

## MARINE RECOVERY FUND CONTRACT

### Section 1

THIS CONTRACT is made on the [ ] day of [ ] 202[ ].

BETWEEN:

- (1) The Secretary of State for Environment, Food and Rural Affairs (“Defra”), of Seacole Building, 4th Floor, 2 Marsham Street, London, SW1P 4DF, acting as the Marine Recovery Fund Operator (“the MRFO”);

AND

- (2) [*MRF Participant name*] of [*MRF Participant registered address*] (“MRF Participant”)

each of Defra and the MRF Participant being a Party and, together, the Parties.

WHEREAS:

- (1) The MRF has been established as a core component of the Offshore Wind Environmental Improvement Package to support the growth of energy generation from offshore wind while protecting and enhancing the marine environment.
- (2) The MRF Participant has obtained Consent for the Project, which includes the carrying out of a Relevant Offshore Wind Activity and is subject to the Compensation Condition.
- (3) The MRF Participant has chosen to make the MRF Payment in respect of the Allocated Measure for the purpose of discharging all or part of the Compensation Condition which has been imposed on the MRF Participant in connection with the Consent to carry out the Relevant Offshore Wind Activity whose adverse environmental effects the Allocated Measure is to compensate.
- (4) Defra, as the MRFO, has agreed to allocate the Allocated Measure to the Project, subject to the terms of this MRF Contract.
- (5) The MRF Participant has provided evidence of possession of a Relevant Lease to the satisfaction of the MRFO.
- (6) Where the MRFO, entirely at its discretion, has requested it, the MRF Participant has provided either:
  - (i) a Deed of Guarantee and Indemnity substantially in the form at Schedule 5 (or in such form as may be approved by the MRFO acting reasonably) entered into by the MRFO and an Affiliate of the MRF Participant previously approved in writing for this purpose by the MRFO; or
  - (ii) an alternative security in a form approved in writing for that purpose by the MRFO acting reasonably including but not limited to a bond, bank guarantee, letter of credit or policy of insurance.

NOW IT IS HEREBY AGREED as follows:

**TERMS OF THIS CONTRACT**

1 The MRF Participant will make the MRF Payment in respect of the Allocated Measure and the MRFO will allocate and, pursuant to regulation 13 of the MRF Regulations, deliver the Allocated Measure in accordance with the terms and conditions of this MRF Contract which comprises all the documents set out below and incorporates all the Standard Terms and Conditions set out in Section 2 and the Schedules below.

2 This Contract comprises the following:

<b>Section 1</b>	Parties and Recitals
<b>Section 2</b>	Standard Terms and Conditions of MRF Contract
<b>Schedule 1</b>	Order Form
<b>Schedule 2</b>	Expression of Interest Form Part A
<b>Schedule 3</b>	Expression of Interest Form Part B
<b>Schedule 4</b>	Contract Offer Letter
<b>Schedule 5</b>	Deed of Guarantee and Indemnity template
<b>Schedule 6</b>	Deed of Variation template
<b>Schedule 7</b>	Contract Change Note template
<b>Schedule 8</b>	Indexation

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## Section 2

### Standard Terms and Conditions of MRF Contract

#### 1 Definitions and Interpretation

1.1 In this MRF Contract the following definitions apply:

**‘Adaptive Management’** means steps which may be taken by the MRFO if it is of the view that an Approved Measure within the LoSCM is not achieving, or is not likely to achieve, its expected outcomes, as set out in an IMP.

**‘Adaptive Management Charge’** means a charge to cover the MRFO’s costs of carrying out any Adaptive Management which is determined to be required by the MRFO, the amount of which shall be specified in the Order Form and shall be subject to Indexation.

**‘Affiliate’** any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity.

**‘Allocated Measure’** means an Approved Measure allocated by the MRFO to the Project which is sufficient to discharge the whole of the Compensation Condition or the part of that Compensation Condition in respect of which the MRF Payment is to be made and is either:

- a) as specified in the Order Form; or
- b) as may be agreed between the Parties from time to time in accordance with this MRF Contract to include any agreed Increased Allocated Measure or Reduced Allocated Measure.

The Allocated Measure may be:

- a) a whole Approved Measure; or
- b) part of an Approved Measure.

**‘Allocated Measure Cost’** means the total cost of delivery, management, maintenance, monitoring and decommissioning of the Allocated Measure as specified in the Order Form which includes the Deposit Fee and shall be subject to Indexation.

**‘Approved Measure’** means a measure to compensate for adverse environmental effects of Relevant Offshore Wind Activities which has been approved and published by the Secretary of State for Environment, Food and Rural Affairs, in accordance with regulation 6 of the MRF Regulations.

**‘Compensation Condition’** means the condition, as set out in EoI Form Part B, requiring the MRF Participant to take measures to compensate for the adverse

environmental effects of its Relevant Offshore Wind Activities which form part of the Project.

<b>'Consent'</b>	means any consent, approval, permission, authorisation or confirmation (however described or given) that is required, or otherwise provided for, by or under primary legislation in relation to the Project.
<b>'Contract Change Note'</b>	means a Contract Change Note in the form attached to this MRF Contract at Schedule 7.
<b>'Contract Offer Letter'</b>	means the Contract Offer Letter as attached to this MRF Contract at Schedule 4 which has been provided by the MRFO to the MRF Participant prior to the Parties entering into this MRF Contract and which sets out information including: <ul style="list-style-type: none"><li>a) the type of Approved Measure to be allocated to the Project;</li><li>b) the quantity of Approved Measure to be allocated to the Project; and</li><li>c) a full breakdown of the MRF Payment.</li></ul>
<b>'Control'</b>	means the beneficial ownership of 50% or more of the issued share capital of a company, or the legal power to direct or cause the direction of the management of the company.
<b>'Deed of Guarantee and Indemnity'</b>	means a Deed of Guarantee and Indemnity in the form attached to this MRF Contract at Schedule 5.
<b>'Deed of Variation'</b>	means a Deed of Variation in the form attached to this MRF Contract at Schedule 6.
<b>'Deposit Fee'</b>	means the deposit fee, which is proportionate to the Allocated Measure Cost and specified in the Order Form.
<b>'Eol Form Part A'</b>	means the Expression of Interest Form Part A as attached to this MRF Contract at Schedule 2 which was submitted by the MRF Participant to the MRFO as part of its application to make the MRF Payment following Consent being granted in respect of the Project and a determination being made, by or on behalf of the Relevant Person, as to the extent to which the MRF Payment would discharge the Compensation Condition.
<b>'Eol Form Part B'</b>	means the Expression of Interest Form Part B as attached to this MRF Contract at Schedule 3 which was submitted by the MRF Participant to the MRFO as part of its application to make the MRF Payment following Consent being granted in respect of the Project and a determination being made, by or on behalf of the Relevant Person, as to the extent to which the MRF Payment would discharge the Compensation Condition.

<b>'Expiry Date'</b>	shall be the later of the completion of the MRF Participant's obligations in accordance with clause 6 and the MRFO's obligations under clause 7.
<b>'Force Majeure Event'</b>	<p>means any event, circumstance, matter or cause affecting the performance by either the MRFO or the MRF Participant of their respective obligations arising from:</p> <ul style="list-style-type: none"> <li>a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Party seeking to claim relief in respect of a Force Majeure Event (the 'Affected Party') which prevent or materially delay the Affected Party from performing its obligations under the Contract;</li> <li>b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;</li> <li>c) acts of a Crown Body, local government or regulatory bodies;</li> <li>d) fire, flood or any disaster; or</li> <li>e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available.</li> </ul> <p>This excludes:</p> <ul style="list-style-type: none"> <li>a) any industrial dispute relating to the MRF Participant;</li> <li>b) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and</li> <li>c) any failure or delay caused by a lack of funds.</li> </ul> <p>This must not be attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party.</p>
<b>'IMP'</b>	means an Implementation and Monitoring Plan which is relevant to the Allocated Measure and which has been or will be provided by the MRFO to the MRF Participant and the Relevant Person and as may be updated and provided to the MRF Participant by the MRFO from time to time.
<b>'Increased Allocated Measure'</b>	means the increased quantity of Allocated Measure which may be negotiated and agreed between the Parties pursuant to clause 11 of this MRF Contract.
<b>'Indexation'</b>	means the method for indexation set out in Schedule 8.
<b>'Insolvency Event'</b>	<p>means in respect of a person:</p> <ul style="list-style-type: none"> <li>a) if that person becomes insolvent;</li> <li>b) where that person is a company, limited liability partnership or a partnership, if an order is made or a resolution is passed for the winding up of the person</li> </ul>

(other than voluntarily for the purpose of solvent amalgamation or reconstruction);

- c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;
- d) if the person makes any composition with its creditors; or
- e) if the person takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction.

**'LoSCM'** means a Library of Strategic Compensatory Measures containing a list of Approved Measures.

**'Mitigation Hierarchy'** means the sequential avoidance, reduction and mitigation of adverse environmental effects, which developers will be required to show they have applied to all stages of the Project's life-cycle before moving to compensatory measures.

**'MRF'** means a Marine Recovery Fund which may be established by the Secretary of State for Environment, Food and Rural Affairs pursuant to regulation 3(1) of the MRF Regulations into which payments may be made in respect of Relevant Offshore Wind Activities and out of which payments may be made towards expenditure on measures to compensate for adverse environmental effects of Relevant Offshore Wind Activities.

**'MRF Contract'** means this MRF Contract between the MRF Participant and the MRFO for the payment and delivery of the Allocated Measure in accordance with the terms and conditions of this MRF Contract.

**'MRF Participant'** means the person or persons named as the MRF Participant in this MRF Contract.

**'MRF Payment'** means a payment into an MRF which is made:

- a) in accordance with this MRF Contract and the Payment Schedule set out in the Order Form;
- b) in respect of an Allocated Measure to compensate for adverse environmental effects of the Relevant Offshore Wind Activity which forms part of the Project; and
- c) for the purposes of discharging all or part of the Compensation Condition in connection with the Consent in respect of the Relevant Offshore Wind Activity that forms part of the Project.

The MRF Payment shall comprise:

- a) the Allocated Measure Cost;
- b) the Adaptive Management Charge; and
- c) administrative fees and other costs incurred by the MRFO in relation to the operation of the MRF as published in accordance with the MRF Regulations.

<b>‘MRF Regulations’</b>	means the Marine Recovery Funds Regulations 2025 No.1230.
<b>‘MRFO’</b>	means the Secretary of State for Environment, Food and Rural Affairs.
<b>‘Order Form’</b>	means the Order Form attached to this MRF Contract at Schedule 1 confirming the type and quantity of the Allocated Measure to be delivered through the MRF and which forms part of this MRF Contract.
<b>‘Payment Schedule’</b>	means the Payment Schedule in relation to the MRF Payment as set out in the Order Form.
<b>‘Project’</b>	<p>means the project or projects in respect of which the MRF Participant has obtained a Consent, and which includes a Relevant Offshore Wind Activity whose adverse environmental effects are to be compensated for by the Allocated Measure.</p> <p>Where the context requires it, the Project includes any variations or changes to the Project as a result of a revised application as contemplated by clauses 11 and 12 of this MRF Contract.</p>
<b>‘Reduced Allocated Measure’</b>	means the reduced quantity of Allocated Measure that may be agreed between the Parties pursuant to clause 12 of this MRF Contract.
<b>‘Relevant Lease’</b>	<p>means either an option agreement for a lease, an agreement for lease or a valid lease (or an equivalent interest secured pursuant to compulsory acquisition powers) in respect of the Site entered into in connection with the Project between:</p> <ol style="list-style-type: none"> <li>a) the MRF Participant; and</li> <li>b) The Crown Estate and/or The Crown Estate Scotland (as applicable),</li> </ol> <p>in each case to the satisfaction of the MRFO acting reasonably.</p>
<b>‘Relevant Offshore Wind Activity’</b>	has the meaning given in section 290 of the Energy Act 2023.
<b>‘Relevant Person’</b>	has the meaning given in section 292(6) of the Energy Act 2023.
<b>‘Sanctions and Trade Controls’</b>	means all sanctions, export control, and anti-boycott laws, regulations, orders, directives, designations, licences, and decisions of the United Kingdom or any other country with jurisdiction over activities undertaken in connection with this MRF Contract.
<b>‘Site’</b>	means the area within which the Project shall be carried out.
<b>‘Transfer of Responsibility Date’</b>	means the date on which the MRFO becomes responsible for the delivery of the Allocated Measure for the purposes of regulation 13 of the MRF Regulations, namely the date by which the MRF has received both:

- a) the Deposit Fee, and
- b) the MRF Payment, or, where the Payment Schedule provides for the MRF Payment to be made in instalments, the first instalment of the MRF Payment,

from the MRF Participant.

**‘VAT’** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**‘Working Day’** means any day other than—

- a) Saturday or Sunday;
- b) Christmas Day or Good Friday;
- c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 References to numbered clauses are references to the relevant clause in this MRF Contract.
- 1.2.2 Any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done.
- 1.2.3 The headings to the clauses of this MRF Contract are for information only and do not affect the interpretation of this MRF Contract.
- 1.2.4 Any reference to an enactment includes a reference to that enactment as modified, amended, extended, consolidated, replaced or re-enacted (including as consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time before or after the date of this MRF Contract and any prior or subsequent legislation under it.
- 1.2.5 The word ‘including’ shall be understood as meaning ‘including without limitation’.
- 1.2.6 The word ‘person’ shall be understood as including a body of persons corporate or unincorporate.

## **2 Legal basis**

2.1 This MRF Contract is made pursuant to section 292 of the Energy Act 2023 and the MRF Regulations.

## **3 Condition Precedent**

- 3.1 Where the MRFO at its sole discretion requests it, this MRF Contract shall not become effective and binding upon the Parties unless and until the MRF Participant has provided to the MRFO either:
  - 3.1.1 a duly executed Deed of Guarantee and Indemnity substantially in the form at Schedule 5 (or in such form as may be approved by the MRFO acting reasonably) entered into by the MRFO and an Affiliate of the MRF Participant previously approved in writing for this purpose by the MRFO; or
  - 3.1.2 an alternative security in a form approved in writing for that purpose by the MRFO acting reasonably including but not limited to a bond, bank guarantee, letter of credit or policy of insurance,

guaranteeing the obligations of the MRF Participant under this MRF Contract and indemnifying the MRFO against any loss arising from any breach of such obligations.

#### **4 Agreements and declarations**

4.1 The Parties agree and declare that:

- 4.1.1 except in relation to any successors to the Parties to this MRF Contract the provisions of this MRF Contract shall not be enforceable under the Contracts (Rights of Third Parties) Act 1999;
- 4.1.2 entering into this MRF Contract and using the MRF to discharge a Compensation Condition does not discharge the MRF Participant's previous and continuing responsibilities and duties in relation to following the Mitigation Hierarchy in relation to the Project; and
- 4.1.3 where the MRF Participant consists of more than one person each such person shall be jointly and severally liable for the obligations under this MRF Contract.

#### **5 Relevant Lease**

5.1 The MRF Participant shall provide the MRFO with evidence that it has entered into a Relevant Lease prior to the allocation of the Approved Measure.

5.2 The MRF Participant's eligibility to use the MRF is conditional upon:

- 5.2.1 the MRF Participant maintaining and complying with the terms of the Relevant Lease; and
- 5.2.2 where applicable, either:
  - (i) the MRF Participant having satisfied any relevant condition and/or other term contained within an option agreement for a lease or an agreement for lease to secure the grant of a valid completed lease pursuant to such option agreement for a lease or agreement for lease; or
  - (ii) the MRF Participant having complied with requirements of any relevant order or other statutory instrument, authority or process, to validly vest the Relevant Lease in the MRF Participant pursuant to compulsory acquisition powers.

5.3 If the Relevant Lease expires (other than where a lease is then entered into by the MRF Participant for the Project in accordance with the terms of the relevant option agreement or agreement for lease) or is forfeited, surrendered, terminated or otherwise held invalid prior to the Transfer of Responsibility Date, the MRFO may immediately terminate this MRF Contract and release the Allocated Measure back into the LoSCM.

5.4 The MRF Participant must notify the MRFO in writing as soon as reasonably practicable of any actual or anticipated forfeiture, loss, expiration, termination, invalidity or transfer of the Relevant Lease.

#### **6 Obligations on MRF Participant**

6.1 Subject to clause 3, on entering into this MRF Contract, the MRF Participant acknowledges that it shall be bound by and comply with the terms and conditions set out in this MRF Contract, including but not limited to payment of all charges in accordance with clause 9.

6.2 The MRF Participant covenants that it shall at all times in performing its obligations under this MRF Contract comply with, and not become exposed to penalties under, Sanctions and Trade Controls and shall not undertake any action that causes the MRFO to be in breach of, or be exposed to penalties under, Sanctions and Trade Controls.

## **7 Obligations on the MRFO**

- 7.1 Subject to clause 3, on entering into this MRF Contract, the MRFO acknowledges that it shall be bound by and comply with the terms and conditions set out in this MRF Contract, including but not limited to:
- 7.1.1 providing the MRF Participant and the Relevant Person with a copy of the IMP and any updates to the IMP in accordance with clause 8 of this MRF Contract;
  - 7.1.2 the allocation of the Allocated Measure to the Project in accordance with clause 9 of this MRF Contract;
  - 7.1.3 the delivery, monitoring, maintenance, management, and decommissioning of the Allocated Measure in accordance with clause 10;
  - 7.1.4 the Adaptive Management of Approved Measures in accordance with clause 16; and
  - 7.1.5 providing the MRF Participant with a receipt in respect of all payments made in accordance with this MRF Contract within 10 Working Days of such payment.

## **8 Implementation and Monitoring Plan**

- 8.1 If the IMP has not been provided to the MRF Participant by the MRFO prior to this MRF Contract coming into force, the MRFO shall provide the MRF Participant and the Relevant Person with a copy of the IMP as soon as reasonably practicable and no later than 5 days prior to the date on which an invoice is issued by the MRFO to the MRF Participant in respect of:
- 8.1.1 the MRF Payment; or
  - 8.1.2 where the Payment Schedule provides for the MRF Payment to be made in instalments, the first instalment of the MRF Payment.
- 8.2 The MRFO shall provide the MRF Participant and the Relevant Person with a copy of any updates that may from time to time be made to the IMP as soon as reasonably practicable after those updates have been made.

## **9 Payment of MRF Payment and allocation of Approved Measure**

- 9.1 Subject to the terms and conditions of this MRF Contract and upon receipt of the Deposit Fee, the MRFO shall allocate the Approved Measure in respect of which the MRF Payment is to be made for the benefit of the Project.
- 9.2 In consideration of the allocation and delivery of the Allocated Measure by the MRFO in accordance with the terms and conditions of this MRF Contract, the MRF Participant covenants to pay the MRF Payment to the MRFO in accordance with the Payment Schedule.
- 9.3 All amounts stated in the Payment Schedule are exclusive of VAT which shall be charged at the prevailing rate. The MRF Participant shall, following the receipt of a valid VAT invoice, pay to the MRFO a sum equal to the VAT chargeable in respect of the Deposit Fee and any payments which form part of the MRF Payment.
- 9.4 The MRF Participant shall pay each amount due and payable in full and in cleared funds to the bank account nominated in writing by the MRFO on the date specified in the Payment Schedule.
- 9.5 Subject to clause 21, all payments made by the MRF Participant shall be non-transferrable between third party plans, projects, and MRF participants.
- 9.6 Subject to clauses 9.7 and 9.8, all payments made by the MRF Participant to the MRFO in accordance with this MRF Contract will be non-refundable.

- 9.7 If, prior to the Transfer of Responsibility Date, the MRFO determines that the Allocated Measure cannot be delivered, the MRF Participant shall be entitled to a refund in accordance with clause 15.2.
- 9.8 Without limitation on clause 23, if:
- 9.8.1 the MRF Participant terminates this MRF Contract before the Transfer of Responsibility Date; and
- 9.8.2 within 12 months of such termination, the Allocated Measure is allocated to another project pursuant to a contract entered into between the MRFO and another applicant to the MRF,
- the MRF Participant, at the discretion of the MRFO, shall be entitled to a refund in respect of the Deposit Fee which it has paid to the MRFO prior to such termination.
- 9.9 Without limitation on clause 23, where this MRF Contract is terminated by either Party after the Transfer of Responsibility Date, the MRF Participant shall continue to be fully responsible for full payment of the MRF Payment in accordance with the Payment Schedule.
- 9.10 If there is a general change in law which would give rise to an increase to the MRF Payment, the MRF Participant shall be liable for such increase.
- 9.11 The Payment Schedule is subject to clause 14.2 (which provides for timings set out in the Payment Schedule to be modified in the event of an application for judicial review of the decision to grant Consent for the Project).

## **10 Transfer of responsibility and delivery of Allocated Measure**

- 10.1 In consideration of the MRF Participant's agreement to pay the MRF Payment and pursuant to regulation 13 of the MRF Regulations, the MRFO will assume responsibility for the delivery, monitoring, maintenance, adaptation, management and decommissioning of the Allocated Measure on the Transfer of Responsibility Date.
- 10.2 The MRFO shall deliver, monitor, adapt and maintain, manage, and decommission (where relevant) the Allocated Measure from the Transfer of Responsibility Date in accordance with, and for the period set out in or determined in accordance with, the IMP.
- 10.3 The MRFO may at any time and at its sole discretion, subcontract any aspect of the delivery, monitoring, maintenance, adaptation, management or decommissioning of the Allocated Measure to a third party.
- 10.4 Subcontracting to a third party under clause 10.3 does not affect the MRFO's obligations under clause 10.1 and the MRFO shall remain liable to the MRF Participant for its obligations set out at that clause.

## **11 Increased Allocated Measure**

- 11.1 If the Relevant Person determines that the Allocated Measure is insufficient to compensate for the adverse environmental effects of the Relevant Offshore Wind Activity that forms part of the Project, including as a result of a variation or change to the Consent in respect of the Project, the MRF Participant must notify the MRFO and provide evidence of such determination to the MRFO as soon as reasonably practicable, and the MRF Participant may either:
- 11.1.1 independently deliver additional compensation measures to address the identified shortfall; or
- 11.1.2 propose to renegotiate the quantity of Allocated Measure set out in the Order Form to address the identified shortfall, subject to availability.
- 11.2 If the MRF Participant and the MRFO acting reasonably agree to an Increased Allocated Measure following renegotiation:

- 11.2.1 the Order Form must be varied in writing following the procedure set out in clause 17; and
  - 11.2.2 the remaining MRF Payment shall be adjusted accordingly to reflect the Increased Allocated Measure.
- 11.3 The MRFO shall not be liable for any delay, cost or loss incurred by the MRF Participant including but not limited to as a result of:
- 11.3.1 the determination of insufficient quantity of Allocated Measure by the Relevant Person;
  - 11.3.2 the renegotiation of the quantity of the Allocated Measure or the MRF Participant's election to deliver additional, independent compensation measures; or
  - 11.3.3 any process relating to the variation of the Order Form.

## **12 Reduced Allocated Measure**

- 12.1 If the Relevant Person determines that the quantity of Allocated Measure exceeds the amount of compensation that is required to compensate for the adverse environmental effects of the Relevant Offshore Wind Activity that forms part of the Project, including as a result of a variation or a change to the Consent in respect of the Project, and that a Reduced Allocated Measure is therefore required, the MRF Participant must notify the MRFO and provide evidence of such determination to the MRFO as soon as reasonably practicable.
- 12.2 Following receipt of notice and evidence submitted pursuant to clause 12.1, the MRFO shall determine, at its sole discretion, whether the excess Allocated Measure should be released back into the LoSCM and shall notify the MRF Participant of such determination as soon as reasonably practicable.
- 12.3 Following determination by the MRFO that the excess Allocated Measure must be released, the MRF Participant shall request a variation to the Order Form to account for the Reduced Allocated Measure following the procedure set out in clause 17.
- 12.4 The MRF Participant shall not be entitled to any refund in respect of any part of the MRF Payment which it has already paid in respect of the Allocated Measure, but the remaining MRF Payment shall be adjusted accordingly to reflect the Reduced Allocated Measure and any MRF Payment already made by the MRF Participant will be credited towards the adjusted MRF Payment.

## **13 Failure to make MRF Payment or first instalment of MRF Payment**

- 13.1 Subject to clauses 13.2 and 14.2 and following payment of the Deposit Fee by the MRF Participant, if the MRF Participant fails to make payment of the MRF Payment, or, where the MRF Payment is to be paid in instalments, the first instalment of the MRF Payment in accordance with the Payment Schedule, the MRFO reserves the right, at its sole discretion and based on demand for the Allocated Measure to:
- 13.1.1 release all or part of the Allocated Measure and make it available to other eligible applicants to the MRF; and
  - 13.1.2 defer delivery of any future Approved Measures to the MRF Participant until such time as the MRFO determines, in its sole discretion, that the MRF has the capacity to support the compensation requirements of the Project.
- 13.2 The MRFO shall notify the MRF Participant in writing of its intention to take the steps set out in clauses 13.1.1 and 13.1.2 and shall give the MRF Participant 28 days to make payment of the MRF Payment or the first instalment of the MRF Payment before taking such steps.
- 13.3 Any release of all or part of the Allocated Measure pursuant to clause 13.1.1 by the MRFO may result in the indefinite deferral or delay of the allocation of the Allocated Measure to the

Project unless and until such time as the MRFO determines it is feasible to allocate it to the Project again.

- 13.4 In the event of a release of all or part of the Allocated Measure pursuant to clause 13.1.1, the MRF Participant may:
- 13.4.1 await future availability of the Allocated Measure and request a variation to the Order Form following the procedure set out in clause 17; or
  - 13.4.2 elect to terminate this MRF Contract.
- 13.5 The exercise of the MRFO's right to release all or part of the Allocated Measure under this clause 13 shall be considered a measure of last resort and shall be determined by the MRFO on a case-by-case basis, taking into account factors including, but not limited to:
- 13.5.1 overall demand for the specific type of Allocated Measure;
  - 13.5.2 the potential environmental impact or effect of delayed delivery of the Allocated Measure; and
  - 13.5.3 the delivery capacity of the MRF.

#### **14 Judicial Review of Consent**

- 14.1 In the event of the Relevant Person's decision to grant Consent for the Project being subject to an application for judicial review, the MRF Participant shall, within 30 days of notification of such proceedings, provide written notice to the MRFO electing either to:
- 14.1.1 proceed with its participation in the MRF and in doing so, continue to make payments in accordance with the Payment Schedule, as modified by clause 14.2, notwithstanding the pending outcome of the judicial review proceedings; or
  - 14.1.2 terminate this MRF Contract.
- 14.2 Where an application for judicial review is made, and the MRF Participant elects to proceed under clause 14.1.1, the MRF Participant's responsibility to make the MRF Payment in accordance with the Payment Schedule, and the MRFO's assumption of responsibility for the delivery of the Allocated Measure pursuant to clause 10.1, have effect as if that payment were required to be made on the earlier of—
- 14.2.1 the date after which permission to proceed with the claim is refused; and
  - 14.2.2 the date 16 weeks after the day on which the application for judicial review is made.
- 14.3 Subject to clause 14.4, if within 6 months of determination of the judicial review proceedings, the MRF Participant submits a new EoI Form Part A in respect of an Approved Measure which is reserved by the MRFO, any Deposit Fee which the MRF Participant has previously paid to the MRFO in respect of the Allocated Measure shall be deducted from the MRF payment in respect of the alternative Approved Measure.
- 14.4 Any subsequent EoI Form Part A which is submitted by the MRF Participant must relate to substantially the same Project.
- 14.5 In the event that the MRF Participant fails to provide notice to the MRFO within the period specified in clause 14.1, the MRF Participant shall be deemed to have elected to proceed with its application to use the MRF in accordance with clause 14.1.1.
- 14.6 For the avoidance of doubt, if the application for judicial review of a decision to grant Consent is ultimately successful and the Consent is quashed, the MRF Participant shall not be entitled to any refund in respect of any Deposit Fee or any part of the MRF Payment which it has paid to the MRFO.

## **15 Determination that Allocated Measure will not be deliverable**

- 15.1 If, prior to the Transfer of Responsibility Date, the MRFO determines that it is unable to deliver the Allocated Measure, the MRFO will seek to identify and secure the delivery of compensation of an alternative type or quantity of Approved Measure which is within the LoSCM subject to the prior written agreement of the Relevant Person.
- 15.2 If it is determined that delivery of such an alternative type or quantity of Approved Measure as set out in clause 15.1 is either:
- 15.2.1 not possible; or
  - 15.2.2 not agreed to by the Relevant Person,
- this MRF Contract shall be terminated and the MRF Participant shall be entitled to a refund in respect of any Deposit Fee which it has paid to the MRFO in respect of the Allocated Measure.
- 15.3 If an alternative type or quantity of Approved Measure is agreed between the MRFO and the Relevant Person, any previous payments made by the MRF Participant to the MRFO in respect of the undeliverable Allocated Measure shall be deducted from the MRF Payment in respect of the alternative Approved Measure.
- 15.4 Subject to clause 15.2, if the MRFO is unable to deliver the Allocated Measure, the MRFO will not be held liable for losses suffered by the MRF Participant, including consequential losses as set out in clause 19.

## **16 Adaptive Management of Approved Measures**

- 16.1 The MRFO may use the Adaptive Management Charge to deliver and shall be responsible for any Adaptive Management of an Approved Measure that is required in accordance with an IMP.
- 16.2 For the avoidance of doubt, the Adaptive Management Charge shall be non-refundable in the event that no Adaptive Management is required in relation to the Allocated Measure or the relevant Approved Measure.

## **17 Making variations to this MRF Contract**

- 17.1 Either Party can request a variation to this MRF Contract. Any request for a variation must be made in writing and submitted to the other Party in accordance with clause 26.
- 17.2 No variation of this MRF Contract shall be valid or effective unless it is in writing, refers to this MRF Contract and is either, entirely at the MRFO's sole discretion:
- 17.2.1 duly signed or executed (as the case may be) by, or on behalf of, each Party in a Deed of Variation; or
  - 17.2.2 set out and signed by both Parties in a Contract Change Note.
- 17.3 If a requested variation to this MRF Contract cannot be agreed or resolved by the Parties, then either:
- 17.3.1 the Parties can agree that the MRF Contract continues without the variation; or
  - 17.3.2 either Party shall be entitled to refer the dispute to be resolved in accordance with clause 22.
- 17.4 The MRFO shall not be required to accept a request made by the MRF Participant for a variation to this MRF Contract.
- 17.5 The MRF Participant may only reject a request made by the MRFO for a variation to this MRF Contract if the MRF Participant:

- 17.5.1 reasonably believes the variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the delivery of the Allocated Measure being provided in a way that infringes any law; or
- 17.5.2 demonstrates to the MRFO's reasonable satisfaction that the variation is technically impossible to implement and that neither the EoI Form Part B nor the IMP state that the MRFO has the required technical capacity or flexibility to implement the variation; or
- 17.5.3 demonstrates to the MRFO's reasonable satisfaction that the variation is likely to or results in a failure to deliver the Allocated Measure in compliance with the Compensation Condition.

## **18 Change in financial circumstances**

- 18.1 The MRF Participant shall promptly notify the MRFO in writing if there is any material change in the financial circumstances of the MRF Participant which could impact on the delivery of the Project and/or the MRF Participant's continued performance of this MRF Contract.

## **19 Limitation of Liability**

- 19.1 The extent of each Party's liability under or in connection with this MRF Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation), shall be as set out in this clause 19.
- 19.2 Subject to clause 19.5, each Party's total aggregate liability shall be as set out in the Order Form.
- 19.3 Subject to clause 19.5, neither Party shall be liable for any consequential, indirect or special loss.
- 19.4 Except as expressly stated in this MRF Contract, and subject to clause 19.5, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 19.5 Notwithstanding any other provision of this MRF Contract, neither Party's liability shall be limited in any way in respect of the following:
  - 19.5.1 death or personal injury caused by negligence;
  - 19.5.2 fraud or fraudulent misrepresentation; or
  - 19.5.3 any other losses which cannot be excluded or limited by applicable law.
- 19.6 After the Transfer of Responsibility Date, responsibility for the delivery of the Allocated Measure cannot transfer back to the MRF Participant in any circumstance.

## **20 Agreement to renew or extend**

- 20.1 The Parties may agree to renew or extend this MRF Contract in advance of the Expiry Date but there is no obligation on either Party to do so.

## **21 Assignment and change of control**

- 21.1 The MRF Participant shall not without the prior written consent of the MRFO, which shall not be unreasonably withheld or delayed, assign, sub-contract, transfer, novate or in any way dispose of the benefit or the burden (or both) of this MRF Contract or any part of this MRF Contract to any other party. When the MRFO approves any such transfer the Parties shall enter into a novation agreement in a form approved of by the MRFO, acting reasonably.
- 21.2 The MRFO can assign, novate or transfer this MRF Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the MRFO. When the

MRFO uses its rights under this clause 21, the MRF Participant must enter into a novation contract in a form approved by the MRFO, acting reasonably.

- 21.3 In the event that the MRF Participant intends to undergo or undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010, the MRF Participant shall notify the MRFO to that effect not less than 30 days prior to the change of control (or as soon as it is legally entitled to do so whether before or after the occurrence of the change of control), providing details of the revised ownership of the MRF Participant following the occurrence of the change of control.
- 21.4 Where the MRF Participant undergoes a change of control and, where the MRFO at its sole discretion requires the MRF Participant to provide a replacement Deed of Guarantee and Indemnity or other security which complies with the provision of clause 3.1 of this MRF Contract to the MRFO, the MRFO shall release and return any Deed of Guarantee and Indemnity which has been provided on entering into this MRF Contract to the relevant Affiliate of the MRF Participant.

## **22 Dispute Resolution**

- 22.1 The contract managers of each Party shall attempt in good faith to negotiate a settlement to any dispute between the Parties arising out of or in connection with this MRF Contract within 14 days of a written request from the other Party. If the contract managers are unable to settle the dispute either Party may on notice to the other escalate the dispute to an appropriately senior representative of each Party.
- 22.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 22.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the 'Mediator') using the Centre for Effective Dispute Resolution ('CEDR') Model Mediation Procedure current at the time of the dispute, with the Mediator chosen by agreement between the Parties or nominated by CEDR if the Parties cannot agree on a mediator within one month. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 22.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law and the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 22.3.1 determine the dispute;
  - 22.3.2 grant interim remedies; or
  - 22.3.3 grant any other provisional or protective relief.
- 22.4 Neither Party can suspend the performance of this MRF Contract during any dispute.

## **23 Termination and Expiry**

- 23.1 Subject to the provisions of this clause 23, this MRF Contract shall expire on the Expiry Date.
- 23.2 Subject to clauses 9.8, 9.9 and 23.3 and without prejudice to any other right or remedy it might have, including any other express rights of termination set out in this MRF Contract, the MRFO may terminate this MRF Contract in whole or in part by written notice to the MRF Participant with immediate effect if any of the following apply:
- 23.2.1 the MRF Participant is in material breach of this MRF Contract where such breach is not capable of remedy;
  - 23.2.2 the MRF Participant repeatedly breaches any of the terms and conditions of this MRF Contract in such a manner that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of this MRF Contract;

- 23.2.3 the MRF Participant is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the MRF Participant receiving notice specifying the breach and requiring it to be remedied;
  - 23.2.4 following a change of control under clause 21.3, and where the MRFO has requested it, the MRF Participant fails to provide a replacement Deed of Guarantee and Indemnity or other security in accordance with clause 21.4;
  - 23.2.5 the MRF Participant suffers an Insolvency Event;
  - 23.2.6 the MRF Participant's interest in the Relevant Lease expires or is forfeited, surrendered, terminated or otherwise held invalid as provided for in clause 5.3;
  - 23.2.7 the MRF Participant fails to pay the MRFO any payment by the date set out in the Payment Schedule and remains in default for not less than 14 days after receipt of a notice of late payment from the MRFO; or
  - 23.2.8 the MRF Participant fails to comply with legal obligations in the fields of environmental, social or labour law.
- 23.3 Termination or expiry of this MRF Contract shall be without prejudice to the rights of any Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties and any other term or condition of this MRF Contract that either expressly or by implication has effect after termination.
- 23.4 The MRF Participant may terminate this MRF Contract in the event of the release of all or part of the Allocated Measure pursuant to clause 13.1.1.
- 23.5 Subject to clauses 9.7 and 15.2, all payments which have been made by the MRF Participant to the MRFO will be non-refundable in the event that this MRF Contract is terminated or expires including but not limited to in accordance with this clause 23.

## **24 Force Majeure**

- 24.1 Neither Party shall have any liability under or be deemed to be in breach of this MRF Contract for any delays or failures in performance of the MRF Contract which result from a Force Majeure Event provided the Affected Party uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2 Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such Force Majeure Event continues for a continuous period of more than 60 days, either Party may terminate the MRF Contract by written notice to the other Party.
- 24.3 Where a Party terminates under this clause 24 each Party must cover its own losses.

## **25 Governing Law and Jurisdiction**

- 25.1 The validity, construction and performance of this MRF Contract, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

## **26 Notices**

- 26.1 Any notice to be given under this MRF Contract shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 26.3, email to the address of the relevant Party as that Party may from time to time notify to the other Party in accordance with this clause 26.
- 26.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5:00pm. Otherwise, delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.

- 26.3 Notices under clauses 23 and 24 may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 26.1.
- 26.4 This clause 26 does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

<b>For and on behalf of the Secretary of State for Environment, Food and Rural Affairs</b>	<b>For and on behalf of [<i>MRF Participant name</i>]</b>
MRFO Signature:	MRF Participant Signature:
Name:	Name:
Job Title:	Job Title:
Date signed:	Date Signed: