the applicant.

4.6 As stated above, it is not enough that an amendment might be considered necessary, it must also be minor.

## **5 Evaluation, Response and Notices**

5.1 Any request from LCCC for further information will be sent as soon as practicable via e-mail. The Regulations permit communications to be by email.

5.2 The Regulations require LCCC to give each applicant for a minor and necessary modification a notice stating whether it accepts or refuses the relevant application at least 5 working days before the allocation round closing date. Where LCCC accepts an application, the notice must set out the accepted modification of the Standard Terms. Where LCCC refuses an application, LCCC will set out in the notice the reasons for the refusal. For the 2017 allocation round, this means that the deadline for the LCCC to respond to minor and necessary modification requests is 12 April 2017.

5.3 Where a modification is accepted by LCCC, such modification will be included in the relevant CFD awarded to the applicant should the applicant be successful in the allocation round process. The modification will not be made in the CFDs awarded to other successful applicants in the CFD allocation round.

## **6 CFD Register**

6.1 In the event that a proposed minor and necessary modification is accepted by LCCC, and the relevant applicant is subsequently awarded a CFD at the conclusion of the allocation round process, each accepted modification relating to such applicant’s CFD will be published by LCCC

in the CFD Register. The [CFD Register](#) is published on LCCC's website. Such publication is required by Regulation 12 of the Regulations.

## Schedule 1

# Minor and Necessary Modification Request Form

Signed requests for Minor & Necessary Modifications should be sent as a scanned **pdf attachment** to [contractmanagement@lowcarboncontracts.uk](mailto:contractmanagement@lowcarboncontracts.uk).

In this form, references to the “Regulations” are to The Contracts for Differences (Standard Terms) Regulations 2014.

Applicants should use one request form per minor and necessary modification request.

### 1. Applicant Details

Applicant's full company name	
Applicant's registered company number	
Applicant's address	
Name of Project	
Brief description of Project, including generation technology and expected capacity of facility (by MW).	
Location of Project	
Contact name of individual making request on behalf of applicant  (i.e. Point of contact for all communications with LCCC (as the CfD Counterparty) in relation to this minor and necessary modification request	
Email address	
Alternative email address	
Telephone number	
Alternative phone number	
Postal address	

**2. Dates**

Date of application for minor and necessary modification:	
Prior application for modification made:	Yes/No
If yes, date of prior application and name of applicant:	

**3. Description of requested minor and necessary modification(s) (see paragraph 3 of the LCCC guidance). Description to include the reason why the modification is requested. Reminder – in order to be eligible for consideration, the requested modification must be both minor and necessary.**

**4. Proposed modification(s) to legal wording of Clause(s) in the CfD Agreement and/or Conditions (in tracked changes).**

Please state Clause/Condition numbers as relevant.

**5. Is the change permitted by the Regulations?**

5.1: Why is the proposed modification considered to be 'minor'?

5.2: Why is the proposed modification considered to be 'necessary'?

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**6. Additional information**

We encourage you to include any additional information to support the points you wish to make.

<b>Date of Receipt</b> <b>To be completed by LCCC</b>	
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