

## CONDITIONAL AGREEMENT

### Section 1

THIS AGREEMENT is made on the [ ] day of [ ] 202[ ]

BETWEEN:

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

AND

- (2) [MRF Applicant name] of [MRF Applicant registered Address ] (“MRF Applicant”)

each of Defra and the MRF Applicant 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 Applicant proposes to apply for Consent in respect of the Project, which includes a Relevant Offshore Wind Activity, and proposes to make the Proposed MRF Payment to compensate for the adverse environmental effects of such Relevant Offshore Wind Activity.
- (3) Defra, as the MRFO, has agreed to reserve the Reserved Approved Measure in respect of which the Proposed MRF Payment is to be made, subject to the terms of this Agreement.
- (4) The MRF Applicant has provided evidence of possession of a Relevant Lease to the satisfaction of the MRFO.
- (5) The Parties are entering into this Agreement pursuant to regulation 7(2)(b) of the MRF Regulations.

NOW IT IS HEREBY AGREED as follows:

**TERMS OF THIS AGREEMENT**

1 The MRF Applicant has applied to make the Proposed MRF Payment and the MRFO has agreed to reserve the Reserved Approved Measure in accordance with the terms and conditions of this Agreement 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 Agreement comprises the following:

- Section 1** Parties and Recitals
- Section 2** Standard Terms and Conditions of Agreement
  
- Schedule 1** Expression of Interest Form Part A
- Schedule 2** Acceptance Letter
- Schedule 3** Confirmation Letter template
- Schedule 4** Expression of Interest Form Part B template
- Schedule 5** Contract Offer Letter template
- Schedule 6** MRF Contract template
- Schedule 7** Order Form template
- Schedule 8** Deed of Variation template
- Schedule 9** Contract Change Note template

## Table of Contents

1	Definitions and Interpretation .....	4
2	Legal basis .....	9
3	Agreements and declarations .....	10
4	Relevant Lease .....	10
5	Obligations on MRF Applicant .....	10
6	Obligations on the MRFO .....	10
7	Final approval of application to use the MRF .....	11
8	Payment of fees and reservation of Approved Measure.....	11
9	Confirmation Letter and IMP .....	12
10	Submission of application for Consent within expected timeframe .....	12
11	Submission of MRF information as part of application for Consent.....	13
12	Adjustments to the Reserved Approved Measure .....	13
13	Submission of EoI Form Part B.....	15
14	Failure to obtain Consent.....	15
15	Making variations to this Agreement.....	15
16	Change in financial circumstances .....	16
17	Limitation of Liability.....	16
18	Assignment and change of control.....	16
19	Dispute Resolution .....	16
20	Termination and expiry.....	17
21	Force Majeure .....	18
22	Governing Law and Jurisdiction.....	18
23	Notices .....	18

**Section 2**  
**Standard Terms and Conditions of Agreement**

**1 Definitions and Interpretation**

1.1 In this Agreement the following definitions apply:

- ‘Acceptance Letter’** means the Acceptance Letter attached to this Agreement at Schedule 2 which has been provided by the MRFO to the MRF Applicant prior to the Parties entering into this Agreement and which sets out:
- (a) confirmation of the type and amount of Approved Measure which is to be reserved;
  - (b) the Estimated Reserved Approved Measure Cost; and
  - (c) the Reservation Fee payable by the MRF Applicant to the MRFO in respect of the Reserved Approved Measure,
- and includes any updates to the Acceptance Letter which may be made pursuant to clause 12 of this Agreement.
- ‘Adaptive Management’** has the meaning set out in the MRF Contract.
- ‘Adaptive Management Charge’** has the meaning set out in the MRF Contract.
- ‘Additional Reservation Fee’** means any Additional Reservation Fee which may be payable by the MRF Applicant to the MRFO in the event of the Parties agreeing an increase to the amount of Reserved Approved Measure in accordance with clause 12 of this Agreement.
- ‘Adjusted Reserved Approved Measure’** means an Adjusted Reserved Approved Measure which may be agreed between the Parties in accordance with clause 12 of this Agreement.
- ‘Agreement’** means this conditional Agreement between the MRF Applicant and the MRFO for the reservation of the Reserved Approved Measure in accordance with the terms and conditions of this Agreement.
- ‘Allocated Measure’** means an Approved Measure which, subject to the terms of this Agreement, may be allocated by the MRFO to the MRF Applicant pursuant to the MRF Contract and which is sufficient to discharge the whole of the Compensation Condition or the part of that Compensation Condition in respect of which the Proposed 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 the MRF Contract to include any agreed increased or reduced amount of such measure.

the Allocated Measure may be:

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

<b>‘Allocated Measure Cost’</b>	has the meaning set out in the MRF Contract.
<b>‘Approved Measure’</b>	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.
<b>‘Compensation Condition’</b>	means the condition which will be set out in EoI Form Part B requiring the MRF Applicant to take measures to compensate for the adverse environmental effects of the Relevant Offshore Wind Activities which form part of the Project.
<b>‘Confirmation Letter’</b>	means a Confirmation Letter in the form attached to this Agreement at Schedule 3 which shall be provided by the MRFO to the MRF Applicant and shall include: <ul style="list-style-type: none"><li>(a) confirmation of receipt of payment of the Reservation Fee; and</li><li>(b) confirmation of the Reserved Approved Measure,</li></ul> and includes any updates to the Confirmation Letter which may be made pursuant to clause 12 of this Agreement.
<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 Agreement at Schedule 9.
<b>‘Contract Offer Letter’</b>	means a Contract Offer Letter in the form attached to this Agreement at Schedule 5 which may be provided by the MRFO to the MRF Applicant within 60 days of submission of an EoI Form Part B by the MRF Applicant to the MRFO.
<b>‘Deed of Variation’</b>	means a Deed of Variation in the form attached to this Agreement at Schedule 8.
<b>‘EoI Form Part A’</b>	means the Expression of Interest Form Part A attached to this Agreement at Schedule 1 which was submitted by the MRF Applicant to the MRFO as part of its application to make the Proposed MRF Payment.

<b>'EoI Form Part B'</b>	means an Expression of Interest Form Part B in the form attached to this Agreement at Schedule 4 which shall be submitted by the MRF Applicant to the MRFO within 60 days of 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 Proposed MRF Payment would discharge the Compensation Condition.
<b>'Estimated Reserved Approved Measure Cost'</b>	means the estimated cost of delivery, management, maintenance, monitoring and decommissioning of the Reserved Approved Measure as specified in the Acceptance Letter.
<b>'Expiry Date'</b>	shall be the later of the completion of the MRF Applicant's obligations in accordance with clause 5 and the MRFO's obligations under clause 6 of this Agreement.
<b>'Force Majeure Event'</b>	<p>means any event, circumstance, matter or cause affecting the performance by either the MRFO or the MRF Applicant 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 Agreement;</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 Applicant;</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 Reserved Approved Measure, to be provided by the MRFO to the MRF Applicant and the Relevant Person and as may be updated and provided to the MRF Applicant by the MRFO from time to time.

<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 (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</li> <li>c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;</li> <li>d) if the person makes any composition with its creditors; or</li> <li>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.</li> </ul>
<b>'LoSCM'</b>	<p>means the Library of Strategic Compensatory Measures containing a list of Approved Measures.</p>
<b>'Mitigation Hierarchy'</b>	<p>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.</p>
<b>'MRF'</b>	<p>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.</p>
<b>'MRF Contract'</b>	<p>means an MRF Contract in the form which is attached to this Agreement at Schedule 6 and, subject to the terms of this Agreement, shall be entered into between the MRF Applicant and the MRFO 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 Proposed MRF Payment would discharge the Compensation Condition.</p>
<b>'MRF Regulations'</b>	<p>means the Marine Recovery Funds Regulations 2025 No. 1230.</p>
<b>'Order Form'</b>	<p>means an Order Form in the form attached to this Agreement at Schedule 7 which shall form part of the MRF Contract to be entered into between the MRF Applicant and the MRFO.</p>
<b>'Project'</b>	<p>means the project or projects in respect of which the MRF Applicant intends to apply for Consent and which includes a</p>

Relevant Offshore Wind Activity whose adverse environmental effects are to be compensated by the Allocated Measure.

- ‘Proposed MRF Payment’** means a proposed payment into an MRF which is to be made:
- (a) in accordance with an MRF Contract;
  - (b) in respect of an Allocated Measure to compensate for adverse environmental effects of a Relevant Offshore Wind Activity which forms part of the Project; and
  - (c) for the purposes of discharging all or part of a Compensation Condition imposed in connection with the granting of a Consent in respect of the Project.
- The Proposed 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.
- ‘Relevant Lease’** 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:
- (a) the MRF Applicant; and
  - (b) The Crown Estate and/or The Crown Estate Scotland (as applicable),
- in each case to the satisfaction of the MRFO acting reasonably.
- ‘Relevant Offshore Wind Activity’** has the meaning given in section 290 of the Energy Act 2023.
- ‘Relevant Person’** has the meaning given in section 292(6) of the Energy Act 2023.
- ‘Reservation Fee’** means the Reservation Fee as specified in the Acceptance Letter which is to be paid by the MRF Applicant to the MRFO in accordance with this Agreement.
- ‘Reserved Approved Measure’** means the type and amount of Approved Measure reserved by the MRFO in respect of which the Proposed MRF Payment is to be made, subject to the terms of this Agreement, and is either:

- (a) as specified in the Acceptance Letter and Confirmation Letter; or
- (b) as may be agreed between the Parties in accordance with this Agreement to include any Adjusted Reserved Approved Measure.

The Reserved Approved Measure may relate to:

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

<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 Agreement.
<b>'Site'</b>	means the area within which the Project shall be carried out.
<b>'VAT'</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994.
<b>'Working Day'</b>	means any day other than— <ul style="list-style-type: none"> <li>a) Saturday or Sunday;</li> <li>b) Christmas Day or Good Friday;</li> <li>c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971.</li> </ul>

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 Agreement.
- 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 Agreement are for information only and do not affect the interpretation of the Agreement.
- 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 Agreement 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 Agreement is made pursuant to section 292 of the Energy Act 2023 and the MRF Regulations.

### **3 Agreements and declarations**

3.1 The Parties agree and declare that:

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

### **4 Relevant Lease**

4.1 The MRF Applicant shall provide the MRFO with evidence that it has entered into a Relevant Lease prior to the reservation of the Reserved Approved Measure.

4.2 The MRF Applicant's eligibility to use the MRF is conditional upon the MRF Applicant maintaining and complying with the terms of the Relevant Lease.

4.3 If at any point during the term of this Agreement, the Relevant Lease expires (other than where a lease is then entered into by the MRF Applicant 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, the MRFO may immediately:

4.3.1 release the Reserved Approved Measure back into the LoSCM; and

4.3.2 terminate this Agreement.

4.4 The MRF Applicant 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.

### **5 Obligations on MRF Applicant**

5.1 On entering into this Agreement, the MRF Applicant acknowledges that it shall be bound by and comply with the terms and conditions set out in this Agreement, including but not limited to:

5.1.1 payment of the Reservation Fee and any Additional Reservation Fee in accordance with clauses 8 and 12 of this Agreement;

5.1.2 submission of an application for Consent in relation to the Project in accordance with clauses 10 and 11 of this Agreement;

5.1.3 submission of an EoI Form Part B in accordance with clause 13 of this Agreement; and

5.1.4 subject to clause 7 of this Agreement, entering into the MRF Contract.

5.2 The MRF Applicant covenants that it shall at all times in performing its obligations under this Agreement 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.

### **6 Obligations on the MRFO**

6.1 On entering into this Agreement, the MRFO acknowledges that it shall be bound by and comply with the terms and conditions set out in this Agreement, including but not limited to:

- 6.1.1 providing the MRF Applicant with a Confirmation Letter in accordance with clause 9 of this Agreement;
- 6.1.2 providing the MRF Applicant with the IMP in accordance with clause 9 of this Agreement;
- 6.1.3 the reservation of the Reserved Approved Measure in accordance with clause 8 of this Agreement; and
- 6.1.4 subject to clause 7 of this Agreement, entering into the MRF Contract.

## **7 Final approval of application to use the MRF**

- 7.1 The MRF Applicant's application shall not be finally approved by the MRFO, and the Parties shall not be obliged to enter into the MRF Contract until:
  - 7.1.1 the MRF Applicant has obtained all applicable Consents in respect of the Project;
  - 7.1.2 the MRFO has been satisfied that a determination has been made, by or on behalf of the Relevant Person who imposed the Compensation Condition which the MRF Applicant seeks to discharge by making the Proposed MRF Payment, as to the extent to which the Proposed MRF Payment would discharge the Compensation Condition;
  - 7.1.3 the MRF Applicant has submitted the EoI Form Part B to the MRFO; and
  - 7.1.4 the MRFO has sent a Contract Offer Letter to the MRF Applicant.

## **8 Payment of fees and reservation of Approved Measure**

- 8.1 Subject to:
  - 8.1.1 the terms of this Agreement; and
  - 8.1.2 payment by the MRF Applicant of the Reservation Fee, and, where applicable, the Additional Reservation Fee,

the MRFO shall reserve the Approved Measure, and where applicable, any Adjusted Reserved Approved Measure, for the benefit of the Project.
- 8.2 In consideration of the reservation of the Reserved Approved Measure by the MRFO in accordance with the terms and conditions of this Agreement, the MRF Applicant covenants to pay the Reservation Fee within 30 days of receipt of an invoice from the MRFO in respect of such fee.
- 8.3 In the event of the Parties agreeing an Adjusted Reserved Approved Measure which would require payment of an Additional Reservation Fee by the MRF Applicant to the MRFO, the MRF Applicant covenants to pay the Additional Reservation Fee within 30 days of receipt of an invoice in respect of such fee from the MRFO in accordance with clause 12 of this Agreement.
- 8.4 The Reservation Fee and any Additional Reservation Fee are exclusive of VAT which shall be charged at the prevailing rate. The MRF Applicant shall, following the receipt of a valid VAT invoice, pay to the MRFO a sum equal to the VAT chargeable in respect of any payments.
- 8.5 The MRF Applicant shall pay the Reservation Fee and any Additional Reservation Fee in full and in cleared funds to the bank account nominated in writing by the MRFO.
- 8.6 The Reservation Fee and, where applicable, the Additional Reservation Fee, shall relate to the Reserved Approved Measure and, where applicable, the Adjusted Reserved Approved Measure, in respect of the Project only and, subject to clause 18, shall be non-transferrable between third party plans, projects, and other applicants to the MRF.

- 8.7 Subject to clause 8.8, the Reservation Fee and any Additional Reservation Fee will be non-refundable.
- 8.8 If the Allocated Measure Cost is significantly higher than the Estimated Reserved Approved Measure Cost, the MRF Applicant may elect to terminate this Agreement and shall be entitled to a refund in respect of any Reservation Fee or Additional Reservation Fee which it has paid to the MRFO. The significance of any variation between the Allocated Measure Cost and the Estimated Reserved Approved Measure Cost will be determined by the MRFO at its sole discretion, acting reasonably.
- 8.9 Subject to the terms of this Agreement, the Reserved Approved Measure, and where applicable any Adjusted Reserved Approved Measure, shall not be reserved or allocated to any other project.

## **9 Confirmation Letter and IMP**

- 9.1 The MRFO shall provide the MRF Applicant with a Confirmation Letter within 15 days of receipt of payment of the Reservation Fee by the MRF Applicant.
- 9.2 The MRFO shall provide the MRF Applicant with a copy of the IMP as soon as reasonably practicable after this Agreement comes into force.
- 9.3 The MRFO shall provide the MRF Applicant 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.

## **10 Submission of application for Consent within expected timeframe**

- 10.1 The MRF Applicant shall notify the MRFO of any anticipated delay to the submission of its application for Consent in respect of the Project, within any expected timeframe as may be set out in EoI Form Part A, as soon as reasonably practicable and no later than within 60 days of expiry of the expected timeframe for submission and shall provide reasonable justification for such delay.
- 10.2 Subject to clause 10.3, if the MRF Applicant fails to submit its application for Consent in respect of the Project within any expected timeframe as may be set out in EoI Form Part A, and no reasonable justification is provided within 60 days of expiry of the expected timeframe for submission, the MRFO reserves the right, at its sole discretion acting reasonably, to:
- 10.2.1 release all or part of the Reserved Approved Measure back into the LoSCM and make it available to other eligible applicants to the MRF; and
- 10.2.2 defer delivery of any future Approved Measures to the MRF Applicant until such time as the MRFO determines, in its sole discretion, that the MRF has the capacity to support the compensation requirements of the Relevant Offshore Wind Activities which form part of the Project.
- 10.3 The MRFO shall notify the MRF Applicant in writing of its intention to release all or part of the Reserved Approved Measure pursuant to clause 10.2.1 and shall give the MRF Applicant 28 days to respond to such notification before exercising its right to release all or part of the Reserved Approved Measure.
- 10.4 If the MRF Applicant does not respond to the MRFO's notice pursuant to clause 10.3 or no reasonable justification for the delay is provided, within 28 days of the MRFO's notice, the MRFO may proceed to take the steps set out in clauses 10.2.1 and 10.2.2.
- 10.5 The MRFO shall notify the MRF Applicant in writing of any partial or complete release of the Reserved Approved Measure within 10 days of such release.
- 10.6 The exercise of the MRFO's right to release all or part of the Reserved Approved Measure pursuant to clause 10.2.1 shall be considered a measure of last resort, taking into account factors including, but not limited to:

- 10.6.1 overall demand for the specific type of Reserved Approved Measure;
  - 10.6.2 the potential environmental impact or effect of delayed delivery of the Reserved Approved Measure; and
  - 10.6.3 the delivery capacity of the MRF.
- 10.7 If all or part of the Reserved Approved Measure is released pursuant to clause 10.2.1, the MRF Applicant shall have the option to either:
- 10.7.1 maintain its application to make the Proposed MRF Payment and await future availability of the Reserved Approved Measure (with no guarantee of timeframe or continuity of the original quantity reserved); or
  - 10.7.2 terminate this Agreement, in which case the MRF Applicant shall forfeit the Reservation Fee and shall have no further claim to the Reserved Approved Measure.
- 10.8 The MRF Applicant shall notify the MRFO in writing of its decision pursuant to clause 10.7 within 10 days of being notified of the release of all or part of the Reserved Approved Measure by the MRFO.

## **11 Submission of MRF information as part of application for Consent**

- 11.1 The MRF Applicant shall submit the following information as part of its application for Consent:
- 11.1.1 a copy of the Confirmation Letter;
  - 11.1.2 a copy of this Agreement; and
  - 11.1.3 subject to clause 11.2, a copy of the IMP.
- 11.2 If the IMP has not been provided to the MRF Applicant by the MRFO before the MRF Applicant submits its application for Consent, it shall not be required to be submitted as part of the application.
- 11.3 If the IMP is provided to the MRF Applicant by the MRFO following the submission of the application for Consent, but before the final determination of the application for Consent, the MRF Applicant shall submit the IMP to the Relevant Person within 10 days of receipt.

## **12 Adjustments to the Reserved Approved Measure**

- 12.1 If, following the granting of Consent for the Project, the Relevant Person notifies the MRFO and the MRF Applicant that the quantity of the Reserved Approved Measure exceeds the amount of compensation that is required to compensate the adverse environmental effects of the Relevant Offshore Wind Activity which forms part of the Project, the MRFO shall determine, at its sole discretion, whether the excess Reserved Approved Measure should be released back into the LoSCM, and shall notify the MRF Applicant of its determination as soon as reasonably practicable after such determination.
- 12.2 If, prior to submission of EoI Form Part B by the MRF Applicant to the MRFO, the MRFO determines that any excess Reserved Approved Measure must be released pursuant to clause 12.1, it shall provide the MRF Applicant with an updated Confirmation Letter confirming the reduced quantity of the Reserved Approved Measure.
- 12.3 If the quantity of the Reserved Approved Measure is reduced, the MRF Applicant shall not be entitled to any refund of the Reservation Fee which it has already paid in respect of the Reserved Approved Measure, but any excess Reservation Fee will be credited towards future payments made by the MRF Applicant in respect of the Reserved Approved Measure.
- 12.4 If, prior to Consent being granted in respect of the Project, the Relevant Person notifies the MRFO and the MRF Applicant that the quantity of the Reserved Approved Measure is

insufficient to compensate the adverse environmental effects of the Relevant Offshore Wind Activity which forms part of the Project, the MRF Applicant may either:

- 12.4.1 independently deliver additional compensation measures to address the identified shortfall; or
  - 12.4.2 propose to renegotiate the initially agreed quantity of the Reserved Approved Measure with the MRFO to address the identified shortfall.
- 12.5 If the Parties acting reasonably agree to an increase to the quantity of the Reserved Approved Measure, the MRFO shall provide the MRF Applicant with an updated Acceptance Letter which shall set out:
- 12.5.1 the adjusted quantity of the Approved Measure which is to be reserved; and
  - 12.5.2 any Additional Reservation Fee which shall be payable by the MRF Applicant to the MRFO in respect of the increase to the quantity of Reserved Approved Measure.
- 12.6 The MRF Applicant shall pay the Additional Reservation Fee within 30 days of receipt of an invoice in respect of such fee in full and in cleared funds to the bank account nominated in writing by the MRFO.
- 12.7 The MRFO shall, within 15 days of receipt of payment of the Additional Reservation Fee, provide the MRF Applicant with an updated Confirmation Letter which shall set out:
- 12.7.1 confirmation of receipt of payment of the Additional Reservation Fee; and
  - 12.7.2 confirmation of the Adjusted Reserved Approved Measure.
- 12.8 The MRF Applicant shall submit the updated Confirmation Letter to the Relevant Person within 10 days of receipt from the MRFO.
- 12.9 If the Parties cannot agree an increase to the Reserved Approved Measure, the MRF Applicant may either:
- 12.9.1 continue with its existing application in respect of the Reserved Approved Measure; or
  - 12.9.2 terminate this Agreement in which case the Reserved Approved Measure shall be released back into the LoSCM.
- 12.10 If, prior to Consent being granted in respect of the Project, the Relevant Person notifies the MRFO and the MRF Applicant that a different type of Approved Measure is required to compensate the adverse environmental effects of the Relevant Offshore Wind Activity which forms part of the Project, the MRF Applicant may submit a new EoI Form Part A to apply to reserve the relevant type of Approved Measure that is so required to compensate the adverse environmental effects of the Relevant Offshore Wind Activity which forms part of the Project.
- 12.11 If the MRF Applicant submits a new application pursuant to clause 12.10 which is accepted by the MRFO, the Parties shall enter into a new conditional agreement and any Reservation Fee already paid in respect of the Reserved Approved Measure under this Agreement shall be credited towards the new application.
- 12.12 The MRFO shall not be liable for any delay, cost or loss incurred by the MRF Applicant including but not limited to:
- 12.12.1 the determination of insufficient quantity of the Reserved Approved Measure by the Relevant Person; and
  - 12.12.2 the renegotiation of the quantity of the Reserved Approved Measure or the MRF Applicant's election to deliver additional, independent compensation measures.

### **13 Submission of EoI Form Part B**

- 13.1 Subject to clause 13.2, the MRF Applicant shall submit an EoI Form Part B to the MRFO within 60 days of 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 Proposed MRF Payment would discharge the Compensation Condition.
- 13.2 In the event of the Relevant Person's decision to grant Consent for the Project being subject to an application for judicial review, the 60-day period set out in clause 13.1 will not include any time between the date of application for judicial review and the earlier of:
- 13.2.1 the date after which permission to proceed with the claim is refused; and
  - 13.2.2 the date 16 weeks after the day on which the application for judicial review is made.

### **14 Failure to obtain Consent**

- 14.1 If the MRF Applicant's application for Consent in respect of the Project is refused by the Relevant Person, the MRFO shall not be liable for any loss, cost or delay incurred by the MRF Applicant as a result of pursuing the Reserved Approved Measure through the MRF.
- 14.2 Subject to clause 14.3, if the MRF Applicant elects to resubmit an application for Consent in respect of the Project, any Reservation Fee previously paid shall be credited towards a subsequent successful application to use the MRF.
- 14.3 Any Reservation Fee which has been paid by the MRF Applicant in respect of the Reserved Approved Measure shall be forfeited if:
- 14.3.1 a subsequent EoI Form Part A is not submitted by the MRF Applicant within 12 months of the refusal of the MRF Applicant's original application for Consent;
  - 14.3.2 the subsequent application for Consent is not submitted within the expected timeframe as set out in the subsequent EoI Form Part A, in which case clause 10 of this Agreement shall apply;
  - 14.3.3 the subsequent application for Consent does not relate to substantially the same Project; or
  - 14.3.4 the subsequent application for Consent is unsuccessful.
- 14.4 If the MRF Applicant does not submit a revised application for Consent in respect of the Project following a refusal by the Relevant Person, this Agreement shall be terminated and neither Party shall have any further obligations or liabilities under this Agreement, save in respect of any obligations which have accrued prior to the date of termination.

### **15 Making variations to this Agreement**

- 15.1 Either Party can request a variation to this Agreement. Any request for a variation must be made in writing and submitted to the other Party in accordance with clause 23.
- 15.2 No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement, and is either, entirely at the MRFO's sole discretion:
- 15.2.1 duly signed or executed (as the case may be) by, or on behalf of, each Party in a Deed of Variation; or
  - 15.2.2 set out and signed by both Parties in a Contract Change Note.
- 15.3 If a requested variation to this Agreement cannot be agreed or resolved by the Parties, then either:
- 15.3.1 the Parties can agree that the Agreement continues without the variation; or

- 15.3.2 either Party shall be entitled to refer the dispute to be resolved in accordance with clause 19.
- 15.4 The MRFO shall not be required to accept a request made by the MRF Applicant for a variation to this Agreement.
- 16 Change in financial circumstances**
- 16.1 The MRF Applicant shall promptly notify the MRFO in writing if there is any material change in the financial circumstances of the MRF Applicant which could impact on the delivery of the Project and/or the MRF Applicant's continued performance of this Agreement.
- 17 Limitation of Liability**
- 17.1 The extent of each Party's liability under or in connection with this Agreement (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 17.
- 17.2 Subject to clause 17.5, each Party's total aggregate liability is no more than 150% of the value of this Agreement.
- 17.3 Subject to clause 17.5, neither Party shall be liable for any consequential, indirect or special loss.
- 17.4 Except as expressly stated in this Agreement, and subject to clause 17.5, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 17.5 Notwithstanding any other provision of this Agreement, neither Party's liability shall be limited in any way in respect of the following:
- 17.5.1 death or personal injury caused by negligence;
- 17.5.2 fraud or fraudulent misrepresentation; or
- 17.5.3 any other losses which cannot be excluded or limited by applicable law.
- 18 Assignment and change of control**
- 18.1 The MRF Applicant 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 Agreement or any part of this Agreement 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.
- 18.2 The MRFO can assign, novate or transfer this Agreement 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 18, the MRF Applicant must enter into a novation agreement in a form approved of by the MRFO, acting reasonably.
- 18.3 In the event that the MRF Applicant intends to undergo or undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010, the MRF Applicant 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 Applicant following the occurrence of the change of control.
- 19 Dispute Resolution**
- 19.1 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 Agreement 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.

- 19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, 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.
- 19.3 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:
- 19.3.1 determine the dispute;
  - 19.3.2 grant interim remedies; or
  - 19.3.3 grant any other provisional or protective relief.
- 19.4 The Parties cannot suspend the performance of this Agreement during any dispute.

## **20 Termination and Expiry**

- 20.1 Subject to the provision of this clause 20, this Agreement shall expire on the Expiry Date.
- 20.2 Subject to clause 20.3 and without prejudice to any other right or remedy it might have including any other express rights of termination set out in this Agreement, the MRFO may terminate this Agreement in whole or in part by written notice to the MRF Applicant with immediate effect if any of the following apply:
- 20.2.1 the MRF Applicant is in material breach of this Agreement where such breach is not capable of remedy;
  - 20.2.2 the MRF Applicant repeatedly breaches any of the terms and conditions of this Agreement 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 Agreement;
  - 20.2.3 the MRF Applicant is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the MRF Applicant receiving notice specifying the breach and requiring it to be remedied;
  - 20.2.4 the MRF Applicant suffers an Insolvency Event;
  - 20.2.5 the MRF Applicant's interest in the Relevant Lease expires or is forfeited, surrendered, terminated or otherwise held invalid as provided for in clause 4.3;
  - 20.2.6 the MRF Applicant fails to pay the MRFO any of the payments due under this Agreement by the specified date for payment and remains in default for not less than 14 days after receipt of a notice of late payment from the MRFO; or
  - 20.2.7 the MRF Applicant fails to comply with legal obligations in the fields of environmental, social or labour law.
- 20.3 Termination or expiry of this Agreement 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 Agreement that either expressly or by implication has effect after termination.
- 20.4 The MRF Applicant may terminate this Agreement in the event of:

- 20.4.1 the release of all or part of the Reserved Approved Measure back into the LoSCM pursuant to clause 10.2.1; or
  - 20.4.2 the release of any part of the Reserved Approved Measure pursuant to clause 12.9.2.
- 20.5 Subject to clause 8.8, all fees which have been paid by the MRF Applicant to the MRFO will be non-refundable in the event that this Agreement is terminated or expires including but not limited to in accordance with this clause 20.

**21 Force Majeure**

- 21.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement 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.
- 21.2 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 this Agreement by written notice to the other Party.
- 21.3 Where a Party terminates under this clause 21 each Party must cover its own losses.

**22 Governing Law and Jurisdiction**

- 22.1 The validity, construction and performance of this Agreement, 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.

**23 Notices**

- 23.1 Any notice to be given under this Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 23.3, 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.
- 23.2 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.
- 23.3 Notices under clauses 20 and 21 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 23.1.
- 23.4 This clause 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 [MRF Applicant name]</b>
MRFO Signature:	MRF Applicant Signature:
Name:	Name:

Job Title:	Job Title:
Date signed:	Date Signed: