



LOW CARBON
CONTRACTS COMPANY

“PLEASE NOTE that this guidance was drafted specifically for the 2014 allocation round and is subject to change. It is published here for information purposes only and will be updated as appropriate when details of the next allocation round are announced”.

Application to modify standard terms: guidance on the form of an application and the information to be included in an application

Version 1 (2014 Allocation Round)

DOCUMENT NOT CURRENT, WAS FOR 2014 ALLOCATION ROUND

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DOCUMENT NOT CURRENT; WAS FOR 2014 ALLOCATION

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Basis of this document

This guidance is published by the Low Carbon Contracts Company Ltd (the 'Low Carbon Contracts') in its capacity as the designated CFD Counterparty pursuant to the Contract for Difference (Counterparty Designation) Order 2014.

Part 3 (*Modification of standard terms*), regulation 5(1) of the Contract for Difference (Standard Terms) Regulations 2014 (the 'Regulations') provides that an applicant (being a person to whom section 15(1) of the Energy Act 2013 applies) "may apply to the CFD counterparty for a modification to the standard terms after a notice establishing an allocation round (an "allocation round notice") has been published by the Secretary of State in accordance with the Contract for Difference (Allocation) Regulations 2014". Such a modification request may relate to the CFD Agreement which is to be signed by the generator or the FIT Contract for Difference Standard Terms and Conditions.

Part 3 (*Modification of standard terms*), regulation 5(4) states that "the CFD Counterparty must publish guidance on the form of an application and the information to be included in an application." This document is published by the Low Carbon Contracts to fulfil this requirement.

Status of this document

This document is the guidance that applies for the period following the "allocation round notice" issued on 29 August 2014 in relation to the 2014 allocation round and shall remain in place as the guidance in respect of modification requests until the publication by the CFD Counterparty of any replacement or amended guidance.

Any feedback on this guidance or any other issues regarding the Minor and Necessary process and applications should be sent to feedback@lowcarboncontracts.uk.

Timeframe and Applicant Expectations

Prospective applicants are encouraged to review the CfD Agreement and FIT Contract for Difference Standard Terms and Conditions ("Standard Terms") at the earliest opportunity. These are available on the DECC web site at <https://www.gov.uk/government/publications/electricity-market-reform-contracts-for-difference> and on the Low Carbon Contracts Company site here.

Minor and necessary modifications (as such terms are defined in the Regulations) may now be requested by applicants by following the process outlined at paragraph 4 below and Low Carbon Contracts is now processing responses.

Early applications are encouraged as Low Carbon Contracts may request further information to support the change request. Low Carbon Contracts will endeavour to request additional information as soon as reasonably possible after receipt of a change request. Low Carbon Contracts will also try

to provide applicants with feedback on their change requests which will enable a re-application, where permitted, prior to the Cut-off Date (see below).

The Regulations require that requests by applicants for minor and necessary changes for any allocation round are submitted no later than the date falling 20 working days before the relevant allocation round's closing date for applications.

In the context of the 2014 allocation round this means that the deadline for requests for minor and necessary changes is 2 October 2014 (the "Cut-off Date"), as the closing date for 2014 allocation round applications is 30 October 2014. The Regulations require that the Low Carbon Contracts must accept or reject, with reasoning, all such requests at least 5 working days before the allocation round closing date for applications. In the context of the 2014 allocation round, this means that the deadline for the Low Carbon Contracts to respond to validly made minor and necessary change requests is 23 October 2014.

Applicants should be aware that where change requests submitted on or shortly before the Cut-off Date are rejected due to insufficient information being provided, the Applicant will not have an opportunity to provide additional information or to re-apply after the Cut-off Date.

Description of Process

The sequence of activities will be as below.

Initiation of Process

Applicants are encouraged to review the Standard Terms as early as possible in order to evaluate whether to submit an application in the 2014 allocation round and whether they require any minor and necessary changes to the Standard Terms.

Application

In order to make an application for minor and necessary changes an applicant must first register on Low Carbon Contracts website and download the "Minor & Necessary Change Request Form" attached to this document as Annex 1.

To complete the form the applicant will need to provide the following:

- a) Project and applicant contact details
- b) Short description of the change(s) being requested, including if a re-application
- c) The new drafting, or drafting amendments, to the Standard Terms which are proposed to give effect to the change request
- d) Why the change requested is minor and necessary (as such terms are set out in the Regulations) and any additional comments the applicant wishes to provide as to why the change request is appropriate (including any supporting information which the applicant considers to be relevant). (See paragraph (g) below.)
- e) Where the change request relates to a project in respect of which the applicant expects a CfD application to be made in the 2014 allocation round, a statement

signed by a director of the applicant stating that, subject to obtaining the applicant's requested minor and necessary changes, by reference to the facts and circumstances then existing and having made all due and careful enquires, the director expects the relevant CfD application to qualify to take part in the allocation process (pursuant to the requirements set out in the Contracts for Difference (Allocation) Regulations 2014) by the date the relevant CfD application is submitted.

- f) The applicant must specify whether the change request relates to the CfD Agreement or the FIT Contract for Difference standard terms and conditions and, in both cases, specify the specific clauses/conditions to which the change request relates.
- g) The applicant should provide its rationale of the need for the change. (i.e. the issue which has driven the change request). The applicant should confirm that its proposed change does not, in its view, fall within any of the categories of change which are stated not to be minor in regulation 7 of the Regulations or not to be necessary in regulation 8 of the Regulations.

Applicants should submit one form for each substantive and unconnected change to the Standard Terms that they wish to request. Therefore, applicants who wish to request a number of changes to the Standard Terms that are each both substantive in nature and unconnected to one another should submit separate forms for each such requested change.

LCCC evaluating the application

The LCCC will evaluate applications according to the requirements in the regulations and will notify the applicant of its decision no later than 5 working days before the closing date of the application window.

For any issues or queries relating to the evaluation of applications please use the: feedback@lowcarboncontracts.uk email

What constitutes a minor and necessary change?

The Regulations provide direction regarding changes to the Standard Terms that will constitute minor and necessary changes. Applicants should provide reasons why the change they propose is both minor and necessary. An extract of the Regulations is set out below.

Minor:

The definition of "Minor" in the Regulations is shown below. One of the key requirements is that changes must not decrease the generator's liabilities under, or increase the generator's commercial benefit of, a CFD. However please consult the Regulations for the full set of requirements.

The CFD Counterparty is required pursuant to regulation 7(3) of the Regulations to determine that a change is not minor where it would be likely to cause the 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 2014 allocation is £12,000. For more information please visit www.lowcarboncontracts.uk

“Minor modification

7.—(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.”*

Necessary:

“Necessary” is set out in the Regulations as shown below.

If an applicant considers that a change is necessary but that change is likely to have a similar impact on other applicants who have applied or are likely to apply without requesting such a change then Low Carbon Contracts will take this into account in determining whether the change should in fact

be viewed as necessary.

Necessary modification

8.—(1) Subject to paragraph (2), the CFD counterparty may determine that a modification is necessary where, in its opinion, an applicant acting reasonably could not accept the offer of a CFD without the modification.

(2) Where an applicant acting reasonably could not accept the offer of a CFD by reason of the circumstances of the ownership or control of that applicant, a modification designed to deal with those circumstances must not be determined as a necessary modification by the CFD counterparty.

Evaluation and Response

Applicants should complete sections 1 to 5 (and if applicable 6 & 7) of the Minor & Necessary Change Request Form and submit via Low Carbon Contracts Company's web page or e mail it electronically to minor.necessary@lowcarboncontracts.uk. The signed declaration will need to be scanned and e mailed. Any request by Low Carbon Contracts for further information will be sent as soon as practicable to the applicant. The response from Low Carbon Contracts which could include a request for more information will be entered into section 8 of the Minor & Necessary Change Request Form. All refusals will include Low Carbon Contracts' reason(s) for refusing the request entered in section 9 of the Minor & Necessary Change Request Form.

Transparency

Each change made pursuant to a Minor & Necessary Change Request Form (a 'Minor & Necessary Change') agreed by Low Carbon Contracts will be published on Low Carbon Contracts website in the interest of transparency if a CfD is signed containing such Minor & Necessary Change.