



Rialtas na hÉireann
Government of Ireland

Terms and Conditions for the First Offshore Wind RESS Competition

ORESS 1

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Version Control

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1.0	DECC	9/11/2022	Final
1.1	DECC	27/3/2023	Minor technical updates
1.2	DECC	5/4/2023	Amending definition of 'ORESS support end date' to limit aid to a maximum of 20 years

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1 Introduction, Purpose and Structure

- 1.1 The Minister has developed the new Renewable Electricity Support Scheme (RESS) for Ireland. The RESS aims to promote the generation of electricity from renewable sources. The new scheme is framed within the context of the Climate Action Plan and the European Union's Clean Energy Package (EU Clean Energy Package), in particular the Renewable Energy Directive and the development of Ireland's National Energy and Climate Plan as updated by Ireland's Climate Action Plan. The RESS will be consistent with the EU Clean Energy Package and the EU Guidelines on State Aid for Climate, Energy and Environmental Aid Guidelines. The RESS will rely on competitive forces to achieve renewable energy ambitions at the lowest feasible cost to electricity customers while delivering technology diversity and significant community participation.
- 1.2 This document sets out the terms and conditions that will apply to the first competition specific to offshore wind to be conducted under the RESS and to the ongoing administration of awards made in the ORESS 1 Auction.
- 1.3 The document is structured as follows:
- Section 1 provides an overview of the overarching principles of RESS
 - Section 2 provides definitions and interpretation provisions
 - Section 3 provides for the legal basis for ORESS 1
 - Section 4 sets out the roles for the Auction Monitor and the Market Auditor
 - Section 5 sets out the form of ORESS 1 Support
 - Section 6 sets out the parameters around the ORESS 1 Auction including the target volume, eligibility requirements, the requirements of Offers and the winner selection rules
 - Section 7 sets out the community-related aspects of ORESS 1
 - Section 8 sets out the obligations on Successful Applicants

- Section 9 sets out (a) the processes that will be employed by the TSO to administer the ORESS 1 Auction including the application process and (b) associated qualification process
- Section 10 sets out the reserved rights of the Minister with respect to ORESS 1
- Section 11 sets out additional general terms and conditions applicable to ORESS 1
- Annex A sets out the form of Implementation Agreement that will be provided to Successful Applicants in the ORESS 1 Auction, including: (i) the form of the Performance Security to be provided by Successful Applicants and (ii) the form of Letter of Offer to be provided by the Minister to Successful Applicants, in accordance with these Terms and Conditions
- Annex B sets out a Financial Questionnaire that must be completed and returned to the Minister
- Annex C sets out a Project Delivery Plan Questionnaire that must be completed by Successful Applicants

1.4 Key elements of the RESS include the following:

- It has been designed to promote investment in renewable energy generation to contribute toward Ireland's ambition of up to 80% renewable electricity, and an EU-wide renewable energy target of 32%, by 2030, within a competitive auction based, cost effective framework.
- It has been designed to deliver on a broader range of policy objectives including:
 - the provision of pathways and supports for communities to participate directly in renewable energy projects
 - broadening the renewable electricity technology mix (the diversity of technologies); and
 - increasing energy security, energy sustainability and ensuring the cost effectiveness of energy policy.

- 1.5 Running in tandem with Corporate Power Purchase Agreements (CPPAs), the RESS (in conjunction with previous renewable support schemes and CPPAs) will provide up to 80% renewable electricity by 2030. This will be subject to determining the cost-effective level of procurement and based on the trajectory to meeting Ireland's contribution to the EU 2030 renewable energy target set out in Ireland's National Energy and Climate Plan as well as the national targets set out in Ireland's Climate Action Plan.

The RESS is being implemented through a series of renewable electricity competitions and in accordance with a renewable electricity auction roadmap, providing indicative timelines and capacities. The RESS is in line with new designs operated across the European Union. It has been designed in the context of the EU's Clean Energy Package and in particular the Renewable Energy Directive's provisions on renewable energy support schemes.

- 1.6 Three entities will be primarily involved in the implementation of the RESS. These are the Minister (when applicable the Minister's designee acting through the Minister), the Regulatory Authority and the TSO.

The Minister is responsible for the design of the RESS policy (including the establishment of RESS competitions), decisions with respect to the RESS auctions and the development of terms and conditions applicable to each RESS auction. The Minister is also responsible for setting clear dates and rules for the delivery of projects as provided for in the ORESS 1 Implementation Agreement in order to ensure high project realisation rates.

The Regulatory Authority is responsible for advising the Minister with respect to the potential availability of RESS supply for each RESS competition, competition parameters for each RESS auction, appointing and overseeing the Auction Monitor and Market Auditor, and for ongoing administration and calculation of RESS payments through the PSO Levy in accordance with provisions set forth in the terms and conditions of each RESS auction by the Minister.

The TSO is responsible for administering the RESS competitions in accordance with provisions set forth in the terms and conditions of each RESS competition and pursuant to Public Service Obligations imposed under Section 39 of the Act.

1.7 The specific responsibilities to be fulfilled by the TSO with respect to RESS are as follows:

- administer a set of operational processes for competitions established by the Minister and as provided for in the terms and conditions of the relevant RESS competition;
- administer an application, qualification and competitive bidding process for competitions established by the Minister and as provided for in the terms and conditions of the relevant RESS competition;
- conduct analysis to support the Minister as necessary for the establishment of a competition as provided for in the terms of reference of the relevant RESS competition;
- submission of results of a RESS competition to the Minister and the Regulatory Authority; and
- report to the Minister on the compliance with TSO's obligations detailed above in these Terms and Conditions.

1.8 These Terms and Conditions apply to ORESS 1 only. Future RESS auctions and supports will be subject to such terms and conditions as shall be issued in respect of those future RESS auctions and supports. All description of and references to future RESS auctions and supports are provided solely for information purposes only and should not be construed so as to create legally binding obligations as between or impose rights and duties on any persons.

1.9 ORESS 1 has been designed to be consistent with Articles 107 to 109 of the Treaty on the Functioning of the European Union together with all associated relevant European Union rules, regulations, guidance and notices applicable to state aid.

1.10 ORESS 1 is subject to any and all clearances required from the EU Commission and any consents, clearances or licenses which might be required from any other competent regulatory or statutory body. For the avoidance of doubt, the Minister reserves the right to amend these Terms and Conditions as a consequence of notifications to the EU Commission pursuant to Articles 107 to 109 of the Treaty on

the Functioning of the European Union.

- 1.11 ORESS 1 is the first of at least three planned offshore RESS auctions which will be technology-specific to Offshore Wind.
- 1.12 Subject to Article 6 of the Renewable Energy Directive, the Minister reserves the right to alter or amend any provision, Section or part of these Terms and Conditions, including as a consequence of any directions, conditions or requirements of any such consents, clearances or licenses.
- 1.13 The Minister may (in his or her sole discretion and subject to relevant state aid approvals) adjust the level of support to be provided pursuant to these Terms and Conditions in accordance with the following objective criteria:
- to promote investor certainty and protect the financial viability of ORESS 1 Projects that are the subject of an Award;
 - to facilitate changes in electricity market arrangements and market revenue calculations by the Regulatory Authority;
 - to promote the short-term and long-term interests of consumers of electricity with respect to reliability, affordability and sustainability of electricity in Ireland; and
 - to ensure proportionality and transparency in the operation of ORESS 1.

2 Definitions and Interpretations

2.1 In these Terms and Conditions, except where the context otherwise requires, capitalised terms used but not otherwise defined herein shall have the following meanings:

“Act” means the Electricity Regulation Act 1999 (as amended).

“Active Power” has the meaning given to that term in the SEM Trading and Settlement Code.

“Affiliate” means, in relation to any company that is incorporated in Ireland or any other jurisdiction, any holding company of that company, any subsidiary of that company or any subsidiary of a holding company of that company, in each case within the meaning given to those terms in Sections 7 and 8 of the Companies Act 2014 in Ireland.

“An Bord Pleanála” means the authority established under the Local Government (Planning and Development) Act 1976 (as amended from time to time), and which is responsible for, amongst other things, the determination of appeals and certain other matters under the Planning and Development Act 2000 (as amended from time to time).

“Applicant” means a person applying to qualify for the ORESS 1 Auction in respect of an ORESS 1 Project.

“Application for Qualification” means an application to be submitted by an Applicant seeking to qualify for the ORESS 1 Auction in respect of an ORESS 1 Project.

“Application for Review” means an application by an Applicant requesting the TSO to review a Provisional Qualification Decision in respect of an Application for Qualification.

“Auction Information Pack” means the information pack prepared by the TSO in accordance with Section 9.4.1 of these Terms and Conditions for the purpose of informing Qualified Applicants of the timing, requirements and processes involved in

the ORESS 1 Auction.

“Auction Information Pack Publication Date” means the scheduled publication date for the Auction Information Pack.

“Auction Monitor” is defined in Section 4.1 of these Terms and Conditions.

“Available Volumes” is defined in Section 6.2.1 of these Terms and Conditions.

“Award” or **“Awards”** means the award of ORESS 1 Support to Successful Applicants.

“Bid Bond” means the cash security to be lodged by an Applicant in respect of an Application for Qualification in accordance with these Terms and Conditions.

“Bid Bond Posting Date” means the last day on which a Bid Bond may be lodged by the Applicant in the TSO RESS Account, and accepted by the TSO, such date to be published in the Qualification Information Pack.

“Bid Bond Required Amount” is defined in Section 6.3.13 of these Terms and Conditions.

“CBF Committee” is defined in Section 7.3.2 of these Terms and Conditions.

“CBF Target Local Community” is defined in Section 7.3.6 of these Terms and Conditions.

“Climate Action Plan” means the climate action plan to tackle climate breakdown which was published by the Department of Communications, Climate Action & Environment on 17 June 2019 and updates of the same.

“Commencement Date” means the date on which the Generator issues a notice to proceed (or equivalent) under its main construction contract (ie, EPC contract or turbine supply contract) in respect of the ORESS 1 Project.

“Commercial Operation” shall have the meaning given to that term in the Implementation Agreement.

“Commercial Operation Date” shall have the meaning given to that term in the Implementation Agreement.

“Community Benefit Fund” or **“CBF”** is defined in Section 7.1.1 of these Terms and Conditions.

“Companies Registration Office” or **“CRO”** means the Companies Registration Office of Ireland, being the central repository of public statutory information on Irish companies and business names.

“Connected Person” has the meaning given to that term in Section 220 of the Companies Act 2014.

“DAM Price” means the price resulting from the Day Ahead Market.

“Day Ahead Market” or **“DAM”** means the day ahead market as more particularly described in the SEMOpx Rules, including the “Day-ahead Auction Market Segment” within the meaning given to that expression in the SEMOpx Rules and any successor thereto.

“Deemed Energy Quantity” is defined in Section 6.8.4 of these Terms and Conditions.

“Deemed Offer Price” is defined in Section 6.8.5 of these Terms and Conditions.

“Difference Payment” has the meaning given to it in Section 5.2.6 of these Terms and Conditions.

“Distribution System Operator” or **“DSO”** means ESB Networks DAC in its capacity as Distribution System Operator pursuant to a licence granted by the Regulatory Authority pursuant to Section 14(1)(g) of the Act and any successor distribution system operator.

“Early Contribution Payment” is defined in Section 7.2.2 of these Terms and Conditions.

“Early Contribution Year” is defined in Section 7.2.2 of these Terms and Conditions.

“Eligible Available Quantity” is defined in Section 5.6.4 of these Terms and Conditions.

“Eligible Technology” is defined in Section 6.3.3 of these Terms and Conditions.

“EU Clean Energy Package” means the European Union’s clean energy package which consists of eight legislative acts, including the Renewable Energy Directive.

“EU Commission” means the executive branch of the European Union including its various Directorates-General with responsibility for policy matters including, *inter alia*, energy and competition policy.

“Evaluation Correction Factor” has the meaning given to it in Section 6.8.5 of these Terms and Conditions.

“Expected MEC” means, in respect of an ORESS 1 Project, the maximum export capacity identified under its Grid Connection Assessment.

“Final Auction Results” means the final auction results issued by the TSO in respect of the outcome of the ORESS 1 Auction.

“Final Auction Results Date” means the indicative date for issue of the Final Auction Results by the TSO.

“Final Competition Ratio” has the meaning given to it in Section 6.4 of these Terms and Conditions.

“Final Qualification Decision” means the final qualification results prepared by the TSO (for approval by the Minister) identifying the proposed Qualified Applicants, for the purposes of the administration of the ORESS 1 application process, as more particularly set out at Section 9.2.7 of these Terms and Conditions.

“Final Qualification Decision Date” means the indicative date for submission of approved Final Qualification Decisions to Applicants in accordance with Section 9.2.7 of these Terms and Conditions.

“Final Withdrawal Date” means the last date an Applicant can withdraw their Application for Qualification in respect of the ORESS 1 Auction.

“Financial Questionnaire” means the financial questionnaire in the form set out in Annex B.

“Financial Questionnaire Submission Opening Date” means the earliest date and time (if applicable) for submission of the Financial Questionnaire, as detailed in the Qualification Information Pack.

“Financial Questionnaire Submission Closing Date” means the latest date and time (if applicable) for submission of the Financial Questionnaire, as detailed in the Qualification Information Pack.

“FIP” means the two way floating feed in premium applicable to ORESS 1, the operation of which is further set out at Section 5.2 of these Terms and Conditions.

“Force Majeure” has the meaning given to it in the Implementation Agreement.

“Fund Administrator” has the meaning given to it in Section 7.1.1 of these Terms and Conditions and shall, for the avoidance of doubt, include any replacement fund administrator appointed in accordance with these Terms and Conditions and the ORESS 1 CBF Rulebook from time to time.

“Generator” means a person who is the holder of a licence to generate electricity under Section 14(1)(a) of the Act and in the context of these Terms and Conditions means a person that is party to an Implementation Agreement and/or has received a Letter of Offer.

“Grid Code” means the conditions, procedures, provisions and codes governing the planning and operation of the transmission system and the scheduling and dispatch of generation prepared by the TSO in accordance with Section 33 of the Act (as may be updated from time to time).

“Grid Connection Agreement” means the agreement to be entered into between the Generator and the TSO setting out the terms on which the ORESS 1 Project will be connected to the transmission system in Ireland (for the avoidance of doubt, not including Northern Ireland);

“Grid Connection Assessment” means a grid connection assessment issued by the

TSO for the ORESS 1 Project in accordance with CRU/2022/14 Decision Paper on “Offshore Grid Connection Assessment – Phase 1 Projects”.

“**Guarantee of Origin**” has the meaning given to it in Article 2(j) of the Renewable Energy Directive.

“**GWh**” means gigawatt hour.

“**Implementation Agreement**” means an agreement to be entered into between a Successful Applicant and the Minister, in the form set out in Annex A of these Terms and Conditions.

“**Implementation Agreement and Performance Security Return Date**” is the date by which all Successful Applicants in receipt of a Notice of Award are required to return both signed copies of the Implementation Agreement and the Performance Security as specified in the Notice of Award.

“**Indexation Date**” means (as applicable) the Indexation Date (Commencement), the Indexation Date (Interim) and each Indexation Date (Annual).

“**Indexation Date (Annual)**” means each 1 January after the Indexation Date (Interim).

“**Indexation Date (Commencement)**” means the date falling 45 days after the earlier of (i) the Commencement Date and (ii) the Final Milestone Date for Milestone 6 as specified in the Implementation Agreement.

“**Indexation Date (Interim)**” means the first day of January occurring after the Indexation Date (Commencement).

“**Information Paper**” means the information paper published by the Regulatory Authority on 2 September 2019 on the “*Terms of Reference for the RESS Market Auditor and Auction Monitor*” (Reference CRU-19-109).

“**Installed Renewable Capacity**” means the total MW^{AC} nameplate capacity of all of the “Installed Plant” (as that term is defined in the Grid Code) of the ORESS 1 Project, but not including the capacity of any energy storage facilities such as battery storage systems.

“Interim Operational Notification” means the interim operational notification (ION) issued by the TSO in respect of the ORESS 1 Project, pursuant to the Grid Code.

“Irish Content” means the cost to the Successful Applicant of procuring goods and services in respect of an ORESS 1 Project, where such goods and services are supplied by companies incorporated in Ireland and/or contractors which carry on the majority of their business in Ireland, in each case expressed as both (i) a euro (€) amount and (ii) a percentage of total overall costs over the lifetime of the ORESS 1 Project.

“kW” means kilowatt.

“Letter of Offer” means a letter of offer for ORESS 1 Support from the Minister to a Generator, in the form set out in Appendix 1 of the Implementation Agreement.

“Longstop Date” means 31 December 2031, as such date may be extended in accordance with Clause 7.3 of the Implementation Agreement;

“Loss-Adjusted Eligible Available Quantity” means Eligible Available Quantity adjusted as follows:

- (a) capped in each hour by the MWh equivalent of Installed Renewable Capacity; and then
- (b) further adjusted to reflect transmission losses and distribution losses (as determined by the TSO and DSO from time to time).

“Loss-Adjusted RESS Metered Quantity” means Metered Quantity adjusted as follows:

- (a) capped in each hour by the MWh equivalent of Installed Renewable Capacity; and then
- (b) further adjusted to reflect transmission losses and distribution losses (as determined by the TSO and DSO from time to time).

“Maritime Area Consent” means a maritime area consent awarded under the relevant provisions of the Maritime Area Planning Act (by the Minister or a designated body).

“Maritime Area Planning Act” means the Maritime Area Planning Act 2021 (as may

be amended from time to time).

“Market Auditor” is defined in Section 4.2 of these Terms and Conditions.

“Market Reference Price” is defined in Section 5.2.4 of these Terms and Conditions.

“Maximum Export Capacity” or **“MEC”** means the maximum export capacity of an ORESS 1 Project as stated in its Grid Connection Agreement.

“Maximum Installed Renewable Capacity” is defined in Section 6.3.11 of these Terms and Conditions.

“Maximum Offer Price Considered” means the maximum Offer Price allowed to be included in an Offer for the ORESS 1 Auction and such maximum Offer Price for the ORESS 1 Auction will be specified in the Auction Information Pack.

“Metered Quantity” means the Active Power produced by the ORESS 1 Project and recorded each hour by the meter of the ORESS 1 Project described in Section 5.5.1.

“Milestones” means the milestones prescribed in Appendix 2 of the Implementation Agreement.

“Minimum Installed Renewable Capacity” is defined in Section 6.3.11 of these Terms and Conditions.

“Minister” means the Minister for the Environment, Climate and Communications or any successor.

“MW” means Megawatt.

“MWh” means Megawatt hour.

“National Energy and Climate Plan” or **“NECP”** means the National Energy and Climate Plans developed by the Irish Government in order to meet the European Union’s energy and climate targets for 2030 and as required under the European Regulation (EU) 2018/1999 of the European Parliament and of the Council on 11 December 2018 on the Governance of the Energy Union and Climate Action.

“New Project” means an ORESS 1 Project which comprises of each of the following elements:

- (a) the electricity generating equipment in respect of the ORESS 1 Project is electricity generating equipment that was not previously used at the Offshore Site to export electricity to the grid prior to the Qualification Application Closing Date;
- (b) the investment in the ORESS 1 Project made after the execution of the Implementation Agreement by or on behalf of the Generator for that ORESS 1 Project must equal or exceed €300 per kW of capacity;
- (c) if the ORESS 1 Project is built at an Offshore Site that was previously used for renewable generation, that the Deemed Energy Quantity at the Offshore Site from the ORESS 1 Project will be at least 50% greater than the previous average annual output from renewable generation that Offshore Site; and
- (d) provided for the avoidance of any doubt, the ORESS 1 Project cannot benefit from any other support scheme funded via the PSO Levy while in receipt of ORESS 1 Support and the ORESS 1 Project cannot have previously received payments under any other support scheme funded via the PSO Levy.

“Notice of Dissatisfaction” means a notice of dissatisfaction issued by an Applicant or Qualified Applicant in accordance with Sections 9.2.5(d) and 9.4.2(d) of these Terms and Conditions.

“Notice of Withdrawal” means an irrevocable notice issued by an Applicant in accordance with Section 9.2.2(c) of these Terms and Conditions.

“Offer” means an offer made by a Qualified Applicant in respect of an ORESS 1 Project in the ORESS 1 Auction.

“Offer Price” means the single price to be specified in an Offer (expressed in €/MWh).

“Offer Quantity” means the MW quantity of the ORESS 1 Project being offered into ORESS 1 as specified in both the Application for Qualification and in the Offer.

“Offshore Site” means the relevant marine area identified in the Maritime Area

Consent and set out in the Application for Qualification, within which the electricity generating plant, offshore grid connection and (if applicable) offshore substation for the ORESS 1 Project is intended to be developed, constructed and operated.

“Offshore Wind” means projects which use wind turbines constructed in bodies of water, usually in the ocean, to harvest wind energy to generate electricity. This definition includes inshore water areas such as lakes and sheltered coastal areas, utilising traditional fixed-bottom wind turbine technologies, as well as deeper-water areas utilising floating wind turbines.

“Onshore Site” means the relevant parcel(s) of land set out in the Application for Qualification, upon which (as applicable) the onshore grid connection and onshore substation for the ORESS 1 Project will be constructed.

“Operational Processes” means a set of processes prepared by the TSO detailing all parties’ obligations in respect of the operation of the ORESS 1 Auction and to be published by the TSO in the Qualification Information Pack and Auction Information Pack.

“ORESS 1” means the first offshore RESS competition and includes the ORESS 1 Auction and the ORESS 1 Support.

“ORESS 1 Annual CBF Contribution Payment” is defined in Section 7.2.1 of these Terms and Conditions.

“ORESS 1 Auction” means the auction, to be conducted under Section 6 of these Terms and Conditions, for the award of ORESS 1 Support.

“ORESS 1 Auction Submission Deadline Date” means the closing date for receipt of Offers.

“ORESS 1 Auction Timetable” means the schedule of events leading up to and following the ORESS 1 Auction, as may be amended or updated by the Minister and/or the TSO from time to time.

“ORESS 1 CBF Rulebook” is defined in Section 7.1.1 of these Terms and Conditions.

“ORESS 1 Payment” means (as applicable) Support Payments and Difference Payments (as each may be adjusted to account for capacity market revenues, in accordance with Section 5.2.6) and Unrealised Available Energy Compensation.

“ORESS 1 PPA” means a power purchase agreement complying with these Terms and Conditions between a Generator and a Supplier obliging the latter to purchase the electrical output from the relevant ORESS 1 Project, and “PPAs” shall be construed accordingly.

“ORESS 1 Project” means a renewable energy project, as detailed in an Application for Qualification.

“ORESS 1 Support” means:

- (a) an entitlement to receive Support Payments and an obligation to pay Difference Payments (as may be adjusted to account for capacity market revenues, in accordance with Section 5.2.6); and
- (b) an entitlement to receive Unrealised Available Energy Compensation in accordance with, and subject to, Section 5.6.

“ORESS 1 Support End Date” means, in respect of an ORESS 1 Project, the earliest of:

- (a) the date which falls twenty (20) years after the Target Commercial Operation Date for the ORESS 1 Project;
- (b) the date which falls twenty (20) years after the ORESS 1 Support Start Date; and
- (c) where the ORESS 1 Project has had its Letter of Offer withdrawn or revoked or has exited or withdrawn from ORESS 1 in accordance with these Terms and Conditions, the date of such withdrawal, revocation or exit (as applicable).

“ORESS 1 Support Period” means, in respect of an ORESS 1 Project, the period beginning on the ORESS 1 Support Start Date and ending on the ORESS 1 Support End Date.

“ORESS 1 Support Start Date” means, in respect of an ORESS 1 Project, the date on which the ORESS 1 Project has achieved Commercial Operation, subject always to (i) the ORESS 1 Project having been listed in the PSO Order and (ii) the ORESS 1 Project having achieved Commercial Operation prior to the Longstop Date.

“Performance Security” means the on demand security to be procured by a Successful Applicant in favour of the Minister in the form as set out in Appendix 3 of the Implementation Agreement.

“Physical Availability” is defined in Section 5.6.5 of these Terms and Conditions.

“Planning Consent” means:

- (a) a full and final grant of planning permission for the construction of the electricity generating plant, offshore grid connection and (if applicable) offshore substation for the ORESS 1 Project at the Offshore Site; and
- (b) a full and final grant of planning permission for the construction of (as applicable) the onshore grid connection and onshore substation for the ORESS 1 Project at the Onshore Site.

“Planning Consent Date” means, in respect of an ORESS 1 Project, the date on which it has received its Planning Consent.

“Planning Consent Longstop” means 30 June 2028, as such date may be extended in accordance with Clause 7.3 of the Implementation Agreement.

“Planning Consent Withdrawal” is defined in Section 8.6 of these Terms and Conditions.

“Planning Consent Withdrawal Period” means, in respect of an ORESS 1 Project, the period beginning on the date on which the ORESS 1 Project receives its Planning Consent and ending:

- (a) 30 days after the date on which the ORESS 1 Project has received its Planning Consent; or
- (b) where a Planning Consent Failure Withdrawal Request has been submitted in

respect of the ORESS 1 Project, 30 days after the date on which the Minister accepts or rejects a Planning Consent Failure Withdrawal Request under Clause 6.5 of the Implementation Agreement.

“Pricing Information” means information that:

- (a) provides an indication of what Offer Price an Applicant may submit in the ORESS 1 Auction in respect of an ORESS 1 Project, including a range of potential Offer Prices;
- (b) provides an indication of what pricing a counterparty would be willing to enter in to a PPA contingent upon the ORESS 1 Project receiving an Award; or
- (c) provides an indication of any relationship between the Offer Price an Applicant may submit in the ORESS 1 Auction in respect of an ORESS 1 Project and the terms under which an entity would provide equity or debt financing or otherwise acquire an interest upon the ORESS 1 Project receiving an Award.

“Project Delivery Plan Questionnaire” means the project delivery plan questionnaire in the form set out in Annex C.

“Provisional Auction Results” means the provisional auction results issued by the TSO in respect of the outcome of the ORESS 1 Auction.

“Provisional Auction Results Date” means the indicative date for issue of the Provisional Auction Results by the TSO.

“Provisional Qualification Decision” means the provisional qualification results issued by the TSO in respect of the outcome of an Application for Qualification, for the purposes of the administration of the ORESS 1 application process.

“Provisional Qualification Decision Date” means the indicative date by which Provisional Qualification Decisions will be issued by the TSO in accordance with Section 9.2.5 of these Terms and Conditions.

“Prudent Electric Utility Practice” means those standards, practices, methods and procedures conforming to safety standards and legal requirements which are attained

by exercising that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances.

“Prudent Industry Operator” means an operator engaged in the electric utility industry which performs in accordance with Prudent Electric Utility Practice.

“PSO” means the ‘public service obligation’ which may be imposed by virtue of Section 39 of the Act.

“PSO Levy” has the meaning given to “public service obligations levy” in the PSO Order.

“PSO Levy Year” means a one-year period running from 1 October to 30 September the following year or such other period as may be specified in any update to the PSO Order.

“PSO Order” means the Electricity Regulation Act 1999 (Public Service Obligations) Order 2002 (as amended from time to time).

“PSO S.I.” is defined in Section 5.3.3 of these Terms and Conditions.

“Qualification Application Closing Date” means the last date an Applicant can submit an Application for Qualification in respect of the ORESS 1 Auction.

“Qualification Decisions Submission Date” means the indicative date for submission of Final Qualification Decisions to the Minister for approval in accordance with Section 9.2.7(b) of these Terms and Conditions.

“Qualification Information Pack” means an information pack prepared by the TSO for the purpose of informing Applicants as to, inter alia, the timing, requirements and conduct of the qualification for the ORESS 1 Auction.

“Qualification Results” means the qualification results prepared by the TSO in accordance with these Terms and Conditions.

“Qualified Applicant” means an Applicant whose Application for Qualification has

been included in the Qualification Results which has been approved by the Minister.

“Regulatory Authority” means the Commission for Regulation of Utilities as established pursuant to the Act or any successor body.

“Relevant Year” is defined in Section 7.2.3(a) of these Terms and Conditions.

“Renewable Capacity Factor” has the meaning given to it in Section 6.8.4 of these Terms and Conditions.

“Renewable Energy Directive” means Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources.

“Representative Competition Ratio” shall have the meaning given to it in Section 6.2.1 of these Terms and Conditions.

“Representative Maximum Quantity” means the Representative Maximum Quantity as determined by the Minister in accordance with Section 6.2.2 of these Terms and Conditions.

“SEAI” means the Sustainable Energy Authority of Ireland or any successor body.

“SEM” or **“Single Electricity Market”** means the arrangements in the State and Northern Ireland initially described in the Memorandum of Understanding between Great Britain and Ireland, which are designed to promote the establishment and operation of a single wholesale electricity market and which allow for the efficient application of the European Union rules for cross-border trade in electricity (as provided in Section 2 of the Energy Act 1999, as amended by the Energy Act 2016).

“SEM Trading and Settlement Code” means the balancing market rules for both the trading and settlement with respect to electricity and for the settlement of capacity in the Single Electricity Market.

“SEMO” has the meaning given to the term “Market Operator” in the SEM Trading and Settlement Code.

“SEMOpX Rules” means the set of rules pursuant to which EirGrid plc and SONI

Limited agree to perform tasks of a nominated electricity market operator in Ireland, and to which participants in the SEM are required to accede in order to trade in such markets as are operated by that nominated electricity market operator, which rules were established by EirGrid plc and SONI Limited and approved by the Regulatory Authority by letter published on 30 June 2017, and as same may be amended from time to time.

“Site” means the Onshore Site and the Offshore Site.

“Standstill Period” means the period of time from and including the date of submission of the Application for Qualification by an Applicant up to and including the ORESS 1 Auction Submission Deadline Date.

“Strike Price” is defined in Section 5.2 of these Terms and Conditions.

“Successful Applicant” means a Qualified Applicant who has been notified by the TSO that its Offer into the ORESS 1 Auction was successful.

“Supplier” means an entity licensed by the Regulatory Authority to supply electricity in Ireland.

“Support Payment” is defined in Section 5.2.6 of these Terms and Conditions.

“Sustainable Energy Community” means a “Sustainable Energy Community” which is registered as such with the SEAI.

“Target Commercial Operation Date” means the date which falls 60 months after the Planning Consent Date, as such date may be extended in accordance with Clause 5.4 or Clause 7.2 of the Implementation Agreement.

“Terms and Conditions” means these ORESS 1 terms and conditions, together with all of its Annexes.

“Transmission System Operator” or **“TSO”** means EirGrid plc in its capacity as transmission system operator pursuant to a licence granted by the Regulatory Authority under Section 14(1)(e) of the Act and any successor transmission system operator.

“TSO Bank” means a bank which is used by the TSO and where an Applicant must deposit its Bid Bond, details of which will be advised to Applicants by the TSO.

“TSO RESS Account” means the bank account held by the TSO whereby Applicants must post a Bid Bond in respect of their ORESS 1 Project, details of which will be communicated to Applicants by the TSO.

“Unrealised Available Energy” is defined in Section 5.6.3 of these Terms and Conditions.

“Unrealised Available Energy Compensation” is support compensation calculated in accordance with Section 5.6 of these Terms and Conditions.

“Working Day” means a weekday which is not:

- (a) a public holiday or a bank holiday in Ireland; or
- (b) a non-processing day, as advised by the TSO Bank.

2.2 The TSO shall use consistent numerical rounding of all published quantities in accordance with the following:

2.2.1 all energy variables shall be expressed in MWh to three decimal places;

2.2.2 all power variables shall be expressed in MW to three decimal places;

2.2.3 all monetary variables shall be expressed in Euro to two decimal places;

2.2.4 all parameters, ratios, factors, discounts, premiums, currency exchange rates, rates, and proportions used in calculations shall be published to the same number of decimal places as that used in calculations; and

2.2.5 time shall be expressed to the nearest second.

Any price, variable, quantity, parameter, volume, ratio, factor, discount, premium, rate or proportion determined under these Terms and Conditions and to be used in settlement under the relevant legislation shall be calculated to the level of

computational precision required to carry out those settlements in accordance with the requirements of relevant legislation.

- 2.3 Without prejudice to Section 2.2, the TSO shall not round any price, variable, quantity, parameter, volume, ratio, factor, discount, premium, rate or proportion during calculation other than that automatically arising from its IT systems, unless specifically required under these Terms and Conditions.
- 2.4 In these Terms and Conditions (including the Annexes), the following shall apply unless the context requires otherwise:
- 2.4.1 the table of contents, and any headings in these Terms and Conditions, are for ease of reference only and do not form part of the contents of these Terms and Conditions and do not and shall not affect its interpretation;
- 2.4.2 words in the singular shall include the plural and vice versa and the masculine gender shall include the feminine and neuter;
- 2.4.3 the word “including” and its variations are to be construed without limitation, and a reference to a range of paragraphs (e.g., 2.4.1 – 2.4.8) includes both paragraphs referred to, as well as all those between;
- 2.4.4 any reference to any legislation, primary or secondary, in these Terms and Conditions includes any statutory interpretation, amendment, modification, replacement, re-enactment or consolidation of any such legislation and any regulations or orders made thereunder and any general reference to any legislation includes any regulations or orders made thereunder;
- 2.4.5 any reference to another agreement, code or document, or any licence, deed or other instrument is to be construed as a reference to that other agreement, code or document, deed, licence or other instrument as lawfully amended, modified, supplemented, substituted, assigned or novated from time to time;
- 2.4.6 any references to Sections, paragraphs, annex(es) and tables are references to Sections, paragraphs, annex(es) and tables of these Terms and Conditions as amended or modified from time to time in accordance with the provisions of these Terms and Conditions;

- 2.4.7 any reference to a day is to be construed as a reference to a calendar day except where provided otherwise, and any reference to a year is to be construed as a reference to a period of 12 months;
- 2.4.8 any reference to a time is to be construed as a reference to the time prevailing in Dublin, Ireland;
- 2.4.9 capitalised words and phrases have the meaning given to them in Section 2.1 to these Terms and Conditions;
- 2.4.10 references to the “Minister” includes any designee, appointee, agent, state department or any other person authorised to act on behalf of the Minister;
- 2.4.11 a reference to a “person” includes any individual, partnership, firm, company, corporation (statutory or otherwise), joint venture, trust, association, organisation or other entity, whether or not having separate legal personality;
- 2.4.12 where these Terms and Conditions require the Minister, the TSO or the Regulatory Authority to publish information and no timeline is specified for such publication, it shall be required to publish such information as soon as is reasonably practicable in the particular circumstances; and
- 2.4.13 differences of language between provisions may be explicable by reference to changes of drafting practice and do not necessarily imply a difference of meaning.

3 Legal Basis for ORESS 1

- 3.1 This Section provides information on the applicable legal basis for ORESS 1, including the conducting of the ORESS 1 Auction and the provision of ORESS 1 Support in accordance with these Terms and Conditions.
- 3.2 ORESS 1 is established by the Minister and ORESS 1 Support will be funded through the PSO Levy charged to all final electricity customers. Section 39 of the Act sets out the legal basis for the PSO Levy.
- 3.3 Statutory Instrument No. 217 of 2002 (as amended) made under Section 39 of the Act requires that the Regulatory Authority calculates and certifies the costs associated with the PSO, including each of the relevant PSO schemes, and sets the associated PSO Levy.
- 3.4 ORESS 1 is part of the overall RESS package, which is subject to state aid approval by the EU Commission and is consistent with the European Union's Clean Energy Package, in particular the Renewable Energy Directive, and S.I. 365/2020 – European Union (Renewable Energy) Regulations 2020 which gives effect to Articles 4 and 6 of the Renewable Energy Directive.
- 3.5 Copies of legislation referred to in these Terms and Conditions are available online at <http://www.irishstatutebook.ie>. EU Directives are available online at <http://eur-lex.europa.eu/en/index.htm>. Regulatory Authority decisions are available at <http://www.cru.ie>.
- 3.6 These Terms and Conditions shall be governed by and construed in accordance with the laws of Ireland and, subject to Sections 9.2.5(d) and 9.4.2(d) of these Terms and Conditions, the Courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of these Terms and Conditions.

4 RESS Auction Monitor and Market Auditor

- 4.1 The Regulatory Authority will appoint a person or firm to act as the RESS auction monitor (the “**Auction Monitor**”). In accordance with the Information Paper, the Auction Monitor shall monitor the processes and procedures followed by the TSO in carrying out qualification and conducting the ORESS 1 Auction under these Terms and Conditions and the Operational Processes.
- 4.2 The Regulatory Authority will appoint a person or firm to act as the RESS market auditor (the “**Market Auditor**”). In accordance with the Information Paper, the Market Auditor shall conduct an audit of the operation and implementation of the ORESS 1 Auction, procedures and processes under these Terms and Conditions and the Operational Processes at least annually, in accordance with the terms of reference determined by the Regulatory Authority.

5 ORESS 1 Support

5.1 Overview

- 5.1.1 Eligible prospective renewable electricity generators may compete in the ORESS 1 Auction (as further detailed in this Section 5 of these Terms and Conditions) for ORESS 1 Support, subject to and in accordance with these Terms and Conditions.
- 5.1.2 A Successful Applicant in the ORESS 1 Auction will be provided with an Implementation Agreement that will, subject to the terms and conditions of the Implementation Agreement, require the Minister to provide the Successful Applicant with a Letter of Offer within two weeks of the later to occur of: (i) the receipt by the Minister of two original counterparts of the Implementation Agreement signed by the Successful Applicant and; (ii) the provision of the Performance Security to the Minister by the Successful Applicant.
- 5.1.3 The Letter of Offer will, subject to the terms of the Implementation Agreement and these Terms and Conditions, entitle the Supplier that enters into a PPA with a Successful Applicant to receive ORESS 1 Support for a period beginning no earlier than the ORESS 1 Support Start Date and ending no later than the ORESS 1 Support End Date.

For the avoidance of doubt, it will not be possible for a Supplier to submit a claim ex ante to the Regulatory Authority for PSO payments associated with the ORESS 1 Support prior to the PSO Levy Year before the ORESS 1 Support Start Date. However, if applicable, an ex-post payment claim can be made by an eligible Supplier in the following PSO Levy Year for Commercial Operation in the period between 1 January and 30 September in the year during which the ORESS 1 Support Start Date falls.

- 5.1.4 ORESS 1 Support is, with the exception of Unrealised Available Energy Compensation, structured as a FIP (i.e. a 2-way floating feed in premium). The ORESS 1 Payment calculation process will be administered by the Regulatory Authority and the process for settlement of ORESS 1 Payments will be administered by the TSO, based on their existing PSO payment procedures.
- 5.1.5 The Letter of Offer will contain a unique ORESS 1 reference number in respect of the

ORESS 1 Project. Once issued and to facilitate the administration of ORESS 1, it is a requirement that this reference number be quoted in all communications with the Minister.

- 5.1.6 The Regulatory Authority will be responsible for implementing and administering the arrangements set out in this Section 5 of these Terms and Conditions. The Regulatory Authority may consult on any modification of these arrangements where it deems appropriate and provide recommendations to the Minister where, following such consultation, the Regulatory Authority is of the view that the arrangements set out in this Section 5 should be modified. Any modification of this Section 5 shall be made by the Minister in accordance with Section 1.12 of these Terms and Conditions.

5.2 2-way Floating Feed In Premium (or FIP)

- 5.2.1 ORESS 1 Support, with the exception of Unrealised Available Energy Compensation, is structured as a FIP.

5.2.2 Strike Price

Each Qualified Applicant will be required to specify an Offer Price for its ORESS 1 Project in the ORESS 1 Auction. If successful in the ORESS 1 Auction, this Offer Price shall be the 'strike price' for that Qualified Applicant used to settle the ORESS 1 Payments for the ORESS 1 Project, as such 'strike price' may from time to time be adjusted in accordance with Section 5.2.3 (the "**Strike Price**").

5.2.3 Strike Price Indexation

- (a) On the Indexation Date (Commencement), the Strike Price will be adjusted in accordance with the following formulae:

$\text{Strike Price}_{\text{CD}} = \text{Strike Price}_{\text{Bid}} \times I_0$ where

$$I_0 = \frac{\text{Steel}_{\text{CD}}}{\text{Steel}_{\text{Bid}}} \times 0.10 + \text{Max} \left(\frac{\text{HICP}_{\text{CD}}}{\text{HICP}_{\text{Bid}}}, 1 \right) \times 0.60 + \frac{\text{HICP}_{\text{CD}}}{\text{HICP}_{\text{Bid}}} \times 0.30$$

And where:

"**Strike Price**" is as defined in Section 5.2.2 (expressed in €/MWh)

"**CD**" means the Indexation Date (Commencement)

"**Bid**" means the ORESS 1 Auction Submission Deadline Date

“Steel” means “The Steel Index – Platts TSI North European Plate” published by Platts, or such other replacement index as the Minister may from time to time designate in writing

“HICP” means “Harmonised Index of Consumer Prices” for the EU 27 published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing

- (b) On the Indexation Date (Interim), the Strike Price will be adjusted in accordance with the following formulae:

$\text{Strike Price}_{ID} = \text{Strike Price}_{CD} \times I_{ID}$ where

$$I_{ID} = 0.70 + \frac{HICP_{ID}}{HICP_{CD}} \times 0.30$$

And where:

“Strike Price” is as defined in Section 5.2.2, as such amount has been adjusted pursuant to Section 5.2.3(a) (expressed in €/MWh)

“ID” means the Indexation Date (Interim)

“CD” means the Indexation Date (Commencement)

“HICP” means “Harmonised Index of Consumer Prices” published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing

- (c) On each Indexation Date (Annual), the Strike Price will be adjusted in accordance with the following formulae:

$\text{Strike Price}_N = \text{Strike Price}_{N-1} \times I_N$ where

$$I_N = 0.70 + \frac{HICP_N}{HICP_{N-1}} \times 0.30$$

And where:

“Strike Price” is as defined in Section 5.2.2, as such amount has been adjusted pursuant to Section 5.2.3(a) and Section 5.2.3(b) (expressed in €/MWh)

“N” means the Indexation Date (Annual)

“HICP” means “Harmonised Index of Consumer Prices” published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing

The Minister will, after each Indexation Date:

(1) publish the calculations in respect of the indexation of the Strike Price under this Section 5.2.3 in respect of such Indexation Date. For the avoidance of doubt, such publications shall not disclose the Strike Price of any specific ORESS 1 Project.

(2) notify each ORESS 1 Project of the adjustments to the Strike Price in accordance with Section 5.2.3 in respect of such Indexation Date.

5.2.4 Market Reference Price

For ORESS 1 Projects, the market reference price used to settle the FIP will be the hourly DAM Price (the “**Market Reference Price**”).

The suitability of using the DAM Price for this purpose may be reviewed from time to time. In the event of changes to market conditions which result in the DAM Price being no longer suitable or feasible for use in the Market Reference Price calculation, a suitable and feasible alternative to the DAM Price will be established.

5.2.5 Annual Forecasts

ORESS 1 Support will be calculated annually based on forecasts and will be reconciled by the Regulatory Authority after the end of the following PSO Levy Year.

5.2.6 Overview of the Arrangements for Calculating RESS PSO Monies

The FIP will be calculated according to arrangements to be developed by the Regulatory Authority that will compare costs to market revenues (in each case as further described below). In the event that costs exceed market revenues, payments will flow from the PSO Levy in the direction of the Supplier to the PPA for the ORESS 1 Project. In the event that market revenues exceed costs, payments will flow from the Supplier to the PPA for the ORESS 1 Project in the direction of the PSO Levy. In general terms, costs are represented by the Strike Price of the ORESS 1 Project applied to its Loss-Adjusted RESS Metered Quantity, and market revenues are represented by the deemed energy revenues and the realised capacity revenues applicable to the ORESS 1 Project. This process is described in further detail below.

The FIP is described as being 2-way because when costs exceed market revenues a

Support Payment will be due to the Supplier, and when market revenues exceed costs a Difference Payment will be due from the Supplier.

The descriptions provided in this Section 5.2.6 are for the purpose of describing the effective amount of the Support Payment and the Difference Payment. The Regulatory Authority will develop arrangements for quantifying these Support Payments and Difference Payments, in accordance with the Act and the PSO Order.

The FIP will be calculated by the Supplier on an hourly basis and will effectively be calculated with respect to deemed energy revenues based on the Loss-Adjusted RESS Metered Quantity of the ORESS 1 Project applied to the Strike Price and the Loss-Adjusted RESS Metered Quantity of the ORESS 1 Project applied to the Market Reference Price. Specifically:

- For hours in which:
 - (a) the Strike Price multiplied by Loss-Adjusted RESS Metered Quantity,

exceeds
 - (b) the Market Reference Price multiplied by Loss-Adjusted RESS Metered Quantity,

then if the DAM Price equals or exceeds zero euro per MWh and, for the avoidance of doubt, the ORESS 1 Project is compliant with TSO dispatch instructions in that hour, the Supplier will be entitled to receive a payment equal to (a) minus (b), otherwise it will be entitled to a payment of zero (the “**Support Payment**”); and

- For hours in which:
 - (a) the Market Reference Price multiplied by Loss-Adjusted RESS Metered Quantity,

exceeds
 - (b) the Strike Price multiplied by Loss-Adjusted RESS Metered Quantity,

then the Supplier will be obligated to make a payment equal to (b) minus (a) (the “**Difference Payment**”).

In calculating the level of ORESS 1 Support, the Support Payment and the Difference Payment will be further adjusted to account for capacity market revenues actually received. The market revenue calculations for the purposes of calculating the PSO Levy for ORESS 1 Projects will take into account only capacity market revenues. It will not take into account capacity market costs (including for the avoidance of doubt any cost obligations of the ORESS 1 Project associated with non-performance under a CRM reliability option). Capacity market revenues will (as applicable) decrease the Support Payment or increase the Difference Payment for the PSO Levy Year.

ORESS 1 Support may additionally include Unrealised Available Energy Compensation pursuant to Section 5.6, if applicable.

For avoidance of doubt, DS3 and constraint revenues will not be considered as market revenues and therefore will not be taken into account in the calculation of Support Payments and Difference Payments, or otherwise in the calculation of ORESS 1 Support.

ORESS 1 Support, inclusive of the net difference between the aggregate of Support Payments and Difference Payments over the relevant PSO Levy Year and adjusted for capacity market revenues and Unrealised Available Energy Compensation as applicable, will be funded (or refunded) through the PSO Levy. For the avoidance of any doubt, payments will therefore have a statutory basis described by these Terms and Conditions but shall not derive by way of a contract pursuant to these Terms and Conditions.

5.2.7 Annual Reconciliation

The TSO will be responsible for disbursing and collecting the net difference between the aggregate of Support Payments and Difference Payments, adjusted for capacity market revenues and Unrealised Available Energy Compensation as applicable, over the relevant PSO Levy Year. Such duties shall, inter alia, take account of the Regulatory Authority’s forecast of the level of payments to and from Suppliers with an ORESS 1 PPA and a reconciliation to adjust for deviations between forecasts and actual outcomes of generation, availability, loss factors, DAM Prices and any other

factors that contribute to the calculation of the level of payments, as necessary.

The arrangements for the calculation of the PSO Levy for ORESS are expected to be broadly similar to the arrangements described in CRU/20/13 Decision Paper on “Arrangements for the Calculation of the PSO Levy post I-SEM implementation” (but for the avoidance of doubt, these arrangements may be modified by the Regulatory Authority from time to time). However, to accord with these Terms and Conditions, the reconciliation with each Supplier will recognise the unique Strike Price and Loss-Adjusted RESS Metered Quantity applicable to each ORESS 1 Project in the reconciliation and, for the avoidance of doubt, Section 5.2.6 means that the FIP will be calculated on an equivalent hourly basis for each of the annual forecast and the annual reconciliation.

5.2.8 Payments from Suppliers to the PSO

In the event that the forecast net amount due in respect of an ORESS 1 PPA for a PSO Levy Year is negative after adjusting for any reconciliation, the Supplier that is a party to the ORESS 1 PPA will be required to make monthly payments over the course of the next applicable PSO Levy Year to the TSO as opposed to receiving payments.

In the event that, at the end of the ORESS 1 Support Period for an ORESS 1 Project, the final reconciliation calculation indicates that there is an amount due from the Supplier, such amount will be the joint and several responsibility of the Supplier and the Generator. This provision will apply to the ORESS 1 Project without regard to ownership of the ORESS 1 Project after the final year of ORESS 1 Support.

5.3 PSO

- 5.3.1 At a designated time prior to the commencement of a PSO Levy Year, each Supplier is required to inform the Regulatory Authority of any Generators with whom it has entered into an ORESS 1 PPA, on behalf of whom they will be eligible to receive (and, when applicable, required to make) ORESS 1 Payments in the upcoming PSO Levy Year. Any responses to queries from Suppliers as to the information to be provided to the Regulatory Authority ahead of the PSO Levy Year shall be addressed directly to such Suppliers by the Regulatory Authority.

5.3.2 The Regulatory Authority will then calculate the amount of the ORESS 1 Support for the upcoming PSO Levy Year on the basis of the information provided to it by Suppliers and other relevant information it considers necessary. Only ORESS 1 Projects (a) in respect of which all obligations under the Implementation Agreement and these Terms and Conditions have been met, (b) which have been notified to the Regulatory Authority by Suppliers and included in the relevant PSO calculation by the Regulatory Authority and (c) which have been included in the PSO S.I. (in accordance with Section 5.3.3) are eligible to receive and make ORESS 1 Payments in the relevant PSO Levy Year.

5.3.3 On an annual basis, to coincide with the PSO Levy Year commencing 1 October, the Minister shall publish a statutory instrument (the “**PSO S.I.**”) that contains a list of ORESS 1 Projects eligible for PSO payments in the upcoming PSO Levy Year. Payments cannot be made unless the ORESS 1 Project is both listed in the PSO S.I. for the upcoming PSO Levy Year and has been included by the Regulatory Authority in the PSO Levy decision. ORESS 1 Projects will be included in the PSO S.I. when (a) they have applied to be included, (b) demonstrate to the satisfaction of the Minister that they are expected to generate during the upcoming PSO Levy Year and (c) have met all other criteria established by the Minister for inclusion. It is for the parties to the ORESS 1 PPAs (i.e. the relevant Generators and Suppliers) to ensure that the Regulatory Authority is provided with timely information each year by Suppliers in accordance with the timelines specified by the Regulatory Authority from time to time.

5.3.4 Each Generator shall take, and shall ensure that the Supplier in respect of its ORESS 1 Project takes, all necessary steps to ensure that:

- (a) its ORESS 1 Project is listed in the PSO Order as soon as practicable prior to the Commercial Operation Date, in accordance with this Section 5.3; and
- (b) all necessary information and documentation required for the purposes of ensuring that its ORESS 1 Project is entitled to (as applicable) make or receive ORESS 1 Payments is provided to the Regulatory Authority as soon as practicable,

in each case such that ORESS 1 Payments may be made in respect of the ORESS 1 Project with effect from the Commercial Operation Date for such ORESS 1 Project.

5.3.5 If a Generator fails to comply with Section 5.3.4 (which, for the avoidance of doubt,

shall include a failure to procure that the Supplier takes all necessary steps detailed in Section 5.3.4), then either:

- (a) the ORESS 1 Payments subsequently paid in respect of the relevant ORESS 1 Project in the next following PSO Levy Year will be subject to an adjustment equal to (i) the market revenues of that ORESS 1 Project in respect of the period of non-compliance minus (ii) the Strike Price for the relevant ORESS 1 Project multiplied by the metered output of the relevant ORESS 1 Project in respect of the period of non-compliance (provided that where such calculation results in a negative number, no adjustment will be made) (the “**Adjustment Amount**”). The Adjustment Amount will (as applicable) be applied to (i) decrease Support Payments subsequently paid in respect of the relevant ORESS 1 Project or (ii) increase Difference Payments subsequently paid in respect of the relevant ORESS 1 Project; or
- (b) the participation of the ORESS 1 Project in ORESS 1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable).

5.4 ORESS 1 PPA

- 5.4.1 The Minister will not be a party to an ORESS 1 PPA, which is a commercially negotiated arrangement between the relevant Supplier and the Generator corresponding to the Successful Applicant.
- 5.4.2 Any termination or expiry of an ORESS 1 PPA, or any event which causes the ORESS 1 PPA to cease to be in full force and effect, shall be notified in writing by the Supplier or its permitted successor or assign to the Minister and the Regulatory Authority forthwith. A Supplier shall cease to have any entitlement to receive future ORESS 1 Payments with effect from the date of termination or expiry of the ORESS 1 PPA, or on the date the ORESS 1 PPA ceases to be in full force and effect, but shall have the right to receive ORESS 1 Payments and any reconciliation payments owed to it (and the obligation to make Difference Payments and to make any reconciliation payments it owes) for the period up to such date of termination or expiry, as the case may be. Unless the ORESS 1 PPA has been transferred to another Supplier in accordance with Section 5.4.3 (or where the ORESS 1 Project has been withdrawn from ORESS 1 in accordance with Section 5.4.5), the existing

Supplier shall retain the obligation for Difference Payments resulting from operation after termination or expiry of the relevant ORESS 1 PPA and any reconciliation payments. Parties to an ORESS 1 PPA shall notify the Minister and the Regulatory Authority immediately in writing in the event that an ORESS 1 Project subject to an ORESS 1 PPA intends to cease to operate or ceases to operate in any PSO Levy Year or for the remaining term of the ORESS 1 PPA.

- 5.4.3 On the application of the Generator and with the prior written consent of the Regulatory Authority, the Generator may enter into a new ORESS 1 PPA with a new Supplier in the event that the original Supplier is unable to perform its obligations under the original ORESS 1 PPA or these Terms and Conditions and if the new PPA is compliant with these Terms and Conditions and is for the remainder of the term of the original ORESS 1 PPA. The new Supplier shall assume liability for any unpaid Difference Payments and reconciliation payments owed by the original Supplier in respect of the period prior to the date on which the change in Supplier takes effect. In circumstances where the Generator and Supplier are in compliance with these Terms and Conditions, and the Generator's ORESS 1 PPA is terminated for reasons beyond the control of the Generator including any successor(s) thereto, the Generator may, with the prior consent of the Regulatory Authority, enter into a new ORESS 1 PPA with a new Supplier provided that the new PPA is compliant with these Terms and Conditions and is for the remainder of the term of the original ORESS 1 PPA.
- 5.4.4 Where an ORESS 1 Project has been included in the PSO Order and a Supplier is a PPA counterparty for an ORESS 1 Project, the Minister and the Regulatory Authority may in their discretion include such ORESS 1 Project in the PSO S.I. and PSO Order for subsequent PSO Levy Years without having regard as to whether such ORESS 1 Project has applied to be in the PSO for that year, provided that such ORESS 1 Project has not withdrawn in accordance with Section 5.4.5 of these Terms and Conditions.
- 5.4.5 Provided that the ORESS 1 Project has achieved Commercial Operation by the Longstop Date in accordance with the Implementation Agreement and has satisfied any and all obligations to pay Difference Payments and reconciliation payments under ORESS 1, the Generator may request to withdraw the ORESS 1 Project from ORESS 1 and take the ORESS 1 Project to the open market without ORESS 1 Support by giving at least 12 months' prior written notice of the date of withdrawal to the Minister. The date of withdrawal must be the first day of a PSO Levy Year. The

Generator must submit evidence that the Supplier to that ORESS 1 PPA agrees to the withdrawal from ORESS 1. The request to withdraw will be granted if the Supplier has paid all Difference Payments and reconciliation payments applicable to the relevant ORESS 1 Project, if any, and the Generator has provided evidence of written consent that the Supplier agrees to the withdrawal. If such a withdrawal is requested and granted, the following will apply:

- (a) the Letter of Offer shall, insofar as it affects the Generator, which includes any future developer or generator developing or operating the same ORESS 1 Project within any renewable support scheme in Ireland, cease to confer any entitlement to ORESS 1 Support with effect from the notified date of withdrawal and no revocation of the withdrawal or revival of the Letter of Offer shall be permitted after the date notified as the withdrawal date has passed; and
- (b) insofar as it affects any Supplier as a party to an ORESS 1 PPA, the Supplier shall cease to qualify for ORESS 1 Support in respect of the relevant ORESS 1 Project after the notified date of withdrawal from ORESS 1 has passed but shall retain any ORESS 1 Support obligations or entitlements which have accrued prior to the date of withdrawal. The Generator withdrawing will be responsible on a joint and several basis for any ORESS 1 Payment obligations that have resulted from operation prior to the date of withdrawal.

5.4.6 A Generator that has executed the Implementation Agreement and has received a Letter of Offer may give notice to the Minister and the Regulatory Authority that it does not wish to be included in the PSO Order and to make or receive (as applicable) ORESS 1 Payments. Provided that such notice is given at least six months prior to the Longstop Date the Generator will be deemed to have withdrawn the ORESS 1 Project from ORESS 1 and to have taken the ORESS 1 Project to the open market without ORESS 1 Support. The withdrawn ORESS 1 Project:

- (a) is ineligible to receive support associated with any future RESS competition.
- (b) shall remain required to meet all obligations set forth in the Implementation Agreement including for the avoidance of doubt to (i) ensure that the Performance Security remains in place and (ii) achieve Commercial Operation by the Longstop Date;
- (c) shall remain subject to forfeiture of Performance Security in accordance with the provisions of the Implementation Agreement; and

- (d) shall be permitted to seek a Guarantee of Origin.

The Minister shall return the Performance Security to an ORESS 1 Project which is withdrawn under this Section 5.4.6 in accordance with the terms of the Implementation Agreement.

5.4.7 For the avoidance of doubt, in interpreting Section 5.4.5 and 5.4.6 the following shall be noted:

- (a) the exercise of the discretion permitted by Section 5.4.5 or 5.4.6 is a discretion to exit ORESS 1 and enter the open market; and
- (b) all notices to withdraw from ORESS 1 will be made solely by the Generator that is a party to the ORESS 1 PPA subject to the Letter of Offer for the ORESS 1 Project. In accordance with Section 5.4.5, the Generator must submit evidence in its notice that the Supplier has provided written consent to the withdrawal from ORESS 1.

5.4.8 Once the ORESS 1 Support Period commences in respect of an ORESS 1 Project, no changes in Supplier are permitted, save as specifically permitted in accordance with these Terms and Conditions.

5.5 Metering

5.5.1 All ORESS 1 Projects must be metered separately. It is a requirement of ORESS 1 that official TSO meters are installed and polled by the TSO. The metering of an ORESS 1 Project must relate to the size and Installed Renewable Capacity of the ORESS 1 Project (the minimum and maximum of which are set out in Section 6.3.11 of these Terms and Conditions). Where there is additional electricity generation installed on an Offshore Site beyond the flexibility provided for in Section 6.3.11, this must be metered separately to the ORESS 1 Project.

5.5.2 All electrical energy generated by an ORESS 1 Project must be delivered across that ORESS 1 Project's meter. No portion of the ORESS 1 Project's generated electricity shall bypass that ORESS 1 Project's meter, or be delivered in a form other than electrical energy.

5.6 Unrealised Available Energy Compensation

- 5.6.1 An ORESS 1 Project that has Unrealised Available Energy in any given hour will be eligible for Unrealised Available Energy Compensation for that hour in accordance with the terms of this Section 5.6.
- 5.6.2 Unrealised Available Energy Compensation will be a €/MWh amount in respect of an hour, calculated as follows:

$$\text{Unrealised Available Energy Compensation} = (\text{Unrealised Available Energy} \times \text{Strike Price}) - \text{Other Compensation for Unrealised Available Energy}$$

- 5.6.3 The “**Unrealised Available Energy**” of an ORESS 1 Project in an hour (expressed in MWh) is defined as the Loss-Adjusted Eligible Available Quantity minus the Loss-Adjusted RESS Metered Quantity of that ORESS 1 Project in that hour. If either:
- (a) the ORESS 1 Project does not comply with a TSO dispatch instruction in that hour; or
 - (b) the Loss-Adjusted RESS Metered Quantity is greater than the Loss-Adjusted Eligible Available Quantity in that hour,

then the Unrealised Available Energy shall be zero.

- 5.6.4 The “**Eligible Available Quantity**” of an ORESS 1 Project in an hour (expressed in MWh) is defined as the Physical Availability of such ORESS 1 Project in that hour. The Eligible Available Quantity shall:

- (a) not include availability in that hour in respect of which generation of that ORESS 1 Project has been limited due to any of the following reasons:
 - (i) Network constraints;
 - (ii) Local system stability constraints;
 - (iii) Forced or planned transmission connection asset outages; and
- (b) only apply if the ORESS 1 Project was offered into the DAM or an applicable

intra-day market and/or the balancing market for the hour concerned and at an offer price no greater than the variable cost of generation.

- 5.6.5 The “**Physical Availability**” of an ORESS 1 Project in an hour (expressed in MWh) is its actual availability to produce Active Power, measured to a revenue quality standard that will be specified by the Regulatory Authority, using physical measurement of availability from anemometers or similar, and subject to any new measurement, testing and verification procedures that may be required for the use of availability as a billing determinant for ORESS 1 Projects pursuant to Section 5.6.9(b). Physical Availability shall be measured, tested and verified on a comparable basis to the determination of Metered Quantities of energy. Physical Availability in an hour shall not include amounts that were unavailable due to a forced outage or planned outage of an ORESS 1 Project.
- 5.6.6 “**Other Compensation for Unrealised Available Energy**” is any other compensation (expressed in €) that an ORESS 1 Project receives outside of the provisions of these Terms and Conditions for Unrealised Available Energy, including any compensation for energy corresponding to Unrealised Available Energy received pursuant to Article 13 of Regulation (EU) 2019/943 (as implemented in the SEM).
- 5.6.7 Unrealised Available Energy Compensation will be funded through the PSO Levy. The Regulatory Authority will consider Unrealised Available Energy Compensation when developing the forecast PSO Levy for each PSO Levy Year and when applying the PSO reconciliation for each PSO Levy Year pursuant to Section 5.2.
- 5.6.8 For the avoidance of doubt, Unrealised Available Energy will be measured as set out in this Section 5.6 during all hours, including hours with negative DAM prices, and will not be contingent upon the ORESS 1 Project securing a position in the DAM or in an intra-day market.
- 5.6.9 To support the provision of Unrealised Available Energy Compensation arrangements the Regulatory Authority will:
- (a) ensure that the TSO has appropriate methodologies for the purposes of Section 5.6.4(a);
 - (b) ensure that the TSO has appropriate methodologies (to be developed and implemented by the TSO) by which Physical Availability of ORESS 1 Projects

shall be measured for the purposes of Section 5.6.5. This may include requirements on ORESS 1 Projects for the installation of physical equipment which measures and communicates their availability, in order to be eligible to receive Unrealised Available Energy Compensation; and

- (c) establish and publish the basis upon which the condition set out in Section 5.6.4(b) regarding participation in ex-ante and/or balancing markets is evaluated and also have regulatory oversight of the methodologies established in accordance with Section 5.6.9(a) and Section 5.6.9(b).

5.7 Prudent Electric Utility Practice and Availability

All ORESS 1 Projects must be operated in accordance with Prudent Electric Utility Practice in order to ensure the ORESS 1 Project is available to produce electricity at times of relative system scarcity and at times of higher than average market prices.

ORESS 1 Projects must use reasonable endeavours to conduct planned outages at times of system surplus and lower than usual, zero, or negative market prices.

ORESS 1 Projects must comply at all times with TSO dispatch instructions.

6 ORESS 1 Auction

6.1 Overview

- 6.1.1 The ORESS 1 Auction will be open to the Eligible Technology.
- 6.1.2 The ORESS 1 Auction will be administered by the TSO in accordance with the terms set out in Section 9 of these Terms and Conditions.
- 6.1.3 The ORESS 1 Auction will be administered in accordance with, inter alia, the following high level steps:
- (a) the TSO will accept Applications for Qualification;
 - (b) Applicants will post their Bid Bonds no later than the Bid Bond Posting Date;
 - (c) the eligibility criteria set out in Section 6.3 of these Terms and Conditions will be assessed by the TSO for each Application for Qualification received;
 - (d) a Provisional Qualification Decision will be made by the TSO;
 - (e) Final Qualification Results are prepared and notified to Applicants and an Offer Price is submitted by each Qualified Applicant to the TSO; and
 - (f) the ORESS 1 Auction will be conducted and Awards will then be notified to Successful Applicants.
- 6.1.4 An Application for Qualification must be associated with a single ORESS 1 Project at a single Offshore Site.

An Applicant may submit more than one Application for Qualification, including for ORESS 1 Projects that might be physically adjacent provided that this is allowed under the Applicant's Maritime Area Consent and grid connection arrangements and so long as each such project independently complies with all the Terms and Conditions. ORESS 1 Projects cannot be mutually-exclusive or dependent on other ORESS 1 Projects.

An Applicant may submit an Application for Qualification for an ORESS 1 Project physically adjacent to an additional electricity generation facility that is not an ORESS 1 Project (for example an additional electricity generation facility that sells its output under a corporate power purchase agreement, or sells its output to the SEM, or a project in a future RESS competition) provided that this is allowed under the Applicant's Maritime Area Consent and grid connection arrangements. The ORESS 1 Project must nevertheless comply with all the Terms and Conditions in its own right. The additional electricity generation facility must be metered separately in accordance with Section 5.5.

6.2 Target Volume

6.2.1 The Regulatory Authority has issued an assessment to the Minister regarding the annual GWh quantity of renewable energy (the “**Available Volumes**” for all projects) which may be awarded competitively under the ORESS 1 Auction. AV was calculated as $AV = PP / RCR$, where:

- (a) PP is the annual GWh quantity initially “Projected to Participate”.
- (b) RCR is a “Representative Competition Ratio” as was determined to be the appropriate ratio by the Regulatory Authority of total auction supply to fixed auction demand that the Regulatory Authority assesses could reasonably be expected to result in a sufficiently competitive auction.

6.2.2 The Minister has determined a Representative Maximum Quantity (RMax) in annual GWh for the ORESS 1 Auction, taking into account amongst other things:

- (a) Available Volumes (AV) as recommended by the Regulatory Authority (with regards to Representative Maximum Quantity (RMax));
- (b) the 2030 target for renewable energy set out in the National Energy and Climate Plan as updated by Ireland's Climate Action Plan;
- (c) the target for corporate power purchase agreements as set out in the Climate Action Plan;
- (d) the 2030 target for installed offshore wind capacity set out in the 2020

Programme for Government; and

(e) other appropriate policy considerations.

6.2.3 Representative Maximum Quantity (RMax) and Representative Minimum Quantity (RMin) have been determined for ORESS 1 in accordance with Sections 6.2.1 and 6.2.2 as follows:

Table 1: RMin and RMax

RMin	1,000 GWh
RMax	18,000 GWh

RMin and RMax figures will be confirmed in the Auction Information Pack.

6.3 Eligibility Requirements

6.3.1 All Applicants must provide evidence to the TSO with the Application for Qualification that the eligibility requirements set out in this Section 6.3 have been met.

6.3.2 All declarations provided by a director in connection with the ORESS 1 Auction must be true and accurate and made by way of a sworn affidavit having regard to the fiduciary duties that a director has to the company whose board (or equivalent) it sits on, in each case under applicable company law legislation.

In the event that any statement in a declaration is found not to be true or accurate, in addition to applicable legal penalties or sanctions in respect of the sworn affidavit:

- (a) if the ORESS 1 Auction has not been held, the ORESS 1 Project will be disqualified from participating in the ORESS 1 Auction;
- (b) if the ORESS 1 Auction has been held, the participation of the ORESS 1 Project in ORESS 1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and
- (c) regardless of whether or not the ORESS 1 Auction has been held, the

Applicant or Qualified Applicant on whose behalf the director signs the false declaration will be prohibited from participating in any RESS competitions for a period of five years.

6.3.3 Eligible Technology

The ORESS 1 Auction will be open to New Projects which are connected directly to the electricity network and metered independently of any other electricity generating plant and which use Offshore Wind to produce electricity (the “**Eligible Technology**”).

Compliance with this Section 6.3.3 must be evidenced by information submitted by the Applicant describing the ORESS 1 Project to be built and the equipment to be used.

6.3.4 Maritime Area Consents

ORESS 1 Projects are required at all stages to have a Maritime Area Consent. The Maritime Area Consent for an ORESS 1 Project must not have an expiry date or a decommissioning obligation prior to the anticipated end of the term of ORESS 1 Support for an ORESS 1 Project.

The Application for Qualification must contain evidence of the Maritime Area Consent for the ORESS 1 Project concerned. The TSO will publish these evidentiary requirements in the Qualification Information Pack.

An Applicant is required to provide a declaration (“**Declaration of Maritime Area Consent**”), the form of which will be provided in the Qualification Information Pack, that:

- (a) the Maritime Area Consent permits and is consistent with the Offer Quantity submitted for the ORESS 1 Project concerned, as well as for the Offer Quantity of any other ORESS 1 Project(s) which utilise the same Maritime Area Consent; and
- (b) the ORESS 1 Project described in the Application for Qualification is in all other respects consistent with that for which the Maritime Area Consent has been obtained.

Minor amendments to Maritime Area Consent subsequent to the submission of the Application for Qualification are permissible, so long as there are no changes required to the information specified in Section 6.3.9.

6.3.5 Grid Connection Assessment

The ORESS 1 Project is required to have received a Grid Connection Assessment in order to be eligible to participate in the ORESS 1 Auction.

6.3.6 Financeability

The ORESS 1 Project must be financeable under the Terms and Conditions and at the Offer Price to be submitted by the Qualified Applicant. In this context, “financeable” is understood as having expressions of interests or indications from investors or funders that they will provide the funding required to construct and operate the ORESS 1 Project, or that the Applicant has sufficient equity funding in place to construct and operate the ORESS 1 Project, in the event that it receives an Award.

Compliance with this requirement must be evidenced by a director declaration (“**Declaration of Financeability**”), the form of which will be provided in the Qualification Information Pack, that the ORESS 1 Project has sufficient equity funding in place or expressions of interests or indications from investors or funders to provide funding if the ORESS 1 Project receives an Award.

For ORESS 1 Projects that plan to use debt financing, the declaration must clearly state that the Applicant: (a) has or will have sufficient equity funding in place for the non-debt financing portion of the funding or commitments from investors to provide such equity funding and (b) has received indications or expressions of interest from lenders that the ORESS 1 Project should receive the debt financing required to construct and operate the ORESS 1 Project.

Applicants are reminded that a failure to secure sufficient debt financing does not excuse the Applicant from performance of its obligations as a Successful Applicant or from any financial consequences of non-performance. For the avoidance of doubt, an Offer by a Qualified Applicant is a firm commitment to develop the ORESS 1 Project as detailed in the Application for Qualification without any contingency based on

securing financing.

6.3.7 New Project Requirements

The ORESS 1 Project must meet the requirements of a New Project. Compliance with this requirement must be evidenced by a director declaration ("**Declaration of New Project**"), the form of which will be provided in the Qualification Information Pack, that the ORESS 1 Project meets the New Project criteria.

The ORESS 1 Project may be subject to audit by the Minister and / or the TSO (or their respective nominees or agents) and required to demonstrate that these requirements have been met in order to participate in ORESS 1.

6.3.8 Applicant Independence

An Applicant is required to provide the following information and / or director declarations (together, the "**Declaration of Bidding Independence**") in order to be eligible to participate in the ORESS 1 Auction (the forms on which the information and / or declarations are to be provided will be included in the Qualification Information Pack):

- (a) a declaration that the Applicant is in compliance with all applicable competition legislation;
- (b) a list of all persons that directly or indirectly own or control more than 10% of the shares of the Applicant (the "**Principal Owners**"). The Applicant shall also provide a certified structure chart showing the ownership of the Applicant up to ultimate beneficial owner level;
- (c) a list of all entities (i) to which the Applicant or its Principal Owners have revealed Pricing Information, excluding any finance provider or advisor bound by confidentiality obligations restricting the disclosure of such Pricing Information (provided that such finance provider or advisor is not an Applicant or the Principal Owner or Affiliate of an Applicant) and / or (ii) which may become a Principal Owner of the Applicant prior to the ORESS 1 Auction Submission Deadline Date provided that commercial discussions have commenced between such entity (or entities) and the Applicant (or its Principal Owners) in this regard. It is the responsibility of the Applicant to

obtain information from its Principal Owners;

- (d) a list of all other entities that (i) the Applicant or its Principal Owners believe have submitted or may submit Applications for Qualification and (ii) in respect of which the Applicant or its Principal Owners are aware of Pricing Information, and the ORESS 1 Projects to which the Pricing Information relates. It is the responsibility of the Applicant to obtain information from its Principal Owners; and
- (e) a list that describes the party to and nature of any agreements or arrangements that the Applicant or its Principal Owners are aware of that are contingent upon the result of the ORESS 1 Auction. It is the responsibility of the Applicant to obtain information from its Principal Owners.

An Applicant is obliged to provide a director declaration as to the accuracy of all information provided in accordance with this Section 6.3.8.

The information will be forwarded to the Regulatory Authority and the Minister by the TSO and may be used in the Regulatory Authority's competition assessment.

As at the ORESS 1 Auction Submission Deadline Date a Qualified Applicant will be required to confirm that all information provided in accordance with this Section 6.3.8 has remained true and correct in all respects throughout the Standstill Period and in accordance with Section 6.8.1 and Section 9.2.6, with the only exception being any information for which a change of status or change of the information itself was approved and accepted in writing by the TSO during the Standstill Period – for example in the case of change of contact details pursuant to Section 6.3.10.

If the Principal Owners and / or the structure chart have changed between the date of submission of the Application for Qualification and the date of submission of the Offer Price, the Applicant shall indicate this and provide an updated certified structure chart showing the ownership of the Applicant up to ultimate beneficial owner level. Any new Principal Owner can only be an entity that was listed by the Applicant in its Application for Qualification in accordance with Section 6.3.8(c).

6.3.9 Other Information

In addition to the information and requirements described above in Sections 6.3.1 to

6.3.8 (inclusive) of the Terms and Conditions, in order to be eligible for ORESS 1, Applicants will be required to provide the following information in the Application for Qualification:

- (a) legal name and registered address or address of principal place of business of the Applicant. The Applicant must be the proposed Generator of the ORESS 1 Project;
- (b) a list of all entities with an ownership or equity interest in the ORESS 1 Project and the same information required in paragraph (a) above for each such entity;
- (c) name of the individual preparing the Application for Qualification;
- (d) a confirmation that the Applicant will be bound by these Terms and Conditions;
- (e) a confirmation that the information that the Applicant has provided is true and accurate in all respects;
- (f) an acknowledgment that for the purposes of the administration of ORESS 1, the Minister is authorised to use information related to the Applicant and the ORESS 1 Project, provided in the Application for Qualification, to communicate with the Applicant, the Regulatory Authority, the TSO and SEMO in order to ensure the proper functioning of ORESS 1 and to ensure the accuracy of information included in the relevant statutory instrument for the PSO Levy for the relevant PSO Levy Year;
- (g) an acknowledgment that the Application for Qualification has been prepared at the expense of the Applicant and that the TSO and the Minister bear no responsibility or liability for any costs incurred by the Applicant in connection with the Application for Qualification;
- (h) a description of the renewable energy equipment that will be utilised for the ORESS 1 Project;
- (i) a description of the overall plant size i.e. aggregate installed (nameplate) rating for the ORESS 1 Project and its Offer Quantity expressed in MW to

three decimal places;

- (j) the Expected MEC; and
- (k) confirmation that a Guarantee of Origin will not be sought in respect of the output of the ORESS 1 Project, in accordance with Statutory Instrument 350 of 2022.

In accordance with Statutory Instrument 350 of 2022, where an ORESS 1 Project receives a Guarantee of Origin for a renewable energy unit, no ORESS 1 Payment for the same unit of electricity shall be made. If an ORESS 1 Project receives a Guarantee of Origin in respect of its output then such ORESS 1 Project may be withdrawn from ORESS 1 by the Minister (and will not be eligible to return to ORESS 1).

6.3.10 Process for Change of Contact Details and/or Directors

Changes to an Applicant's company name, its registered directors, its address and/or changes to the individuals authorised to represent the Applicant are permissible during the Standstill Period subject to the following provisions:

- (a) changes to an Applicant's name, its registered directors, and/or its address must be notified by means of a director declaration and accompanied by a receipt of formal change from the CRO; and
- (b) changes to authorised individuals shall be notified by means of a director declaration and accompanied, where necessary, by a receipt of formal change from the CRO if it relates to a new director.

6.3.11 Installed Renewable Capacity of the ORESS 1 Project

Minimum Installed Renewable Capacity

Following the Commercial Operation Date, Generators must at all times during the ORESS 1 Support Period be able to demonstrate that the Installed Renewable Capacity of the ORESS 1 Project is at least 80% of the Offer Quantity which was accepted into ORESS 1 (the "**Minimum Installed Renewable Capacity**").

Maximum Installed Renewable Capacity

An ORESS 1 Project may over-install above its MEC where there is over-installation allowed pursuant to the decision paper of the Regulatory Authority (ref: CER/14/047) (**“RA Decision Paper 14/047”**) provided that the ORESS 1 Project remains compliant with these Terms and Conditions including compliance with Section 6.3.12. In any case, the Installed Renewable Capacity of the ORESS 1 Project shall be no more than 120% of the Offer Quantity which was accepted into ORESS 1 (the **“Maximum Installed Renewable Capacity”**).

6.3.12 Maximum Export Capacity and Offer Quantity

In all cases the Offer Quantity (1) cannot be greater than the Expected MEC and (2) cannot be greater than the maximum export capacity identified in an ORESS 1 Project's application for planning permission (if such application has been submitted to An Bord Pleanála).

Where there is over-installation relative to MEC for an ORESS 1 Project pursuant to Section 6.3.11:

- (a) the ORESS 1 Project must be technically controlled to ensure that the MEC cannot be exceeded;
- (b) the Supplier with whom the Successful Applicant enters into an ORESS 1 PPA must provide evidence of this technical control to the Regulatory Authority when making their annual returns; and
- (c) the Successful Applicant must undertake in writing not to raise the MEC of the ORESS 1 Project, except with the prior written agreement of the Minister and the Regulatory Authority. This includes agreeing a methodology for suitable metering arrangements to separately record generation at the Offshore Site which would be above the capacity approved for ORESS 1 Support.

6.3.13 Bid Bond

- (a) Each Applicant must provide a Bid Bond to the TSO by the Bid Bond Posting Date in accordance with Section 9.3 of these Terms and Conditions. The Bid

Bond value in ORESS 1 is €6 per MWh, where the MWh value is the Deemed Energy Quantity for one year for the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh (the “**Bid Bond Required Amount**”). For example, the Bid Bond for a 500 MW Offshore Wind project would be €6/MWh x 500 MW x 8760 hours x 0.45 Renewable Capacity Factor = €11,826,000.

- (b) The TSO may draw down on the Bid Bond in the circumstances set out in Sections 5.3.5(b), 6.3.2(b), 6.5.6(b), 6.6.3(b), 6.8.1(b), 6.8.3, 8.2, 8.12 and 9.3 of these Terms and Conditions. There will be no exceptions applied to the forfeiture provisions including in respect of any events that are claimed to be outside of the control of the Applicant.

6.4 Final Competition Ratio

The TSO will provide the Qualification Results to the Regulatory Authority, including any information supplied in connection with the Applications for Qualification required by the Regulatory Authority such as information concerning commonality of ownership or other aspects of Applicant independence. For the avoidance of doubt, this information will not include Offer Prices given that Offer Prices will not yet have been submitted to the TSO.

The Regulatory Authority will then determine an appropriate final competition ratio “**Final Competition Ratio**” (“**FCR**”) taking into account the results of a competitive analysis that the Regulatory Authority will undertake on the aforementioned data. The competitive analysis undertaken by the Regulatory Authority for this purpose may consider certain factors including the distribution of ownership and commonality of control, pivotal supplier considerations, other market concentration considerations, and other factors as the Regulatory Authority in its sole discretion deems appropriate. If the Regulatory Authority determines there is insufficient competition with which to conduct an auction a statement to this effect will be published before the ORESS 1 Auction Submission Deadline Date. Otherwise, the Final Competition Ratio will be published by the Regulatory Authority no later than the Provisional Auction Results Date.

6.5 Project Information Document

- 6.5.1 Each Qualified Applicant must complete and submit a project information document in respect of their ORESS 1 Project (the “**Project Information Document**”), the form of

which will be provided in the Qualification Information Pack.

- 6.5.2 The Project Information Document will detail the key characteristics of an ORESS 1 Project, including technical and spatial characteristics, the proposed final Installed Renewable Capacity – which must be equal in MW to the Offer Quantity – and the anticipated annual output (in MWh) based on P50 estimates. The key characteristics of the ORESS 1 Project detailed in the Project Information Document must be true and accurate, provided in good faith, based on all available financial and technical data available at the date of the submission of the Project Information Document, and consistent with industry norms.
- 6.5.3 The Project Information Document must be consistent with the ORESS 1 Project's Maritime Area Consent, Grid Connection Assessment, application for Planning Consent (where such application has been made at the time the Project Information Document is submitted), and any other consents, licences, permissions, authorisations or similar items in respect of the ORESS 1 Project.
- 6.5.4 The Project Information Document must be provided by each Qualified Applicant in good faith.
- 6.5.5 The Project Information Document must be submitted to the Minister (for the attention of ORESS Team, International and Offshore Energy Division at the address specified at Clause 13 of the Implementation Agreement) at the same time at which the Financial Questionnaire in respect of the relevant ORESS 1 Project is submitted.
- 6.5.6 If a Qualified Applicant breaches this Section 6.5 or if information submitted in the Project Information Document is found not to have been true and accurate at the time of submission:
- (a) if the ORESS 1 Auction has not been held, the ORESS 1 Project will be disqualified from participating in the ORESS 1 Auction;
 - (b) if the ORESS 1 Auction has been held, the participation of the ORESS 1 Project in ORESS 1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and
 - (c) regardless of whether or not the ORESS 1 Auction has been held, the Applicant

or Qualified Applicant on whose behalf the Project Information Document is submitted will be prohibited from participating in any RESS competitions for a period of five years.

6.6 Declaration of Project Information

6.6.1 As part of an Offer, each Qualified Applicant must provide a director declaration in respect of their ORESS 1 Project (“**Declaration of Project Information**”), the form of which will be provided in the Qualification Information Pack, confirming that:

- (a) the Project Information Document was true and accurate as at the time of submission;
- (b) the Project Information Document remains true and accurate as at the date of the Offer; and
- (c) the Offer Quantity submitted in respect of the ORESS 1 Project is based on, and consistent with, the information contained in the Project Information Document.

6.6.2 The Declaration of Project Information must be true and accurate and made by way of a sworn affidavit having regard to the fiduciary duties that a director has to the company whose board (or equivalent) it sits on, in each case under applicable company law legislation.

6.6.3 In the event that any statement in the Declaration of Project Information is found not to be true or accurate, in addition to applicable legal penalties or sanctions in respect of the sworn affidavit:

- (a) if the ORESS 1 Auction has not been held, the ORESS 1 Project will be disqualified from participating in the ORESS 1 Auction;
- (b) if the ORESS 1 Auction has been held, the participation of the ORESS 1 Project in ORESS 1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and
- (c) regardless of whether or not the ORESS 1 Auction has been held, the Qualified

Applicant on whose behalf the director signs the false declaration will be prohibited from participating in any RESS competitions for a period of five years.

6.7 Planning Consent Application

- 6.7.1 All applications for Planning Consent in respect of an ORESS 1 Project must be submitted without undue delay.
- 6.7.2 Any applications for Planning Consent in respect of an ORESS 1 Project which are submitted after the submissions of the Project Information Document in respect of such ORESS 1 Project must be consistent with the Project Information Document.

6.8 Offer Process

- 6.8.1 Qualified Applicants will be invited to submit an Offer Price (denominated in €/MWh) in respect of their ORESS 1 Project. The Offer Price must be submitted before the ORESS 1 Auction Submission Deadline Date.

In its Offer, the Qualified Applicant must confirm (subject to Section 6.3.8 and Section 6.3.10) that all information provided in the Application for Qualification remained true and accurate in all respects throughout the Standstill Period and that it remains true and accurate in all respects as of the date of submission, with the only exception being any information for which a change of status, or change of the information itself, was approved and accepted in writing by the TSO within the Standstill Period – for example in the case of change of contact details pursuant to Section 6.3.10.

The Qualified Applicant must complete and submit the Financial Questionnaire attached at Annex B to the Minister (to be submitted for the attention of ORESS Team, International and Offshore Energy Division at the address specified at Clause 13 of the Implementation Agreement) no earlier than the Financial Questionnaire Submission Opening Date and no later than the Financial Questionnaire Submission Closing Date. The information submitted in this Financial Questionnaire must be true and accurate at the time of submission.

In the event that information submitted in the Financial Questionnaire is found not to have been true and accurate at the time of submission:

- (a) if the ORESS 1 Auction has not been held, the ORESS 1 Project will be disqualified from participating in the ORESS 1 Auction;
- (b) if the ORESS 1 Auction has been held, the participation of the ORESS 1 Project in ORESS 1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and
- (c) regardless of whether or not the ORESS 1 Auction has been held, the Applicant or Qualified Applicant on whose behalf the Financial Questionnaire is submitted will be prohibited from participating in any RESS competitions for a period of five years.

6.8.2 In accordance with Section 5.2.2 of these Terms and Conditions, the Strike Price for a Successful Applicant will be set at that Successful Applicant's Offer Price (i.e. ORESS 1 Support is 'pay-as-bid'), as such Strike Price may be adjusted from time to time in accordance with Section 5.2.3. For the avoidance of doubt, ORESS 1 Support will not be linked to any market-clearing (pay-as-cleared) price.

6.8.3 The Offer Price may not exceed the Maximum Offer Price Considered. Offers for which the Offer Price submitted exceeds the Maximum Offer Price Considered or for which the Offer Price is not submitted by the ORESS 1 Auction Submission Deadline Date will not be considered in the ORESS 1 Auction and in such cases, the Offer will be disregarded and the TSO will be entitled to draw down on the full amount of the Bid Bond.

6.8.4 For the purposes of winner selection, each Offer Quantity will be converted into a deemed energy quantity ("**Deemed Energy Quantity**" or "**DEQ**") in GWh/year as follows:

$$DEQ_o = OQ_o \times 8760 \times RCF / 1000$$

For Offshore Wind, the "**Renewable Capacity Factor**" (RCF) will be deemed to be 45%

6.8.5 For the purposes of winner selection, each Offer Price will be converted into a deemed offer price ("**Deemed Offer Price**" or "**DOP**") in €/MWh as follows:

$$DOP_o = OP_o \times ECF$$

For Offshore Wind, the “**Evaluation Correction Factor**” (ECF) will be deemed to be 1.00.

6.9 Winner Selection

6.9.1 The ORESS 1 Auction will be conducted by the TSO subsequent to the Regulatory Authority’s reassessment of competition.

6.9.2 The ORESS 1 Auction takes the form of a simple, sealed bid auction of eligible Offers. The following Offer information submitted by each Qualified Applicant is utilised and evaluated within the winner selection process:

(a) Deemed Offer Price (DOP_o); and

(b) Deemed Energy Quantity (DEQ_o).

6.9.3 For the avoidance of doubt, despite the fact that DEQ_o s are used for the purpose of winner selection, the FIP will be subject to reconciliation based on actual Loss-Adjusted RESS Metered Quantity as described in Section 5 of these Terms and Conditions. DEQ_o s are solely utilised for the purpose winner selection in the ORESS 1 Auction.

6.9.4 There is no budget cap for the ORESS 1 Auction other than that which is implied by the terms of Section 6 of these Terms and Conditions.

6.9.5 The TSO will clear eligible Offers submitted in the ORESS 1 Auction in accordance with the following sequential steps:

(a) the Total Energy Available (TEA) will be calculated in the first instance as the sum of Deemed Energy Quantity (DEQ_o) across the set of Offers eligible;

(b) a schedule of cumulative Deemed Energy Quantity will then be produced where all the eligible Offers are sorted by Deemed Offer Price, from lowest to highest. This schedule (i.e. supply curve) will therefore contain: Deemed Offer Price (DOP_o), Deemed Energy Quantity (DEQ_o); Cumulative Deemed Energy Quantity ($CDEQ_o$), where o indexes offers now sorted by Deemed Offer Price.

In the event that any Deemed Offer Prices are identical, the tie-breaking rules set out in Section 6.9.6 of these Terms and Conditions will apply; and

- (c) the Auction Starting Quantity (ASQ) will then be calculated as follows:

$$ASQ = \text{Max} (\text{Min} (TEA / FCR, R_{\text{Max}}), R_{\text{Min}})$$

Winner-determination rules will then be applied by selecting winners in turn from the list of eligible Offers sorted from lowest Deemed Offer Price to highest Deemed Offer Price. The winner-selection rules to be applied in the ORESS 1 Auction are that eligible Offers are accepted in turn starting from that with the lowest Deemed Offer Price and proceeding through the list up to and including that for which the total Deemed Energy Quantity accepted, first meets or exceeds ASQ.

However, if the Regulatory Authority's competition assessment conducted pursuant to Section 6.4 of these Terms and Conditions concluded that there is insufficient competition with which to conduct an auction then ASQ will not be calculated and the auction will not proceed.

6.9.6 Tie-breaking

If any tied Deemed Offer Prices are identified pursuant to Section 6.9.5 then Offers with identical Deemed Offer Prices will be sorted by Deemed Energy Quantity from highest to the lowest (i.e. the higher quantity is selected before the lower quantity). In the event that any Offers are identical with regards to both Deemed Offer Price and Deemed Energy Quantity, the tie-break will be resolved using a predetermined and unique Offer index. The Offer index will be determined by the TSO ordering offers in random order, where the random order is reproducible and where all possible random orders are equally likely.

7 Community Aspects of ORESS 1

Community participation in ORESS 1 is via the Community Benefit Fund. If a Generator fails to comply or to procure compliance (as the case may be) with this Section 7, the Letter of Offer may be withdrawn.

7.1 General

- 7.1.1 Each Generator shall ensure that community participation in ORESS 1 shall be through a community benefit fund established by that Generator for the relevant ORESS 1 Project (the “**Community Benefit Fund**” or “**CBF**”) in accordance with the provisions of this Section 7 and any community benefit fund rules and guidelines for Generators and Fund Administrators in respect of ORESS 1 which may be published from time to time by the Minister or a nominated body (the “**ORESS 1 CBF Rulebook**”).
- 7.1.2 Without prejudice to the Minister’s other rights under this Section 7, if a Generator fails to either (a) comply with its obligations under this Section 7, (b) comply with its obligations under the ORESS 1 CBF Rulebook, or (c) procure compliance with the relevant obligations under this Section 7 or the ORESS 1 CBF Rulebook by the Fund Administrator or the CBF Committee (each as hereinafter defined), the Letter of Offer for the relevant ORESS 1 Project may (in the Minister’s sole discretion) be withdrawn by the Minister.
- 7.1.3 Each Generator expressly acknowledges and agrees that the provisions of this Section 7 are strictly subject to Section 11.5 (*Liability*) of these Terms and Conditions and without prejudice to the foregoing each Generator agrees to, at its sole cost and expense and on demand, defend, hold harmless and indemnify the Minister against any and all liabilities, losses, damages, costs and/or expenses (including any liabilities, losses, damages, costs and/or expenses relating to any third party claim or action) of any nature whatsoever and howsoever arising (including indirect or consequential damage or loss whatsoever or howsoever arising) in any way resulting from any actions or omissions of (a) a Generator, or (b) any Fund Administrator or CBF Committee appointed or established by such Generator, in any such case in the performance or non-performance of any of their respective obligations under these Terms and Conditions and/or the ORESS 1 CBF Rulebook, and any such liability, losses, damages, costs and/or expenses is hereby expressly disclaimed by the

Minister and his or her officers, employees, servants, advisers and agents and is hereby excluded, in each case, to the fullest extent permitted by law.

- 7.1.4 If at any stage the Minister (in his or her sole discretion) determines that an issue has arisen, or may arise, in connection with the distribution of funding from the Community Benefit Fund, the Minister may direct that all funds in the Community Benefit Fund must be transferred to a bank account specified by the Minister (or a nominated body) in order to safeguard and ensure the continued distribution of funding to the CBF Target Local Community in accordance with the requirements of this Section 7 and the ORESS 1 CBF Rulebook. The Generator and Fund Administrator will comply with such direction as soon as practicable and in any event no later than 5 Working Days following such direction.

7.2 Community Benefit Fund

- 7.2.1 Each Generator for an ORESS 1 Project is required to establish a Community Benefit Fund no later than 1 year after the Commencement Date of the relevant ORESS 1 Project. Subject to Section 7.2.2, with effect from the Commercial Operation Date of an ORESS 1 Project, and in respect of each PSO Levy Year (or pro rata part thereof) during the ORESS 1 Support Period for the relevant ORESS 1 Project, the Generator for that ORESS 1 Project shall be required to make a contribution calculated as the Loss-Adjusted RESS Metered Quantity for that ORESS 1 Project multiplied by €2/MWh (the “**ORESS 1 Annual CBF Contribution Payment**”) to the Community Benefit Fund, provided that the Community Benefit Fund shall be funded on and from the Commercial Operation Date in accordance with the following provisions of this Section 7.2.1:

- (a) the amount being the Deemed Energy Quantity calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh of the ORESS 1 Project for that PSO Levy Year (or pro rata part thereof), multiplied by €2/MWh, shall be deposited by the Generator annually (in arrears), no later than one month following such PSO Levy Year (or part thereof), with the Fund Administrator appointed by that Generator to the bank account nominated by such Fund Administrator; and
- (b) no later than twenty (20) Working Days before the start of the immediately subsequent PSO Levy Year, the Generator shall calculate the amount being the Loss-Adjusted RESS Metered Quantity for that ORESS 1 Project multiplied by

€2/MWh for the immediately preceding PSO Levy Year, and where such amount is:

- (i) greater than the amounts paid in accordance with Section 7.2.1(a), the excess shall forthwith (and in event no later than ten (10) Working Days) be deposited by the Generator with the Fund Administrator (as hereinafter defined) appointed by that Generator to the bank account nominated by such Fund Administrator; or
- (ii) lower than the amounts paid in accordance with Section 7.2.1(a), the Fund Administrator shall refund the difference between such amounts to the bank account nominated by the Generator to the Fund Administrator.

The Generator shall forthwith (and in any event no later than ten (10) Working Days after receiving a request in writing from the Minister) provide the Minister with such documents and records (including any reasonable supporting documents) as the Minister may request in writing from the Generator in relation to the calculations carried out by the Generator pursuant to this Section 7.2.1.

7.2.2 For each 12 month period following the Commencement Date (each such date being an “**Early Contribution Year**”), the Generator shall be obliged to deposit in its respective Community Benefit Fund a euro amount equal to a percentage of the Deemed Energy Quantity (as specified below), annually (in arrears) no later than one month after the end of the relevant Early Contribution Year (or part thereof), as follows:

- (a) 30% of the Deemed Energy Quantity for one year of the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh, multiplied by €2/MWh, for the first Early Contribution Year;
- (b) 60% of the Deemed Energy Quantity for the ORESS 1 for one year of the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh, multiplied by €2/MWh for the second Early Contribution Year;
- (c) 80% of the Deemed Energy Quantity for one year of the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh, multiplied by €2/MWh for the third Early Contribution Year; and
- (d) 100% of the Deemed Energy Quantity for one year of the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from

GWh to MWh, multiplied by €2/MWh, in equal monthly instalments for any subsequent Early Contribution Year until Commercial Operation of the relevant ORESS 1 Project occurs,

(each payment above in Section 7.2.2(a) to (d) above being an “**Early Contribution Payment**”).

The Generator shall forthwith (and in any event no later than ten (10) Working Days after receiving a request in writing from the Minister) provide the Minister with such documents and records (including any reasonable supporting documents) as the Minister may request in writing from the Generator in relation to the calculations carried out by the Generator pursuant to this Section 7.2.2.

7.2.3 With effect from the date which is three years following the Commercial Operation Date for an ORESS 1 Project, the Generator for that ORESS 1 Project shall be entitled to offset the amount of any Early Contribution Payments paid by it in accordance with Section 7.2.2 against the amount of the ORESS 1 Annual CBF Contribution Payments to be paid by it under Section 7.2.1 (as such payments may be reconciled and adjusted pursuant to Section 7.2.1), subject to the following provisions:

- (a) in each 12 month period following the date which is three years from the date of Commercial Operation for an ORESS 1 Project (the “**Relevant Year**”) the Generator for that ORESS 1 Project may offset Early Contribution Payments previously paid by it under Section 7.2.2 provided that the amount to be offset in the Relevant Year is not greater than 30% of the amount of the ORESS 1 Annual CBF Contribution Payment to be paid by the Generator in the Relevant Year under Section 7.2.1 (as such payments may be reconciled and adjusted pursuant to Section 7.2.1); and
- (b) the amount of Early Contribution Payments which have previously been paid by the Generator under Section 7.2.2 but which may not be offset by the Generator pursuant to Section 7.2.3(a) above may be offset by the Generator in the subsequent Relevant Year(s) against the amount of the ORESS 1 Annual CBF Contribution Payments to be paid by it under Section 7.2.1 (as such payments may be reconciled and adjusted pursuant to Section 7.2.1).

7.3 Fund Administrator

7.3.1 Each Generator shall, prior to the establishment of the Community Benefit Fund under

Section 7.2.1, select and appoint through an open competition or procurement process an ORESS 1 CBF fund administrator (the “**Fund Administrator**”) to administer the Community Benefit Fund for the relevant ORESS 1 Project in accordance with these Terms and Conditions and the ORESS 1 CBF Rulebook. Further, each Generator shall:

- (a) ensure that such Fund Administrator (i) is independent from the Generator, is separately managed and governed and is not subject to the control of the Generator (whether by ownership of shares, the power to control or direct the management of the Generator or otherwise) and (ii) without prejudice to sub-Section 7.3.1(a)(i), is not an Affiliate, Connected Person or Principal Owner of the Generator and does not have the power to exercise control of the Generator (whether by ownership of shares, the power to control or direct the management of the Generator or otherwise);
- (b) ensure that the Fund Administrator appointed by it in accordance with this Section 7.3.1 has the requisite experience, skills, qualifications and competencies in order to perform its obligations as the administrator of the Community Benefit Fund for the relevant ORESS 1 Project in accordance with these Terms and Conditions, the ORESS 1 CBF Rulebook and all applicable laws;
- (c) procure that the Fund Administrator performs its obligations with respect to the relevant Community Benefit Fund (i) with all reasonable skill, care and diligence and (ii) in accordance with these Terms and Conditions, the ORESS 1 CBF Rulebook and all applicable laws;
- (d) procure that the Fund Administrator is selected and appointed in accordance with the ORESS 1 CBF Rulebook; and
- (e) ensure that a Fund Administrator is duly appointed and in place at all times during the administration of the Community Benefit Fund until the later of (i) the end of the ORESS 1 Support Period and (ii) the deployment of all funds in the Community Benefit Fund. For the avoidance of doubt, a termination of the appointment of a Fund Administrator shall not relieve the Generator of its obligations under this Section 7.3.1(e).

7.3.2 Each Generator shall establish (or shall procure that the Fund Administrator

establishes) a local ORESS 1 Community Benefit Fund Committee (the “**CBF Committee**”). Each Generator shall procure that the CBF Committee established by it shall ensure (a) the successful operation and delivery of Community Benefit Funds for its relevant ORESS 1 Project and (b) community participation in fund decision making for the allocation of funds in the relevant Community Benefit Fund.

- 7.3.3 Each Generator shall register (or shall procure that the Fund Administrator registers) the Community Benefit Fund (including the name, address, company number (where applicable) and contact details for the Fund Administrator appointed by it), and details of the CBF Committee with the SEAI’s CBF national register (the “**SEAI CBF National Register**”) no later than 1 year after the Commencement Date for its relevant ORESS 1 Project.
- 7.3.4 If any information in the SEAI CBF National Register in respect of the Community Benefit Fund, the Fund Administrator or the CBF Committee for an ORESS 1 Project becomes inaccurate or untrue in any respect, each Generator shall update (or shall procure that the Fund Administrator updates) such information as soon as practicable.
- 7.3.5 Each Generator shall procure that the Fund Administrator and CBF Committee appointed by it for the relevant ORESS 1 Project shall comply with (a) the ORESS 1 CBF Rulebook and (b) any reporting requirements as may be specified by the SEAI from time to time.
- 7.3.6 Each Generator shall ensure that the CBF Committee established by it shall ensure that:
- (a) all applications for funding under the Community Benefit Fund received by the CBF Committee are assessed in a fair, reasonable, non-discriminatory and transparent manner; and
 - (b) all funding from the Community Benefit Fund:
 - (i) is used for the sustainable environmental, economic, social and cultural well being of the local community for the ORESS 1 Project (as such local community for the relevant ORESS 1 Project shall be defined by the CBF Committee for that ORESS 1 Project in accordance with the ORESS 1 CBF Rulebook) (the “**CBF Target Local Community**”); and

- (ii) is allocated by the relevant Fund Administrator for that ORESS 1 Project to the committees, clubs, associations, entities, corporates or any other persons or bodies who are authorised to represent or act for or on behalf of any such CBF Target Local Community and that are selected by the CBF Committee for funding from the relevant Community Benefit Fund; and
 - (c) due and careful consideration is given to funding opportunities for all stakeholders in the CBF Target Local Community, including, but not limited to, local fishers, seafood culture, tourism, the wider blue economy, and maritime heritage communities.
- 7.3.7 Each Generator shall, and shall procure that each of the Fund Administrator and the CBF Committee appointed by it shall, use their respective best endeavours to maximise the deployment of funds from the Community Benefit Fund for the relevant ORESS 1 Project to the CBF Target Local Community before the end of the ORESS 1 Support Period in respect of the ORESS 1 Project.
- 7.3.8 If, at the end of the ORESS 1 Support Period, there are funds remaining in the Community Benefit Fund then the Generator and the Fund Administrator shall (subject to Section 7.1.4) be entitled to continue to distribute funding from the Community Benefit Fund to the CBF Target Local Community, strictly subject to compliance with the requirements of this Section 7 and the ORESS 1 CBF Rulebook.
- 7.3.9 Each Generator acknowledges and agrees that the Minister (or his or her respective nominees or agents) has a right to request and to receive all documents and records in connection with the Community Benefit Fund established by a Generator for the relevant ORESS 1 Project for compliance with these Terms and Conditions and the ORESS 1 CBF Rulebook (including all documents and records demonstrating compliance by the Fund Administrator with these Terms and Conditions and the ORESS 1 CBF Rulebook).

7.4 Prohibition on Security / Encumbrance over the Community Benefit Fund (or part of it)

- 7.4.1 Each Generator hereby covenants that it shall not (and that it shall procure that the Fund Administrator and CBF Committee appointed by it shall not) at any time during the ORESS 1 Support Period (or during the time that Early Contribution Payments are

made) for the relevant ORESS 1 Project:

- (a) create or permit to subsist any mortgage, charge, lien or any other security interest or encumbrance on or over the Community Benefit Fund or any part of it (or anything having a similar effect to any of the foregoing); and / or
- (b) do, or cause or permit to be done, anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the Community Benefit Fund.

8 Obligations of ORESS 1 Successful Applicants

- 8.1 Each Successful Applicant is required to execute an Implementation Agreement (in the form prescribed in Annex A (Agreed Form Implementation Agreement)) and provide the Performance Security (in the form attached to the Implementation Agreement and for the avoidance of doubt alternative forms of security (including cash) are not permitted) by the Implementation Agreement and Performance Security Return Date. For the avoidance of doubt, a single Performance Security instrument for the full amount as calculated in accordance with Section 8.3 must be provided by a Successful Applicant. The provision of more than one Performance Security instrument of less than this full amount by or on behalf of the Successful Applicant is not permitted.
- 8.2 In the event that the Implementation Agreement has not been executed and (where applicable) the Performance Security has not been provided by the Implementation Agreement and Performance Security Return Date, the Successful Applicant for the ORESS 1 Project will have the Award rescinded and will not receive a Letter of Offer and the TSO will be entitled to draw down on the full amount of the Bid Bond.
- 8.3 The Implementation Agreement includes, among other things, the following with respect to obligations of Generators in respect of ORESS 1 Projects:
- provision of the Performance Security in the amount of €20 per MWh, where the MWh value is the Deemed Energy Quantity for one year for the ORESS 1 Project calculated pursuant to Section 6.8.4 and multiplied by 1,000 to convert from GWh to MWh. For example, the Performance Security for a 500 MW Offshore Wind project would be €20/MWh x 500 MW x 8760 hours x 0.45 Renewable Capacity Factor = €39,420,000;
 - Milestones to be achieved by the ORESS 1 Project with the consequence that the Letter of Offer may be revoked and draws made against the Performance Security for a failure to meet such Milestones;
 - force majeure provisions; and
 - requirements to comply with these Terms and Conditions, including the community aspects of ORESS 1 as detailed in these Terms and Conditions.

- 8.4 Where an ORESS 1 Project is included as a successful project in the notification of Final Auction Results then, except where otherwise permitted pursuant to Section 8.10 or Clause 6.8(c) of the Implementation Agreement, that project and any of the following potential renewable energy projects will be ineligible to participate in the subsequent RESS competition for offshore projects (regardless of the development status of the ORESS 1 Project at the time of the subsequent RESS competition):
- a potential project that is on the same Offshore Site or in an adjacent marine area to such ORESS 1 Project, to the extent that both projects would utilise a common Maritime Area Consent or a common planning consent and that the Maritime Area Consent or planning consent does not allow for both projects to be constructed; or
 - a potential project that is on the same Offshore Site or in an adjacent marine area to such ORESS 1 Project, to the extent that both projects would utilise common grid connection offers or agreements and that the offers or agreement or MEC would not allow for both projects to be constructed or that the MEC of the connection will not allow both projects to export at full capacity.
- 8.5 Subject to Section 8.4 and all other relevant requirements at the time including those that may be contained in future RESS terms and conditions, a separately metered extension to an ORESS 1 Project, where that ORESS 1 Project was included in the notification of Final Auction Results and where the extension is in an adjacent marine area to the ORESS 1 Project, will be possible as an independent renewable energy project in future RESS competitions. This separately metered extension project will only be eligible for support under the future RESS scheme once the ORESS 1 Project has achieved Commercial Operation.
- 8.6 Subject to an Implementation Agreement in respect of the relevant ORESS 1 Project having been executed and Performance Security being in place, a Generator shall be entitled during the Planning Consent Withdrawal Period to issue an irrevocable notice to the Minister of the proposed withdrawal of its ORESS 1 Project from ORESS 1 as a result of a condition (or conditions) contained in the Planning Consent for that ORESS 1 Project (a “**Planning Consent Withdrawal**”).
- 8.7 Upon receipt of a Planning Consent Withdrawal notice, the Minister may terminate the participation of the ORESS 1 Project in ORESS 1, revoke the Letter of Offer and

draw down on the full amount of the Performance Security.

8.8 The withdrawal of the ORESS 1 Project from ORESS 1 pursuant to a Planning Consent Withdrawal is at all times conditional on, and subject to, receipt by the Minister of the full amount of the Performance Security.

8.9 No later than 180 days after the Planning Consent Withdrawal, the relevant Generator may provide evidence (satisfactory to the Minister) that the Planning Consent Withdrawal was solely a result of a condition (or conditions) contained in its Planning Consent rendered proceeding with the project commercially impracticable. Further:

- (a) Such evidence must contain documentation of the assumptions and methods used to develop the Offer Price and to complete the Project Information Document, in each case which can be shown to be contemporaneous with the Offer submission and which must explain and demonstrate the impact on the commercial practicability of the project directly resulting from conditions attached to the Planning Consent. Diminution in the expected return to equity investors will not in and of itself constitute commercial impracticability.
- (b) Such evidence must demonstrate that the Offer Price was cost-based, using reasonable cost assumptions at the time of Offer submission, including reasonable costs of capital and debt.
- (c) In quantifying the impact on the commercial practicability of the project for this purpose, all factors and costs must be held constant at the level used to develop the Offer Price and to complete the Project Information Document, other than specific factors contained in the Planning Consent which differ from those contained in the application for Planning Consent.
- (d) In exercising the sole discretion to determine if the evidence is satisfactory, the Minister will place limited value on claims which are not supported by evidence that is contemporaneous with the Offer.
- (e) The verifiability of any claim under this Section 8.9 may be enhanced where it can be shown that the detailed assumptions and analyses that support the Offer Price and Project Information Document in respect of a project were placed in escrow on or before the Offer submission with an escrow agent

retained by the Applicant.

- 8.10 If the Minister (in his or her sole discretion) determines that the evidence provided under Section 8.9 is satisfactory then the Minister will notify the Generator and the ineligibility provisions in Section 8.4 will not apply in respect of the relevant ORESS 1 Project.
- 8.11 If the Minister (in his or her sole discretion) determines that the evidence provided under Section 8.9 is not satisfactory then the Minister will notify the Generator and the ineligibility provisions in Section 8.4 will apply in respect of the relevant ORESS 1 Project.
- 8.12 Each Successful Applicant must complete and submit:
- (a) the initial Project Delivery Plan Questionnaire no later than six (6) months after the Implementation Agreement and Performance Security Return Date;
 - (b) an updated Project Delivery Plan Questionnaire no later than six (6) months from the Planning Consent Date; and
 - (c) an updated Project Delivery Plan Questionnaire no later than six (6) months from the Commercial Operation Date.

Each Successful Applicant must on an ongoing basis notify the Minister as soon as practicable of any material changes to the information contained in the most recently submitted Project Delivery Plan Questionnaire.

The information submitted in all Project Delivery Plan Questionnaires must be true and accurate in all material respects and such information must be provided by Successful Applicants in good faith.

If information submitted in any Project Delivery Plan Questionnaire is (i) not true and accurate in any material respect at the time it is provided or (ii) the Minister determines that such information was not provided in good faith, any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable) up to a maximum of 5% of such Bid Bond or Performance Security (as applicable) in respect of each Project Delivery Plan Questionnaire submitted under Section 8.12(a) or Section 8.12(b) (as applicable).

- 8.13 Each Successful Applicant must procure that operation and maintenance (O&M) services in respect of its ORESS 1 Project are primarily provided from a port in Ireland or Northern Ireland.

9 Auction Administration Processes

9.1 Auction Timetable

9.1.1 The TSO shall publish the ORESS 1 Auction Timetable which shall include indicative dates for the following:

- (a) the date by which the Auction Information Pack will be published;
- (b) the opening and closing dates for receipt of Applications for Qualification;
- (c) the Bid Bond Posting Date;
- (d) the Final Withdrawal Date;
- (e) the Provisional Qualification Decision Date;
- (f) the Qualification Decisions Submission Date;
- (g) the Final Qualification Decisions Date;
- (h) the Financial Questionnaire Submission Opening Date;
- (i) the Financial Questionnaire Submission Closing Date;
- (j) the Auction Information Pack Publication Date;
- (k) the opening for receipt of Offers;
- (l) the ORESS 1 Auction Submission Deadline Date;
- (m) the date for conclusion of the ORESS 1 Auction (the “**Auction Completion Date**”);
- (n) the Provisional Auction Results Date; and
- (o) the Final Auction Results Date.

9.2 Application Process

9.2.1 Qualification Information Pack

The TSO shall develop and publish the Qualification Information Pack including a form of Application for Qualification and including the forms of director's declarations specified to be provided in the Terms and Conditions which includes all the relevant information on how an Applicant may apply to qualify for the ORESS 1 Auction.

All declarations provided in connection with the ORESS 1 Auction must be in the form contained in the Qualification Information Pack. Any declarations submitted which are edited, amended or otherwise altered in any way which is not permitted by the form of declaration will be deemed invalid.

9.2.2 Submission of Applications for Qualification

- (a) Where an Applicant is seeking to participate in the ORESS 1 Auction in respect of an ORESS 1 Project, it shall submit an Application for Qualification to the TSO using the required documentation set out in the Qualification Information Pack by the Qualification Application Closing Date.
- (b) The TSO shall consider and review an Application for Qualification and determine whether the relevant Applicant is eligible to participate in the ORESS 1 Auction in respect of the ORESS 1 Project in accordance with these Terms and Conditions. The TSO may seek any further information from the Applicant that it may reasonably require to make its determination in respect of any Application for Qualification.
- (c) Where an Applicant is no longer seeking to participate in the ORESS 1 Auction in respect of an ORESS 1 Project, it shall submit a Notice of Withdrawal to the TSO prior to the Final Withdrawal Date using the required documentation set out in the Qualification Information Pack.
- (d) The TSO shall not consider an Application for Qualification where the Applicant has submitted a Notice of Withdrawal prior to the Final Withdrawal Date.

9.2.3 Administrative Considerations

The TSO may reject an Application for Qualification for the ORESS 1 Auction where it considers that the information contained in the Application for Qualification is materially deficient or incorrect.

9.2.4 Eligibility Criteria

The TSO shall reject an Application for Qualification for the ORESS 1 Auction where the ORESS 1 Project does not meet and/or the Applicant does not comply with Section 6.3 of these Terms and Conditions.

9.2.5 Provisional Qualification Decisions

- (a) The TSO shall use reasonable endeavours to issue Provisional Qualification Decisions to all Applicants that have submitted Applications for Qualification by the Provisional Qualification Decision Date.
- (b) In respect of a Provisional Qualification Decision, where an Applicant (acting reasonably and in good faith and to the standard of a Prudent Industry Operator) considers that the TSO has not applied these Terms and Conditions correctly in making the Provisional Qualification Decision, they may submit an Application for Review to the TSO within two Working Days of receipt of the Provisional Qualification Decision.
- (c) The TSO shall review any relevant Provisional Qualification Decision and issue its decision to the relevant Applicant within ten Working Days of the receipt of the Application for Review.
- (d) Following receipt of the TSO decision at Section (c) above, where an Applicant (acting reasonably to the standard of a Prudent Industry Operator) considers that the TSO has not applied these Terms and Conditions correctly in assessing an Application for Qualification and an Application for Review, they may submit a Notice of Dissatisfaction to the Minister within two Working Days of receipt of the TSO decision.

9.2.6 Standstill Period

- (a) During the Standstill Period, Applicants shall not reveal Pricing Information to third parties that were not disclosed pursuant to Section 6.3.8(c)(i), excluding any finance provider or advisor bound by confidentiality obligations restricting the disclosure of such Pricing Information (provided that such finance provider or advisor is not an Applicant or the Principal Owner or Affiliate of an Applicant).
- (b) During the Standstill Period, Applicants shall not engage in commercial discussions with third parties that were not disclosed pursuant to Section 6.3.8(c)(ii) regarding potential changes of Principal Owners.
- (c) During the Standstill Period Applicants shall not engage in commercial discussions with third parties that were not disclosed pursuant to Section 6.3.8(e) regarding any commercial agreements or arrangements that are contingent upon the result of the ORESS 1 Auction, with the exception of technical input providers such as engineers, construction contractors and equipment manufacturers.

9.2.7 Final Qualification Decisions

- (a) The TSO shall prepare Final Qualification Decisions in respect of Applications for Qualification that:
 - (i) reflect the Provisional Qualification Decisions;
 - (ii) reflect any changes to Provisional Qualification Decisions arising from any Application for Review or Notice of Dissatisfaction;
 - (iii) correct any error or omission in Provisional Qualification Decisions which the TSO becomes aware of; and
 - (iv) reflect any updated information or change in circumstances affecting the Applicant that the TSO becomes aware of.
- (b) The TSO shall use reasonable endeavours to submit the Final Qualification Decisions to the Minister for approval by the Qualification Decisions Submission Date.
- (c) The Minister shall consider the Final Qualification Decisions submitted by the

TSO, the Auction Monitor report (in accordance with the Information Paper) and any Notices of Dissatisfaction submitted by Applicants in respect of a Final Qualification Decision.

- (d) The TSO shall issue the approved Final Qualification Decisions to Applicants by the later of (i) the Final Qualification Decisions Date or (ii) within two Working Days following receipt of approval from the Minister of the Final Qualification Decisions.
- (e) The TSO shall issue to the Regulatory Authority the approved Final Qualification Decisions for the purposes of the Regulatory Authority determining the Final Competition Ratio in accordance with Section 6.4 of these Terms and Conditions.

9.3 Bid Bond Process

9.3.1 Obligation to Provide

- (a) The purpose of the Bid Bond is to provide credit support to cover scenarios where an Applicant does not submit an Offer or execute the Implementation Agreement and post a Performance Security.
- (b) The Applicant, where required to do so under these Terms and Conditions, shall post a Bid Bond as a single payment to the TSO RESS Account by the Bid Bond Posting Date.
- (c) Where an Applicant does not post the required level of Bid Bond by the Bid Bond Posting Date the TSO shall reject the relevant Application for Qualification for the ORESS 1 Auction.

9.3.2 Acceptable Forms of Bid Bond

- (a) The Bid Bond shall be by way of a cash held deposit in the TSO RESS Account with the TSO Bank as provided for in the following paragraphs of this Section 9.3.2.
- (b) The TSO shall establish and maintain a TSO RESS Account with the TSO Bank as follows:

- (i) the TSO RESS Account shall be in the sole name of the TSO with the designation "Reserve Account relating to the RESS Auctions"; and
- (ii) the TSO shall irrevocably instruct the bank to make payment against the sole instruction of the TSO in accordance with these Terms and Conditions. These Terms and Conditions shall take precedence over the bank mandate for the TSO RESS Account.

9.3.3 Bid Bonds shall be subject to the following conditions:

- (a) a Bid Bond shall be available for draw down by the TSO making a call or a demand as provided for in these Terms and Conditions and shall continue to remain in place until the provision of the executed Implementation Agreement and the Performance Security by the relevant Applicant; and
- (b) the Applicant shall not allow, and shall not take any action, or fail to take any action, which would have the effect of allowing, the amount of the Bid Bond to reduce below the Bid Bond Required Amount.

9.3.4 Termination and Associated Charges

- (a) Applicants are reminded of Sections 5.3.5(b), 6.3.2(b), 6.5.6(b), 6.6.3(b), 6.8.1(b), 6.8.3, 8.2 and 8.12 of these Terms and Conditions which will allow the TSO to draw down on the full amount of the Bid Bond.
- (b) Without prejudice to Section 9.3.4(a), where a Successful Applicant does not execute the Implementation Agreement or does not post the Performance Security in accordance with these Terms and Conditions, the Minister shall rescind the Letter of Offer and instruct the TSO to draw down on the Bid Bond provided by the Successful Applicant.
- (c) Where a Successful Applicant executes the Implementation Agreement and posts the Performance Security associated with that Implementation Agreement in accordance with the timeframes set out in these Terms and Conditions, the Minister shall instruct the TSO to return the Bid Bond to the Successful Applicant.

- (d) If a Qualified Applicant is unsuccessful in the ORESS 1 Auction (and has otherwise complied with these Terms and Conditions), the TSO shall return the Bid Bond to the Qualified Applicant within ten Working Days of the publication of the final results of the ORESS 1 Auction.
- (e) If an Applicant submits a valid Notice of Withdrawal to the TSO by the Final Withdrawal Date, the TSO shall return the Bid Bond to the Applicant within ten Working Days of the Final Withdrawal Date.
- (f) If an Applicant does not qualify for ORESS 1 then the TSO shall return the Bid Bond to the Applicant within ten (10) Working Days of the issue of Final Qualification Decisions to Applicants.

9.4 Auction Process

9.4.1 Auction Information Pack

- (a) The TSO shall develop the Auction Information Pack and an offer submission form (the “**Offer Submission Form**”), which includes all the relevant information on how a Qualified Applicant may submit an Offer.
- (b) The TSO shall publish the Auction Information Pack and Offer Submission Form. The TSO shall include in the Offer Submission Form details of the secure submission process.

9.4.2 Submission of Offers and Provisions Relating to Auction Results

- (a) Qualified Applicants shall submit an Offer using the Offer Submission Form no later than the ORESS 1 Auction Submission Deadline Date.
- (b) The TSO shall use reasonable endeavours to conclude the ORESS 1 Auction in accordance with these Terms and Conditions by the Auction Completion Date.
- (c) The TSO shall use reasonable endeavours to do the following by the Provisional Auction Results Date:
 - (i) issue the Provisional Auction Results to all Qualified Applicants that

submitted an Offer; and

(ii) publish a notification of the Provisional Auction Results, containing:

- the total number of: Applications for Qualification; Applications for Qualification that did not qualify; withdrawals from the process; and Qualified Applicants who failed to submit an Offer Price;
- the total number of Qualified Applicants who were provisionally successful in the auction and the total number of Qualified Applicants who were provisionally unsuccessful in the auction;
- the quantity of renewable energy supply (in total GWh/yr of Deemed Energy Quantity) of provisionally successful Offers;
- the quantity of renewable energy supply (in total GWh/yr of Deemed Energy Quantity) of provisionally unsuccessful Offers;
- the capacity (in total MW of Offer Quantity) of provisionally successful Offers;
- the capacity (in total MW of Offer Quantity) of provisionally unsuccessful Offers;
- the GWh-weighted average Offer Price of provisionally successful Offers; and
- a list of all provisionally successful Applicants and the location, size (Offer Quantity) of each provisionally successful Offer.

The Offer Price for each provisionally successful Applicant will not be published.

(d) In respect of a Provisional Auction Result, where the Qualified Applicant (acting to the standard of a Prudent Industry Operator) considers that the TSO has not applied these Terms and Conditions correctly, they may submit a Notice of Dissatisfaction to the Minister within two Working Days of receipt of the outcome of the Provisional Auction Results.

- (e) The TSO shall submit the Provisional Auction Results, for all Qualified Applicants that submitted an Offer, to the Minister for approval.
- (f) The Minister shall consider the Provisional Auction Results submitted by the TSO, the Auction Monitor report (in accordance with the Information Paper) and any Notices of Dissatisfaction submitted by Qualified Applicants in respect of a Provisional Auction Result.
- (g) The TSO shall issue the Final Auction Results to all Qualified Applicants by the later of: (i) the Final Auction Results Date; and (ii) two Working Days after the receipt of approval from the Minister in respect of the Final Auction Results.

9.5 Post Auction Information to Be Released Publicly

The TSO will publish a notification of the Final Auction Results, including:

- the quantity of renewable energy supply (in total GWh/yr of Deemed Energy Quantity) of successful Offers;
- the quantity of renewable energy supply (in total GWh/yr of Deemed Energy Quantity) of unsuccessful Offers;
- the capacity (in total MW of Offer Quantity) of successful Offers;
- the capacity (in total MW of Offer Quantity) of unsuccessful Offers;
- the GWh-weighted average Offer Price of successful Offers; and
- a list of all Successful Applicants and the location, size (Offer Quantity).

The Offer Price for each Successful Applicant will not be published. However, the current Regulatory Authority policy is to publish PSO outturn payments by Supplier to each Generator.

When instructed by the Minister the TSO will publish a list of any Successful

Applicants for whom the TSO has drawn down a Bid Bond pursuant to Section 9.3.4(b). This list will include the location and size (Offer Quantity) of each Offer concerned.

10 Reserved Rights of the Minister

10.1.1 The Minister reserves the following rights, in addition to the rights specified elsewhere in these Terms and Conditions:

- (a) the right to reject all Applications for Qualification and / or Offers, modify these Terms and Conditions if all Applications for Qualification and / or Offers have been rejected and direct the TSO to re-run the ORESS 1 Auction;
- (b) the right to reject any Applications for Qualification and / or Offers as a result of Applications for Qualification and / or Offers being inconsistent with the objectives of ORESS 1, and including by reason that the Application for Qualification and / or Offer took advantage of an interpretation of these Terms and Conditions which was not intended by the Minister and accepting such Application for Qualification or Offer would be contrary to the objectives of ORESS 1;
- (c) the right to reject any Offer for any reason, provided that no Offer with a higher Deemed Offer Price is accepted, and/or to modify RMin and/or RMax; and
- (d) the right to modify or amend these Terms and Conditions at any stage prior to the Final Withdrawal Date in connection with changes or updates to legislation, regulatory decisions following the publication of these Terms and Conditions or other developments which may impact on the ORESS 1 Auction.

11 General

11.1 Condition of Offer

It shall be a condition of any Letter of Offer for ORESS 1 that each ORESS 1 Project shall comply on an ongoing basis with these Terms and Conditions and any other legal or regulatory requirements applicable to the ORESS 1 Project in question. In the case of any material breach of any of these Terms and Conditions, or of any legal or regulatory requirements, the Letter of Offer may be withdrawn.

11.2 Changes to Plant or Equipment

11.2.1 Pursuant to condition 6 of the Letter of Offer, the Minister may agree to material changes to plant or equipment within any individual ORESS 1 Project subject to the following conditions:

- (a) the change is notified in writing to the Minister sufficiently in advance of the change;
- (b) the change is agreed by response in writing by the Minister;
- (c) the changes to the plant or equipment are reasonable and the ORESS 1 Project remains otherwise compliant with these Terms and Conditions;
- (d) the changes do not increase or decrease the Installed Renewable Capacity of the ORESS 1 Project (save in accordance with Section 6.3.11 of these Terms and Conditions) nor the MEC of the ORESS 1 Project;
- (e) the change does not violate the Maritime Area Consent for the ORESS 1 Project;
- (f) the change does not result in the ORESS 1 Project no longer using the Eligible Technology; and
- (g) the change does not result in energy produced by the ORESS 1 Project bypassing the meter of the ORESS 1 Project, or being delivered in a form other than electrical energy.

11.2.2 Subject to the conditions at sub-Sections 11.2.1(c) to 11.2.1(f), minor changes to plant and equipment within any individual ORESS 1 Project do not require the Minister's approval.

11.3 Freedom of Information Act

11.3.1 All records held by the Minister, the TSO and / or the Regulatory Authority are subject to the provisions of the Freedom of Information Act 2014, as amended or revised from time to time, (the "**Fol Act**") and may be subject to disclosure in the public interest in accordance with the Fol Act.

11.3.2 The Fol Act establishes a general rule of disclosure of all records held by certain bodies including the Minister, the TSO and / or the Regulatory Authority. Some exceptions are provided for including where information is of a personal or confidential nature or commercially sensitive. Applicants should seek their own legal advice on the applicability of the Fol Act to any application, information or documentation submitted under these Terms and Conditions.

11.4 Costs and Expenses

The Minister shall not be responsible or liable for any costs or expenses incurred in making any Application for Qualification in the ORESS 1 Auction or submitting an Offer or otherwise participating in ORESS 1 regardless of the conduct or outcome of the Application for Qualification or the ORESS 1 Auction or otherwise.

11.5 Liability

Although every care has been taken in preparing these Terms and Conditions and equal care will be taken in performing any obligations under these Terms and Conditions, no representation, warranty or undertaking, express or implied, in respect of any error or misstatement by or on behalf of the Minister or any of his or her officers, employees, servants, advisers, contractors, or agents is or will be made or given to any Applicant or to any other party, and no responsibility or liability will be accepted by the Minister or any of his or her officers, employees, servants, advisers or agents for the accuracy or completeness of these Terms and Conditions or of any other information, written or oral, which is made available to any Applicant or to any

other party or to the officers, employees, servants, advisers, contractors or agents of any such party. Any and all liability and/or loss (including any third party liability or loss) of any nature whatsoever and howsoever arising (including liability and/or loss and any third party liability or loss (including indirect or consequential damage and loss whatsoever or howsoever arising)) in any way resulting from performing any obligations under these Terms and Conditions is hereby expressly disclaimed by the Minister and his or her officers, employees, servants, advisers and agents and is hereby excluded, in each case, to the fullest extent permitted by law.

11.6 Change of Control

For all ORESS 1 Projects, the Successful Applicant shall give (as soon as reasonably practicable) notice to the Minister of any transfer or allotment of shares or amendment of articles of association or constitutional documents or by some other act or deed whereby the effective control of the Successful Applicant (whether by ownership of shares or the power to control or direct the management of the Successful Applicant) changed or passed to any person not having effective control as at the date of the Application for Qualification.

11.7 Access and Performance Monitoring

It is a condition of ORESS 1 that Generators who receive a Letter of Offer will be required to provide reasonable access to the Site to the Minister, its employees, contractors, servants or agents (including Sustainable Energy Authority of Ireland, its employees, contractors, servants and agents, and the Regulatory Authority and the TSO, and their respective employees, contractors, servants and agents) and to provide technical and generation information including statistical data to them for the purpose of monitoring and forming technical assessments of efficiency, reliability and productivity including overall performance.

11.8 Consultation with Third Parties

It is a condition of entry to the ORESS 1 Auction that the Applicant accepts that the Minister may correspond with the appropriate regulatory authority (including the Regulatory Authority and the TSO) about related applications to construct or operate the electricity generating plant or permissions, consents or authorisations issued by it and to communicate with the appropriate network operator regarding the status of

related connections to the network.

11.9 Extension of Time

The Minister may, even where no applications for extensions of time limits have been received, publish, in the event of a delay in grid connection build-out affecting, or likely to affect, one or more ORESS 1 Projects or a category (which may be a category defined by type of ORESS 1 Project or by reference to some other factor related to the likely impact of such a delay) of them, a notice extending, for such ORESS 1 Projects or such a category, a specified deadline, or all deadlines, by a specified period of time or until a specified date within the conditions of the state aid clearance decision for ORESS 1.

11.10 Information

The Minister may, where he or she considers it appropriate to do so, request any information he or she deems necessary for the consideration of an Application for Qualification or to confirm to his or her satisfaction ongoing compliance by an Applicant and/or Generator or Application for Qualification with these Terms and Conditions and the Minister may exclude any Applicant and/or Generator or Application for Qualification from ORESS 1 if any information requested in a letter warning of the possibility of such exclusion is not received within 21 days after being requested in such a letter.

11.11 Data Protection

The Minister will process personal data (as that term is defined under the General Data Protection Regulation 2016/679) in connection with the administration of ORESS 1. For further information on how the Minister processes personal data in connection with ORESS 1, and the parties that personal data may be shared with, please see the privacy note contained on the Department of the Environment, Climate and Communications website.

Annex A

Form of Implementation Agreement, Performance Security and Letter of Offer

The Minister for the Environment, Climate and Communications

ORESS 1

Implementation Agreement

[•] 20[•]

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THIS IMPLEMENTATION AGREEMENT (“AGREEMENT”) is made the day of 20[●]

BETWEEN:

- (1) **THE MINISTER FOR THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS**, of 29 – 31 Adelaide Road, Dublin, D02 X285 (the “**Minister**”); and
- (2) [[●]], a [[●] company] incorporated under the laws of [●], with [registration number [●]] and having its registered office at [[●]] (the “**Generator**”),

each a “**Party**” and together the “**Parties**”.

WHEREAS:

- A. The Minister has developed the new Renewable Electricity Support Scheme (RESS) for Ireland. The RESS aims to promote the generation of electricity from renewable sources and is framed within the context of the EU’s Clean Energy Package and in particular the Renewable Energy Directive.
- B. An Application for Qualification for the ORESS 1 Auction in respect of the ORESS 1 Project was accepted by the TSO and an Offer was submitted into the ORESS 1 Auction in respect of the ORESS 1 Project.
- C. By Notice of Award, the Generator was informed that the ORESS 1 Project was successful in the ORESS 1 Auction.
- D. In accordance with the Terms and Conditions, the Generator (as a successful bidder) shall be entitled to receive a Letter of Offer for ORESS 1 Support (in the form set out in Appendix 1 to this Agreement) subject to and in accordance with the terms of this Agreement.
- E. In accordance with the Terms and Conditions, the Parties have agreed to enter into this Agreement subject to and upon the terms and conditions hereafter set forth.

In consideration of the mutual agreements contained herein **IT IS HEREBY AGREED** as follows:

1 Definitions and Interpretation

1.1 Definitions

- 1.1.1 Any term used but not defined in this Agreement (including the Recitals) and the Appendices hereto shall have the meaning given to such term in the Terms and Conditions.
- 1.1.2 In this Agreement (including the Recitals) and the Appendices hereto, save where the context otherwise admits or requires, the following definitions shall have the following meanings:

“Act” means the Electricity Regulation Act 1999 (as amended);

“Application for Qualification” has the meaning given to it in the Terms and Conditions;

“Approved Credit Rating” means at least a BBB rating of long-term debt given by Standard & Poor’s (or equivalent rating by Moody’s or Fitch);

“Commercial Operation” means the ORESS 1 Project has both (i) obtained an Interim Operational Notification and (ii) achieved an Installed Renewable Capacity, commissioned and onsite, equal to or greater than the Minimum Installed Renewable Capacity;

“Commercial Operation Date” means the date the ORESS 1 Project achieved Commercial Operation;

“Commercial Operation Declaration” has the meaning given to that term in Clause 5.5;

“Competent Authority” means any local or national or supra-national agency, authority, department, inspectorate, ministry, official or public or statutory person (whether autonomous or not) or regulatory authority of the Republic of Ireland or of the European Union which has jurisdiction over any of the Parties to and the subject matter of this Agreement and shall include the Regulatory Authority and shall not include a court or tribunal of competent jurisdiction;

“Event of Default” has the meaning given to that term in Clause 10.1;

“Expiry Date” means, for any ORESS 1 Project, the date falling seven (7) months after the ORESS 1 Support Start Date;

“Force Majeure” means any event or circumstance or number of events or circumstances or combination thereof which is beyond the control of a Party and which could not have been avoided and which results in or causes the failure of a Party to perform any of its obligations under this Agreement and any such event or circumstance or number of events or circumstances or combination thereof shall be limited to the following:

- (a) acts of terrorists;
- (b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) sabotage or acts of vandalism, criminal damage or the threat of such acts;
- (d) extreme weather or environmental conditions including lightning, fire, landslip, accumulation of snow or ice, natural disasters and phenomena including meteorites, the occurrence of pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds, impact by aircraft, volcanic eruption, explosion including nuclear explosion, radioactive or chemical contamination or ionising radiation;
- (e) any change of legislation, governmental order, restraint or directive having the effect of preventing or delaying the construction, commissioning or testing of the ORESS 1 Project, shutting down or reducing the output of the ORESS 1 Project or (where applicable) interrupting the supply of fuel or electricity to the ORESS 1 Project; and
- (f) any strike which is part of a labour dispute of a national character occurring in the Republic of Ireland or which is part of a national electricity industry strike within the Republic of Ireland,

provided that Force Majeure shall not include lack of funds and/or the inability of a Party to pay and/or delay in construction or energisation of an ORESS 1 Project's grid connection;

"Guarantee of Origin" has the meaning given to it in the Terms and Conditions;

"Installed Renewable Capacity" has the meaning given to it in the Terms and Conditions;

"Judicial Review Challenge" means any judicial review proceedings initiated by a third party, following the granting of a leave to proceed, in relation to a decision made by An Bord Pleanála or any other planning authority under the Planning and Development Acts 2000 to 2021 in respect of the Planning Consent for the ORESS 1 Project;

"Law" or **"Laws"** means any law applicable to this Agreement and will include common law, statutes, statutory instruments, byelaws, rules, codes, regulations, decisions, directives, constitutions, instruments, rules of court, delegated or junior legislation;

"Letter of Offer" means a letter of offer for ORESS 1 Support from the Minister to the Generator, in the form set out in Appendix 1 to this Agreement;

"Longstop Date" has the meaning given to it in the Terms and Conditions;

"Material Breach" means a breach by the Generator of or a failure by the Generator to comply with:

- (a) the Terms and Conditions; or
- (b) Clause 8.1 or Clause 8.2 of this Agreement; or
- (c) any warranties, representations or confirmations contained in Clause 4 of this Agreement;

"Milestone Completion Dates" means the dates that each Milestone must be achieved by the Generator as set out in Appendix 2;

“Milestones” means the milestones prescribed in Appendix 2;

“Non-Performing Party” means a Party which is unable to perform all or any of its obligations by reason of Force Majeure;

“Notice of Award” means the letter from the Minister to the Generator advising the Generator that the ORESS 1 Project was successful in the ORESS 1 Auction;

“Offer” has the meaning given to it in the Terms and Conditions;

“Onerous Condition” means, in respect of an ORESS 1 Project, any of the following conditions contained in the Planning Consent for that ORESS 1 Project:

- (a) A condition that will require the ORESS 1 Project to cease operations before the date falling 20 years from the Longstop Date;
- (b) A condition that will directly prevent the ORESS 1 Project from achieving an installed capacity that is at least equal to 90% of the Offer Quantity; or
- (c) A condition that will directly prevent the ORESS 1 Project from achieving an annual output that is at least 90% of the annual output specified in the Project Information Document,

provided that none of the following shall constitute an Onerous Condition:

- (i) any amendment or revision to a Planning Consent after the grant of such Planning Consent; or
- (ii) any contribution payments (howsoever described) required under the Planning Consent;

“Onerous Condition Event” means, in respect of an ORESS 1 Project, a circumstance where:

- (a) an Onerous Condition is contained in the Planning Consent for the ORESS 1 Project; and

- (b) the Planning Consent for the ORESS 1 Project does not permit the development and operation of a project with the key characteristics detailed in the Project Information Document,

in each case as at the date on which the Planning Consent for the ORESS 1 Project has been granted;

“ORESS 1 Auction” has the meaning given to it in the Terms and Conditions;

“ORESS 1 Project” means the renewable energy project to be developed by the Generator, as detailed in the Application for Qualification;

“Performance Security” means the on demand performance security to be procured by the Generator in the form as set out in Appendix 3;

“Planning Consent Failure Event” means a circumstance where, prior to Commercial Operation of the ORESS 1 Project:

- (a) the ORESS 1 Project’s application for Planning Consent in respect of the ORESS 1 Project is refused; or
- (b) the Planning Consent for the ORESS 1 Project is quashed as a result of a Judicial Review Challenge; or
- (c) the Planning Consent for the ORESS 1 Project has not been decided upon by the Planning Consent Longstop, except where Section 6.7.1 of the Terms and Conditions has not been complied with in respect of the ORESS 1 Project; or
- (d) an Onerous Condition Event occurs;

“Planning Consent Longstop” has the meaning given to it in the Terms and Conditions;

“PPA” means a power purchase agreement between the Generator and a licensed supplier obliging the latter to purchase the output from the ORESS 1 Project;

“Regulatory Authority” means the Commission for Regulation of Utilities as established pursuant to the Act or any successor body;

“Renewable Energy Directive” means Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources;

“RESS” means each renewable electricity support scheme established by the Minister pursuant to Section 39 (2) (b) of the Act;

“Terms and Conditions” means the terms and conditions governing the ORESS 1 Auction (as may be amended or updated in accordance with the Terms and Conditions);

“Transmission System Operator” or **“TSO”** has the meaning given to it in the Terms and Conditions; and

“Working Day” has the meaning given to it in the Terms and Conditions.

1.2 Interpretation

1.2.1 In this Agreement, unless the context requires otherwise, any reference to:

- (a) the singular shall include the plural and vice versa;
- (b) any gender reference shall be deemed to include references to the masculine, feminine and neuter genders;
- (c) the word “including” and its variations shall be construed without limitation;
- (d) any reference to “writing” or “written” shall include all methods of reproducing words in a legible and non-transitory form;
- (e) any words importing persons or parties shall include individuals, firms and corporations, joint ventures, trusts, unincorporated associations and organisations, partnerships and any other entity, in each case whether or not having a separate legal personality and any references to persons shall include their legal successors and permitted assignees;
- (f) any reference to legislation, regulations, directives, orders, instruments, codes

or other enactments shall include any amendments, modifications, extensions, replacements or re-enactments thereof then in force;

- (g) any reference to a statutory agency, body, corporation, entity, ministry or office shall include their legal predecessors, successors and permitted assignees;
- (h) unless otherwise specified:
 - (i) any reference in this Agreement to a Clause is a reference to a Clause contained in this Agreement;
 - (ii) any reference to an Appendix is a reference to an Appendix to this Agreement;
 - (iii) any reference to another agreement or document, or any deed or other instrument shall be construed as a reference to that other agreement, or document, deed or other instrument as the same may have been, or may from time to time be, amended, varied, supplemented, substituted or novated;
 - (iv) any reference to a month or year shall be construed as reference to a calendar month or year, as the case may be;
 - (v) where reference is made to a monetary amount or sum, it is to an amount or sum denominated in euro unless specified otherwise;
 - (vi) the table of contents and Clause headings are inserted for ease of reference only and shall be ignored for the purpose of the construction of this Agreement;
 - (vii) all terms which have been defined in this Agreement shall have their initial letters in capital typescript whenever and wherever they appear in this Agreement; and
 - (viii) any reference to time shall be construed as local time in Dublin, Ireland.

1.2.2 In the event of inconsistency between the provisions of this Agreement and the Letter of Offer or the Terms and Conditions, the following order of precedence shall prevail:

- (a) the Terms and Conditions;
- (b) this Agreement; and
- (c) the Letter of Offer.

2 Term

2.1 This Agreement shall commence on the date of this Agreement and shall continue until the earlier of (i) the Expiry Date; and (ii) the termination of this Agreement in accordance with its terms.

3 Agreement

3.1 The Generator agrees that it shall:

3.1.1 deliver to the Minister and maintain the Performance Security in accordance with Clauses 8.1 and 8.2; and

3.1.2 design, finance, construct, complete and commission the ORESS 1 Project in accordance with this Agreement, the Terms and Conditions and all Laws.

3.2 Subject to the Generator's compliance with Clause 8.1, the Minister agrees to provide the Letter of Offer to the Generator following receipt by the Minister of: (i) two original counterparts of this Agreement duly executed by the Generator; and (ii) an original of the Performance Security which has been duly executed.

4 Confirmations

4.1 The Generator hereby warrants, represents and confirms to the Minister as follows:

4.1.1 that the representations and warranties contained in the Application for

Qualification for the ORESS 1 Project are true, valid and correct, complete and accurate in all material respects as of the date hereof;

- 4.1.2 the Generator is a company duly organised, validly existing and in a good standing under the laws of the country in which it is established and has full power and authority to carry on its business as provided for in this Agreement;
- 4.1.3 the Generator has the corporate power and authority to enter into this Agreement and the transactions provided for and contemplated in it;
- 4.1.4 the execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Generator is a party or any Laws applicable to the Generator or its assets; and
- 4.1.5 the Generator is entering into this Agreement with a full understanding of its terms and risks and is capable of assuming those risks.

5 Achievement of Milestones and Commercial Operation

- 5.1 The ORESS 1 Project is entitled to receive ORESS 1 Support for a period beginning no earlier than the ORESS 1 Support Start Date and ending no later than the ORESS 1 Support End Date.
- 5.2 The Generator shall ensure that all Milestones are completed by the time prescribed in Appendix 2.
- 5.3 The Generator shall:
 - (a) use its best endeavours to ensure that the ORESS 1 Project achieves Commercial Operation as soon as practicable following first export of the ORESS 1 Project; and
 - (b) ensure that the ORESS 1 Project achieves Commercial Operation by the Longstop Date.

5.4 If the ORESS 1 Project cannot achieve:

5.4.1 a particular Milestone by the relevant Milestone Completion Date; or

5.4.2 Commercial Operation by the Target Commercial Operation Date,

in each case due to Force Majeure, then, always subject to (i) the Generator's compliance with Clause 9.1 and the Minister's right to terminate for extended Force Majeure under Clause 9.2, the relevant Milestone Completion Date, future Milestone Completion Dates and the Target Commercial Operation Date will be extended to take account of such delay owing to Force Majeure, in each case up to a maximum extension of 12 months. For the avoidance of doubt, neither the Planning Consent Longstop nor the Longstop Date shall be extended as a result of Force Majeure.

5.5 No later than ten (10) Working Days after the Commercial Operation Date, the Generator shall furnish a director's certificate to the Minister along with any other relevant information confirming and evidencing that Commercial Operation has been achieved (the "**Commercial Operation Declaration**").

5.6 The Generator acknowledges that the Minister may request any copies of any certificates or other documentation to ensure that the Commercial Operation Declaration is true and accurate and the Generator will comply with any such requests from the Minister.

5.7 The Generator shall notify the Minister as soon as possible, and in any event no later than 5 Working Days, following achievement of the Planning Consent Date, which notification will confirm the Planning Consent Date and provide reasonable supporting documentation evidencing same.

6 Planning Consent Failure Event

6.1 If, prior to the Commercial Operation Date, a Planning Consent Failure Event occurs in respect of an ORESS 1 Project then the Generator shall notify the Minister of such Planning Consent Failure Event as soon as practicable (and in any event no later than 20 Working Days after the occurrence of such Planning Consent Failure Event)

(a **“Planning Consent Failure Notification”**).

- 6.2 A Planning Consent Failure Notification must be accompanied by evidence (satisfactory to the Minister) demonstrating the occurrence of the Planning Consent Failure Event.
- 6.3 No later than 30 Working Days after a Planning Consent Failure Notification, the Generator will issue to the Minister either:
- (a) an irrevocable confirmation that it intends to withdraw the ORESS 1 Project from ORESS 1 due to the Planning Consent Failure Event (a **“Planning Consent Failure Withdrawal Request”**); or
 - (b) an irrevocable confirmation that it has elected to keep the ORESS 1 Project in ORESS 1 and to use its best endeavours to resolve the Planning Consent Failure Event as soon as practicable (a **“Planning Consent Failure Commitment”**).
- 6.4 A Planning Consent Failure Withdrawal Request will (except where triggered by an Onerous Condition Event) be accompanied by a director's declaration (acceptable to the Minister) from the Generator in respect of the ORESS 1 Project, confirming that the director believes, having made due enquiries, that the Planning Consent Failure Event will prevent the ORESS 1 Project achieving Commercial Operation by the Longstop Date.
- 6.5 As soon as practicable following receipt of a Planning Consent Failure Withdrawal Request, the Minister shall (in his or her sole discretion) accept or reject the Planning Consent Failure Withdrawal Request.
- 6.6 If the Generator fails to provide a Planning Consent Failure Notification within 20 Working Days of the Planning Consent Failure Event, it will not be entitled to withdraw from ORESS 1 under this Clause 6 as a result of such Planning Consent Failure Event.
- 6.7 If, in respect of a Planning Consent Failure Event:
- (a) the Generator fails, within the 20 Working Day period referred to in Clause 6.1, to provide a Planning Consent Failure Notification; or

- (b) the Generator issues a Planning Consent Failure Commitment; or
- (c) the Generator fails, within the 30 Working Day period referred to in Clause 6.3, to issue a Planning Consent Failure Withdrawal Request or a Planning Consent Failure Commitment; or
- (d) the Minister rejects a Planning Consent Failure Withdrawal Request under Clause 6.5,

then the Generator shall not be entitled to withdraw from ORESS 1 under this Clause 6 as a result of such Planning Consent Failure Event.

6.8 If the Minister accepts a Planning Consent Failure Withdrawal Request under Clause 6.5 then:

- (a) The Letter of Offer in respect of the ORESS 1 Project shall be withdrawn immediately;
- (b) The Generator's Performance Security will be returned in full, less any amounts deducted at that date in accordance with the Terms and Conditions and this Agreement; and
- (c) The ORESS 1 Project will not be prevented from competing in future ORESS auctions for which it would otherwise be eligible, solely as a result of such withdrawal.

6.9 This Clause 6 contains the sole and exclusive rights of a Generator and ORESS 1 Project in respect of a Planning Consent Failure Event.

7 Judicial Review Challenge

7.1 The Generator shall notify the Minister as soon as practicable if the Generator becomes aware that the Planning Consent for the ORESS 1 Project is subject to a Judicial Review Challenge.

7.2 For each month during which the Planning Consent for the ORESS 1 Project is

subject to a Judicial Review Challenge, the Target Commercial Operation Date and the Milestone Completion Dates which are explicitly linked to the occurrence of the Planning Consent Date will be extended by a month to take account of such Judicial Review Challenge. For the avoidance of doubt, neither the Planning Consent Longstop nor the Longstop Date may be extended pursuant to this Clause 7.2.

7.3 Without prejudice to Clause 7.2, if a Judicial Review Challenge in respect of the Planning Consent for the ORESS 1 Project remains outstanding at any stage during the period between 30 June 2027 and 30 June 2028, the Minister may (in his or her sole discretion) grant an extension to the Planning Consent Longstop and the Longstop Date, subject to a maximum extension of 2 years.

7.4 This Clause 7 contains the sole and exclusive rights of the Generator and the ORESS 1 Project in respect of a Judicial Review Challenge.

8 Performance Security

8.1 As security for the commitments of the Generator under this Agreement and the Terms and Conditions, the Generator shall procure the execution and delivery of the Performance Security, by a security provider with an Approved Credit Rating to the Minister no later than the Implementation Agreement and Performance Security Return Date. As specified at Section 8.1 of the Terms and Conditions, the Performance Security must be in the form attached to this Agreement and alternative forms of security (including cash) are not permitted.

8.2 In the event that:

8.2.1 the Generator does not achieve a Milestone by the applicable Milestone Completion Date allowing the Minister to make a demand under the Performance Security as indicated in Appendix 2 to the Agreement; or

8.2.2 Commercial Operation is not achieved by the Longstop Date; or

8.2.3 the development of the ORESS 1 Project is abandoned; or

8.2.4 Planning Consent is not received by the Planning Consent Longstop; or

8.2.5 any of the matters listed in Clause 10 arise, allowing the Minister to terminate

this Agreement and/or make a demand for payment under the Performance Security in accordance with Clause 10.2; or

8.2.6 any of the matters listed in the Terms and Conditions, allowing the Minister to terminate this Agreement and/or make a demand for payment under the Performance Security, arise,

the Minister may make a demand for payment under the Performance Security pursuant to its terms.

8.3 [Not Used].

8.4 Subject to the overarching principle that any such replacement cannot result in a gap in security cover (and for the avoidance of doubt any gap in cover shall be a breach of this Agreement and the Terms and Conditions), a Generator may apply to replace the Performance Security in place with a new performance security instrument (the **“Replacement Performance Security”**) during the term of this Agreement. Any Replacement Performance Security must:

- (a) be issued by a financial company with an Approved Credit Rating
- (b) be in the form set out at Appendix 3 to this Agreement.
- (c) be effective so there is no gap in security cover.

8.5 The Replacement Performance Security shall be sent by registered post or hand delivered to:

Department of the Environment, Climate and Communications, 29-31 Adelaide Road,
Dublin 2, D02 X285

For the Attention of: Principal Officer, International and Offshore Energy Division,
Department of the Environment, Climate and Communications.

8.6 Following receipt of the Replacement Performance Security which satisfies the requirements of Clause 8.4, the Minister shall return the previous Performance Security provided to the Generator.

8.7 The Minister shall return the Performance Security or Replacement Performance

Security (as applicable) following receipt of the documentation at Clauses 5.5 and 5.6 for that ORESS 1 Project including any additional information/documents required by the Minister to verify the documentation provided by the Generator.

9 Force Majeure

- 9.1 Where a Non-Performing Party is rendered wholly or partially unable to perform all or any of its obligations under this Agreement by reason of Force Majeure, this Agreement shall remain in effect but the Non-Performing Party's relevant obligations and the corresponding obligations of the other Party owed to the Non-Performing Party under this Agreement which are obligations affected by Force Majeure shall be suspended provided that such suspension shall be of no greater scope and no longer duration than is required by the Force Majeure.

Further:

- 9.1.1 as soon as reasonably practicable, but in any event within five (5) Working Days, the Non-Performing Party shall notify the other Party of the circumstances of Force Majeure, identifying the nature of the event, its expected duration, and the particular obligations thereby affected and shall furnish reports at such intervals as the other Party may reasonably request, with respect thereto during the period of Force Majeure;
- 9.1.2 the Non-Performing Party shall use all reasonable endeavours to remedy this inability to perform and to resume full performance of its obligations under the Agreement;
- 9.1.3 no obligations of either Party that arose before the Force Majeure and which can reasonably be expected to be performed are excused as a result of Force Majeure;
- 9.1.4 forthwith after the occurrence of the Force Majeure, each Party shall use all reasonable endeavours to consult with the other as to how best to give effect to their obligations under the Agreement so far as is reasonably practicable during the period of Force Majeure;
- 9.1.5 the Non-Performing Party on being able to resume full performance of its

obligations under the Agreement, shall provide the other Party with written notice to that effect, without delay; and

9.1.6 insofar as possible the Non-Performing Party shall seek to mitigate the consequences of the Force Majeure occurrence.

9.2 If the event that an event of Force Majeure continues for more than twelve (12) months, then the Party not affected by Force Majeure may by notice in writing to the Non-Performing Party terminate this Agreement with effect from the date of such notice. On termination of this Agreement pursuant to this Clause 9.2, the Parties acknowledge that the Letter of Offer will be withdrawn by the Minister.

10 Events of Default and Termination

10.1 The following events or circumstance shall be Events of Default:

10.1.1 the Generator does not comply with its obligations under Clause 8 of this Agreement; or

10.1.2 a demand has been made by the Minister under the Performance Security and such amount is not paid to the Minister within the timeframe for payment specified in the Performance Security; or

10.1.3 the Generator is in Material Breach; or

10.1.4 any other act, default or omission which is in breach of this Agreement and in respect of which the Minister has given notice (a “breach notice”) to the Generator requiring the breach to be rectified and the Generator has failed to rectify within twenty (20) Working Days of the breach notice or such longer period as the Minister may in its sole discretion specify in the breach notice; or

10.1.5 the Generator:

- (a) is unable to pay its debts within the meaning of Section 570 of the Companies Act 2014 (and a Party shall not be deemed to be unable to pay its debts if any demand for payment is being contested in good faith by the Party concerned with recourse to

all appropriate measures and procedures) or if it enters into any voluntary scheme, agreement or arrangement (other than for the purpose of solvent reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Minister); or

- (b) has a receiver or examiner appointed over the whole or any material part of its assets or undertaking; or
- (c) passes any resolution for winding-up; or
- (d) anything analogous to, or having a substantially similar effect to, any of the events or any circumstances specified in Clause 10.1.5 (a) - (c) above occurs in any jurisdiction in relation to the Generator;

10.1.6 Commercial Operation is not achieved by the Longstop Date;

10.1.7 the Planning Consent Date does not occur by the Planning Consent Longstop; or

10.1.8 the Minister has terminated or revoked the Letter of Offer in accordance with the Terms and Conditions.

10.2 Where an Event of Default arises or the Minister terminates this Agreement in accordance with Clause 9.2, the Minister shall be entitled to:

10.2.1 make an immediate demand under the Performance Security; and / or

10.2.2 terminate this Agreement and the Letter of Offer with immediate effect.

10.3 The Minister shall have no liability to the Generator by reason of exercising such right of termination or revocation of the Letter of Offer in accordance with this Clause 10.

11 Effects of Termination

11.1 The relevant provisions of this Agreement shall survive expiry or termination of this Agreement to the extent necessary to provide for final payment of any payments,

charges or other monies due and owing pursuant to this Agreement.

- 11.2 Termination of this Agreement by the Minister as a whole under Clause 10 shall not affect any rights or obligations of the Parties which have accrued at the time of such termination or, where applicable, the continuing obligations of the Parties under this Agreement.

12 Severance

If any provision of this Agreement is or becomes invalid, unenforceable or illegal by a judgement or decision of any court of competent jurisdiction or any Competent Authority to which it is subject or by order of the relevant body of the European Union, the same shall be deemed severable and the remainder of this Agreement shall remain in full force and effect. In any such case, the Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for such invalid or unenforceable provision in order to give effect, so far as practicable, to the spirit of this Agreement.

13 Notices

- 13.1 Any notice given by one Party to the other under this Agreement shall be in writing and shall be sent or delivered to the address, and marked for the attention of the person specified in Clause 13.4. Either Party may, by notice to the other, given in compliance with this Clause 13, change its address or the person in that Party to which such notices are to be sent or delivered.
- 13.2 All such written notices shall either be personally delivered or be sent by pre-paid registered post (airmail if overseas) or electronic transfer. Communication by electronic means shall be confirmed by forwarding a copy of same by pre-paid registered post.
- 13.3 Any notice so delivered, posted or transferred shall be deemed to have been given:
- 13.3.1 in the case of personal delivery, when delivered; or
- 13.3.2 in the case of pre-paid registered post, on the second day following the date of

posting (or, if airmailed to or from overseas, on the fifth day following the date of posting),

provided that, if in accordance with the above provisions, any such notice or communication is delivered or received outside working hours on any day, such notice or communications shall be deemed to have been served at the start of the working hour on the next Working Day thereafter.

13.4 The Minister

Address: Principal Officer, International and Offshore Energy Division
The Department for the Environment, Climate and
Communications, 29 – 31 Adelaide Road, Dublin, D02 X285

For the attention of: ORESS Team, International and Offshore Energy Division

The Generator

Address: [•]

For the attention of: [•]

14 Entire Agreement

This Agreement, and the agreements or documents between the Generator and the Minister referred to herein, constitute the whole and only agreement between the Parties relating to the ORESS 1 Project.

15 Variation

This Agreement may only be varied in writing by the Parties.

16 Waiver

16.1 No delay or omission by any Party to this Agreement in exercising any right, power or

remedy provided by law or under this Agreement will:

16.1.1 affect that right, power or remedy; or

16.1.2 operate as a waiver of it.

16.2 The exercise or partial exercise of any right, power or remedy provided by law or under this Agreement will not preclude any other or further exercise of it or the exercise of any other right, power or remedy.

17 Counterparts

17.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but will not be effective until each Party has executed at least one counterpart.

17.2 Each counterpart will constitute an original of this Agreement, but all the counterparts will together constitute but one and the same instrument.

18 Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the Courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this Agreement.

IN WITNESS whereof the Parties hereto have executed this Agreement the day and year first herein written.

Appendix 1
Form of Letter of Offer

Our Ref: ORESS 1/X/YYYY

[•] 20[•]

[Legal name of Applicant]

[Address (including EirCode)]

[email address]

ORESS 1
Competition

Letter of Offer

RE: [ORESS 1 Project Name] - ORESS 1 Ref. No: 2/YYYY (please quote on any future correspondence)

Dear [Authorised User•]

I am directed by the Minister for the Environment, Climate and Communications to refer to your application in the ORESS 1 (Offshore Renewable Electricity Support Scheme 1) Auction.

I am pleased to inform you that the ORESS 1 Project identified in the following table has been accepted into ORESS 1, subject to the conditions notified below:

Applicant	ORESS 1 Project	Offer Price
[Legal Name of Applicant] [Address (including EirCode)]	[ORESS 1 Project name], [•]MW, [•], townland, Generator address, County	€[ORESS1OfferPrice]/MWh

The ORESS 1 Ref. No in respect of this ORESS 1 Project is [•] and should be quoted in all your correspondence with the Minister.

Capitalised terms used but not defined herein shall have the meaning given to them in the ORESS 1 terms and conditions which are publicly available at [insert link].

Conditions of this offer

1. That you shall comply with the ORESS 1 terms and conditions.
2. You are required to comply with the Implementation Agreement including the achievement of all Milestones required to be completed under the Implementation Agreement by their respective completion dates.
3. A Maritime Area Consent is required at all times in respect of your ORESS 1 Project in order to remain compliant with the ORESS 1 terms and conditions.
4. A Grid Connection Agreement is required at all times during the ORESS 1 Support Period in respect of your ORESS 1 Project in order to remain compliant with the ORESS 1 terms and conditions.
5. Individual ORESS 1 Projects are required to be metered separately.
6. Any material changes to the ORESS 1 Project as accepted into ORESS 1 must be approved by the Minister.
7. You are reminded of the requirement for official metering and of the requirement for the relevant supplier to provide evidence to the Regulatory Authority regarding technical control to ensure that the MEC cannot physically be exceeded.

Conditions of this offer relating to the PSO Order

The following additional conditions must be complied with in order for the ORESS 1 Project to be included in the PSO Order:

8. Confirmation that a Guarantee of Origin in respect of the output of the ORESS 1 Project will not be sought;
9. Evidence that the supplier with whom the Generator has entered into a PPA in respect of the ORESS 1 Project has notified the Regulatory Authority that the ORESS 1 Project is eligible for ORESS 1 Payments in the upcoming PSO Levy Year; and

10. The Generator's current Tax Clearance Certificate from the Revenue Commissioners or for non-tax residents, a certificate or statement of suitability from the Irish Revenue Commissioners.

This information must be submitted to the Minister at latest within thirty (30) Working Days of a supplier notifying the Regulatory Authority that the specified ORESS 1 Project is to be included in the calculations for the upcoming PSO Levy Year.

It is noted that ORESS 1 Support can only be paid to ORESS 1 Projects in any given year subject to two conditions:

1. that the ORESS 1 Projects have been included in the Regulatory Authority's annual PSO decision; and
2. that the ORESS 1 Projects are included in the annual PSO Order statutory instrument.

Acknowledgement

You are required to acknowledge receipt of this offer in writing within ten (10) Working Days from the date of this letter.

Yours sincerely

Principal Officer
International and Offshore Energy Division

Cc: EirGrid: RESS@EirGrid.com

Appendix 2

Milestones

#	Milestone	Interim Milestone Date and consequences for failure to meet Interim Milestone Date	Final Milestone Date and consequences for failure to meet Final Milestone Date
1.	The Generator shall issue two original executed copies of the Implementation Agreement to the Minister.	N/A	If not complete by the Implementation Agreement and Performance Security Return Date, the Notice of Award will be revoked.
2.	The Generator shall issue to the Minister a Performance Security in accordance with the terms of the Implementation Agreement.	N/A	If not complete by the Implementation Agreement and Performance Security Return Date, the Notice of Award will be revoked.
3.	The Generator shall complete and submit the Project Delivery Plan Questionnaire in accordance with Section 8.12 of the ORESS 1 terms and conditions.	N/A	If not complete by six (6) months after the Implementation Agreement and Performance Security Return Date, the Minister will be entitled to drawdown up to a maximum of 5% of the Performance Security.
4.	The Generator shall submit a copy of the Planning Consent in respect of the ORESS 1 Project.	N/A	If not complete by the Planning Consent Longstop, the Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
5.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 8.12 of	N/A	To be submitted within six (6) months of the Planning Consent Date.

#	Milestone	Interim Milestone Date and consequences for failure to meet Interim Milestone Date	Final Milestone Date and consequences for failure to meet Final Milestone Date
	the ORESS 1 terms and conditions.		If not complete by this date, the Minister will be entitled to drawdown up to a maximum of 5% of the Performance Security (in addition to any other entitlement the Minister may have to drawdown in respect of a failure to achieve Milestone 3).
6.	The Generator shall submit evidence of the Commencement Date.	If not complete by 12 months following the Planning Consent Date, the Minister will be entitled to drawdown up to a maximum of 25% of the Performance Security (4% per month).	If not complete by 18 months following the Planning Consent Date, the Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
7.	The Generator shall achieve Commercial Operation.	If not complete by the Target Commercial Operation Date, erosion of the contract term equivalent to the period of time between the Target Commercial Operation Date and Commercial Operation Date.	If not complete by the Longstop Date, Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
8.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 8.12 of the ORESS 1 terms and conditions.	N/A	To be submitted within six (6) months after achievement of Milestone 7 (<i>Commercial Operation</i>). If not complete by this date, the Minister will be entitled to drawdown up to a maximum of 5% of the Performance Security

#	Milestone	Interim Milestone Date and consequences for failure to meet Interim Milestone Date	Final Milestone Date and consequences for failure to meet Final Milestone Date
			(in addition to any other entitlement the Minister may have to drawdown in respect of a failure to achieve Milestone 3 or Milestone 5).

Appendix 3

Performance Security

Bond to be provided by a Bank or Financial Institution

To: Minister for the Environment, Climate and Communications Date [●]

Dear Sirs

Global Performance Security issued pursuant to the Implementation Agreement in the amount of €[●]

Under the Implementation Agreement between Minister for the Environment, Climate and Communications (the “**Beneficiary**”) and [●] (the “**Generator**”) (the “**Implementation Agreement**”), it was agreed that the Generator will procure the issue of a Performance Security in favour of the Beneficiary in the form of this document.

This Performance Security is subject to the UCP Rules except where otherwise stated.

[●] with its registered place of business at [●] (the “**Issuer**”) issues this Performance Security, number [●], and irrevocably and unconditionally agrees as follows:

1. In this Performance Security (and every Demand), unless the context otherwise requires:

“**Authorised Signatory**” means an officer of the Beneficiary having authority to execute a Demand and whose name and specimen signature have been notified to the Issuer by the Beneficiary before service of the Demand;

“**Demand**” means a written notice of demand served by the Beneficiary on the Issuer in the form set out in the Attachment to this Performance Security;

“**Expiry Date**” means the earlier of (i) the date falling seven (7) months after the ORESS 1 Support Start Date (as defined in the ORESS 1 Terms and Conditions) and (ii) the date falling seven (7) months after the Longstop Date (as defined in the Implementation Agreement);

“Specified Amount” means in relation to any Demand the sum specified in that Demand; and

“UCP Rules” means the ICC Uniform Customs and Practices for Documentary Credits, 2007 Revisions (UCP 600) and all subsequent revisions thereof unless otherwise stated. Reference to any article is reference to such article in the UCP Rules or, where relevant, the equivalent article in any subsequent revisions of the UCP Rules.

2. The Issuer irrevocably and unconditionally undertakes that it will, on service of a Demand in paper form at the address specified below in clause 7 (or such other address as agreed between the Beneficiary and the Issuer) before the Expiry Date, and within three (3) business days of service of the Demand pay to the Beneficiary the Specified Amount, unless in so doing the aggregate limit set out in clause 3 of this Performance Security would be exceeded, in which case the Issuer shall pay to the Beneficiary so much of the Specified Amount as may be paid without exceeding such limit. The address specified below in clause 7 must be an address in the Republic of Ireland.
3. The Beneficiary may make one or more Demands under this Performance Security provided that the aggregate amount of all Demands and the aggregate liability of the Issuer under this Performance Security shall not exceed [insert maximum amount of Performance Security].
4. Any payment under this Performance Security shall be made without set-off or counterclaim and free from any deduction or withholding in euro in immediately available, fully transferable, cleared funds by transfer to the following name:

Account Name:	
Account Number:	
Bank Name:	
Bank Address:	
Sort Code:	
Swift Code:	

IBAN:	
-------	--

or in such other manner or to such other account at an Irish financial institution as the Beneficiary may from time to time notify to the Issuer in writing.

Where any such deduction or withholding or is required by law to be made (whether by the Generator, Issuer or otherwise) the Issuer shall pay in the same manner and at the same time such additional amounts as will result in receipt by the Beneficiary of the amount it would have received had no such deduction or withholding been required.

5. The obligations of the Issuer under this Performance Security shall cease on the Expiry Date, except:
- (a) in respect of any Demand received by the Issuer prior to the Expiry Date in relation to which the Issuer shall be obliged (subject to the terms of this Performance Security) to pay to the Beneficiary the Specified Amount; and
 - (b) as provided in clause 11 of this Performance Security,

and the provisions of this clause 5 shall survive expiration of this Performance Security accordingly.

6. The liability of the Issuer shall not in any way be affected by:
- (a) any time, indulgence or relief being given to or by the Beneficiary or the Generator;
 - (b) any amendment or extension of or supplement to the Implementation Agreement;
 - (c) any invalidity in, or irregularity or unenforceability of the obligations of any person under the Implementation Agreement; or
 - (d) anything done or omitted which but for this provision might constitute a legal or equitable discharge or release of, or defence for, the Issuer.

7. Any notices or notification given under this Performance Security shall be in writing

and shall be served by sending the same by post or leaving the same at:

If to the Issuer: [●]
 Republic of Ireland

Attention: [●]

If to the Beneficiary: Minister for the Environment, Climate and
 Communications, 29 – 31 Adelaide Road, Dublin, D02
 X285

For the attention of: Principal Officer, International and
Offshore Energy Division

The Beneficiary and the Issuer may change its nominated address to another address in the Republic of Ireland by prior written notice to the other party. Any written notices shall be effective upon the earlier of:

(a) actual receipt; or

(b) two (2) days after mailing or despatch.

[The Issuer agrees to appoint [*NAME, COMPANY NUMBER AND REGISTERED ADDRESS IN IRELAND*] from the date of this Performance Security up until the Expiry Date as its agent in Ireland for the purpose of receiving service of process in any proceedings brought against the Issuer in connection with this Performance Security]¹

8. This Performance Security may be amended only by an instrument in writing signed on behalf of the Beneficiary and the Issuer.
9. The governing law for the purposes of this Performance Security shall be the laws of Ireland. The competent Courts shall be the Courts of Ireland.
10. The Beneficiary, after receiving written consent of the Issuer and the Generator (such consent not to be unreasonably withheld), may transfer and assign all its rights and obligations under the Performance Security and Article 38 and 39 of the UCP Rules

¹ **Note:** Delete the wording in square brackets if the Issuer has a registered place of business in Ireland and the Performance Security is being provided by such Irish entity.

is hereby expressly excluded to the extent that it precludes such an assignment.

11. If this Performance Security expires during any interruption of business of a kind referred to in Article 36 of the UCP Rules, then the Issuer shall remain liable to make payment under this Performance Security in respect of any Demand served no later than fifteen (15) business days after the Issuer has notified the Beneficiary that its business has ceased to be so interrupted. The Issuer undertakes that it shall, within two (2) business days of the cessation of any interruption of business referred to in Article 36 of the UCP Rules (during which this Performance Security expires) notify the Beneficiary of that cessation. Article 36 of the UCP Rules is hereby amended.
12. All charges and fees under this Performance Security shall be for the account of the Generator.

Yours faithfully

[•]

Attachment to Appendix 3

Form of Demand

To: [The Issuer]

[Date]

The Performance Security number [] dated [] (the “Performance Security”)

We refer to the Performance Security dated [] and issued by you in our favour. In accordance with paragraph 2 of the Performance Security, we hereby make demand in the sum of EUR [] and request that you pay the same immediately to [specified account].

For and on behalf of Minister for the Environment, Climate and Communications.

Dated this [] of [] 20[]

[Authorised signatory]

SIGNED by authorised officer (print name)

Signature: _____

for and on behalf of the

THE MINISTER FOR THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS

in the presence of (print name):

Signature of Witness: _____

SIGNED by (print name)

Signature: _____

for and on behalf of

[GENERATOR]

in the presence of (print name):

Signature of Witness: _____

Annex B
Financial Questionnaire

Dear ORESS Applicant,

In line with EU State Aid Decision and ex-post evaluation of the scheme requirements (https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_54683) Applicants are required to provide the information specified in the table below. Applicants should note that the Department for the Environment, Climate and Communications will treat all such information as confidential and commercially sensitive for the purposes of the Freedom of Information Act 2014 and any environmental information supplied as having been supplied voluntarily for the purposes of the Access to Information on the Environment Regulations 2007 – 2018. In the event that the Department for the Environment, Climate and Communications considers that such information provided by an Applicant falls within the scope of a request made under the Freedom of Information Act 2014 or the Access to Information on the Environment Regulations 2007 – 2018, that Applicant will be consulted before a decision is made in respect of any such request. The Department for the Environment, Climate and Communications will ensure that, to the extent such information is used in any published ex-post evaluation, it will be on an anonymized basis.

Where an Applicant has submitted Offers in respect of more than one project in ORESS 1, the Applicant must submit a separate response for each of its projects.

Information request	Applicant response
Project Details What is the ORESS application reference number of your project?	Insert application reference number as provided by EirGrid during the auction process.
Importance of ORESS Please estimate the likelihood of you being able to deliver your project, without ORESS or other financial support from the State.	Select one of the following: <ul style="list-style-type: none"> • > 99% (almost certain to be delivered); • 75% to 99% (highly likely to be delivered); • 50% to 75% (likely to be delivered); • 25% to 50% (unlikely to be delivered); • 1% to 25% (highly unlikely to be delivered); or • < 1% (almost certainly <u>not</u> delivered).
Non-ORESS opportunities Please estimate the likelihood of you being able to deliver your project through a Corporate Power Purchase Agreement (Corporate PPA), or by other means, including energy export to other jurisdictions. Your answer to this question should be a percentage range no greater than that in your answer to the preceding question.	Select one of the following: <ul style="list-style-type: none"> • > 99% (almost certain to be delivered); • 75% to 99% (highly likely to be delivered); • 50% to 75% (likely to be delivered); • 25% to 50% (unlikely to be delivered); • 1% to 25% (highly unlikely to be delivered); or • < 1% (almost certainly <u>not</u> delivered).
Explanation	Select one or more of the following:

Information request	Applicant response
Please provide a brief explanation for your responses to the questions above.	<ul style="list-style-type: none"> • The project would not be economically viable without RESS support; • The project would be unlikely to proceed as a corporate PPA; and/or. • Other – please specify
<p>Project Internal Rate of Return (IRR) Please estimate the Nominal pre-tax Project IRR (PIRR) in respect of your project, based on your Offer Price in the ORESS auction. The PIRR is the discount rate that equates the Nominal Project Cashflows to a Net Present Value of zero. Nominal means inclusive of escalation or inflation (i.e. 'money of the day', and <u>not</u> in 'real terms').</p> <p>Project Cashflows:</p> <ul style="list-style-type: none"> — include project revenues, capital and operating costs (see definitions below), and working capital adjustments; and — exclude all Financing Costs, Taxes and Accrual Items. <p>Whereby:</p> <ul style="list-style-type: none"> — Financing Costs include interest, finance arranging or refinancing fees, dividends; — Taxes include corporation tax, capital gains tax, VAT, rates and stamp duty; and — Accrual Items include depreciation, amortisation and other accrual accounting adjustments to the project cashflows. 	<p>Select one of the following:</p> <ul style="list-style-type: none"> • PIRR \geq 10%; • 10% > PIRR \geq 8%; • 8% > PIRR \geq 6%; • 6% > PIRR \geq 4%; • 4% > PIRR \geq 2%; or • 2% > PIRR.
<p>Capital costs Please indicate the total Nominal Capital Costs associated with your project, relative to its Offer Quantity.</p> <p>Nominal Capital Costs:</p> <ul style="list-style-type: none"> — include all planning, design, construction, contingency, escalation or inflation, project management, plant, machinery, equipment and other acquisition, installation or demolition costs associated with construction of the generation facility or other costs of a capital nature that will be incurred directly by your project – but excluding grid connection costs; — exclude all Financing Costs and Taxes. 	<p>Specify total Nominal Capital Costs to the nearest €100,000 per 1 MW and specify the year for which that value applies, e.g. '2023 Euros'.</p>
<p>Annual Operating costs Please indicate the Annual Operating Costs associated with your project, relative to its Offer Quantity.</p> <p>Operating Costs:</p> <ul style="list-style-type: none"> — include all repairs, maintenance, operations 	<p>Specify Annual Operating Costs to the nearest €10,000 per 1 MW and specify whether that value has been levelised on a nominal basis, or alternatively on a real basis, e.g. 'levelised nominal'.</p>

Information request	Applicant response	
<p>and management costs associated with operation of the generation facility; — exclude all Financing Costs and Taxes. Annual means the levelised cost over the life of the plant.</p>		
<p>Transmission and Generation Baseline costs</p> <p>In addition to the cost information required by this Financial Questionnaire, ORESS 1 Projects are required to complete the CRU cost template CRU202313b and send to the CRU (offshoreeconomicregulation@cru.ie) in Microsoft Excel format by the Financial Questionnaire Submission Closing Date. The costs provided in the ORESS 1 Financial Questionnaire should be consistent with those provided in the cost template CRU202313b and vice versa (notwithstanding the difference in categorisation between the two).</p>		

Annex C

Project Delivery Plan Questionnaire

In order to inform Government policy and the design of future ORESS auctions, each Successful Applicant is required to complete and submit responses to this Project Delivery Plan Questionnaire in accordance with the Milestones at Appendix 2.

Successful Applicants should note that the Department will treat all information as confidential and commercially sensitive for the purposes of the Freedom of Information Act 2014, and any environmental information supplied as having been supplied voluntarily for the purposes of the Access to Information on the Environment Regulations 2007 – 2018. In the event that the Department for the Environment, Climate and Communications considers that such information provided by a Successful Applicant falls within the scope of a request made under the Freedom of Information Act 2014 or the Access to Information on the Environment Regulations 2007 – 2018, that Successful Applicant will be consulted before a decision is made in respect of any such request. The Department will ensure that, to the extent any information is used in any published ex-post evaluation, it will be on an anonymised basis.

A separate Project Delivery Plan Questionnaire response must be provided for each ORESS 1 Project for which an Implementation Agreement has been executed.

Project Delivery Plan Questionnaire responses must be returned by the relevant deadlines in the Implementation Agreement either by email to the ORESS@decc.gov.ie mailbox or alternatively by post to;

ORESS Team,
Long Term Strategic Planning Division,
Department of the Environment, Climate and Communications,
29-31 Adelaide Road,
Dublin 2.
D02 X285

1. Project Summary

Please provide an overview of the status of your ORESS 1 Project (maximum 4 pages). This should include, but is not limited to, the following information:

1.1 Size of the ORESS 1 Project and key locations (expressed in installed capacity MW).

1.2 Ownership structure with explanation.

1.3 The current status of development and key past and future **project milestones**, including expected construction start date, delivery of first power, anticipated final commissioning and decommissioning etc.

- 1.4** Describe efforts to gather **market information** on the availability of capable Irish suppliers² and potential consortia or alliances of Irish suppliers, and Irish and international suppliers, for consideration in competitive tenders associated with the ORESS 1 Project.
- 1.5** As far as information is available at the time of submission, and in tabular format, provide **all current and anticipated future** contracts, sub-contracts and purchase orders greater than €1 million to be issued by you and your 1st tier contractors and suppliers for the project broken down by (i) Development Expenditure, (ii) Capital Expenditure, (iii) Operational Expenditure and (iv) Decommissioning Expenditure phases (the “**Summary Supply Chain Plan**”).
- 1.6** Please provide a comprehensive inventory of **all** activities and their expected outcomes contained in your Summary Supply Chain Plan to facilitate the efficient monitoring and delivery of your Summary Supply Chain Plan.

2. Business Environment

This section of the questionnaire investigates the ORESS 1 Project regarding the promotion of competitive procurement processes that broaden supply chains, reduce costs and carbon footprints and remove barriers to entry for local suppliers. Of particular relevance are activities supporting developing and increasing the productivity, competitiveness, and capacity of businesses and suppliers, directly or through alliances. (There is no maximum number of pages for this section).

- 2.1** Renewable energy deployment should deliver economic growth in the places where these developments are located and contribute to both the country’s short-term economic recovery from the global pandemic and longer-term industrial transformation to renewable energy and a green economy.
- (a) Please quantify the expected **levels of Irish Content** to be delivered over the ORESS 1 Project’s lifetime, broken down by (i) Development Expenditure, (ii) Capital Expenditure, (iii) Operational Expenditure and (iv) Decommissioning Expenditure and by the ORESS 1 Project’s major components.
- (b) Please provide a written commentary of no more than 500 words to explain the reasons for your anticipated levels of Irish content in each phase of the ORESS 1 Project. Commentaries may be publicised and should not disclose commercially sensitive information.
- 2.2.** Describe and support with evidence the three most impactful activities you plan to undertake

² **Note:** In this Project Delivery Plan Questionnaire, ‘suppliers’ refers to contractors and other suppliers of goods and services in respect of the ORESS 1 Project, but for the avoidance of doubt does not include electricity off-takers in respect of the ORESS 1 Project.

across the development, construction and operational phases of the ORESS 1 Project to **incentivise your supply chains to ensure a low carbon footprint** in the goods and services they provide to the ORESS 1 Project.

2.3 Describe and support with evidence the three most impactful activities you plan to undertake in the development, construction and operational phases of the ORESS 1 Project to **identify and resolve gaps in capability and productivity in your international and Irish supply chains** to improve competitiveness and thereby reduce project costs and risk. **Identify how your activities, directly or in coordination with the wider industry, will support delivery of your commitments to Irish Content.**

2.4 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to **improve the visibility of opportunities** to suppliers within international and Irish supply chains, and ensure greater collaboration of opportunity across the industry.

2.5 Describe and support with evidence how your ORESS 1 Project's contracting strategy and procurement processes will assure full and fair opportunity for Irish suppliers to access open tenders to compete for supply chain opportunities. Provide responses to the following:

- (a) The value drivers of your **Contracting Strategy**, the role of framework agreements and other strategic sourcing arrangements, the application of sole/single sourcing criteria, and consideration of consortia bids and supplier collaboration to meet procurement requirements including between Irish suppliers and between Irish and international suppliers.
- (b) How you provide full and fair opportunity at the **Expression of Interest** stage.
- (c) How you provide full and fair opportunity for suppliers to **pre-qualify** and/or be selected for a **bid list**.
- (d) How you provide full and fair **tender requirements** and contract clauses that do not unnecessarily prohibit market access.
- (e) What the mechanisms are for **feedback** to unsuccessful suppliers at all stage of tendering.
- (f) What processes and practices you have in place for fair and timely **payment of suppliers**.

2.6 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to identify and **promote new entrants** into your supply chains through this ORESS 1 Project and remove barriers to new entrants, including actions to specifically **support SMEs**.

2.7 Please describe the **most significant supply chain risks and issues** across the ORESS 1

Project's life cycle and the measures to be put in place to mitigate these risks or manage the issues. This may include risks relating to bribery and corruption, supply distribution and delivery, custom and boarder administration, supplier capacity constraints, community and other stakeholder grievances, environmental pollution and harm to the natural environment.

3. Infrastructure

This section of the questionnaire investigates the ORESS 1 Project regarding the removal of barriers and increasing investment in infrastructure. Of particular relevance are activities that will broaden the opportunities for low carbon electricity generation and increase the capabilities of local supply chains to meet the requirements of the new technologies. (There is no maximum number of pages for this section).

3.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to **coordinate supply chain activity** within the ORESS 1 Project and between different projects to mitigate and offset the impacts that the electricity network infrastructure directly associated with your ORESS 1 Project will have on **local communities** and the **marine and terrestrial environments**.

3.2 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to make sure that your project supply chains will help maintain **reliability and resilience for the Irish electricity system** and assist with integrating increasing amounts of renewable, intermittent generation.

3.3 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to **strengthen infrastructure that supports your international and Irish supply chains**, so as to achieve improved productivity and competitiveness, reduce project costs and risk and facilitate the adoption of innovative renewable power generation technologies. Identify how your activities, directly or in coordination with the wider industry, will support delivery of your commitments to Irish content.

4. People

This section of the questionnaire investigates the ORESS 1 Project regarding the development of a diverse, skilled workforce and increasing local employment opportunities. Of particular

relevance are activities supporting the training and transitioning of the workforce to attain the skills needed for low carbon electricity generation, in ways that minimise skill shortages, increase productivity, achieve diversity and are ethical and safe. (There is no maximum number of pages for this section).

4.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project (including the major supply chain components) to:

- (a) **gather information** on the Irish labour market; **match** the current and future skill requirements of the ORESS 1 Project with the skills, qualifications and experience of the Irish labour market,
- (b) identify **skill gaps** in the Irish labour market and how these gaps can be filled,
- (c) support the **transition** of Irish workers from non-renewable sectors (including oil and gas) to the low carbon electricity generation sector,
- (d) and/or **collaborate** with Irish educational and vocational education institutions to build a pipeline of experienced and qualified Irish workers.

4.2 Describe with supporting evidence how your **recruitment and hiring strategy** across the development, construction and operational phases of the ORESS 1 Project will assure no discrimination of suitably qualified and experienced Irish residents to access employment and temporary work opportunities in your company group and within supply chain contracts.

Provide responses to the following:

- (a) a description of how you reach out and **alert the Irish labour market** in general, and the Irish labour market in the **location of the ORESS 1 Project** in particular, to recruitment and hiring opportunities relating to the ORESS 1 Project within your company group and within supply chain contracts,
- (b) a description of how your recruitment process removes barriers to recruitment of suitably qualified and skilled Irish workers and provides **equal and fair consideration of Irish residents**,
- (c) an aggregated **Project Skills Plan** (or equivalent e.g. People Schedules) combining labour requirements across the development, construction and operational phases of the ORESS 1 Project, broken down into job positions for (i) Professionals and (ii) Technicians, and for each job position the approximate number of FTE (or person-hours of work) required for each.

4.3 How many **Irish apprenticeship** and **trainee positions** of greater than six months duration are you taking on at each stage of the project and how many **scholarship positions** at Irish

education institutions of one year or more duration are you planning to sponsor? Of these positions, what proportion of do you anticipate will turn into long-term employment opportunities with the project of two years or more?

4.4 What **number of jobs** in terms of Full Time Equivalent (FTE) workers are anticipated at each stage of the ORESS 1 Project within the developer organisation and within the supply chain of the ORESS 1 Project and how are you gathering this information? Please break these anticipated jobs down by 'Ireland' and 'Rest of the World' and by 'Professional', 'Technicians' and 'Basic' skill.

Please describe the anticipated duration of different types of new jobs with examples, which positions will likely be full time employees versus temporary hires, and what career progression activities will be put in place to extend positions beyond the construction period into operations and maintenance or into roles on other projects.

5. Place

This section of the questionnaire investigates the ORESS 1 Project regarding the creation of local opportunities, supporting communities and strengthening the local economy of regions close to low carbon electricity generation projects. Of particular interest are activities encouraging the development of competitive local supply chains, infrastructure and skills, aligning with local development strategies and engaging with communities and universities. (There is no maximum number of pages for this section).

5.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 1 Project to create more opportunities for **investment and growth in the ORESS 1 Project's local economy** (the region where the ORESS 1 Project is located).

5.2 What **engagement** have you had, and plan to have, to align development, construction and operational activities with the development of any **Local Industrial Strategies/economic development plans** in relation to the ORESS 1 Project?

5.3 What strategy have you developed, or will develop, for **community engagement** in relation to the ORESS 1 Project and the objective of increasing opportunities for investment and growth in the local economy?

6. Ideas

This section of the questionnaire investigates the ORESS 1 Project regarding how to bring about innovation through nurturing and commercialising innovative technologies. Of particular relevance are activities that will create more efficient equipment, improve installation methods and develop new types of procurement and contracting strategies. Also relevant are any other activities that will reduce the costs of projects and overcome the technical challenges of renewable electricity generation. (There is no maximum number of pages for this section).

6.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction, operational and decommissioning phases of the ORESS 1 Project to **invest in R&D in Ireland** that relate to the challenges faced by the ORESS 1 Project and by associated technologies.

6.2 Describe and support with evidence the three most impactful activities your **supply chain partners** plan to undertake across the development, construction and operational phases of the ORESS 1 Project to invest in **R&D in Ireland** that relate to the challenges faced by the ORESS 1 Project and by associated technologies.