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**ELECTRICITY DEMAND REDUCTION PILOT SCHEME**

**PHASE II**

**PARTICIPANT AGREEMENT**

**TERMS AND CONDITIONS**

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Department of Energy and Climate Change  
1 February 2016

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**PART 1**  
**INTERPRETATION AND DURATION**

**1. Defined Terms**

1.1. In these Conditions, capitalised terms have the meaning set out or referred to in Schedule 1 (defined terms).

**2. References to the parties**

2.1. In these Conditions:

- a) references to “Our”, “Us” and “We” are to the Secretary of State for Energy and Climate Change; and
- b) references to “You” and “Your” are to the participant in the Scheme as identified in the Award Letter (but if the participant is an Aggregator are to be construed in accordance with the participant’s responsibility for its Constituent Clients under clause 44).

**3. References to deadlines and periods of time**

3.1. Periods of days referred to in these Conditions:

- a) begin on the first Business Day following the relevant event or occurrence to which they relate; and
- b) expire at 5pm on the final day of that period, or if that day is not a Business Day at 5pm on the next Business Day.

3.2. Where You are required to provide Us with information or evidence, You must ensure that We receive it by the relevant deadline in these Conditions.

**4. Other interpretation**

4.1. In these Conditions:

- a) headings are for ease of reference only and do not affect interpretation;
- b) references to clauses or to Schedules (except in paragraph 3.1 g) of Schedule 3) are to clauses in, or Schedules to, these Conditions;
- c) references to the singular include the plural, and vice versa;
- d) “include”, “includes” and “including”, “in particular”, “such as” and similar words and expressions are to be construed as if they were followed by the words “without limitation”;
- e) references to any statutory provision are to that provision as amended or re-enacted (whether before or after the commencement of the Agreement); and

- f) where a Scheme Document is revised, references to that Scheme Document are to the Revised Version and to the equivalent section in that Revised Version.

**5. Duration of Agreement**

- 5.1. The Agreement commences on the date You sign the Award Letter.
- 5.2. Subject to the ongoing obligations under clause 51 (on-going obligations), to Our rights of earlier termination under clause 37.1 and to Your right to withdraw from the Scheme under clause 37.2, the Agreement terminates as follows:

<i>Relevant Winter Peak Period</i>	<i>Final day of term of Agreement</i>
2016-17 Winter Peak Period	29 March 2018
2017-18 Winter Peak Period	29 March 2019

**PART 2**  
**PURPOSE AND PRINCIPAL OBLIGATIONS**

**Section 1**  
**Purpose and general**

**6. Purpose and general**

- 6.1. The Scheme is a pilot scheme under section 43(1) of the Energy Act 2013. The purposes of the Scheme are:
- a) for You to achieve Capacity Savings by the installation and use of those measures (“EDR Measures”) which–
    - i. are specified in Your M&V Documents, and
    - ii. comply with all requirements of the Scheme,
 (the entirety of those measures constituting Your “Project”); and
  - b) for Us to obtain sufficient information from participants to review the operation and effectiveness of the Scheme under section 43(2) of the Energy Act 2013, and to report the results and conclusions of that review to Parliament under section 43(3) of that Act.
- 6.2. Capacity Savings are reductions in Your demand for grid electricity achieved in Your normal business operations during the Peak Applicable Hours in the Relevant Winter Peak Period as a result of the EDR Measures. Reductions in demand for grid electricity achieved by a reduction of Your business operations, by a reduction in the use of the relevant equipment or systems, by use outside of those hours or by use of energy other than grid electricity do not constitute Capacity Savings.

- 6.3. To comply with the Scheme, You must in particular:
- a) if relevant, comply with the preconditions in Section 2 of this Part 2; and
  - b) in all cases, comply with the principal obligations in Section 3 of this Part 2 being–
    - i. the Operational Verification Obligation,
    - ii. the Savings Obligation, and
    - iii. the Post Winter Peak Obligations.
- 6.4. You have been selected to participate in the Scheme on the understanding that Your Application and, in particular, Your M&V Documents, comply in all material aspects, in accuracy and completeness, with the requirements of the Scheme including all relevant Published Templates and that Your Project complies with all requirements of eligibility. It is Your responsibility to ensure that this is, and remains, the case.
- 6.5. The Agreement is conditional on an application by the United Kingdom authorities for a decision by the European Commission authorising the Scheme under the EU state aid rules (Article 107 of the Treaty on the Functioning of the European Union) in accordance with section 3.4 (energy efficiency measures, including cogeneration and district heating and district cooling) of the Environmental Aid Guidelines. The EDR Payment will not be paid unless and until the Commission has notified the UK of its authorisation of the Scheme. We will notify You as soon as possible once the Commission determines Our application, and this Agreement will be subject to any conditions relating to the Scheme required by or under the Commission’s decision.

**Section 2**  
**Scheme preconditions**

**7. Provision of baseline data**

- 7.1. This clause 7 applies where Your Capacity Savings are to be established in whole or in part by a Metered Approach and You have not provided Us with baseline data at the time of Your Application (as permitted by section 3.3 of the M&V Manual).
- 7.2. Where this clause 7 applies, it is a precondition of Your participation in the Scheme that You provide Us with baseline data in accordance with section 3.3 of the M&V Manual by the relevant deadline under clause 7.3 or 7.4.
- 7.3. Except in so far as clause 7.4 applies, the deadline for the provision of baseline data under clause 7.2 is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 30 March 2016
2017-18 Winter Peak Period	5pm on 30 March 2017

- 7.4. Where clause 8 (specification and validation of Capacity Savings) applies and You submit a Clause 8 Specification:

- a) You must provide the baseline data for the part of Your Project covered by that Clause 8 Specification by the deadline in clause 8.4; but
- b) the deadline in clause 7.3 continues to apply for all other parts of Your Project.

## **8. Specification and validation of Capacity Savings**

### *Application of clause 8*

- 8.1. This clause 8 applies where You have been accepted as a participant in the Scheme with Capacity Savings which:
- a) were not specified in Your Original M&V Documents, as permitted by Chapter 7 of the Participant Handbook; or
  - b) We were not able to validate in assessing Your Application, as identified in the Application Outcome Letter, but which (in that letter) We permitted You to treat as unspecified Capacity Savings.

### *Interpretation*

- 8.2. In this clause 8:
- a) “shortfall” has the meaning in clause 8.7 a);
  - b) “specified Capacity Savings” means any Capacity Savings which–
    - i. were specified in Your Original M&V Documents, and
    - ii. We were able to validate in assessing Your Application;
- and
- c) “unspecified Capacity Savings” means any Capacity Savings to which clause 8.1 a) or clause 8.1 b) apply.

### *Requirement of clause 8*

- 8.3. Where this clause 8 applies, it is a pre-condition of Your participation in the Scheme that by the relevant deadline in clause 8.4:
- a) where a mandatory Clause 8 Specification is required under clause 8.6, You provide Us with that Clause 8 Specification; and/or
  - b) where clause 8.9 or clause 8.12 b) apply, You provide Us with either–
    - i. a voluntary Clause 8 Specification under clause 8.9 b), and/or

- ii. confirmation in writing that You have decided not to submit one in respect of some or all of Your unspecified Capacity Savings.

*Deadline*

8.4. The deadline for You to comply with the requirements referred to in clause 8.3 is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 30 June 2016
2017-18 Winter Peak Period	5pm on 30 June 2017

8.5. You must comply with the requirements referred to in clause 8.3 a) and clause 8.3 b), and provide Us with the relevant information and material, at the same time.

*Mandatory Clause 8 Specification: insufficient specified Capacity Savings*

8.6. You must provide Us with the information required by clause 8.7 (a “mandatory Clause 8 Specification”) where (or, in the case of clause 8.12 a), to the extent that) You have insufficient specified Capacity Savings to meet Your Savings Target (having bid unspecified Capacity Savings into the EDR Auction).

8.7. The Clause 8 Specification must:

- a) in a case falling under clause 8.1 a), specify how You will achieve sufficient Capacity Savings to remedy the shortfall between the specified Capacity Savings and Your Savings Target and provide sufficient information and evidence to allow Us to validate those Capacity Savings; and
- b) in a case falling under clause 8.1 b), include sufficient information and evidence to enable Us to validate sufficient Capacity Savings to remedy that shortfall (having regard to the matters identified in the Application Outcome Letter which prevented validation by Us at that time).

*Voluntary Clause 8 Specification: sufficient specified Capacity Savings*

8.8. Clause 8.9 applies where, as a result of having bid a lower volume of Capacity Savings into the EDR Auction than the Capacity Savings in Your Application (as permitted by Chapter 10 of the Participant Handbook) You have sufficient specified Capacity Savings to achieve Your Savings Target.

8.9. Where this clause 8.9 applies:

- a) You are not required to submit a mandatory Clause 8 Specification under clause 8.6; but
- b) You may voluntarily (as the case may be)–
  - i. specify how You will achieve Your unspecified Capacity Savings, with the information and evidence required by clause 8.7 a), and/or

- ii. provide Us with sufficient information and evidence to enable Us to validate Your unspecified Capacity Savings,

(a “voluntary Clause 8 Specification”).

8.10. You may submit a voluntary Clause 8 Specification under clause 8.9 b) in respect of:

- a) all of Your unspecified Capacity Savings; or
- b) some of them,

(bearing in mind that You cannot achieve Capacity Savings from any unspecified or un-validated part of Your Project).

#### *Mixed cases*

8.11. Clause 8.12 applies where You have bid a bid a lower volume of Capacity Savings into the EDR Auction than the Capacity Savings in Your Application but where that volume is insufficient to achieve Your Savings Target, so that:

- a) You continue to have a shortfall; but
- b) it is only necessary for You to specify, and/or for Us to validate, a proportion of Your unspecified Capacity Savings to remedy that shortfall.

8.12. Where this clause 8.12 applies:

- a) clause 8.6 applies, so that You must submit a mandatory Clause 8 Specification, in respect of the remaining shortfall; and
- b) clause 8.9 applies in respect of the balance of unspecified Capacity Savings beyond that shortfall.

#### *Further requirements for Clause 8 Specifications*

8.13. The requirements of paragraph 1 (requirements for Clause 8 Specifications and Clause 15 Applications), paragraph 3 (contents of Clause 8 Specifications and Clause 15 Applications) and paragraph 4 (outcome of Clause 8 Specifications and Clause 15 Applications) of Schedule 2 (changes to Your Project) apply to the submission of Clause 8 Specifications.

## **9. Non-compliance with the preconditions**

9.1. If You fail to comply with the preconditions in clause 7 or clause 8.3:

- a) the relevant EDR Measures will not constitute part of Your Project and (in the case of failure to comply with clause 7 or clause 8.3 a)) We will determine that they constitute Non-Compliant Capacity; and
- b) We shall reduce the EDR Payment to which You are entitled (should You comply with all other requirements of the Scheme) by a percentage equal to

double the Non-Compliant Capacity (in accordance with clause 20.3 to clause 20.5 relating to Non-Compliant Capacity).

### **Section 3** **Principal Scheme obligations**

#### **10. Operational Verification Obligation**

10.1. You must, by the relevant deadline in clause 10.2, provide Us with sufficient information and evidence (“the Operational Verification Obligation”) to:

a) satisfy Us that the EDR Measures–

- i. have been installed, and
- ii. are operating as intended,

in compliance with all requirements of the Scheme; and

b) verify the total amount of Eligible Costs that You have incurred.

10.2. The deadline for the provision of information and evidence under clause 10.1 is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 30 September 2016
2017-18 Winter Peak Period	5pm on 2 October 2017

10.3. Detailed requirements for the Operational Verification Obligation (which do not restrict or qualify the generality of clause 10.1), and the consequences of non-compliance, are set out in Part 3 of these Conditions.

#### **11. Savings Obligation**

11.1. You must:

a) achieve Your Savings Target through use of the relevant EDR Measures, in compliance with all requirements of the Scheme, during–

- i. the Peak Applicable Hours of the Relevant Winter Peak Period, or
- ii. such a shorter time of expected use, within those hours, as may be specified for the relevant EDR Measure in Your M&V Documents,

recording evidence that You have done so; and

b) by the relevant deadline in clause 11.2, provide Us with a report (“the Winter Capacity Savings Report”) demonstrating, to Our reasonable satisfaction, that You have complied with the requirement of paragraph a),

(the requirements of this clause 11.1 together constitute the “Savings Obligation”).

- 11.2. The deadline for the provision of the Winter Capacity Savings Report under clause 11.1 b) is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 18 April 2017
2017-18 Winter Peak Period	5pm on 13 April 2018

- 11.3. Detailed requirements for the Savings Obligation (which do not restrict or qualify the generality of clause 11.1), and the consequences of non-compliance, are set out in Part 4 of these Conditions.
- 11.4. For the avoidance of doubt, Your Savings Target is an overall target so that an underachievement in one part of Your Project can be compensated for by an overachievement in another where that is possible (for instance, overachievement occasioned by the operation of equipment for additional Peak Applicable Hours in the Relevant Winter Peak Period in a case falling under clause 11.1 a) ii)).

## **12. Post Winter Peak Obligations**

- 12.1. So as to enable Us to obtain information and evidence relating to the operation and effectiveness of both Your Project and the Scheme (including beyond the Relevant Winter Peak Period), You must:

- a) participate, until the relevant deadline in clause 12.2, in such evaluation activities as We may reasonably require; and
- b) if Your Capacity Savings are established (in whole or in part) by a Metered Approach–
  - i. continue to record metering data in accordance with clause 22, and
  - ii. provide Us, by the relevant deadline in clause 12.2, with the information required by the final data request under section 7.2 of the M&V Manual,

(the requirements of this clause 12.1 together constitute the “Post Winter Peak Obligations”).

- 12.2. The deadline referred to in clause 12.1 a) and 12.1 b) ii) is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 3 December 2017
2017-18 Winter Peak Period	5pm on 2 December 2018

- 12.3. Detailed requirements relating to the Post Winter Peak Obligations, and the consequences of non-compliance, are set out in Part 5 of these Conditions.

## **13. Cross-cutting obligations**

- 13.1. In undertaking Your Project in accordance with the principal obligations in clause 10 to clause 12, You must:

- a) comply with all other requirements of these Conditions, in particular the requirements in Part 6 (Other requirements) of these Conditions; and
- b) co-operate with Us in the exercise of Our rights under these Conditions.

#### **Section 4** **EDR Payment**

#### **14. EDR Payment**

- 14.1. The EDR Payment is awarded, and will be paid, on the basis that You achieve Your Savings Target and comply with the Scheme in all material respects.
- 14.2. The EDR Payment will be paid (subject to clause 14.3 and clause 14.4) in three instalments:
  - a) 20% (“the Operational Verification Instalment”) will be paid, in advance of the Savings Obligation, once We are satisfied that You have complied with the requirements of the Operational Verification Obligation; its retention by You is conditional on compliance with the Savings Obligation;
  - b) 60% (“the Delivered Savings Instalment”) will be paid once We are satisfied that You have complied with the Savings Obligation; and
  - c) the remaining 20% (“the Final Instalment”) will be paid once We are satisfied that You have complied with the Post Winter Peak Obligations.
- 14.3. The EDR Payment may not exceed the total amount of Your Eligible Costs.
- 14.4. We may on any of the grounds set out or referred to in clause 38 (repayment etc.) or clause 39 (suspension), reduce, withdraw or suspend the EDR Payment or, where it has already been paid, require its repayment with interest. We will not make the payments in clause 14.2 where We have reasonable cause for concern that any of those grounds apply.
- 14.5. We will endeavour to pay You within 30 days of:
  - a) being satisfied that You have complied with the relevant requirements; or
  - b) the conclusion of a relevant review under clause 42 (review of decisions), if later.

**Section 5**  
**Changes to Your Project**

**15. Changes to Your Project**

*General restriction on changes*

- 15.1. In accordance with clause 50.1, You may not make any changes to Your Project unless We agree those changes with You in writing.
- 15.2. The Agreement is entered into on the assumption that You undertake Your Project as specified in Your Original M&V Documents or further to a Clause 8 Specification. However, We recognise that circumstances may arise in which changes to that Project become necessary as a result of factors relating to the operation of Your business which were unforeseen at the time of Your Application for the Scheme (“Change Circumstances”). To allow for those circumstances, but to do so in the context of the workable management of the Scheme, You may apply to Us to make changes to Your Project (a “Clause 15 Application”) under this clause 15.

*Restrictions on Clause 15 Applications*

- 15.3. You may only make a Clause 15 Application where Change Circumstances arise.
- 15.4. Except as provided for by clause 15.7, the number of Clause 15 Applications You may submit during Your participation in the Scheme is limited (irrespective of the number of Change Circumstances which occur) as follows:
- a) subject to clause 15.6, You may submit one application to make a Major Change; and
  - b) You may submit one application to make a Minor Change.

*Further requirements for Clause 15 Applications*

- 15.5. You must make Your application in accordance with the requirements of Schedule 2 (changes to Your Project) and do so by the relevant deadline in that Schedule.

*Major Changes where a Clause 8 Specification is being submitted*

- 15.6. A Clause 8 Specification is treated as a Major Change (but is dealt with under that clause). Accordingly, if You submit a Clause 8 Specification:
- a) You may, in addition to submitting that Clause 8 Specification, make a Clause 15 Application to make a Major Change to that part of the Project which was specified and validated at the time of Your Application for the Scheme (“the existing Project”); but

- b) You may only make that Clause 15 Application to make a Major Change to the existing Project if You do so at the same time as submitting Your Clause 8 Specification.

*Further changes*

- 15.7. We may permit further changes to Your Project beyond the limit set out in clause 15.4, but will only do so in circumstances that We consider to be exceptional. Your starting assumption must therefore be that further changes will not be permitted.

**PART 3**  
**OPERATIONAL VERIFICATION OBLIGATION**

**16. Operational Verification Obligation: evidence**

- 16.1. The information and evidence that You are required to provide Us to comply with the Operational Verification Obligation comprises:

- a) evidence of purchase, installation and operation of equipment–
  - i. a commissioning certificate for each category of equipment containing the information required by section 7.1.1. of the M&V Manual, or
  - ii. such alternative operational verification evidence that We may agree in writing that You may provide,

together with confirmation that the equipment has been purchased and installed after You were informed of Your success in the EDR Auction;

- b) evidence of Eligible Costs incurred–
  - i. confirmation of the total Eligible Costs You have incurred, and
  - ii. receipts or other evidence verifying that amount;

and

- c) any other, or more particular, relevant evidence that We may reasonably require (including under information or evidence required under clause 16.2 or under clause 28 (provision of information and evidence)).

- 16.2. Without prejudice to the generality of clause 16.1, You must:

- a) provide Us with all information and evidence that We specify in the Operational Verification Template; and
- b) present that information and evidence as directed by that template.

- 16.3. Without qualifying the generality of clause 27 (record keeping), You must retain all relevant evidence including receipts and proofs of purchase to demonstrate that You have complied with the Operational Verification Obligation.
- 16.4. It is also a condition of the Operational Verification Obligation that You satisfy Us that You have complied with any specific preconditions for participation in the Scheme (in addition to those in clause 7 and clause 8) as may be set out in the Award Letter or the Application Outcome Letter.

**17. Non-compliance with the Operational Verification Obligation**

*Failure to demonstrate installation and use of EDR Measures*

- 17.1. We shall determine that You have failed to comply with the Operational Verification Obligation (in whole or in part) where (or to the extent that)
- a) You do not provide Us with the evidence required by the relevant deadline in respect of the relevant EDR Measures; or
  - b) We are not satisfied (on the basis of the information and evidence You have provided to Us, or on the basis of other information coming to Our attention) that a relevant EDR Measure has properly been installed and is in use.
- 17.2. Where We reach the conclusion in clause 17.1, the relevant EDR Measures will constitute Non-Compliant Capacity. In consequence, where that non-compliance extends into the Relevant Winter Peak Period, You will be liable to a reduction in Your EDR Payment in accordance with clause 20.2 to clause 20.5. To avoid or minimise the risk of such a reduction, You must:
- a) satisfy Us that the relevant EDR Measures have been properly installed and are in use; and
  - b) verify the date on which this became the case.

*Failure to demonstrate Eligible Costs*

- 17.3. We are unable to pay any instalment of the EDR Payment unless and until We are satisfied about the total amount of Eligible Costs that You have incurred.

*Notification of compliance*

- 17.4. We will endeavour to inform You whether We consider that You have complied with the Operational Verification Obligation within 15 (fifteen) Business Days of receipt of satisfactory evidence of operational verification.

**PART 4**  
**SAVINGS OBLIGATION**

**18. Savings Obligation: evidence**

18.1. You must, during the Relevant Winter Peak Period, obtain, record and thereafter retain:

- a) all information and evidence required by section 7.2 of the M&V Manual; and
- b) any additional, or more specific, information and evidence referred to in Your M&V Documents.

*Use of EDR Measures*

18.2. In particular, You must obtain, record and retain information and evidence relating to:

- a) the actual time of use, at full capacity (where relevant), of the EDR Measures;
- b) any time of non-use, or time of use at a reduced capacity;
- c) any difference between the time of actual use under paragraph a) and the required time of use for those EDR Measures under clause 11.1 a); and
- d) any Force Majeure Event justifying any reduced or non-use of those EDR Measures; You must notify Us of the relevant Force Majeure Event as soon as possible after it occurs.

*Measurement of Capacity Savings*

18.3. Your Capacity Savings must be established by the measurement approach applying to the relevant EDR Measure and site under Your M&V Documents, being one of the approaches permitted by the M&V Manual.

18.4. Where (or to the extent that) Your Capacity Savings are established by the Deemed Savings Approach, You are not required to measure electricity use. Under the Deemed Savings Approach, Your Capacity Savings will be established by applying (to the time and extent of use of the relevant EDR Measure recorded under clause 18.2) the relevant Published formulae and factors.

18.5. Where (or to the extent that) Your Capacity Savings are established by a Metered Approach, You must provide such information as the M&V Manual requires in relation to the relevant Metered Approach and, in particular, You must:

- a) measure and record the grid electricity used in the operation of the relevant EDR Measure; and
- b) where applicable, obtain and record data relating to any relevant independent variables having an effect on electricity demand, such as temperature.

**19. Savings Obligation: Winter Capacity Savings Report**

- 19.1. The information provided in the Winter Capacity Savings Report must be sufficient to demonstrate that You have met Your Savings Target, and complied with the Savings Obligation in all material respects, having regard to the information You are required to record under this Part 4.
- 19.2. In particular, the Winter Capacity Savings Report must:
- a) contain–
    - i. the information required by section 7.2 of the M&V Manual, and
    - ii. all information specified in or necessitated by Your M&V Documents;and
  - b) be presented in the form set out in Your M&V Documents.

**20. Non-compliance with the Savings Obligation**

*Non-submission of Winter Capacity Savings Report*

- 20.1. You will not qualify for the EDR Payment or any instalment of it where You fail to provide Us with a properly completed Winter Capacity Savings Report.

*Failure to meet Savings Target and related non-compliance*

- 20.2. We will reduce the EDR Payment in accordance with clause 20.3 where You provide Us with a properly completed Winter Capacity Savings Report by the relevant deadline but, in Our reasonable determination, You:
- a) fail to achieve Your Savings Target; or
  - b) otherwise materially fail to comply with clause 11.1 a).

*Reduction of EDR Payment*

- 20.3. Where clause 20.2 applies, We will reduce the EDR Payment by a percentage equal to twice the amount of:
- a) the Capacity Savings that We determine You have failed to achieve; or
  - b) the Non-Compliant Capacity, where (or to the extent that) We conclude that the Non-Compliant Capacity results in failure to achieve Your Savings Target in compliance with the requirements of the Scheme,
- (as the case may be). Accordingly, in a case where We determine that You have failed to achieve 50% or more of Your Savings Target, or that the Non-Compliant

Capacity results in Your failure to achieve 50% or more of Your Savings Target in compliance with the Scheme, We will reduce the EDR Payment to zero.

- 20.4. The reduction of the EDR Payment under clause 20.2 is a reduction of the entire EDR Payment. However, We will, in the first instance, seek to effect the reduction by recovering the absolute amount of that reduction from the Delivered Savings Instalment and the Final Instalment (in relative proportions). We will only require repayment of the Operational Verification Instalment (or any part of it) where the absolute amount of the reduction of the EDR Payment exceeds the amount of the Delivered Savings Instalment and the Final Instalment for which You are eligible.
- 20.5. In determining the amount of the Capacity Savings that You have failed to achieve, or any Non-Compliant Capacity, Our assessment (to be determined reasonably) shall (subject to any review under clause 42 (review of decisions)) be final. In calculating any reduction to the EDR Payment, We will disregard any non-use or reduced use of an EDR Measure which in Our determination arises as a result of a promptly notified Force Majeure Event.
- 20.6. For the avoidance of doubt, there will be no increase in the EDR Payment for exceeding Your Savings Target.

*Notification of compliance*

- 20.7. We will endeavour to inform You whether We consider that You have complied with the Savings Obligation within 30 (thirty) Business Days of receipt of a satisfactory Winter Capacity Savings Report.

**PART 5**  
**POST WINTER PEAK OBLIGATIONS**

**21. Post Winter Peak Obligations: evaluation activities**

- 21.1. The evaluation activities in which We shall require You to participate under clause 12.1 a) may include:
  - a) interviews (either face to face, by telephone or both);
  - b) completing any evaluation questionnaires;
  - c) participation in group discussions arranged by Us;
  - d) site visits (other than inspection of sites under clause 29.1); and
  - e) any follow-up queries or activities.
- 21.2. You must:
  - a) make all reasonable efforts to participate in the evaluation activities, and inform Us promptly if You are unable to do so; We shall treat repeated failure

to participate in the evaluation activities as a failure to comply with the Scheme; and

- b) ensure that the relevant evaluation activities are undertaken by a person (“relevant person”) having sufficient expertise, authority and seniority to be able to do so having regard to the activity in question.
- 21.3. We anticipate that the duration of the evaluation activities (excluding travel) is likely to involve up to 10 (ten) hours of a relevant person’s time. (Depending on the circumstances, more than one person may participate in the same activity but in this case We will only count the time of one representative towards the 10 hour total).
- 21.4. If You are participating as an Aggregator, You must, where We require You to do so, ask Your Constituent Clients whether they would be willing to participate in the evaluation activities.
- 21.5. For the avoidance of doubt, the evaluation activities under this clause 21 are focused on Our evaluation of the operation and effectiveness of the Scheme as a whole. Accordingly:
- a) the evaluation activities are separate from any activities You are otherwise required to perform in order to ensure that Your Project complies with the Scheme (such as activities, including measurement and verification, to comply with the Operational Verification Obligation or the Savings Obligation, providing Us with information and evidence under clause 28.1, facilitating inspections under clause 29.1 or complying with the requirements of clause 30 (evaluation of Deemed Savings Approach)) (“Compliance Activities”); and
  - b) the time You spend in Compliance Activities does not count towards the anticipated time for evaluation activities under clause 21.3.

## **22. PostWinter Peak Obligations: measurement and final data request**

- 22.1. If You are a participant to whom clause 12.1 b) applies (Capacity Savings established by a Metered Approach), You must continue to record metered data, and relevant variables, for a full 12 months from the date of installation of the relevant EDR Measure in accordance with section 7.2 of the M&V Manual.
- 22.2. You must also provide Us with that information as part of the final data request, in accordance with that section and Your M&V Documents.
- 22.3. The purpose of the continued measurement and reporting obligations is to support evaluation of the Scheme. Accordingly, the data will not (so far as it relates periods not falling under the Relevant Winter Peak Period) affect Your compliance with Your Savings Target (unless it indicates non-compliance with the Scheme at the relevant times). However, a material failure to comply with the requirements of this clause 22 will entitle Us to withdraw or reduce the Final Instalment under clause 23.1.

## **23. Non-compliance with the Post Winter Peak Obligations**

- 23.1. If You fail to comply with the Post Winter Peak Obligations, We will reduce the amount of the Final Instalment by a sum which We determine is commensurate with

the failure in question. In determining any reduction of the Final Instalment under this clause 23.1, Our assessment (to be determined reasonably) shall (subject to any review under clause 42 (review of decisions)) be final.

## **PART 6** **OTHER REQUIREMENTS**

### **Section 1** **Eligibility**

#### **24. Eligibility: general**

24.1. It is a fundamental condition of the Agreement that You:

- a) undertake Your Project in accordance with Your M&V Documents; and
- b) comply, and (except as provided for by clause 24.2) continue to comply, with all requirements of the Scheme including those in Chapter 4 of the Participant Handbook.

24.2. The requirement that Your Project complies with the two year payback period in Chapter 4 of the Participant Handbook applies on the basis of prices, other material factors and reasonable assumptions at the time of Your Application (or, where relevant, at the time of the submission of any Clause 8 Specification or Clause 15 Application). You will not be treated as ineligible for the Scheme where those factors and assumptions subsequently change for reasons beyond Your control.

24.3. The EDR Payment is designed to incentivise Capacity Savings that You would not otherwise make. You are therefore not eligible to participate in the Scheme or receive the EDR Payment where (or to the extent that):

- a) You are otherwise required to install an EDR Measure under any requirement of law;
- b) an EDR Measure forms part of a pre-existing project or commitment; or
- c) You purchase or install the relevant equipment prior to being informed of Your success in the EDR Auction (however, while equipment purchased or installed from that date onwards may be used in Your Project, entering into contractual commitments prior to signing the Agreement is at Your risk).

#### **25. Other public funding**

25.1. It is a fundamental condition of the Agreement that You do not receive any other public funding in relation to Your Project (or any part of it).

25.2. For the purpose of clause 25.1, public funding means any funding, subsidy or other benefit or advantage (including any tax rebate or other tax relief and the benefits referred to in clause 25.3 and clause 25.4) attributable to Her Majesty's Government

(including the devolved administrations), or any other public authority, which incentivises or subsidises the EDR Measures or the achievement of the Capacity Savings.

25.3. Without limiting the generality of clause 25.1 and clause 25.2, You must not receive benefits for or in connection with Your Project under any of the following:

- a) any payment or benefit, other than the EDR Payment, under Part 2 (electricity market reform) of the Energy Act 2013;
- b) a climate change agreement;
- c) the energy company obligation;
- d) grants or loans from Us, or from parties operating on Our behalf including Salix Finance Ltd;
- e) the renewable heat incentive;
- f) the green deal cash-back scheme;
- g) the green deal home improvement fund;
- h) the demand side balancing reserve; or
- i) the green homes cashback scheme in Scotland.

25.4. Without limiting the generality of clause 25.1 and clause 25.2, if You claim a capital allowance under the Capital Allowances Act 2001 in connection with any capital expenditure in respect of which You have received or will receive an EDR Payment You must deduct the amount of the applicable EDR Payment from Your claim.

## **26. Compliance with laws and regulatory requirements**

26.1. In undertaking Your Project, You must comply with all relevant laws and regulatory requirements including:

- a) planning requirements and other consents;
- b) buildings regulations; and
- c) health and safety legislation.

## **Section 2** **Records and monitoring**

### **27. Record keeping**

27.1. The timely provision to Us, and retention by You, of complete and accurate information and evidence is a fundamental requirement of the Scheme.

- 27.2. You must keep sufficient records and evidence to verify Your compliance with the requirements of the Scheme, including:
- a) all records required by the M&V Manual; and
  - b) any additional, or more specific, records required by Your M&V Documents.
- 27.3. If there is a material deficiency in Your record keeping, We shall be entitled to conclude that You have failed to comply with the Scheme and, where reasonable in the circumstances, to terminate the Agreement with immediate effect.
- 27.4. You must keep the records required by this clause 27 for a period of 10 (ten) years beginning with the date of commencement of the Agreement.
- 27.5. You must also keep a copy of the Agreement (and all of the documents it refers to), as well as all correspondence with Us, for that period.

## **28. Provision of information and evidence**

- 28.1. You must promptly provide Us, or Our Agents, with all information and evidence (including documents and records) relating to Your Project, and to Your participation in the Scheme, that We may reasonably require, and do so at such times and in such form as We may reasonably specify.
- 28.2. We may require You to ensure that any information or evidence provided to Us is verified by a person of such qualifications or expertise as We may specify.
- 28.3. You must also provide information or evidence to the following authorities or their agents, as they may require:
- a) the Comptroller and Auditor General;
  - b) Parliament or any Parliamentary Committee;
  - c) the European Commission; and
  - d) any other public authority which may be entitled by law to such information or evidence.
- 28.4. If You do not comply with the requirements of this clause 28, We shall be entitled to conclude that You have failed to comply with the requirements of the Scheme and to terminate the Agreement with immediate effect.

## **29. Inspection of sites**

- 29.1. You must allow Us, or Our Agents, to inspect any relevant sites and relevant evidence, so that We may:
- a) verify Your compliance with the Agreement;

- b) verify the information and evidence You have submitted to Us at any time, including in Your Application; and
  - c) obtain evidence, including the taking of photographs and other recorded evidence, for the purposes in paragraphs a) and b).
- 29.2. We will not provide any payment or reimbursement for any expense or inconvenience You incur as a result of an inspection.
- 29.3. We will endeavour to inform You of the outcome of any inspection within 15 (fifteen) Business Days of the inspection taking place.
- 29.4. If, without reasonable mitigating circumstances as may be determined by Us, You do not comply with a reasonable request for inspection by granting Us or Our Agents reasonable access to the relevant sites or evidence, We shall be entitled to terminate the Agreement with immediate effect.

### **Section 3** **Evaluation of deemed Savings Approach**

#### **30. Evaluation of Deemed Savings Approach**

- 30.1. This clause 30 applies if Your Capacity Savings are established (in whole or in part) by the Deemed Savings Approach.
- 30.2. In order to allow Us to evaluate the accuracy and effectiveness of the Deemed Savings Approach, You must, where We require:
- a) install by such date as We specify (“the installation deadline”), in accordance with Our or Our Agent’s instructions, metering equipment specified by Us (or being of a type and having functionality specified by Us) for that purpose or allow Us or Our Agents to install that equipment;
  - b) ensure that the relevant metering equipment is fully operational, and transmits accurate data, from the installation deadline until–
    - i. termination of the Agreement, or
    - ii. such earlier date as We confirm in writing;
- and
- c) allow Us, or Our Agents, reasonable access to the relevant sites to inspect and/or maintain that metering equipment.
- 30.3. The installation deadline under clause 30.2 may occur, on reasonable notice, at any time after the commencement of the Agreement (so that We can obtain measurements at any relevant time during the period of the Agreement, including prior to the installation of the relevant EDR Measures in order to verify a baseline).

- 30.4. In a case where We install metering equipment under clause 30.2, We require that the installation is supervised by an appropriately qualified member of Your staff or representative. This is to ensure that We do not inadvertently damage Your equipment or premises in any way.
- 30.5. Where metering equipment is installed under clause 30.2, You must co-operate with Us and Our Agents to facilitate the taking and recording of meter readings and in recording photographic and other evidence to verify those readings.
- 30.6. You must not interfere with metering equipment installed under clause 30.2 in any way without Our prior authorisation in writing and must report to Us in writing any defect of which You become aware. Any metering equipment installed at Our cost will constitute Our property, but You will be responsible for any failure of, damage to, or damage caused by, that metering equipment so far as caused, or contributed to, by Your acts or omissions, or those of persons for whom You are responsible (see clause 43.1 a)). On the termination of Your obligations under clause 30.2 b), You must comply with Our reasonable instructions relating to the de-commissioning and disposal, if necessary, of that metering equipment.
- 30.7. Whether or not We require the installation of metering equipment under clause 30.2 (and without restricting or qualifying the generality of clause 28.1), You must promptly provide Us, or Our Agents, with all information or evidence We reasonably require relating to the use of the Deemed Savings Approach in Your Project. We may use this information (inter alia) to consider whether metering equipment should be installed at a relevant site under clause 30.2.
- 30.8. We shall be entitled to terminate the Agreement with immediate effect in the case of material non-compliance with this clause 30.

## **PART 7** **WARRANTIES ETC.**

### **31. Warranties**

- 31.1. In entering into the Agreement, in accepting any instalment of the EDR Payment, and by continuing to participate in the Scheme, You represent and warrant that:
- a) You comply, and (except as provided for by clause 24.2) remain compliant, with all requirements of the Scheme;
  - b) the information and evidence You have provided to Us in connection with Your actual or potential participation in the Scheme including in Your Application and M&V Documents was and remains–
    - i. complete, containing all information required by the Scheme Documents including the Published Templates for the M&V Documents, and
    - ii. true and accurate;

- c) You have full capacity and authority, and have obtained any consents necessary, to–
  - i. enter into the Agreement, and
  - ii. undertake Your Project;and
- d) You are aware of no circumstances which might materially and adversely impact on Your ability to undertake Your Project (or any part of it), or to comply with the Agreement, including–
  - i. any circumstance in contravention of the requirements in Section 1 of Part 6 of these Conditions (eligibility),
  - ii. any contractual obligations with third parties,
  - iii. any requirement of law, including those in clause 26.1,
  - iv. any legal or administrative proceedings (such as any litigation or any wind-up or insolvency proceedings), or
  - v. any circumstance which might give rise to such proceedings.

31.2. In providing Us with information or evidence, You will be deemed to represent and warrant that the information is representative, true, complete and accurate.

31.3. The warranties under clause 31.1 and clause 31.2 are deemed to be made on Your own behalf and by You on behalf of any Constituent Client.

## **32. Ongoing duty to notify**

32.1. You must, within 5 (five) Business Days of becoming aware of the relevant occurrence or circumstance, notify Us of:

- a) any breach of the requirements of the Agreement;
- b) any inaccuracy or incompleteness in information to which the warranties in clause 31 (warranties) apply;
- c) any material change in Your circumstances, including any change of circumstances meaning that the warranties in clause 31 are no longer, or may no longer be, true and accurate; and
- d) any circumstance entitling Us to exercise Our rights under Part 9 (termination and repayment etc.) of these Conditions to terminate the Agreement or to reduce, withdraw, require You to repay or suspend the EDR Payment.

32.2. For the purpose of clause 32.1 c), a material change in Your circumstances includes:

- a) any of the events referred to in Schedule 3 (change of control and insolvency); and

- b) any change to Your business where relevant to Your Project or the Capacity Savings You are able to achieve, including any change in the nature of the business undertaken at a relevant site or the hours of operation of that site.

## **PART 8** **USE OF INFORMATION**

### **33. Use of information: general**

- 33.1. We may publish, share and disclose information (“Your Information”) relating to Your participation, or that of any Constituent Client, in the Scheme in accordance with:
  - a) Our information policy in Chapter 20 of the Participant Handbook or any other information policy We may Publish; and
  - b) clause 34 to clause 36.
- 33.2. So as to enable Us to consider whether any of Your Information may be confidential or contain personal data (under section 1(1) of the Data Protection Act 1998), You must inform Us in writing of any information where You consider either is the case.
- 33.3. Prior to any publication, information sharing or disclosure We may seek Your written representations on the matters set out in clause 33.2. If We do so, You must provide any response in writing and within any deadline reasonably specified by Us, or, if no deadline is specified, within 5 (five) Business Days.
- 33.4. Having taken into account any representations made by You in writing, the decision on any publication, information sharing or disclosure, and/or any editing or redactions, shall be within Our absolute discretion.
- 33.5. The fact of Your participation in the Scheme, or that of any Constituent Client, or the other matters in clause 34.2, shall not be regarded as confidential.

### **34. Use of information: publication**

- 34.1. We may publish Your Information for the purpose of the provision of Our report to Parliament under section 43(3) of the Energy Act 2013 and for other reasonable purposes including publishing Our evaluation of the Scheme, press notices and case studies (in the context of Our general publicity of the Scheme).
- 34.2. The particulars that We may publish under clause 34.1 include:
  - a) the fact that You are participating in the Scheme;
  - b) Your Savings Target;
  - c) the Capacity Savings You achieve;
  - d) the amount of the EDR Payment awarded, or paid, to You; and

- e) a summary of Your Project.
- 34.3. We may publish the information referred to in clause 34.1 on the gov.uk web site or otherwise.

**35. Use of information: information sharing**

- 35.1. We may disclose Your Information to:
- a) other public authorities including–
    - i. other government departments,
    - ii. Ofgem, and
    - iii. the public authorities referred to in clause 28.3;
- and
- b) Our Agents and their agents.
- 35.2. We may also disclose Your Information to third parties:
- a) where required to do so by law, such as for the investigation of any suspected breach of the law including fraud or a suspected criminal act; or
  - b) for other reasonable purposes, including academic or other research.

**36. Freedom of Information**

- 36.1. We may be required to disclose Your Information under the Freedom of Information Act 2000 (“FOIA”) or the Environmental Information Regulations 2004 (“the EIRs”).
- 36.2. You must assist, and cooperate with, Us, as reasonably requested, to enable Us to comply with Our obligations under FOIA and the EIRs.

**PART 9**  
**TERMINATION AND REPAYMENT ETC.**

**37. Termination**

- 37.1. We may (and in the case of paragraph d) shall) terminate the Agreement, and Your participation in the Scheme, with immediate effect:
- a) in accordance with any specific right set out in these Conditions;
  - b) in the case of any other material breach of the Agreement (including a breach relating to a warranty under clause 31 (warranties)) which–

- i. is not capable of remedy, or
  - ii. is capable of remedy, but You do not remedy the breach to Our reasonable satisfaction within 20 (twenty) Business Days of receipt of a notice from Us specifying the breach and the remedy required;
- c) in the case of repeated breaches of the Agreement, where those breaches occur in such frequency or manner as to reasonably justify a conclusion that Your conduct is inconsistent with an intention or ability to participate in the Scheme in compliance with the Agreement;
- d) where termination, or withdrawal or repayment of the entire EDR Payment, is required by law, including–
  - i. an order of a court of competent jurisdiction, or
  - ii. a decision of the European Commission relating to state aid;
- e) if the European Commission do not authorise the Scheme on or by 31 March 2017;
- f) on the occurrence of an event referred to in Schedule 3 (change of control and insolvency);
- g) where We have reasonable grounds to conclude that any information or evidence You have provided to Us, whether under the Agreement or in Your Application, has–
  - i. been materially misleading, and/or
  - ii. not been provided honestly or in good faith;
- h) where You have omitted to provide information under the Agreement, or in Your Application, where that omission has had a similar misleading intention or effect as in paragraph g);
- i) where evidence emerges from which We have reasonable grounds to conclude that You–
  - i. were not eligible to participate in the Scheme, or to participate on the terms or at the amount of the EDR Payment under the Agreement, or
  - ii. have ceased to be eligible to participate in the Scheme, or to participate on those terms;
- j) without prejudice to the generality of paragraph i), where You or any person referred to in regulation 57(2) of the Public Contracts Regulations 2015 is, or has been, convicted of any of offence listed in regulation 57(1) of those Regulations (whether or not in connection with Your Project); or
- k) where (the Agreement not having yet been terminated) You fail to make any repayment required under clause 38 (repayment etc.).

37.2. You may terminate the Agreement by withdrawing from the Scheme at any time, by notifying Us in accordance with clause 47 (Your communications with Us).

37.3. Where the Agreement is terminated under clause 37.1 or clause 37.2:

a) if the termination occurs prior to the conclusion of the Savings Obligation, You are not entitled to the EDR Payment and any EDR Payment received must be repaid with interest (in accordance with clause 38.4 and clause 38.6); or

b) if, prior to the date of termination–

i. You have complied fully with the Operational Verification Obligation and the Savings Obligation and all other relevant requirements, and

ii. no grounds for withdrawal, reduction or repayment of the EDR Payment exist (or are later found to have existed before that date),

You are entitled to the Operational Verification Instalment and the Delivered Savings Instalment but are not entitled to the Final Instalment.

37.4. Where grounds for termination arise under clause 37.1 a) to j) but We choose not to exercise them, We may instead exercise Our rights under clause 38.1 to reduce, withdraw or require You to repay all or any proportion of the EDR Payment with interest.

### **38. Repayment etc.**

38.1. We shall where the grounds set out or referred to in clause 38.2 apply:

a) reduce or withdraw the EDR Payment; and/or

b) where the EDR Payment has already been paid, require You to repay all, or (where relevant) any proportion, of the EDR Payment with interest.

38.2. The grounds on which Our rights under clause 38.1 apply are:

a) where a reduction of the EDR Payment applies pursuant to–

i. clause 9.1 b) (non-compliance with pre-conditions),

ii. clause 17.2 or clause 17.3 (non-compliance with the Operational Verification Obligation),

iii. clauses 20.1 to 20.5 (non-compliance with the Savings Obligation), or

iv. clause 23.1 (non-compliance with the Post Winter Peak Obligations);

b) in accordance with clause 37.3; or

c) the following grounds–

i. where reduction, withdrawal or repayment of the EDR Payment, or of any part of it, is required by law (as referred to in clause 37.1 d)),

- ii. in the case of any overpayment, in which case the amount of the EDR Payment which We have overpaid must be repaid by You,
  - iii. in a case where We conclude that the EDR Payment exceeds Your Eligible Costs, in which case You are not entitled to the excess,
  - iv. where You receive any other public funding referred to in clause 25, in which case the amount of the EDR Payment shall be reduced by the amount of that other public funding and the balance must be repaid by You (without prejudice to any consequence, or the exercise of any rights by any relevant authority, under the measure or scheme in question), or
  - v. where a sum of money is owed by You to Her Majesty's Government (including the devolved administrations), including a sum owed under any other agreement (whether or not related to the Scheme).
- 38.3. Where more than one ground under clause 38.2 arises, the reductions to the EDR Payment shall be cumulative (so that a separate reduction is made for each ground) unless We confirm otherwise in writing (having regard to all the circumstances).
- 38.4. Interest on any repayment will be calculated from the date of the original payment, in accordance with:
- a) the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
  - b) any other rate required by law in the circumstances (including any rate required under EU law relating to state aid), if it is higher.
- 38.5. You must make any repayment within 30 (thirty) Business Days of:
- a) the date of Our notification requiring the repayment; or
  - b) the date of Our notification of the conclusion of any review of Our decision under clause 42 (review of decisions).
- 38.6. If You fail to make any repayment within the deadline under clause 38.5, further interest will accrue on the outstanding sum (inclusive of interest already charged under clause 38.4), after that deadline, at the statutory rate of interest under section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 or any other rate required by law in the circumstances, if it is higher.

## **39. Suspension**

- 39.1. We may suspend payment of the EDR Payment (or any part of it) where:
- a) We have reasonable cause for concern that grounds for the exercise of Our rights under clause 37 (termination) or clause 38 (repayment etc.) arise, pending Our investigation of the circumstances and the making of a determination; or

- b) that suspension is required by law (as referred to in clause 37.1 d)).
- 39.2. In the case of any suspension, You must continue to comply with the Agreement unless We confirm otherwise in writing.

**40. Waiver**

- 40.1. If We do not exercise Our rights under this Part 9, this shall not constitute a waiver of those rights unless We confirm any such waiver in writing.
- 40.2. Any such waiver as may be confirmed in writing under clause 40.1 shall constitute a waiver only in relation to the particular circumstances or occurrence to which it relates, and may not be taken as a precedent that We will waive Our rights should analogous circumstances arise in the future.

**PART 10**  
**DECISION MAKING**

**41. Reasoning for decisions**

- 41.1. In the case that We decide that You have failed to comply with the Agreement and/or decide to exercise Our rights under Part 9 of these Conditions, We shall:
- a) notify You of that decision; and
  - b) provide a summary of Our reasoning for reaching that decision.

**42. Review of decisions**

- 42.1. Where We make a decision referred to in clause 41.1 (“the Original Decision”), You may apply to Us to review that Original Decision where You consider that We have incorrectly applied the Agreement in Your case.
- 42.2. You are not entitled to seek a review under clause 42.1:
- a) for the purpose of reviewing the terms of the Agreement itself; or
  - b) to adduce new information or evidence which You were required to provide prior to the making of the Original Decision.
- 42.3. You must:
- a) submit Your application within 10 (ten) Business Days of receipt of Our reasoning under clause 41.1 for the Original Decision; and
  - b) do so in writing, specifying—
    - i. the Original Decision You are asking Us to review, and

- ii. the grounds on which You consider that it should be reviewed.
- 42.4. You must provide Us with any necessary assistance, explanations or further information or evidence, to enable Us to conduct the review.
- 42.5. Once We have undertaken the review, We may:
- a) affirm the Original Decision;
  - b) vary the Original Decision; or
  - c) substitute the Original Decision with a new decision.
- 42.6. We will endeavour to determine the review within 10 (ten) Business Days of receipt of Your application or (if later) of receipt of any information or evidence provided under clause 42.4 and inform You as soon as practicable thereafter.
- 42.7. You may not seek more than one review of the substance of the Original Decision. Accordingly, Our verdict in a review shall be final.

## **PART 11** **MISCELLANEOUS**

### **43. Responsibility for partners and agents etc.**

- 43.1. You:
- a) must ensure that persons for whom You are responsible (including Your partners, agents, employees and contractors) comply with the Agreement; and
  - b) agree that any breach of the Agreement by those persons will constitute a breach of the Agreement by You.

### **44. Participation as an Aggregator**

- 44.1. Without qualifying the generality of clause 43.1, if You are participating as an Aggregator You must ensure that all of Your Constituent Clients comply with the Agreement.
- 44.2. You must, in particular, ensure that Your Constituent Clients:
- a) provide Us with information and evidence under clause 28.1, and consent in writing for You to do so;
  - b) provide their consent in writing for Us to use that information and evidence in accordance with Part 8 (use of information) of these Conditions;
  - c) allow Us to inspect their sites in accordance with clause 29.1; and

d) comply with clause 30 (evaluation of Deemed Savings Approach) where We require them to do so.

44.3. Where a Constituent Client, or any person for whom that Constituent Client is responsible (in accordance with the principle of clause 43.1), does not comply with the Agreement, You will be responsible for that failure which will be deemed to constitute a breach of the Agreement by You.

44.4. We may (or, as relevant, shall) exercise Our rights against You under Part 9 (termination and repayment etc.) of these Conditions where any of the grounds for doing so under that Part arise in respect of a Constituent Client or by virtue of its acts or omissions or those of any person for whom it is responsible.

#### **45. Relationship between the parties**

45.1. Nothing in the Agreement creates a relationship of employment, agency, partnership or joint venture or any similar relationship between You and Us. Accordingly, You must not hold Yourself out as having any such relationship.

45.2. Our liability to You is limited, to the fullest extent permitted by law, to making the EDR Payment (the payment being subject to Your compliance with the Agreement and to Our rights under Part 9 (termination and repayment etc.) of these Conditions). To the fullest extent permitted by law, We shall have no liability to any Constituent Client.

45.3. You remain entirely responsible for Your risks and liabilities in undertaking Your Project, and, to the fullest extent permitted by law, We shall have no liability for any consequence, direct or indirect, that may arise as a result of Your Project.

#### **46. Indemnity**

46.1. You agree to indemnify Us against all claims, demands, actions, proceedings, costs, charges, expenses, losses, damages or other liabilities arising from:

a) Your acts or omissions, and those of any persons for whom You are responsible (within the meaning of clause 43.1), in the conduct of Your Project or in using the EDR Payment; and

b) if You are participating as an Aggregator, the acts or omissions of Your Constituent Clients and any persons for whom they are responsible.

#### **47. Your communications with Us**

47.1. Where You notify Us of any matter or provide Us with information or evidence under these Conditions:

a) You must upload the relevant material on the EDR Portal using any Published Templates (where available), in any case where We specify (on the EDR Portal, or otherwise) that participants should do so; or

b) in other cases, You may contact Us by e-mail (edrproject@decc.gsi.gov.uk) quoting Your participant ID in the e-mail title.

- 47.2. Communications via the EDR Portal or by e-mail shall, so long as You do not receive an error message, be deemed effective:
- a) on the Business Day sent; or
  - b) if sent after 5pm on a Business Day or on a day other than a Business Day, on the next Business Day.
- 47.3. You may otherwise contact Us at the address identified on the Award Letter, and communications will be effective on the Business Day received or on the next Business Day if received at the times to which clause 47.2 b) applies. For informal enquiries, You may contact Us on Our EDR telephone line (0300 068 8488) but this will not count as a formal notification unless and until confirmed by You in writing.
- 47.4. You must retain proof of sending communications, against future uncertainty.

**48. Our communications with You**

- 48.1. It is important that We are able to contact You to discuss Your Project, and We will do so using Your contact details confirmed in the Award Letter.
- 48.2. You must notify Us, in accordance with clause 47 (Your communications with Us), if those contact details change.

**49. Entire agreement**

- 49.1. The following documents constitute the entire agreement between the parties:
- a) these Conditions;
  - b) the Award Letter;
  - c) the Application Outcome Letter (in so far as it contains requirements remaining to be complied with when You enter into the Agreement);
  - d) Your M&V Documents;
  - e) the M&V Manual;
  - f) the Participant Handbook; and
  - g) any other Scheme Documents.
- 49.2. Any conflict or inconsistency between the documents referred to in clause 49.1 shall be resolved in the order in which those documents are listed in that clause.
- 49.3. Subject to clause 6.4, clause 31.1 b) and clause 37.1 g) and h), the Agreement supersedes previous correspondence and understandings. This clause 49.3 does not exclude the liability of either party in respect of any previous fraud or fraudulent representation.

49.4. References in these Conditions to particular sections of the M&V Manual or Chapters of the Participant Handbook do not qualify the general application of the M&V Manual and the Participant Handbook or Your obligation to comply with all relevant requirements contained within them.

## **50. Variation**

50.1. Subject to clause 50.2, no variation of the Agreement shall be effective unless it is agreed in writing and signed by authorised representatives of both parties.

50.2. Notwithstanding clause 50.1, We may, from time to time, where We consider it necessary for the purpose of the Scheme, revise the M&V Manual, the Participant Handbook and other Scheme Documents. We shall Publish such revisions. The Agreement shall also be treated as varied so far as necessary to give effect to the conditions of any decision of the European Commission relating to state aid.

50.3. Clause 15 and Schedule 2 (changes to Your Project) govern any variation to the Agreement which entails a change to Your Project.

## **51. Ongoing obligations**

51.1. The termination of the Agreement shall be without prejudice to the rights of either party accrued in respect of the other party's acts or omissions prior to termination.

51.2. The following continue in force after the termination of the Agreement:

- a) clause 25 (other public funding), where You have received (and not repaid with interest) any payment of the EDR Payment;
- b) clause 26.1 (compliance with laws and regulatory requirements);
- c) clause 27 (record keeping), relating to records for the period before the termination;
- d) clause 28 (provision of information and evidence);
- e) clause 29 (inspection of sites), so far as necessary to investigate any grounds for repayment of the EDR Payment or wrongdoing;
- f) clause 30.6 (evaluation of Deemed Savings Approach );
- g) clause 32.1 (ongoing duty to notify), but clause 32.1 c) only so far as relating to changes in circumstance prior to termination;
- h) the entirety of Part 8 of these Conditions (use of information);
- i) clause 38 (repayment etc.), so far as relating to the repayment of any EDR Payment You have received;
- j) clause 46.1 (indemnity);
- k) this clause 51;

- l) any conditions relating to state aid applying to the Scheme by virtue of a decision of the European Commission; and
- m) any other clauses or requirements of the Agreement, so far as necessary to give the provisions listed in this clause 51.2 effect.

**52. Third party rights**

- 52.1. The Agreement does not confer any rights or benefits on third parties for the purpose of the Contracts (Rights of Third Parties) Act 1999. For the avoidance of doubt, Constituent Clients are not parties to the Agreement and the Agreement does not confer any rights or benefits on them.

**53. Assignment etc.**

- 53.1. You may not assign or otherwise transfer to any other person the benefit of the Agreement. However, this clause 53.1 does not prevent You from paying the relevant part of the EDR Payment to a Constituent Client.

**54. Further funding**

- 54.1. We are under no obligation to provide You with any further funding beyond the amount of the EDR Payment identified in the Award Letter.

**55. Law and jurisdiction**

- 55.1. The Agreement is governed by English law and is subject to the exclusive jurisdiction of the English courts to which the parties submit.

**56. Severance**

- 56.1. If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

**SCHEDULE 1**  
**DEFINED TERMS**

<b>Agent</b>	any contractor or other person employed or engaged by Us in connection with the Scheme
<b>Aggregator</b>	You are an Aggregator if You participate in the Scheme on behalf of one or more Constituent Clients (whether or not You also participate in the Scheme on Your own account)
<b>Agreement</b>	the agreement between You and Us, relating to Your participation in the Scheme for Your Project, of which these Conditions form part
<b>Application</b>	Your application for participation in the Scheme for Your Project, including Your Original M&V Documents and material submitted as part of the expressions of interest process; “Clause 15 Application” is construed differently, as referred to below
<b>Application Outcome Letter</b>	the letter informing You of the outcome of Your Application prior to the EDR Auction and allowing You to proceed to the EDR Auction, as identified in the Award Letter
<b>Award Letter</b>	the letter setting out Our offer to You to participate in the Scheme subsequent to the EDR Auction
<b>Business Day</b>	any day apart from:  a) Saturdays and Sundays; and  b) any day which is a public or bank holiday in England and Wales, as published from time to time on the gov.uk web site <sup>1</sup>
<b>Capacity Savings</b>	has the meaning in clause 6.2
<b>Change Circumstances</b>	see clause 15.2
<b>Clause 8 Specification</b>	a mandatory Clause 8 Specification under clause 8.6 or a voluntary Clause 8 Specification under clause 8.9 b)
<b>Clause 15 Application</b>	see clause 15.2
<b>Compliance Activities</b>	see clause 21.5 a)
<b>Conditions</b>	these terms and conditions
<b>Constituent Client</b>	any third party (whether a business or an individual) who is

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<sup>1</sup> <https://www.gov.uk/bank-holidays#england-and-wales>

	installing EDR Measures as part of Your Project
<b>Deemed Savings Approach</b>	see section 1.4 of the M&V Manual
<b>Delivered Savings Instalment</b>	see clause 14.2 b)
<b>EDR Auction</b>	the auction described in Chapter 10 (as reissued) of the Participant Handbook
<b>EDR Measure</b>	see clause 6.1 a)
<b>EDR Payment</b>	either: <ul style="list-style-type: none"> <li>a) the sum identified in the Award Letter to be paid by Us to You; or</li> <li>b) where a reduction to that sum has been made pursuant to Our rights in Part 9 of these Conditions (termination and repayment etc.), the reduced sum</li> </ul>
<b>EDR Portal</b>	the Department of Energy and Climate Change EDR internet portal: <a href="https://itportal.decc.gov.uk/eng/fox/edr/EDR_LOGIN/login">https://itportal.decc.gov.uk/eng/fox/edr/EDR_LOGIN/login</a> , or any successor portal or address as We may Publish
<b>Eligible Costs</b>	Eligible Costs are: <ul style="list-style-type: none"> <li>a) the reasonable cost of purchase, delivery to the relevant site and installation of equipment constituting the EDR Measure;</li> <li>b) any Value Added Tax incurred on those costs which You are not able to reclaim from HM Revenue and Customs,</li> </ul> <p>provided that the costs in paragraphs a) and b) constitute extra investment costs permitted by paragraph (148) of the Environmental Aid Guidelines; in the case of any dispute as to whether the costs under paragraph a) are reasonable, Our assessment shall be final;</p> <p>Eligible Costs do not include costs incurred in:</p> <ul style="list-style-type: none"> <li>a) closing, opening or altering premises for the purpose of the installation of an EDR Measure;</li> <li>b) the preparation or submission of Your Application, any Clause 8 Specification or in any other submission;</li> <li>c) Compliance Activities; or</li> <li>d) operating or maintaining the relevant EDR Measure</li> </ul>
<b>Environmental Aid Guidelines</b>	European Commission Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 28.6.2014, p. 200

**Final Instalment** see clause 14.2 c)

**Force Majeure Event** occurs where:

- a) there has been a power cut, being the unexpected and temporary loss of the supply of grid electricity to a site where that loss is not attributable to Your acts or omissions or those of other relevant persons; or
- b) You are unable to use the relevant EDR Measure due to unforeseen events beyond Your reasonable control, or the control of other relevant persons, in the nature of acts of God, riots, war or armed conflict, acts of terrorism, fire, flood, storm, earthquake, other disasters or similar events;

for the avoidance of doubt, Force Majeure Events do not include events in the ordinary course of business such as loss of business, failure in a supply chain, industrial disputes, Your acts or omissions or the acts or omissions of other relevant persons, termination of a lease or staff absences;

for the purpose of this definition, "other relevant person" includes a Constituent Client, any person for whom You or a Constituent Client are responsible (in accordance with the principle of clause 43.1) and any landlord, tenant or licensee of the relevant site (or any other person having access to or responsibility for that site) and persons for whom they may be responsible

**Major Change** any change, or any combination of changes, to Your Project which involves modifications to Your M&V Documents where the relevant change:

- a) involves the installation of a measure of a kind or of a type of technology, or takes place at a site, which was not specified in Your Original M&V Documents; or
- b) affects EDR Measures equating (in terms of Capacity Savings) to 50% or more of Your Savings Target

**Metered Approach** one of the metered approaches in section 3.1 of the M&V Manual

**Minor Change** any change, or any combination of changes, to Your Project which involves modifications to Your M&V Documents which is not a Major Change

**M&V Documents** the measurement and verification (M&V) documents to which the Agreement applies being either:

- a) Your Original M&V Documents; or
- b) those documents as further specified under clause 8 (specification and validation of Capacity Savings) or modified under clause 15 (changes to Your Project)

<b>M&amp;V Manual</b>	the Electricity Demand Reduction Pilot Scheme Phase II Measurement and Verification Manual dated 16 June 2015 (or a Revised Version) and its appendices and spread sheet files (or any Revised Versions)
<b>Non-Compliant Capacity</b>	Our reasonable determination of the kW capacity, as a percentage of Your Savings Target, equating to the part of Your Project in respect of which We determine that You have materially failed to comply with the relevant requirement of the Scheme
<b>Operational Verification Instalment</b>	see clause 14.2 a)
<b>Operational Verification Obligation</b>	see clause 10.1
<b>Operational Verification Template</b>	the Published Template for operational oerification
<b>Original Decision</b>	see clause 42.1
<b>Original M&amp;V Documents</b>	the version of Your measurement and verification documents confirmed by Us in informing You of the outcome of Your Application (whether in the Application Outcome Letter or otherwise) under paragraphs 130 or 131 of the Participant Handbook
<b>Participant Handbook</b>	the Electricity Demand Reduction Pilot Scheme Phase II Participant Handbook dated 30 November 2015 (or a Revised Version)
<b>Peak Applicable Hours</b>	each of the following hours: <ul style="list-style-type: none"> <li>a) 4pm to 4.59pm;</li> <li>b) 5pm to 5.59pm;</li> <li>c) 6pm to 6.59pm; and</li> <li>d) 7pm to 7.59pm</li> </ul>
<b>Post Winter Peak Obligations</b>	see clause 12.1
<b>Project</b>	see clause 6.1 a)
<b>Publish</b>	publication by Us on the EDR pages of the gov.uk web site <sup>2</sup> or on the EDR Portal

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<sup>2</sup> <https://www.gov.uk/government/collections/electricity-demand-reduction-pilot-supporting-information-and-documents>

<b>Published Template</b>	a Published template or electronic form (being the version currently published at the time that the relevant Scheme requirement must be complied with)
<b>Relevant Winter Peak Period</b>	the Winter Peak Period applying to Your Project, as specified in the Award Letter, being either: <ul style="list-style-type: none"> <li>a) the 2016-17 Winter Peak Period; or</li> <li>b) the 2017-18 Winter Peak Period</li> </ul>
<b>Revised Version</b>	the most recent Published revised version of the relevant Scheme Document
<b>Savings Obligation</b>	see clause 11.1
<b>Savings Target</b>	the total average Capacity Saving that You must achieve, as specified in the Award Letter (pursuant to the EDR Auction)
<b>Scheme</b>	the electricity demand reduction (EDR) pilot scheme phase II announced by the Department of Energy and Climate Change on 16 June 2015 and set out in the Scheme Documents
<b>Scheme Documents</b>	the Published documents relating to the Scheme (including the M&V Manual, M&V Document templates and the Participant Handbook) (or Revised Versions)
<b>Winter Capacity Savings Report</b>	see clause 11.1 b)
<b>2016-17 Winter Peak Period</b>	the period from 1 November 2016 to 28 February 2017 (inclusive), excluding: <ul style="list-style-type: none"> <li>a) Saturdays and Sundays;</li> <li>b) 26 December 2016;</li> <li>c) 27 December 2016; and</li> <li>d) 2 January 2017</li> </ul>
<b>2017-18 Winter Peak Period</b>	the period from 1 November 2017 to 28 February 2018 (inclusive), excluding: <ul style="list-style-type: none"> <li>a) Saturdays and Sundays;</li> <li>b) 25 December 2017;</li> <li>c) 26 December 2017; and</li> <li>d) 1 January 2018</li> </ul>
<b>Your Information</b>	see clause 33.1

**SCHEDULE 2**  
**CHANGES TO YOUR PROJECT**

**1. Requirements for Clause 8 Specifications and Clause 15 Applications**

- 1.1. The relevant Clause 8 Specification or change under clause 15 (changes to Your Project) must comply with all requirements of the Scheme, and in particular:
- a) the relevant Clause 8 Specification or Clause 15 Application may not result in–
    - i. an alteration of Your Savings Target,
    - ii. a change of the Relevant Winter Peak Period, or
    - iii. a reduction of the overall expected time of use of Your EDR Measures;
- and
- b) Your Project must, following the relevant Clause 8 Specification or relevant change, continue to have a payback period of two or more years.

**2. Deadline for Clause 15 Applications**

- 2.1. The deadline for a Clause 15 Application to make a Major Change is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 30 June 2016
2017-18 Winter Peak Period	5pm on 30 June 2017

- 2.2. The deadline for a Clause 15 Application to make a Minor Change is:

<i>Relevant Winter Peak Period</i>	<i>Deadline</i>
2016-17 Winter Peak Period	5pm on 12 August 2016
2017-18 Winter Peak Period	5pm on 14 August 2017

**3. Contents of Clause 8 Specifications and Clause 15 Applications**

- 3.1. You must confirm whether You are submitting:
- a) a Clause 8 Specification;
  - b) a Clause 15 Application; or
  - c) both.
- 3.2. Your Clause 8 Specification or Clause 15 Application must comprise:
- a) in all cases–

- i. a completed version of the Published Template for M&V revisions,
- ii. a revised version of Your M&V Documents, in compliance with the requirements in section 6 of the M&V Manual,
- iii. baseline data, where Your Capacity Savings are to be established in whole or in part by a Metered Approach, and
- iv. confirmation that Your changes and the resulting Project (as updated) comply with all of the requirements of the Scheme;

and

- b) in the case of a Clause 15 Application (or, where paragraph 3.1 c) applies, in respect of the element constituting the Clause 15 Application)–
  - i. a brief explanation of the relevant Change Circumstances,
  - ii. confirmation that those circumstances were unforeseen at the time of Your Application for the Scheme, and
  - iii. confirmation of whether the change is one that You consider to be a Major Change or a Minor Change (Our assessment of the category of change will, however, be determinative).

#### **4. Outcome of Clause 8 Specifications and Clause 15 Applications**

- 4.1. In accordance with clause 50.1, no Clause 8 Specification or change under clause 15 takes effect until it is approved by Us in writing.

**SCHEDULE 3**  
**CHANGE OF CONTROL AND INSOLVENCY**

**1. Change of control**

- 1.1. You are subject to a change of control (including a takeover, merger or de-merger) (control being interpreted in accordance with section 1124 of the Corporation Tax Act 2010).

**2. Cessation of business**

- 2.1. You cease or suspend the carrying on of Your business or a material part of it.

**3. Insolvency etc.**

- 3.1. You are a company (or other body corporate) and any of the following events occur:
- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986, an arrangement or reconstruction under Part 26 of the Companies Act 2006 or any other composition scheme or arrangement with, or assignment for the benefit of, the company's creditors;
  - b) a shareholders' meeting is convened for the purpose of considering a resolution that the company is wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
  - c) a petition is presented for the winding up of the company (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator;
  - d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of Your business or assets;
  - e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
  - f) You are or become unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986;
  - g) being a company subject to the small companies regime under section 381 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - h) any other event occurs, in any jurisdiction to which You are subject, which is similar to those listed in sub-paragraphs a) to g).
- 3.2. You are an individual and any of the following events occur:

- a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, Your creditors;
- b) a petition is presented and not dismissed within 14 days or order made for Your bankruptcy;
- c) a receiver, or similar officer is appointed over the whole or any part of the Your assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of Your assets;
- d) You are or become unable to pay Your debts or have no reasonable prospect of doing so, within the meaning of section 268 of the Insolvency Act 1986;
- e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of Your assets and such attachment or process is not discharged within 14 days;
- f) You die or are adjudged to lack capacity in accordance with Part 1 of the Mental Capacity Act 2005; or
- g) any other event occurs, in any jurisdiction to which You are subject, which is similar to those listed in sub-paragraphs a) to f).

3.3. You are a partnership and any of the events referred to in paragraphs 3.1 or 3.2 occur in relation to any partner.