Rialtas na hÉireann
Government of Ireland

Terms and Conditions ORESS Tonn Nua Offshore Wind Auction

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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 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 phase of the second competition specific to offshore wind to be conducted under the RESS and to the ongoing administration of awards made in the ORESS Tonn Nua 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 Tonn Nua
- Section 4 sets out the roles for the Auction Monitor and the Market Auditor
- Section 5 sets out the form of ORESS Tonn Nua Support
- Section 6 sets out the processes that will be employed by the TSO to administer the ORESS Tonn Nua Auction
- Section 7 sets out the parameters around the qualification stage of the ORESS Tonn Nua Auction
- Section 8 sets out the parameters around the post-qualification stage of the ORESS Tonn Nua Auction
- Section 9 sets out the parameters around the winner selection stage of the ORESS Tonn Nua Auction

- Section 10 sets out the obligations of the Successful Applicant
- Section 11 sets out the obligations of the Generator
- Section 12 sets out the mechanisms for withdrawal of the ORESS Tonn Nua Project from ORESS Tonn Nua
- Section 13 sets out the community-related aspects of ORESS Tonn Nua.
- Section 14 sets out additional general terms and conditions applicable to ORESS Tonn Nua
- Annex A sets out the form of Project Delivery Agreement that will be provided to the Successful Applicant in the ORESS Tonn Nua Auction, including: (i) the form of the Performance Security to be provided by the Successful Applicant and (ii) the form of Letter of Offer to be provided by the Minister to the Successful Applicant, 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 certain parameters in relation to the grid connection of the ORESS Tonn Nua Project
- Annex D details the Offshore Site

1.4 Key elements of the RESS include the following:

- It has been designed to promote investment in renewable energy generation within a competitive auction based, cost effective framework.
- It has been designed to contribute toward Ireland's ambition of 80% renewable electricity and a renewable energy target of 43%, as set under the National Energy and Climate Plan, by 2030.
- 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.

(1) 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, and for media relations concerning RESS auctions, including publication of auction results. The Minister is also responsible for setting clear dates and rules for the delivery of projects in order to ensure high project realisation rates.

(2) 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 or otherwise as applicable in accordance with provisions set forth in the terms and conditions of each RESS auction by the Minister.

(3) 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 for approval and publication and to the Regulatory Authority; and
- report to the Minister regarding its functions under these Terms and Conditions.

1.8 These Terms and Conditions apply to ORESS Tonn Nua 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 Tonn Nua 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 Tonn Nua 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 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.

1.12 ORESS Tonn Nua has been developed in line with the Maritime Area Planning Act, which provides the legal and administrative underpinning for a new planning regime in the maritime area, facilitating the development of offshore energy. The Maritime Area Regulatory Authority is the state agency established under the Maritime Area Planning Act and is responsible for granting MACs and for compliance and enforcement of MACs.

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 the ORESS Tonn Nua Project that is 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 Tonn Nua.

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:

"**Abandoned**" means a complete cessation by the Generator of the development or construction of the ORESS Tonn Nua Project for a period of three hundred and sixty five (365) days, except where such cessation has resulted from Force Majeure or a Grid Delay Event.

"**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 Tonn Nua Auction.

"**Application for Qualification**" means an application to be submitted by an Applicant seeking to qualify for the ORESS Tonn Nua Auction.

"**Application for Review**" means an application by an Applicant requesting a review of a Provisional Qualification Decision in respect of the Application for Qualification submitted by such Applicant.

"**Auction Completion Date**" is defined in Section 6.1.1 of these Terms and Conditions.

"**Auction Information Pack**" means the information pack prepared by the TSO in accordance with Section 6.3.1 of these Terms and Conditions for the purpose of informing Qualified Applicants of the timing, requirements and processes involved in the ORESS Tonn Nua 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.

"**Award**" means the award of ORESS Tonn Nua Support to the Successful Applicant.

"**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 an 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**" means €20,000,000 (twenty million euro).

"**CBF Committee**" is defined in Section 13.3.2 of these Terms and Conditions.

"**CBF Target Local Community**" is defined in Section 13.3.6 of these Terms and Conditions.

"**Change of Control**" means any transfer or allotment of shares or amendment of articles of association or constitutional documents or some other act or deed whereby the effective control of the Generator (whether by ownership of shares or the power to control or direct the management of the Generator or otherwise) is changed or passed to any person not having effective control as at the date of the Application for Qualification.

"**Climate Action Plan**" means the climate action plans 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 Tonn Nua Project.

"**Commercial Operation**" shall have the meaning given to that term in the Project Delivery Agreement.

"**Commercial Operation Date**" shall have the meaning given to that term in the Project Delivery Agreement.

"**Community Benefit Fund**" or "**CBF**" is defined in Section 13.1.1 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.

"**Connection Assets**" means the transmission connection assets in respect of the ORESS Tonn Nua Project which are owned and/or operated by an entity (or entities) licensed by the Regulatory Authority to do so.

"**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.

"**Declaration of Applicant Project Experience**" is defined in Section 7.3.10 of these Terms and Conditions.

"**Declaration of Financeability**" is defined in Section 7.3.5 of these Terms and Conditions.

"**Declaration of MAC Application Eligibility**" is defined in Section 7.3.9 of these Terms and Conditions.

"**Declaration of New Project**" is defined in Section 7.3.6 of these Terms and Conditions.

"**Declaration of Prior PSO Funding**" is defined in Section 7.3.7 of these Terms and Conditions.

"**Declaration of Project Information**" is defined in Section 7.7.1 of these Terms and Conditions.

"**Declaration of Updated Project Information**" is defined in Section 11.6.1 of these Terms and Conditions.

"**Designated Maritime Area Plan**" or "**DMAP**" means a specifically selected portion of the maritime area designed for a particular use.

"**Difference Payment**" has the meaning given to it in Section 5.2.8 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 13.2.2 of these Terms and Conditions.

"**Early Contribution Year**" is defined in Section 13.2.2 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 7.3.4 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.

"**Final Auction Results**" means the final auction results issued by the Minister in respect of the outcome of the ORESS Tonn Nua Auction.

"**Final Auction Results Date**" means the indicative date for issue of the Final Auction Results by the Minister.

"**Final Milestone Date**" means the final milestone dates prescribed in Appendix 2 of the Project Delivery Agreement.

"**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 Tonn Nua application process, as more particularly set out at Section 7.2.5 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 7.2.5 of these Terms and Conditions.

"**Final Withdrawal Date**" means the last date on which an Applicant can withdraw their Application for Qualification in respect of the ORESS Tonn Nua Auction.

"**Financial Questionnaire**" means the financial questionnaire in the form set out in Annex B.

"**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.

"**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.

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

"**Fixed Grid Date**" means the Target Grid Delivery Date, as at the Grid Standstill Date.

"**Full Connection Offer**" means an offer issued by the TSO to the Generator to connect the ORESS Tonn Nua Project to the transmission system in accordance with applicable decision paper(s) issued by the CRU.

"**Fund Administrator**" is defined in Section 13.3.1 of these Terms and Conditions.

"**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 a Project Delivery Agreement and/or has received a Letter of Offer in respect of the ORESS Tonn Nua Project.

"**Grid Charges**" has the meaning given to it in Section 5.2.4 of these Terms and Conditions.

"**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 Tonn Nua Project will be connected to the transmission system in Ireland (for the avoidance of doubt, not including Northern Ireland).

"**Grid Connection Information**" means the grid connection information document prepared by the TSO, and as may be amended by the TSO from time to time, in accordance with applicable decision paper(s) issued by the CRU.

"**Grid Costs Adjustment**" has the meaning given to it in Section 5.2.4 of these Terms and Conditions.

"**Grid Costs Adjustment Date**" has the meaning given to it in Section 5.2.4 of these Terms and Conditions.

"**Grid Delay Compensation**" shall have the meaning given to that term in the Project Delivery Agreement.

"**Grid Delay Compensation Start Date**" means the first date on which Grid Delay Compensation accrues to the Generator in accordance with the Project Delivery Agreement.

"**Grid Delivery**" means where (i) the Connection Assets can facilitate the sustained export of power (in an amount equal to the MEC); and (ii) the TSO has issued an Interim Operational Notification.

"**Grid Standstill Date**" means the date falling eight (8) weeks after the later of (i) the Planning Consent Date and (ii) the date upon which a full and final grant of planning permission is obtained for the Connection Assets in respect of the ORESS Tonn Nua Project, as such Grid Standstill Date may be extended in accordance with Clause 12.1 of the Project Delivery Agreement.

"**Guarantee of Origin**" has the meaning given to it in Article 2 of the Renewable Energy Directive.

"**GWh**" means gigawatt hour.

"**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 forty-five (45) days after the earlier of (i) the Commencement Date and (ii) the Final Milestone Date for Milestone 5 as specified in the Project Delivery 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 11 January 2023 on the *"Terms of Reference for the RESS Market Auditor and Auction Monitor 2023 Update" (Reference CRU202303)*.

"**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 Tonn Nua Project, but not including the capacity of any energy storage facilities such as battery storage systems.

"**kW**" means kilowatt.

"**Letter of Offer**" means the letter of offer for ORESS Tonn Nua Support from the Minister to the Generator, in the form set out in Appendix 1 of the Project Delivery Agreement.

"**Longstop Date**" means 1 January 2037, as such date may be extended in accordance with Clause 7, Clause 10 and/or Clause 11 of the Project Delivery

Agreement.

"**Loss-Adjusted Eligible Available Quantity**" means Eligible Available Quantity adjusted as follows:

(a) capped in each hour by the lower of (1) the MWh equivalent of the Installed Renewable Capacity and (2) the MWh equivalent of the Target 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 lower of (1) the MWh equivalent of the Installed Renewable Capacity and (2) the MWh equivalent of the Target 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).

"**MAC Application Challenge Period**" is defined in Section 10.1.4 of these Terms and Conditions.

"**Maritime Area Consent**" or "**MAC**" means a maritime area consent awarded under the relevant provisions of the Maritime Area Planning Act.

"**Maritime Area Consent Guidance**" means the "General Guidance for completing an application for a Maritime Area Consent (in accordance with Section 75 or 76 of the Maritime Area Planning Act 2021)" published by MARA in August 2023 (as may be amended, updated or replaced from time to time).

"**Maritime Area Planning Act**" means the Maritime Area Planning Act 2021 (as amended).

"**Maritime Area Regulatory Authority**" or "**MARA**" means the state agency, established under the Maritime Area Planning Act, responsible for, inter alia, granting a MAC for the maritime area, marine licencing for specified activities, compliance and enforcement of MACs and administration of the existing foreshore consent portfolio, or

any successor body.

"**Market Auditor**" is defined in Section 4.2 of these Terms and Conditions.

"**Market Reference Price**" is defined in Section 5.2.6 of these Terms and Conditions.

"**Maximum Export Capacity**" or "**MEC**" means the maximum export capacity of the ORESS Tonn Nua Project, as specified in Annex C of these Terms and Conditions.

"**Maximum Installed Renewable Capacity**" is defined in Section 11.2.1 of these Terms and Conditions.

"**Maximum Offer Price Considered**" means the maximum Offer Price allowed to be included in an Offer for the ORESS Tonn Nua Auction and such maximum Offer Price for the ORESS Tonn Nua Auction will be specified by the Minister no later than the date of publication of the Auction Information Pack.

"**Metered Quantity**" means the Active Power produced by the ORESS Tonn Nua Project and recorded each hour by the meter of the ORESS Tonn Nua Project described in Section 5.5.1.

"**Milestones**" means the milestones prescribed in Appendix 2 of the Project Delivery Agreement.

"**Minimum Installed Renewable Capacity**" is defined in Section 11.2.1 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**" 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 a renewable energy generation project which satisfies each of

the following criteria:

(a) the electricity generating equipment in respect of the renewable energy generation 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 renewable energy generation project made after the execution of the Project Delivery Agreement must equal or exceed €300 per kW of capacity; and

(c) if the renewable energy generation project is built at an Offshore Site that was previously used for renewable generation, that the expected annual energy output at the Offshore Site from the renewable energy generation project will be at least 50% greater than the previous average annual output from renewable generation at that Offshore Site.

"**Notice of Dissatisfaction**" means a notice of dissatisfaction issued by an Applicant or Qualified Applicant in accordance with Sections 7.2.3(d) and 8.3(d) of these Terms and Conditions.

"**Notice of Withdrawal**" means an irrevocable notice issued by an Applicant in accordance with Section 7.2.1(c) of these Terms and Conditions.

"**Offer**" means an offer made by a Qualified Applicant in respect of its Proposed ORESS Tonn Nua Project in the ORESS Tonn Nua Auction.

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

"**Offer Submission Form**" is defined in Section 6.3.1 of these Terms and Conditions.

"**Offshore Site**" means the relevant marine area, as identified as an area within the Project Development Area and as further detailed in Annex D, within which the electricity generating plant for the ORESS Tonn Nua 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 shallower waters utilising traditional fixed-bottom wind turbine technologies, as well as deeper-water areas utilising floating wind turbines.

"**Onerous Planning Condition**" means, in respect of the ORESS Tonn Nua Project, any of the following conditions contained in the Planning Consent for that ORESS Tonn Nua Project:

(a) A condition that will require the ORESS Tonn Nua Project to cease operations before the date falling thirty (30) years from the Longstop Date;

(b) A condition that will directly prevent the ORESS Tonn Nua Project from achieving an Installed Renewable Capacity that is at least equal to the Minimum Installed Renewable Capacity; or

(c) A condition that will directly prevent the ORESS Tonn Nua Project from achieving an annual output that is at least 85% of the Target Annual Energy Quantity,

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

(i) any amendment or revision to a Planning Consent after the grant of such Planning Consent;

(ii) any contribution payments (howsoever described) required under the Planning Consent;

(iii) any condition contained in the Planning Consent which could reasonably be considered an expected and probable consequence of the Generator's Planning Consent application; or

(iv) any condition which is attributable to the Generator having failed to comply with Section 11.1.5 of these Terms and Conditions.

"**Onerous Planning Condition Event**" means, in respect of the ORESS Tonn Nua Project, a circumstance where an Onerous Planning Condition is contained in the Planning Consent for the ORESS Tonn Nua Project as at the date on which the Planning Consent for the ORESS Tonn Nua Project has been granted.

"**Onerous Planning Condition Event Notification**" is defined in Section 12.4.1 of these Terms and Conditions.

"**Onerous Planning Condition Event Withdrawal**" means a withdrawal from ORESS Tonn Nua in accordance with Section 12.4 of these Terms and Conditions.

"**Onerous Planning Condition Event Withdrawal Request**" is defined in Section 12.4.4 of these Terms and Conditions.

"**Operational Processes**" means a set of processes prepared by the TSO detailing all parties' obligations in respect of the operation of the ORESS Tonn Nua Auction and to be published by the TSO in the Qualification Information Pack and Auction Information Pack.

"**ORESS Tonn Nua**" means the first phase of the second offshore RESS competition and includes the ORESS Tonn Nua Auction and the ORESS Tonn Nua Support.

"**ORESS Tonn Nua Annual CBF Contribution Payment**" is defined in Section 13.2.1 of these Terms and Conditions.

"**ORESS Tonn Nua Auction**" means the auction, to be conducted under Section 8 of these Terms and Conditions, for the award of ORESS Tonn Nua Support.

"**ORESS Tonn Nua Auction Submission Deadline Date**" means the closing date for receipt of Offers.

"**ORESS Tonn Nua Auction Timetable**" means the schedule of events leading up to and following the ORESS Tonn Nua Auction, as may be amended or updated by the Minister and/or the TSO from time to time.

"**ORESS Tonn Nua CBF Rulebook**" is defined in Section 13.1.1 of these Terms and Conditions.

"**ORESS Tonn Nua Commitment**" is defined in Section 12.1.1 of these Terms and Conditions.

"**ORESS Tonn Nua Payment**" means (as applicable) Support Payments and Difference Payments (as each may be adjusted to account for capacity market revenues, in accordance with Section 5.2.8) and Unrealised Available Energy Compensation.

"**ORESS Tonn Nua PPA**" means a power purchase agreement complying with these Terms and Conditions between the Generator and a Supplier obliging the latter to purchase the electrical output from the ORESS Tonn Nua Project, and "**PPA**" shall be construed accordingly.

"**ORESS Tonn Nua Project**" means the renewable energy project, to be developed by the Generator, as detailed in its Application for Qualification.

"**ORESS Tonn Nua 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 5.2.8);

(b) an entitlement to receive Unrealised Available Energy Compensation in accordance with, and subject to, Section 5.6; and

(c) an entitlement to receive Grid Delay Compensation in accordance with, and subject to, Clause 11 of the Project Delivery Agreement.

"**ORESS Tonn Nua Support End Date**" means, in respect of the ORESS Tonn Nua Project, the earliest of:

(a) the date which falls twenty (20) years after the Target Commercial Operation Date for the ORESS Tonn Nua Project;

(b) the date which falls twenty (20) years after the ORESS Tonn Nua Support Start Date; and

(c) where the ORESS Tonn Nua Project has had its Letter of Offer withdrawn or revoked in accordance with these Terms and Conditions, the date of such withdrawal or revocation (as applicable).

"**ORESS Tonn Nua Support Period**" means, in respect of the ORESS Tonn Nua Project, the period beginning on the ORESS Tonn Nua Support Start Date and ending on the ORESS Tonn Nua Support End Date.

"**ORESS Tonn Nua Support Start Date**" means, in respect of the ORESS Tonn Nua Project, the earlier of:

(a) the Grid Delay Compensation Start Date; and

(b) the date on which the ORESS Tonn Nua Project has achieved Commercial Operation, subject always to the ORESS Tonn Nua Project having achieved Commercial Operation prior to the Longstop Date.

"**Other Compensation for Unrealised Available Energy**" is defined in Section 5.6.6 of these Terms and Conditions.

"**Partial MAC Grant**" is defined in Section 10.1.2 of these Terms and Conditions.

"**Performance Security**" means the on demand security to be procured by the Successful Applicant in favour of the Minister in the form as set out in Appendix 3 of the Project Delivery Agreement, in an amount equal to the Performance Security Required Amount.

"**Performance Security (First Period)**" means the period beginning on the date on which the Performance Security is posted and ending on the expiry of the Unsuitable Site Conditions Withdrawal Period.

"**Performance Security (Second Period)**" means the period beginning on the expiry of the Performance Security (First Period) and ending on the commencement of the Performance Security (Third Period).

"**Performance Security (Third Period)**" means either:

(a) the period beginning ten (10) Working Days after the date falling eight (8) weeks after the Planning Consent Date and ending on the Performance Security End Date; or

(b) if, on the date falling eight (8) weeks after the Planning Consent Date, the Planning Consent is subject to a Third Party Judicial Review Challenge, the date beginning ten (10) Working Days after the conclusion of such Third Party Judicial Review Challenge and ending on the Performance Security End Date.

"**Performance Security End Date**" means the earlier of:

(a) the date falling seven (7) months after the Commercial Operation Date; or

(b) the date falling seven (7) months after the Longstop Date, as such date may be extended from time to time.

"**Performance Security Required Amount**" means:

(a) €80,000,000 (eighty million euro), during the Performance Security (First Period);

(b) €100,000,000 (one hundred million euro), during the Performance Security (Second Period); and

(c) €120,000,000 (one hundred and twenty million euro), during the Performance Security (Third Period).

"**Permitted Generator Withdrawal**" is defined in Section 12.1.5 of these Terms and Conditions.

"**Physical Availability**" is defined in Section 5.6.5 of these Terms and Conditions.

"**PID Gantt Chart**" is defined in Section 7.6.2 of these Terms and Conditions.

"**Planning Consent**" means a full and final grant of planning permission for the construction of the electricity generating plant of the ORESS Tonn Nua Project at the Offshore Site.

"**Planning Consent Date**" means, in respect of the ORESS Tonn Nua Project, the date on which it has received its Planning Consent.

"**Planning Consent Failure Commitment**" is defined in Section 12.2.3 of these Terms and Conditions.

"**Planning Consent Failure Event**" means a circumstance where, prior to Commercial Operation of the ORESS Tonn Nua Project:

(a) the application for Planning Consent in respect of the ORESS Tonn Nua Project is refused; or

(b) the Planning Consent for the ORESS Tonn Nua Project is quashed as a result of a Third Party Judicial Review Challenge; or

(c) either:

(i) the Generator has issued a Planning Consent Failure Commitment in respect of the circumstances outlined in limb (a) or limb (b) above and the Planning Consent for the ORESS Tonn Nua Project has not been decided upon by the Planning Consent Longstop; or

(ii) in any other circumstance, the Planning Consent for the ORESS Tonn Nua Project has not been decided upon by the Planning Consent

Longstop,

in each case except where Section 11.1.5 of the Terms and Conditions has not been complied with in respect of the ORESS Tonn Nua Project.

"**Planning Consent Failure Notification**" is defined in Section 12.2.1 of these Terms and Conditions.

"**Planning Consent Failure Withdrawal**" means a withdrawal from ORESS Tonn Nua in accordance with Section 12.2 of these Terms and Conditions.

"**Planning Consent Failure Withdrawal Request**" is defined in Section 12.2.3 of these Terms and Conditions.

"**Planning Consent Longstop**" means 31 December 2030, as such date may be extended in accordance with Clause 7 of the Project Delivery Agreement, or such other date as may be from time to time agreed in accordance with Section 12.2.4.

"**Pricing Information**" means information that:

(a) provides an indication of what Offer Price an Applicant may submit in the ORESS Tonn Nua Auction, 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 Applicant receiving an Award; or

(c) provides an indication of any relationship between the Offer Price an Applicant may submit in the ORESS Tonn Nua Auction and the terms under which an entity would provide equity or debt financing or otherwise acquire an interest upon the ORESS Tonn Nua Project receiving an Award.

"**Principal Owners**" is defined in Section 7.3.8 of these Terms and Conditions.

"**Project Delivery 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.

"**Project Delivery Agreement and Performance Security Return Date**" is the date by which the Successful Applicant in receipt of a Notice of Award is required to return both signed copies of the Project Delivery Agreement and the Performance Security as specified in the Notice of Award.

"**Project Delivery Plan Questionnaire**" means the project delivery plan questionnaire in the form set out in the Auction Information Pack.

"**Project Development Area**" means a maritime area designated by the State for offshore wind development to be utilised by the ORESS Tonn Nua Project and contained with the relevant DMAP for ORESS Tonn Nua.

"**Project Information Document**" is defined in Section 7.6.1 of these Terms and Conditions.

"**Proposed ORESS Tonn Nua Project**" means an offshore renewable energy project proposed by an Applicant, as detailed in that Applicant's Project Information Document, which if successful in the ORESS Tonn Nua Auction will become the ORESS Tonn Nua Project.

"**Prospective Principal Owners**" is defined in Section 7.3.8 of these Terms and Conditions.

"**Provisional Auction Results**" means the provisional auction results issued by the Minister in respect of the outcome of the ORESS Tonn Nua Auction.

"**Provisional Auction Results Date**" means the indicative date for issue of the Provisional Auction Results by the Minister.

"**Provisional Qualification Decision**" means the provisional qualification results issued in respect of the outcome of an Application for Qualification, for the purposes of the administration of the ORESS Tonn Nua application process.

"**Provisional Qualification Decision Date**" means the indicative date by which Provisional Qualification Decisions will be issued in accordance with Section 7.2.3 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 Tonn Nua Auction.

"**Qualification Decisions Submission Date**" means the indicative date for submission of Final Qualification Decisions to the Minister for approval in accordance with Section 7.2.5(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 Tonn Nua 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 approved by the Minister.

"**Quashed MAC Application**" is defined in Section 10.1.6 of these Terms and Conditions.

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

"**Related Company**" means:

(a) any company that directly or indirectly owns or controls more than 30% of the

shares of the Applicant; or

(b) any Affiliate of the Applicant.

"**Relevant Year**" is defined in Section 13.2.3 of these Terms and Conditions.

"**Remitted MAC Decision**" is defined in Section 10.1.6 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, as may be amended from time to time.

"**SEAI CBF National Register**" is defined in Section 13.3.3 of these Terms and Conditions.

"**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 Act).

"**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.

"**Shared Pricing Information Group**" is defined in Section 7.3.8 of these Terms and Conditions.

"**South Coast DMAP**" means the South Coast Designated Maritime Area Plan for Offshore Renewable Energy made by the Minister in accordance with the Maritime Area Planning Act 2021.

"**Standard Industry Practice**" means those practices, processes, methods and procedures, during the relevant time period, which accord with practices, processes, methods, or procedures generally accepted in the relevant industry.

"**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 Tonn Nua Auction Submission Deadline Date.

"**Strike Price**" is defined in Section 5.2 of these Terms and Conditions.

"**Strike Price Calculation Date**" means any Indexation Date or Grid Costs Adjustment Date (as applicable).

"**Successful Applicant**" means the Qualified Applicant who has been notified by the Minister that its Offer into the ORESS Tonn Nua Auction was successful.

"**Successful Applicant Judicial Review Challenge**" means any judicial review proceedings initiated by the Successful Applicant following the granting of a leave to proceed, in relation to:

(a) a decision made by An Bord Pleanála or any other planning authority under the Planning and Development Acts 2000 to 2023 in respect of the Planning Consent for the ORESS Tonn Nua Project; or

(b) a decision made by MARA under the Maritime Area Planning Act in respect of a MAC application in connection with the ORESS Tonn Nua Project.

"**Successful MAC Application**" is defined in Section 10.1.2(b) of these Terms and Conditions.

"**Supplier**" means an entity licensed by the Regulatory Authority to supply electricity in Ireland.

"**Support Payment**" is defined in Section 5.2.8 of these Terms and Conditions.

"**Surveying Fee**" means the fee, as detailed in the Qualification Information Pack, to be paid to the Minister by the Generator, in connection with the surveying expenses

incurred by or on behalf of the Minister in respect of the generation, procurement, acquisition or analysis of survey data, by whatever means, for the Project Development Area for ORESS Tonn Nua.

"**Target Annual Energy Quantity**" means 3,547.8 GWh.

"**Target Commercial Operation Date**" means the later of:

(a) 31 December 2032; and

(b) the date which falls sixty (60) months after the Planning Consent Date.

The Target Commercial Operation Date may be extended in accordance with Clause 5.3, Clause 7 or Clause 10 of the Project Delivery Agreement.

If the Target Commercial Operation Date is a date falling after the Longstop Date, the Target Commercial Operation Date shall be a date falling on the Longstop Date.

"**Target Grid Delivery Date**" means the date specified in Annex C of these Terms and Conditions, being the date on which the TSO aims for Grid Delivery to occur and where it is assumed an acceptable request from the Generator to the TSO to obtain the Interim Operational Notification is received in advance in a timely manner consistent with the Generator's obligations pursuant to Section 5.3.6. The TSO may update the Target Grid Delivery Date from time to time in accordance with Prudent Electric Utility Practice and applicable decision paper(s) issued by the CRU (if any).

"**Target Installed Renewable Capacity**" means 900 MW.

"**Terms and Conditions**" means these ORESS Tonn Nua terms and conditions, together with all of its Annexes (including the Project Delivery Agreement and Letter of Offer).

"**Third Party Judicial Review Challenge**" means any judicial review proceedings initiated by a party other than the Generator and any related parties (including, without limitation, its agents, directors, employees or any Connected Person in respect of any such person) following the granting of a leave to proceed, in relation to:

(a) a decision made by An Bord Pleanála or any other planning authority under the Planning and Development Acts 2000 to 2023 in respect of the Planning Consent for the ORESS Tonn Nua Project;

(b) a decision made by MARA under the Maritime Area Planning Act in respect of a MAC application in connection with the ORESS Tonn Nua Project; or

(c) a decision made by any administrative or public body in respect of any consent, licence, permission, authorisation or similar item in respect of the ORESS Tonn Nua Project (other than the Planning Consent and the MAC application).

"**Third Party Successful MAC Application Challenge**" is defined in Section 10.1.4 of these Terms and Conditions.

"**Transmission System Operator**" or "**TSO**" means the licenced 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, 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.

"**Unsuccessful MAC Application**" is defined in Section 10.1.2(a) of these Terms and Conditions.

"**Unsuccessful MAC Application Challenge**" is defined in Section 10.1.4 of these Terms and Conditions.

"**Unsuitable Site Conditions**" means, in respect of the ORESS Tonn Nua Project, conditions identified in the site surveys completed by, or on behalf of, the Generator in respect of the Offshore Site:

(a) which would prevent the ORESS Tonn Nua Project (with key characteristics as detailed in the Project Information Document) from (i) achieving Commercial

Operation by the Longstop Date or (ii) being developed, constructed and/or operated at the Offshore Site; and

(b) which are demonstrably and materially different and detrimental to those conditions which would be consistent with Standard Industry Practice for proceeding with the development, construction and/or operation of the ORESS Tonn Nua Project (with key characteristics as detailed in the Project Information Document) at the Offshore Site.

"**Unsuitable Site Conditions Commitment**" is defined in Section 12.3.3 of these Terms and Conditions.

"**Unsuitable Site Conditions Notification**" is defined in Section 12.3.1 of these Terms and Conditions.

"**Unsuitable Site Conditions Withdrawal**" means a withdrawal from ORESS Tonn Nua in accordance with Section 12.3 of these Terms and Conditions.

"**Unsuitable Site Conditions Withdrawal Notification**" is defined in Section 12.3.3 of these Terms and Conditions.

"**Unsuitable Site Conditions Withdrawal Period**" means the period beginning on the date of the Project Delivery Agreement and ending on the earlier of (a) the date falling three (3) years after the date of the Project Delivery Agreement and (b) the date on which the Planning Consent application is submitted by the Generator in accordance with section 11.1.5 of these Terms and Conditions.

"**Updated PID Gantt Chart**" is defined in Section 11.5.4 of these Terms and Conditions.

"**Updated Project Information Document**" is defined in Section 11.5.1 of these Terms and Conditions.

"**Upheld MAC Decision**" is defined in Section 10.1.6 of these Terms and Conditions.

"**WIP Survey Contract**" means a contract entered into between the Minister and a service provider, in connection with the generation, procurement, acquisition or analysis of survey data.

"**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 twelve (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, the Regulatory Authority or MARA 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 Tonn Nua

3.1 This Section provides information on the applicable legal basis for ORESS Tonn Nua, including the conducting of the ORESS Tonn Nua Auction and the provision of ORESS Tonn Nua Support in accordance with these Terms and Conditions.

3.2 ORESS Tonn Nua is established by the Minister and ORESS Tonn Nua Support will be funded through the PSO Levy charged to all final electricity customers, or otherwise as applicable. 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 Tonn Nua 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 7.2.3(d) and 8.3(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 Tonn Nua 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 Tonn Nua 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 Tonn Nua Support

5.1 Overview

5.1.1 Eligible prospective renewable electricity generators may compete in the ORESS Tonn Nua Auction (as further detailed in this Section 5 of these Terms and Conditions) for ORESS Tonn Nua Support, subject to and in accordance with these Terms and Conditions.

5.1.2 The Successful Applicant in the ORESS Tonn Nua Auction will be provided with a Project Delivery Agreement that will, subject to the terms and conditions of the Project Delivery Agreement, require the Minister to provide the Successful Applicant with a Letter of Offer within two (2) weeks of the later to occur of: (i) the receipt by the Minister of two original counterparts of the Project Delivery 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 Project Delivery Agreement and these Terms and Conditions, entitle the Supplier that enters into a PPA with the Successful Applicant to receive ORESS Tonn Nua Support for a period beginning no earlier than the ORESS Tonn Nua Support Start Date and ending no later than the ORESS Tonn Nua 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 Tonn Nua Support prior to the PSO Levy Year before the ORESS Tonn Nua 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 Tonn Nua Support Start Date falls.

5.1.4 The ORESS Tonn Nua Payment calculation process will be administered by the Regulatory Authority and the process for settlement of ORESS Tonn Nua 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 Tonn Nua reference number in respect of the ORESS Tonn Nua Project. Once issued and to facilitate the administration of ORESS Tonn Nua, 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 provide recommendations to the Minister where 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 1.11 of these Terms and Conditions.

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

5.2.1 ORESS Tonn Nua Support, with the exception of Unrealised Available Energy Compensation and Grid Delay Compensation, is structured as a FIP.

5.2.2 Strike Price

Each Qualified Applicant will be required to specify an Offer Price in the ORESS Tonn Nua Auction.

If successful in the ORESS Tonn Nua Auction, this Offer Price shall be used to calculate the 'strike price' (the "**Strike Price**") which is used to settle the ORESS Tonn Nua Payments for the ORESS Tonn Nua Project.

The Strike Price shall be calculated, and adjusted accordingly, on each Strike Price Calculation Date in accordance with the following formula:

$$\text{Strike Price}_{SPCD} = (\text{Offer Price} \times I_{SPCD}) + \text{Grid Costs Adjustment Amount}_{SPCD}$$

And where:

"**Strike Price**" is the Strike Price

"**SPCD**" means the applicable Strike Price Calculation Date

"**I**" is the Indexation Factor, as determined in accordance with Section 5.2.3

"**Grid Costs Adjustment Amount**" is the Grid Costs Adjustment Amount, as most recently determined as of the Strike Price Calculation Date in accordance with Section 5.2.4, expressed in €/MWh.

In the case of a calculation made on an Indexation Date, the most recently calculated Grid Costs Adjustment Amount shall continue to apply. In the case

of a calculation made on a Grid Costs Adjustment Date, the most recently calculated Indexation Factor shall continue to apply.

The Strike Price calculated on a Strike Price Calculation Date shall be the Strike Price applicable to Section 5.2.8 for that date and for each subsequent date until the next Strike Price Calculation Date.

5.2.3 Indexation Factor

(a) On a date specified by the Regulatory Authority and with regards to the Indexation Date (Commencement), the Regulatory Authority will calculate the Indexation Factor in accordance with the following formula:

$$I_{CD} = \frac{Steel_{CD}}{Steel_{Bid}} \times 0.10 + Max\left(\frac{HICP_{CD}}{HICP_{Bid}}, 1\right) \times 0.60 + \frac{HICP_{CD}}{HICP_{Bid}} \times 0.30$$

And where:

"**I**" is the Indexation Factor

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

"**Bid**" means the ORESS Tonn Nua 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 the "Harmonised Index of Consumer Prices" for the twenty-seven (27) countries of the European Union published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing.

(b) On a date specified by the Regulatory Authority and with regards to the Indexation Date (Interim), the Regulatory Authority will calculate the Indexation Factor in accordance with the following formula:

$$\mathrm{I_{ID}} = \mathrm{I_{CD}} \text{ x } (0.70 + \frac{\mathrm{HICP_{ID}}}{\mathrm{HICP_{CD}}} \text{ x } 0.30)$$

And where:

"**I**" is the Indexation Factor

"**ID**" means the Indexation Date (Interim)

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

"**HICP**" means the "Harmonised Index of Consumer Prices" for the twenty-seven (27) countries of the European Union published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing

(c) On dates specified by the Regulatory Authority and with regards to each Indexation Date (Annual), the Regulatory Authority will calculate the Indexation Factor in accordance with the following formula:

$$I_N = I_{N-1} \text{ x } (0.70 + \frac{HICP_N}{HICP_{N-1}} \text{ x } 0.30)$$

And where:

"**I**" is the Indexation Factor

"**N**" means the Indexation Date (Annual). Where N is the first Indexation Date (Annual) then N-1 shall equal the Indexation Date (Interim)

"**HICP**" means the "Harmonised Index of Consumer Prices" for the twenty-seven (27) countries of the European Union published by Eurostat, or such other replacement index as the Minister may from time to time designate in writing

5.2.4 Grid Costs Adjustment

Each year, the Supplier in respect of the ORESS Tonn Nua Project will calculate and provide to the Regulatory Authority for review and approval the Grid Costs Adjustment Amount as at a defined date (a "**Grid Costs Adjustment Date**").

The first Grid Costs Adjustment Date will be either (a) the 1 October immediately preceding the ORESS Tonn Nua Support Start Date, or (b) where the ORESS Tonn Nua Support Start Date occurs on 1 October, the ORESS Tonn Nua Support Start Date.

The Grid Costs Adjustment Date will thereafter be each 1 October during the ORESS Tonn Nua Support Period.

The Grid Costs Adjustment Amount will be calculated in accordance with the following formula:

Grid Costs Adjustment Amount$_N$ = Grid Charges$_N$ / Total Annual Physical Availability$_N$

Where:

"**Grid Charges**" means the total charges levied by the TSO in respect of the ORESS Tonn Nua Project's use of the offshore and onshore transmission system in year $_N$ (expressed in €), including for the avoidance of doubt all onshore transmission use of system charges, all offshore transmission use of system charges, and all other connection or other charges (if any) levied by the TSO under the Grid Connection Agreement in year $_N$ (expressed in €).

"**Total Annual Physical Availability**" means the total availability of the ORESS Tonn Nua Project to produce Active Power in year $_N$ (expressed in MWh)

"**N**" means the Grid Costs Adjustment Date

The Grid Costs Adjustment Amount will be subject to ex-ante estimation and reconciliation to account for any difference between the actual values and the estimated values of the Grid Costs Adjustment Amount formula. Arrangements for calculating the Grid Costs Adjustment Amount, including the process of reconciling the estimated values and the actual values of the Grid Costs Adjustment Amount formula after each Grid Costs Adjustment Date, will be published by the Regulatory Authority.

If the Installed Renewable Capacity of the ORESS Tonn Nua Project is less than the Target Installed Renewable Capacity, the Grid Costs Adjustment Amount will be reduced proportionally by reference to the difference between the Installed Renewable Capacity and the Target Installed Renewable Capacity.

5.2.5 Notification of Strike Price Adjustment

As soon as practicable following each Strike Price Calculation Date:

(a) The Regulatory Authority shall notify the Minister of (1) the Indexation Factor, (2) the Grid Costs Adjustment Amount and (3) the Strike Price, in each case as at such Strike Price Calculation Date, and must provide the underlying

calculations in respect of each such value; and

(b) The Minister shall, following receipt of such information from the Regulatory Authority, publish such information.

5.2.6 Market Reference Price

For the ORESS Tonn Nua Project, 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.

Without prejudice to the generality of the foregoing, if at any time the DAM Price is calculated or settled based on a time period other than a one-hour period, the Minister may (in his or her sole discretion) amend these Terms and Conditions to account for any such change.

5.2.7 Annual Forecasts

ORESS Tonn Nua 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.

5.2.8 Overview of the Arrangements for Calculating RESS PSO Monies

The FIP will be calculated by the Supplier in respect of the ORESS Tonn Nua Project according to arrangements to be developed by the Regulatory Authority that will compare costs to market revenues (in each case as further described below). If costs exceed market revenues, payments will flow from the PSO Levy in the direction of the Supplier to the PPA for the ORESS Tonn Nua Project. If market revenues exceed costs, payments will flow from the Supplier to the PPA for the ORESS Tonn Nua Project in the direction of the PSO Levy. In general terms, costs are represented by the Strike Price of the ORESS Tonn Nua 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 Tonn Nua 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 5.2.8 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 Tonn Nua Project applied to the Strike Price and the Loss-Adjusted RESS Metered Quantity of the ORESS Tonn Nua 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 Tonn Nua 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 (a) minus (b) (the "**Difference Payment**").

In calculating the level of ORESS Tonn Nua 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 the ORESS Tonn Nua Project 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 Tonn Nua 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 Tonn Nua Support may additionally include Unrealised Available Energy Compensation pursuant to Section 5.6 (if applicable) and Grid Delay Compensation pursuant to the Project Delivery Agreement (as applicable).

For avoidance of doubt, DS3 revenues (or revenues from any successor ancillary service programme) 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 Tonn Nua Support.

ORESS Tonn Nua 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 or otherwise as applicable. 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.

5.2.9 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 and Grid Delay 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 the Supplier with the ORESS Tonn Nua PPA and a reconciliation to adjust for deviations between forecasts and actual outcomes of generation, availability, loss factors, DAM Prices and any other factors (including the Grid Costs Adjustment) 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 the Supplier will recognise the unique Strike Price and Loss-Adjusted RESS Metered Quantity applicable to the ORESS Tonn Nua Project in the reconciliation and, for the avoidance of doubt, Section 5.2.8 means that the FIP will be calculated on an equivalent hourly basis for each of the annual forecast and the annual reconciliation.

5.2.10 Payments from Suppliers to the PSO

If the forecast net amount due in respect of the ORESS Tonn Nua PPA for a PSO Levy Year is negative after adjusting for any reconciliation, the Supplier that is a party to the ORESS Tonn Nua 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.

If, at the end of the ORESS Tonn Nua Support Period for the ORESS Tonn Nua 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 Tonn Nua Project without regard to ownership of the ORESS Tonn Nua Project after the final year of ORESS Tonn Nua Support.

5.3 PSO

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

5.3.2 The Regulatory Authority will then calculate the amount of the ORESS Tonn Nua Support for the upcoming PSO Levy Year on the basis of the information provided to it by the Supplier and other relevant information it considers necessary. The ORESS

Tonn Nua Project will only be eligible to receive ORESS Tonn Nua Payments in the relevant PSO Levy Year if (a) all obligations under the Project Delivery Agreement and these Terms and Conditions have been met, (b) the ORESS Tonn Nua Project has been notified to the Regulatory Authority by the Supplier and included in the relevant PSO calculation by the Regulatory Authority and (c) the ORESS Tonn Nua Project has been included in the PSO S.I. (in accordance with Section 5.3.3).

If at any time:

(a) the ORESS Tonn Nua Project has achieved Commercial Operation and is exporting electricity;

(b) the ORESS Tonn Nua Project is not, for any reason, included in the PSO Order; and

(c) the date is prior to the earlier of (i) the date which falls twenty (20) years after the Target Commercial Operation Date and (ii) the date which falls twenty (20) years after the ORESS Tonn Nua Support Start Date,

then,

(i) the Generator will be liable to the Minister for all Difference Payments (if any) (as may be adjusted to account for capacity market revenues, in accordance with Section 5.2.8 of these Terms and Conditions) in respect of the ORESS Tonn Nua Project which would have been payable if the ORESS Tonn Nua Project had been included in the PSO Order during the applicable time period; and

(ii) the Generator will not be eligible for Unrealised Available Energy Compensation during the applicable time period.

Further, to the extent that prior to the Commercial Operation Date, the market revenues of the ORESS Tonn Nua Project are greater than the Strike Price multiplied by the loss-adjusted metered output of the ORESS Tonn Nua Project, the Generator will be liable to pay to the Minister (or to the PSO Levy as directed by the Minister) an amount equal to (a) the market revenues (including capacity market revenues) of the ORESS Tonn Nua Project prior to the Commercial Operation Date minus (b) the Strike Price multiplied by the loss-adjusted metered output of the ORESS Tonn Nua Project prior to the Commercial Operation Date.

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 the ORESS Tonn Nua Project eligible for PSO payments in the upcoming PSO Levy Year. Payments cannot be made unless the ORESS Tonn Nua 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. The ORESS Tonn Nua Project 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 Tonn Nua PPA (i.e. the Generator and Supplier) to ensure that the Regulatory Authority is provided with timely information each year by the Supplier in accordance with the timelines specified by the Regulatory Authority from time to time.

5.3.4 The Generator shall take, and shall ensure that the Supplier in respect of the ORESS Tonn Nua Project takes, all necessary steps to ensure that:

(a) the ORESS Tonn Nua 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 Tonn Nua Project is entitled to (as applicable) make or receive ORESS Tonn Nua Payments is provided to the Regulatory Authority as soon as practicable,

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

5.3.5 If the 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 Tonn Nua Payments subsequently paid in respect of the ORESS Tonn Nua Project in the next following PSO Levy Year will be subject to an adjustment equal to (i) the market revenues of the ORESS Tonn Nua Project in respect of the period of non-compliance minus (ii) the Strike Price for the ORESS Tonn Nua Project multiplied by the metered output of the ORESS

Tonn Nua 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 ORESS Tonn Nua Project or (ii) increase Difference Payments subsequently paid in respect of the ORESS Tonn Nua Project; or

(b) the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua 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).

5.3.6 The Generator shall, as soon as practicable, apply to obtain an Interim Operational Notification.

5.4 ORESS Tonn Nua PPA

5.4.1 The Minister will not be a party to the ORESS Tonn Nua PPA, which is a commercially negotiated arrangement between the Supplier and the Generator in respect of the ORESS Tonn Nua Project.

5.4.2 Any termination or expiry of the ORESS Tonn Nua PPA, or any event which causes the ORESS Tonn Nua 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 Tonn Nua Payments with effect from the date of termination or expiry of the ORESS Tonn Nua PPA, or on the date the ORESS Tonn Nua PPA ceases to be in full force and effect, but shall have the right to receive ORESS Tonn Nua 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 and until the ORESS Tonn Nua PPA has been transferred to another Supplier in accordance with Section 5.4.3, the existing Supplier and the Generator shall be jointly and severally liable to pay Difference Payments resulting from operation after termination or expiry of the ORESS Tonn Nua PPA and any reconciliation payments. Parties to the ORESS Tonn Nua PPA shall notify the Minister and the Regulatory Authority immediately in writing if the ORESS Tonn Nua Project intends to cease to operate or ceases to operate in any PSO Levy Year or for the remaining term of the ORESS Tonn Nua 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 Tonn Nua PPA with a new Supplier if the original Supplier is unable to perform its obligations under the original ORESS Tonn Nua 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 Tonn Nua 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 Tonn Nua 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 Tonn Nua 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 Tonn Nua PPA.

5.4.4 Where the ORESS Tonn Nua Project has been included in the PSO Order and a Supplier is a PPA counterparty for the ORESS Tonn Nua Project, the Minister and the Regulatory Authority may in their discretion include the ORESS Tonn Nua Project in the PSO S.I. and PSO Order for subsequent PSO Levy Years without having regard as to whether the ORESS Tonn Nua Project has applied to be in the PSO for that year and without regard as to whether the ORESS Tonn Nua Project has a PPA in place with a Supplier.

5.4.5 After the Commercial Operation Date, no changes in Supplier are permitted, save as specifically permitted in accordance with these Terms and Conditions.

5.4.6 If, at any time after the Commercial Operation Date, an ORESS Tonn Nua PPA is not in full force and effect, the Generator will be liable to the Minister for all ORESS Tonn Nua Payments in respect of the ORESS Tonn Nua Project which would have been paid, if such ORESS Tonn Nua PPA had been in place during the applicable time period.

5.5 Metering

5.5.1 The ORESS Tonn Nua Project must be metered separately. It is a requirement of ORESS Tonn Nua that official TSO meters are installed and polled by the TSO. The metering of the ORESS Tonn Nua Project must relate to the size and Installed

Renewable Capacity of the ORESS Tonn Nua Project.

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

5.6 Unrealised Available Energy Compensation

5.6.1 If the ORESS Tonn Nua Project has achieved Commercial Operation and has Unrealised Available Energy in any given hour, it will be eligible for Unrealised Available Energy Compensation for that hour in accordance with the terms of this Section 5.6. For the avoidance of doubt, Unrealised Available Energy Compensation will only accrue if the ORESS Tonn Nua Project has been included in the PSO Order during the applicable time period.

5.6.2 Unrealised Available Energy Compensation will be a €/MWh amount in respect of an hour, calculated as follows:

> Unrealised Available Energy Compensation = (Unrealised Available Energy x Strike Price) – Other Compensation for Unrealised Available Energy

5.6.3 The "**Unrealised Available Energy**" of the ORESS Tonn Nua Project in an hour (expressed in MWh) is defined as the Loss-Adjusted Eligible Available Quantity minus the Loss-Adjusted RESS Metered Quantity of the ORESS Tonn Nua Project in that hour, provided always that if either:

(a) the ORESS Tonn Nua 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 the ORESS Tonn Nua Project in an hour (expressed in MWh) is defined as the Physical Availability of the ORESS Tonn Nua Project in that hour, provided always that the Eligible Available Quantity shall:

(a) not include availability in that hour in respect of which generation of the

ORESS Tonn Nua Project has been limited due to forced or planned transmission connection asset outages; and

(b) only apply if the ORESS Tonn Nua 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. For the avoidance of doubt, for the purpose of this Section 5.6.4(b) the variable cost of generation in this context shall be limited to operations and maintenance costs that vary as a result of energy production and shall not include (1) any opportunity costs (including those that may be related to potential lost revenue opportunities) or (2) any lost opportunities to earn Unrealised Available Energy Compensation or other support or revenues.

5.6.5 The "**Physical Availability**" of the ORESS Tonn Nua Project in an hour (expressed in MWh) is its actual availability to produce Active Power, measured to a defined 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 the ORESS Tonn Nua Project 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. The Physical Availability of the ORESS Tonn Nua Project cannot exceed (1) its MEC, or (2) the Installed Renewable Capacity in any given hour, whichever is lower. Physical Availability in an hour shall not include amounts that were unavailable due to a forced outage or planned outage of the ORESS Tonn Nua Project. Physical Availability in an hour shall not include any portion of the Installed Renewable Capacity of the ORESS Tonn Nua Project which has yet to be connected to the transmission system for the purposes of exporting electricity.

5.6.6 "**Other Compensation for Unrealised Available Energy**" is any other compensation (expressed in €) that the ORESS Tonn Nua Project receives for Unrealised Available Energy, including compensation outside of the provisions of these Terms and Conditions, such as 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 Tonn Nua 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 the ORESS Tonn Nua Project shall be measured for the purposes of Section 5.6.5. This may include requirements on the ORESS Tonn Nua Project 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).

5.6.10 Without prejudice to the generality of the foregoing, and consistent with Section 5.2.6, if at any time the DAM Price is calculated or settled based on a time period other than a one-hour period, the Minister may (in his or her sole discretion) amend these Terms and Conditions to account for any such change.

6 Auction Administration Processes

6.1 Auction Timetable

6.1.1 The TSO shall publish the ORESS Tonn Nua Auction Timetable which shall include indicative dates for the following:

(a) the date by which the Qualification 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 Tonn Nua Auction Submission Deadline Date;

(m) the date for conclusion of the ORESS Tonn Nua Auction (the "**Auction Completion Date**");

(n) the Provisional Auction Results Date; and

(o) the Final Auction Results Date.

6.2 Application Process

6.2.1 Qualification Information Pack

(a) 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 Tonn Nua Auction.

(b) All declarations provided in connection with the ORESS Tonn Nua 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.

6.3 Auction Process

6.3.1 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.

7 ORESS Tonn Nua Auction – Qualification Process

7.1 Overview

7.1.1 The ORESS Tonn Nua Auction will be open to the Eligible Technology.

7.1.2 The ORESS Tonn Nua Auction will be administered by the TSO in accordance with the terms set out in Section 6 of these Terms and Conditions.

7.1.3 The ORESS Tonn Nua 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 7.2 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 Minister;

(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 Tonn Nua Auction will be conducted and the Award will then be notified to the Successful Applicant.

7.1.4 No Applicant shall be permitted to submit more than one Application for Qualification. If any Applicant submits more than one Application for Qualification, only the first Application for Qualification to be submitted will be accepted or if multiple Applications for Qualification have been submitted simultaneously then the Minister shall be entitled (in his or her sole discretion) to select the Application for Qualification which will be accepted.

7.2 Qualification Process

7.2.1 Submission of Applications for Qualification

(a) Where an Applicant is seeking to participate in the ORESS Tonn Nua Auction, 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 Tonn Nua Auction 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 Tonn Nua Auction, 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.

7.2.2 Administrative Considerations

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

7.2.3 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 (2) 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 (10) Working Days of the

receipt of the Application for Review.

(d) Following receipt of the TSO's decision at sub-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 (2) Working Days of receipt of the TSO's decision.

7.2.4 Standstill Period

(a) During the Standstill Period, Applicants shall not reveal Pricing Information to third parties that were not disclosed in the Declaration of Bidding Independence as part of their Shared Pricing Information Group, 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, any new Principal Owner can be only (1) a Prospective Principal Owner or (2) such other new Principal Owner as may be disclosed by the Applicant by way of submission to the Regulatory Authority, the Minister and the TSO at least twenty-one (21) days before the end of the Standstill Period.

7.2.5 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 draft 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 Minister shall issue the approved Final Qualification Decisions to Applicants by the Final Qualification Decisions Date.

(e) The TSO shall issue to the Regulatory Authority the approved Final Qualification Decisions.

7.3 Eligibility Requirements

7.3.1 The TSO shall reject an Application for Qualification for the ORESS Tonn Nua Auction where the Proposed ORESS Tonn Nua Project does not meet and/or the Applicant does not comply with the requirements of this Section 7.3.

7.3.2 All Applicants must provide evidence to the TSO with the Application for Qualification that the eligibility requirements set out in this Section 7.3 have been met.

7.3.3 All declarations provided by a director in connection with the ORESS Tonn Nua 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.

If 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 Tonn Nua Auction has not been held, the relevant Applicant or Qualified Applicant on whose behalf the director signs the false declaration will be disqualified from participating in the ORESS Tonn Nua Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS Tonn Nua Auction has been held, the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua 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 Tonn Nua Auction has been held, the Applicant or Qualified Applicant on whose behalf the director signs the false declaration, together with the Affiliates of (as applicable) such Applicant or Qualified Applicant, will be prohibited from participating in any RESS competitions for a period of up to five years.

7.3.4 Eligible Technology

The ORESS Tonn Nua 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, as required by the South Coast DMAP, use fixed bottom Offshore Wind to produce electricity (the "**Eligible Technology**").

Compliance with this Section 7.3.4 must be evidenced by information submitted by the Applicant describing the Proposed ORESS Tonn Nua Project, including the equipment to be used.

7.3.5 Financeability

The Proposed ORESS Tonn Nua 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 Proposed ORESS Tonn Nua Project, or that the Applicant has sufficient equity funding in place to construct and operate the Proposed ORESS Tonn Nua Project, if 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 Applicant has sufficient equity funding in place or expressions of interests or indications from investors or funders to provide funding if the Proposed ORESS Tonn Nua Project receives an Award.

If the Proposed ORESS Tonn Nua Project plans to use debt financing, the declaration must clearly state that the Applicant: (i) 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 (ii) has received indications or expressions of interest from lenders that the Proposed ORESS Tonn Nua Project should receive the debt financing required to construct and operate the Proposed ORESS Tonn Nua Project.

Applicants are reminded that a failure to secure sufficient debt financing does not excuse the Applicant from performance of its obligations as a Generator 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 Proposed ORESS Tonn Nua Project as detailed in the Application for Qualification without any contingency based on securing financing.

7.3.6 New Project Requirements

The Proposed ORESS Tonn Nua 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 Proposed ORESS Tonn Nua Project meets the New Project criteria.

The Applicant 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 Tonn Nua.

7.3.7 Prior PSO Funding

The Applicant must not have previously received payments in respect of the Proposed ORESS Tonn Nua Project under any support scheme funded via the PSO Levy.

Compliance with this requirement must be evidenced by a director declaration ("**Declaration of Prior PSO Funding**"), the form of which will be provided in the Qualification Information Pack.

The Applicant may be subject to audit by the Minister and / or the TSO (or their respective nominees or agents) and required to demonstrate that this requirement has been met in order to participate in ORESS Tonn Nua.

7.3.8 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 Tonn Nua 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 persons or entities that may become a Principal Owner of the Applicant prior to the ORESS Tonn Nua Auction Submission Deadline Date ("**Prospective Principal Owners**");

(d) 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 (ii) that the Applicant or its Principal Owners believe have submitted or may submit an Application for Qualification and in respect of which the Applicant or its Principal Owners are aware of Pricing Information, and the Proposed ORESS Tonn Nua Project to which the Pricing Information relates ("**Shared Pricing Information Group**").

An Applicant is obliged to provide a director declaration as to the accuracy of all information provided in accordance with this Section 7.3.8.

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.

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.

7.3.9 MAC Application

Each Applicant must complete an application for a Maritime Area Consent in respect of its Proposed ORESS Tonn Nua Project and hold this application ready for submission to MARA in accordance with Section 10.1.1(a) if such Applicant is declared the provisional winner of the ORESS Tonn Nua Auction. Such application must (1) have regard to the Maritime Area Consent assessment guidelines as set out in the Maritime Area Consent Guidance as published by the Maritime Area Regulatory Authority and (2) request a MAC in respect only of the Project Development Area specified in the Designated Maritime Area Plan (and not a greater or lesser area).

Compliance with this requirement must be evidenced by a director declaration ("**Declaration of MAC Application Eligibility**"), the form of which will be provided in the Qualification Information Pack, that (1) the director has examined the Maritime Area Consent Guidance, (2) having regard to the Maritime Area Consent Guidance, the Applicant has prepared an application to MARA in order to apply for a Maritime Area Consent in respect of the Proposed ORESS Tonn Nua Project, and (3) that the director reasonably believes that the Applicant satisfies the Maritime Area Consent Guidance criteria for award of a MAC in respect of the Proposed ORESS Tonn Nua Project.

7.3.10 Applicant's Project Experience

Each Applicant must provide a director declaration ("**Declaration of Applicant Project Experience**"), the form of which will be provided in the Qualification Information Pack, that (1) the director has examined the requirements set out below in (a) and (b) below, and (2) having regard to such requirements, the director reasonably believes that the Applicant or one or more of its Related Companies (as applicable) satisfies such requirements:

(a) Project Experience

The Applicant, or one or more of its Related Companies, has the relevant experience in relation to projects of a similar scale and nature to the Proposed ORESS Tonn Nua Project, for all three stages (development, construction, operation and maintenance) as outlined below:

(i) Development (design & consenting) Stage

At least twelve (12) months continuous experience at the development (design & consenting) stage for a project of a similar scale and nature to the Proposed ORESS Tonn Nua Project. Experience must relate to an offshore wind farm of greater than or equal to 200MW capacity where the development stage is deemed to end at point of grant of development permission / planning permission.

The experience must be within the ten (10) years immediately preceding the date of submission and this period of experience includes the date upon which development permission / planning permission was granted to the project.

(ii) Construction Stage

At least twelve (12) months continuous experience at the construction stage for a project of a similar scale and nature to the Proposed ORESS Tonn Nua Project. Experience must relate to an offshore wind farm of greater than or equal to 200MW. The construction stage is deemed to end at point of first generation of all or part of the offshore windfarm.

The experience must be within the ten (10) years immediately preceding the date of submission. This period of experience includes the date upon which first generation of all or part of the windfarm was attained.

(iii) Operation & Maintenance Stage

At least twelve (12) months continuous experience at the operation and maintenance stage for a project of a similar scale and nature to the Proposed ORESS Tonn Nua Project. Operation and maintenance experience must relate to an offshore windfarm of greater than or equal to 200MW where the operational stage is deemed to begin at point of first generation of all or part of the offshore windfarm and to end at date of commencement of decommissioning of the offshore windfarm.

The experience must be within the ten (10) years immediately preceding the date of submission of the Application for Qualification.

(b) <u>Project Delivery Team Experience</u>

The Applicant, or one or more of its Related Companies, must have the necessary breadth and depth of resources to ensure the successful delivery of the ORESS Tonn Nua Project. This experience must include:

(i) A senior member of the ORESS Tonn Nua Project team has at least ten (10) years of experience with marine projects of a similar scale and nature with experience gained at the development and construction stages of the reference project. Such experience must pertain to the development and construction stages of an offshore wind farm up to the point at which first generation of all or part of the offshore wind farm is achieved;

(ii) A senior member of the ORESS Tonn Nua Project has at least ten (10) years of experience with other projects of a similar scale and nature (including terrestrial projects) with experience gained at the development and construction stages of the reference project. A senior member of the ORESS Tonn Nua Project team has at least ten (10) years of renewable energy development experience where development experience means the development and construction stages of a renewable energy development up to the point at which first generation of all or part of the renewable energy project is achieved; and

(iii) A senior member of the ORESS Tonn Nua Project team has at least ten (10) years of experience of the Irish planning permission system delivering projects of a similar scale and nature (including terrestrial projects).

Where the Applicant intends to rely on the experience of one or more of its Related Companies to satisfy the requirements in this Section 7.3.10, the Declaration of Applicant Project Experience must be accompanied by a written undertaking from the Related Company (or Related Companies) to make readily and freely available to the Applicant such experience without any impediments or restrictions.

7.3.11 Other Information

In addition to the information and requirements described above in Sections 7.3.1 to 7.3.10 (inclusive) of the Terms and Conditions, in order to be eligible for ORESS Tonn Nua, 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 Proposed ORESS Tonn Nua Project;

(b) a list of all entities with an ownership or equity interest in the Applicant 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 Tonn Nua, the Minister is authorised to use information related to the Applicant and the Proposed ORESS Tonn Nua Project, provided in the Application for Qualification, to communicate with the Applicant, the Regulatory Authority, the TSO, MARA and SEMO in order to ensure the proper functioning of ORESS Tonn Nua 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 Proposed ORESS Tonn Nua Project;

(i) a description of the overall plant size i.e. aggregate installed (nameplate) rating for the Proposed ORESS Tonn Nua Project; and

(j) confirmation that a Guarantee of Origin will not be sought in respect of the output of the ORESS Tonn Nua Project.

7.4 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.

7.5 Bid Bond

7.5.1 Obligation to Provide

(a) Each Applicant must provide a Bid Bond, in an amount at least equal to the Bid Bond Required Amount, as a single payment to the TSO RESS Account by the Bid Bond Posting Date.

(b) 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.

7.5.2 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 this Section 7.5.2.

(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.

7.5.3 Bid Bond Conditions

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 Project Delivery 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.

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.

7.5.4 Return of Bid Bond

(a) 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 (10) Working Days of the Final Withdrawal Date.

(b) If an Applicant does not qualify for ORESS Tonn Nua, the TSO shall return the Bid Bond to the Applicant within ten (10) Working Days of the issue of Final Qualification Decisions to Applicants.

(c) If a Qualified Applicant is unsuccessful in the ORESS Tonn Nua Auction (and has otherwise complied with these Terms and Conditions), the TSO shall return the Bid Bond to the Qualified Applicant as soon as practicable after the Final Auction Results have been published.

(d) If the Successful Applicant executes the Project Delivery Agreement and posts the Performance Security associated with that Project Delivery Agreement in accordance with the timeframes set out in these Terms and Conditions, the TSO shall return the Bid Bond to the Successful Applicant as soon as practicable.

7.6 Project Information Document

7.6.1 Each Applicant must complete and submit a project information document in respect of

their Proposed ORESS Tonn Nua Project (the "**Project Information Document**"), the form of which will be provided in the Qualification Information Pack.

The Project Information Document will detail the key characteristics of the Proposed ORESS Tonn Nua Project, including technical and spatial characteristics, the proposed final Installed Renewable Capacity (which must be at least equal in MW to the Target Installed Renewable Capacity) and the anticipated annual output (in MWh) based on P50 estimates (which must be at least equal to the Target Annual Energy Quantity). The Project Information Document must also include anticipated conditions at the Offshore Site, including all anticipated conditions related to seabed conditions, siting constraints and wind speeds. These anticipated conditions must be supported by (1) third party analysis from reputable sources, (2) any surveying data collected in respect of the Proposed ORESS Tonn Nua Project and which is available to the Applicant and/or (3) by raw data collected by the Applicant, as applicable.

The Project Information Document must also provide information on the technical parameters of the Proposed ORESS Tonn Nua Project, including but not limited to the foundation types, inter-array cable lengths and export cable lengths to the offshore substation and cable size in respect of the Proposed ORESS Tonn Nua Project.

7.6.2 The Project Information Document will include a detailed Gantt chart illustrating how the Proposed ORESS Tonn Nua Project will be delivered in accordance with these Terms and Conditions (the "**PID Gantt Chart**"). The PID Gantt Chart must:

(a) demonstrate in detail all key delivery activities and dependencies of the Proposed ORESS Tonn Nua Project, as well as identifying the delivery critical path of the Proposed ORESS Tonn Nua Project;

(b) demonstrate consistency with the Target Grid Delivery Date, the Planning Consent Longstop and the Target Commercial Operation Date, as well as all Milestone Completion Dates; and

(c) demonstrate that the Proposed ORESS Tonn Nua Project will achieve the Target Commercial Operation Date on the earliest date possible in consistency with all key delivery activities and dependencies.

7.6.3 The key characteristics of the Proposed ORESS Tonn Nua Project detailed in the Project Information Document (including in the PID Gantt Chart) must be (i) true and accurate, (ii) technically suitable for the Offshore Site based on the conditions at the

Offshore Site at the date of submission of the Project Information Document, (iii) realistic, (iv) provided in good faith, (v) based on all available financial and technical data available at the date of the submission of the Project Information Document, and (vi) consistent with Standard Industry Practice.

7.6.4 The Project Information Document must be consistent with the Grid Connection Information and any other consents, licences, permissions, authorisations or similar items in respect of the Proposed ORESS Tonn Nua Project which exist as at the date on which the Project Information Document is submitted.

7.6.5 The Project Information Document must be provided by each Applicant in good faith.

7.6.6 The Project Information Document must be submitted to the Minister (for the attention of ORESS Team, Offshore Energy Long Term Strategic Planning Division at the address specified at Clause 16 of the Project Delivery Agreement) at the same time at which the Financial Questionnaire in respect of the Proposed ORESS Tonn Nua Project is submitted.

7.6.7 If an Applicant breaches this Section 7.6 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 Tonn Nua Auction has not been held, the relevant Applicant or Qualified Applicant on whose behalf the Project Information Document was submitted will be disqualified from participating in the ORESS Tonn Nua Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS Tonn Nua Auction has been held, the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua 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 Tonn Nua Auction has been held, the Applicant or Qualified Applicant on whose behalf the Project Information Document is submitted, together with the Affiliates of (as applicable) such Applicant or Qualified Applicant, will be prohibited from participating in any RESS competitions for a period of up to five years.

7.6.8 Each Project Information Document will be treated by the Minister and its agents as confidential and commercially sensitive.

7.7 Declaration of Project Information

7.7.1 The Project Information Document must be accompanied by a director declaration in respect of each Applicant's Proposed ORESS Tonn Nua Project ("**Declaration of Project Information**"), the form of which will be provided in the Qualification Information Pack, confirming that:

(a) the Project Information Document is true and accurate as at the time of submission;

(b) the Project Information Document will remain true and accurate as at the date of the Offer; and

(c) the Project Information Document is based on, and consistent with, the Target Installed Renewable Capacity.

7.7.2 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.

7.7.3 If 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 Tonn Nua Auction has not been held, the relevant Applicant or Qualified Applicant on whose behalf the director signed the false declaration will be disqualified from participating in the ORESS Tonn Nua Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS Tonn Nua Auction has been held, the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua 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 Tonn Nua Auction has been held,

the Applicant or Qualified Applicant on whose behalf the director signs the false declaration, together with the Affiliates of (as applicable) such Applicant or Qualified Applicant, will be prohibited from participating in any RESS competitions for a period of up to five years.

7.8 Competition

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. At which point any Applicant included in the Qualification Results will be deemed a Qualified Applicant. 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.

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 Tonn Nua Auction Submission Deadline Date.

8 ORESS Tonn Nua Auction – Post-Qualification and Auction Process

8.1 Offer Process

8.1.1 Qualified Applicants will be invited to submit an Offer Price (denominated in €/MWh) in respect of their Proposed ORESS Tonn Nua Project. The Offer Price must be submitted before the ORESS Tonn Nua Auction Submission Deadline Date using the Offer Submission Form.

In its Offer, the Qualified Applicant must confirm (subject to Section 7.4) 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 exceptions being (a) 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 and (b) any changes of Principal Owners during the Standstill Period in accordance with Section 7.2.4(b).

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, Offshore Energy Long Term Strategic Planning Division at the address specified at Clause 16 of the Project Delivery 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.

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

(a) if the ORESS Tonn Nua Auction has not been held, the Qualified Applicant on whose behalf the Financial Questionnaire is submitted will be disqualified from participating in the ORESS Tonn Nua Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS Tonn Nua Auction has been held, the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua 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 Tonn Nua Auction has been held, the Applicant or Qualified Applicant on whose behalf the Financial Questionnaire is submitted, together with the Affiliates of (as applicable) such Applicant or Qualified Applicant, will be prohibited from participating in any RESS competitions for a period of up to five years.

8.1.2 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 Tonn Nua Auction Submission Deadline Date will not be considered in the ORESS Tonn Nua 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.

8.2 Auction Competitiveness

If the Regulatory Authority's competition assessment conducted pursuant to Section 7.8 of these Terms and Conditions concludes that there is insufficient competition with which to conduct an auction, then the Minister reserves the right to not proceed with the ORESS Tonn Nua Auction.

8.3 Submission of Offers and Provisions Relating to Auction Results

(a) The TSO shall use reasonable endeavours to conclude the ORESS Tonn Nua Auction in accordance with these Terms and Conditions by the Auction Completion Date.

(b) The TSO shall send the following information to the Minister no later than 5 days prior to the Provisional Auction Results Date:

(i) 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; and

(ii) a list of the Offer Prices of all Qualified Applicants, ranked from lowest price to highest price.

(c) The Minister shall use reasonable endeavours to issue the Provisional Auction

Results to all Qualified Applicants that submitted an Offer, together with the information referred to in 8.3(b) above, by the Provisional Auction Results Date.

(d) In respect of a Provisional Auction Result, where a Qualified Applicant (acting to the standard of a Prudent Industry Operator) considers that the TSO has not applied these Terms and Conditions correctly, it may submit a Notice of Dissatisfaction to the Minister within two (2) Working Days of receipt of the outcome of the Provisional Auction Results.

(e) The Minister shall consider the Auction Monitor report and any Notices of Dissatisfaction submitted by Qualified Applicants in respect of a Provisional Auction Result.

9 ORESS Tonn Nua Auction – Winner Determination

9.1 Winner Selection

9.1.1 The ORESS Tonn Nua Auction will be conducted on behalf of the Minister by the TSO.

9.1.2 The ORESS Tonn Nua Auction takes the form of a simple, sealed bid auction of eligible Offers.

9.1.3 The Minister shall determine the winner of the ORESS Tonn Nua Auction by selecting the Qualified Applicant with the lowest Offer Price.

9.2 Tie-breaking

If any tied Offer Prices are identified then Offers with identical Offer Prices will be resolved by way of a tie-break. The tie-break will be resolved using a random index number. 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.

9.3 Post Auction Information to Be Released Publicly

The Minister will, by the Final Auction Results Date, publish the Final Auction Results, including (i) the name of the successful applicant, (ii) the location and size (in MW) of the ORESS Tonn Nua Project, and (iii) the Offer Price of the successful applicant.

10 Obligations of the ORESS Tonn Nua Successful Applicant

10.1 Receipt of Maritime Area Consent

10.1.1 Following issuance of the Final Auction Results:

(a) The Successful Applicant must submit to MARA, in accordance with section 79 of the Maritime Area Planning Act, the application for a Maritime Area Consent in respect of the ORESS Tonn Nua Project which it had prepared in accordance with Section 7.3.9, no later than five (5) Working Days after the issuance of the Final Auction Results; and

(b) MARA will determine such Maritime Area Consent application in accordance with section 81 of the Maritime Area Planning Act 2021.

10.1.2 As soon as possible, and in any event within five (5) Working Days, following MARA's determination in respect of such Maritime Area Consent application, the Successful Applicant will notify the Minister as to whether:

(a) MARA has determined not to grant the Successful Applicant a Maritime Area Consent in respect of the ORESS Tonn Nua Project (an "**Unsuccessful MAC Application**"); or

(b) MARA has determined to grant the Successful Applicant a Maritime Area Consent in respect of the ORESS Tonn Nua Project (a "**Successful MAC Application**"); or

(c) MARA has determined to partially grant the Successful Applicant a Maritime Area Consent in respect of the ORESS Tonn Nua Project (a "**Partial MAC Grant**").

10.1.3 If a Partial MAC Grant occurs, the Minister will (in his or her discretion) determine whether or not the Partial MAC Grant is sufficient in the context of the ORESS Tonn Nua Auction. If the Minister determines that the Partial MAC Grant is not sufficient, an Unsuccessful MAC Application will be deemed to have occurred. If the Minister determines that the Partial MAC Grant is sufficient, a Successful MAC Application will be deemed to have occurred.

10.1.4 The Successful Applicant shall notify the Minister as soon as practicable if:

(a) the Unsuccessful MAC Application is subject to a Successful Applicant Judicial Review Challenge (an "**Unsuccessful MAC Application Challenge**"); or

(b) the Successful MAC Application is subject to a Third Party Judicial Review Challenge (a "**Third Party Successful MAC Application Challenge**"); or

(c) an eight-week period elapses without an Unsuccessful MAC Application Challenge or Third Party Successful MAC Application Challenge occurring (such period being the "**MAC Application Challenge Period**").

10.1.5 The Successful Applicant shall:

(a) use all reasonable endeavours to resolve an Unsuccessful MAC Application Challenge or a Third Party Successful MAC Application Challenge as soon as practicable;

(b) keep the Minister updated on a regular basis on the status of any Unsuccessful MAC Application Challenge or Third Party Successful MAC Application Challenge; and

(c) notify the Minister as soon as practicable of the outcome of any Unsuccessful MAC Application Challenge or Third Party Successful MAC Application Challenge.

10.1.6 Without prejudice to its obligations under Section 10.1.5, the Successful Applicant shall:

(a) Notify the Minister as soon as soon as practicable if the Maritime Area Consent in respect of the ORESS Tonn Nua is quashed as a result of a Third Party Successful MAC Application Challenge (a "**Quashed MAC Application**");

(b) If, as a result of an Unsuccessful MAC Application Challenge or a Third Party Successful MAC Application Challenge, the decision on whether to grant a Maritime Area Consent in respect of the ORESS Tonn Nua has been remitted to MARA for determination (a "**Remitted MAC Decision**"); and

(c) Notify the Minister as soon as soon as practicable if MARA's decision not to grant the Successful Applicant a Maritime Area Consent in respect of the ORESS Tonn Nua Project has been upheld following an Unsuccessful MAC Application Challenge (an "**Upheld MAC Decision**")

10.1.7 If a Remitted MAC Decision occurs, the provisions of Sections 10.1.2 - 10.1.6 (inclusive) shall apply again in respect of MARA's determination of whether or not to grant the Successful Applicant a Maritime Area Consent in respect of the ORESS Tonn Nua Project.

10.1.8 In the event of (i) an Unsuccessful MAC Application (where the MAC Application Challenge Period has expired without an Unsuccessful MAC Application Challenge), (ii) an Upheld MAC Decision, or (iii) a Quashed MAC Application:

(a) The Successful Applicant will not receive (1) a Notice of Award or (2) a Letter of Offer;

(b) The Minister shall be entitled (in his or her sole discretion) to direct the TSO to re-run the ORESS Tonn Nua Auction; and

(c) The Bid Bond shall be returned to the Successful Applicant.

10.1.9 In the event of (1) a Successful MAC Application where the MAC Application Challenge Period has expired without a Third Party Successful MAC Application Challenge or (2) a Successful MAC Application that is upheld following a Third Party Successful MAC Application Challenge:

(a) The Successful Applicant will receive a Notice of Award; and

(b) Section 10.2 shall apply.

10.2 Project Delivery Agreement and Performance Security

10.2.1 On or before the Project Delivery Agreement and Performance Security Return Date, the Successful Applicant must:

(a) execute a Project Delivery Agreement (in the form prescribed in Annex A (Agreed Form Project Delivery Agreement)); and

(b) provide the Performance Security (in the form as set out in Appendix 3 of the Project Delivery Agreement and for the avoidance of doubt alternative forms

of security (including cash) are not permitted).

10.2.2 If the Project Delivery Agreement has not been executed and the Performance Security has not been provided by the Project Delivery Agreement and Performance Security Return Date then:

(a) the Successful Applicant will have the Award rescinded and will not receive a Letter of Offer;

(b) the TSO will be entitled to draw down on the full amount of the Bid Bond; and

(c) the Minister shall be entitled (in his or her sole discretion) to direct the TSO to re-run the ORESS Tonn Nua Auction.

11 Obligations of the ORESS Tonn Nua Generator

11.1 Further Obligations

11.1.1 Project Delivery Plan Questionnaire

The Generator must complete and submit:

(a) the initial Project Delivery Plan Questionnaire no later than six (6) months after the Project Delivery 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.

The Generator 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 the Generator 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 Performance Security in place may be drawn down by the Minister up to a maximum of 5% of such Performance Security (as applicable) in respect of each Project Delivery Plan Questionnaire submitted under this Section 11.1.1.

11.1.2 Name of the Project

The Generator shall, in all correspondence and external communications (including, without limitation, public announcements, statements and press releases) refer to the project as ‘Tonn Nua’. Variations such as ‘Tonn Nua Array’, ‘Tonn Nua Wind Park’, or ‘Tonn Nua Wind Farm’ are acceptable, provided that the term ‘Tonn Nua’ always retains prominence in the title.

11.1.3 O&M Services

The Generator must procure that operation and maintenance (O&M) services in respect of the ORESS Tonn Nua Project are primarily provided from a port in Ireland or Northern Ireland.

11.1.4 Full Connection Offer

The Generator must apply for a Full Connection Offer in accordance with the relevant CRU decision paper(s) in respect of grid connections for Phase 2 projects.

11.1.5 Planning Consent Application

(a) The Generator shall submit Planning Consent applications in respect of the ORESS Tonn Nua Project without undue delay.

(b) Any applications for Planning Consent in respect of the ORESS Tonn Nua Project must be consistent with the Updated Project Information Document.

(c) The Generator shall submit applications for Planning Consent in respect of the ORESS Tonn Nua Project in good faith and shall ensure such applications are consistent with Standard Industry Practice.

(d) The Generator shall not submit applications for Planning Consent in respect of the ORESS Tonn Nua Project with the intention of frustrating the ORESS Tonn Nua Auction or relying on Section 12.2 or Section 12.3 of these Terms and Conditions.

11.1.6 WIP Survey Contract

A copy of the WIP Survey Contract in respect of ORESS Tonn Nua will be contained in the Auction Information Pack. If no WIP Survey Contract is contained in the Auction Information Pack then the provisions of these Terms and Conditions which relate to the WIP Survey Contract shall not apply.

The Generator must execute a novation deed between the Generator, the Minister and the relevant service provider in respect of the WIP Survey Contract no later than the Project Delivery Agreement and Performance Security Return Date, pursuant to which the Generator shall replace the Minister as a party to the WIP Survey Contract. The form of novation deed shall be contained in the Auction Information Pack.

The Generator must comply with its obligations under the WIP Survey Contract, on and from the effective date of novation.

11.1.7 Surveying Fee

The Generator shall, no later than twenty (20) Working Days after receiving a request from the Minister (or its agents), transfer the Surveying Fee to a bank account specified by the Minister (or a nominated body).

The Surveying Fee shall include, where applicable, any costs incurred under the WIP Survey Contract.

11.2 Renewable Capacity and Maximum Export Capacity

11.2.1 Installed Renewable Capacity

Minimum Installed Renewable Capacity

Following the Commercial Operation Date, the Generator must at all times until the ORESS Tonn Nua Support End Date be able to demonstrate that the Installed Renewable Capacity of the ORESS Tonn Nua Project is at least equal to 90% of the Target Installed Renewable Capacity (the "**Minimum Installed Renewable Capacity**").

Maximum Installed Renewable Capacity

The Installed Renewable Capacity of the ORESS Tonn Nua Project shall be no more than 120% of the Target Installed Renewable Capacity (the "**Maximum Installed Renewable Capacity**").

For the avoidance of doubt, all renewable capacity installed by or on behalf of the Generator at the Offshore Site up to the Target Installed Renewable Capacity shall form part of, and remain part of, the ORESS Tonn Nua Project until the ORESS Tonn Nua Support End Date.

11.2.2 Maximum Export Capacity

The Generator undertakes not to request to raise the MEC of the ORESS Tonn Nua Project, except with the prior written agreement of the Minister.

11.3 Guarantees of Origin

11.3.1 In accordance with Statutory Instrument 350 of 2022, where the ORESS Tonn Nua Project receives a Guarantee of Origin for a renewable energy unit, no ORESS Tonn Nua Payment for the same unit of electricity shall be made.

11.3.2 If the ORESS Tonn Nua Project receives a Guarantee of Origin in respect of its output then the Minister may terminate the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua and revoke the Letter of Offer (and the ORESS Tonn Nua Project will not be eligible to return to ORESS Tonn Nua).

11.4 Prudent Electric Utility Practice and Availability

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

11.4.2 The ORESS Tonn Nua Project must use reasonable endeavours to conduct planned outages at times of system surplus and lower than usual, zero, or negative market prices.

11.5 Updated Project Information Document

11.5.1 The Generator must complete and submit an updated project information document in respect of the ORESS Tonn Nua Project (the "**Updated Project Information Document**"), the form of which will be provided in the Qualification Information Pack.

11.5.2 The Updated Project Information Document must outline any changes to the key characteristics of the ORESS Tonn Nua Project as set out in the Project Information Document. The Generator must explain in the Updated Project Information Document (in sufficient detail and by reference to supporting documentation, as appropriate) why any such changes to the key characteristics of the ORESS Tonn Nua Project were not envisioned at the time of submission of the Project Information Document but are now required as a result of surveying data subsequently collected in respect of the Offshore Site (which surveying data must accompany the Updated Project Information Document, if not already provided pursuant to these Terms and Conditions).

11.5.3 The Updated Project Information Document must identify and categorise any changes to the key characteristics of the ORESS Tonn Nua Project as set out in the Project

Information Document, as follows:

(a) Any changes where the key characteristics of the ORESS Tonn Nua Project as set out in the Project Information Document are no longer technically feasible as a result of new surveying data collected after the submission of the Project Information Document shall be identified in the Updated Project Information Document as 'PID Changes Necessitated by New Survey Data';

(b) All other changes in respect of the key characteristics of the ORESS Tonn Nua Project as set out in the Project Information Document shall be identified in the Updated Project Information Document as 'Elective PID Changes'.

Any other information provided by the Generator in the Updated Project Information Document which is unchanged from the information submitted in the Project Information Document shall be identified in the Updated Project Information Document as 'Unchanged'.

11.5.4 The Updated Project Information Document must include an updated Gantt chart in respect of the ORESS Tonn Nua Project (the "**Updated PID Gantt Chart**") outlining any changes to the key delivery activities, dependencies and delivery critical path of the ORESS Tonn Nua Project as against the PID Gantt Chart. The Updated PID Gantt Chart must satisfy the requirements set out in Section 7.6.2.

11.5.5 The key characteristics of the ORESS Tonn Nua Project, as amended by the Updated Project Information Document, and the characterisation of any changes pursuant to Section 11.5.3, 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 Updated Project Information Document, and consistent with Standard Industry Practice.

11.5.6 The Updated Project Information Document must be consistent with the Generator's Maritime Area Consent in respect of the ORESS Tonn Nua Project, the TSO's Grid Connection Information or updated Grid Connection Information as updated in accordance with applicable decision paper(s) issued by the CRU (as applicable), its Planning Consent application, its Full Connection Offer, and any other consents, licences, permissions, authorisations or similar items in respect of the ORESS Tonn Nua Project which exist as at the date on which the Updated Project Information Document is submitted.

11.5.7 The Updated Project Information Document must be provided by the Generator in good faith.

11.5.8 The Updated Project Information Document must be submitted to the Minister (for the attention of ORESS Team, Offshore Energy Long Term Strategic Planning Division at the address specified at Clause 16 of the Project Delivery Agreement) on the same date on which the Generator submits its Planning Consent application in respect of the ORESS Tonn Nua Project.

11.5.9 If the Generator breaches this Section 11.5 or if information submitted in the Updated Project Information Document is found not to have been true and accurate at the time of submission:

(a) the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Performance Security in place may be drawn down by the Minister (as applicable); and

(b) the Generator on whose behalf the Updated Project Information Document is submitted, together with the Affiliates of such Generator, will be prohibited from participating in any RESS competitions for a period of up to five years.

11.5.10 The Updated Project Information Document will be treated by the Minister and its agents as confidential and commercially sensitive.

11.6 Declaration of Updated Project Information

11.6.1 The Updated Project Information Document must be accompanied by a director declaration in relation to the ORESS Tonn Nua Project ("**Declaration of Updated Project Information**"), the form of which will be provided in the Qualification Information Pack, confirming that the Updated Project Information Document is true and accurate as at the time of submission.

11.6.2 The Declaration of Updated 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.

11.6.3 If any statement in the Declaration of Updated 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) the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Performance Security in place may be drawn down by the Minister; and

(b) the Generator on whose behalf the director signs the false declaration, together with the Affiliates of such Generator, will be prohibited from participating in any RESS competitions for a period of up to five years.

12 Withdrawal from ORESS Tonn Nua

12.1 ORESS Tonn Nua Commitment and Prohibition on Withdrawal

12.1.1 Subject to Section 12.1.5, the ORESS Tonn Nua Project must at all times remain in ORESS Tonn Nua, such that it can at all times make or receive (as applicable) ORESS Tonn Nua Payments until the occurrence of the ORESS Tonn Nua Support End Date (the "**ORESS Tonn Nua Commitment**").

12.1.2 Subject to Section 12.1.5, the Generator undertakes that until the occurrence of the ORESS Tonn Nua Support End Date:

(a) it shall not take any action, or permit any action to be taken by another person (except by the Minister), to suspend, cancel, revoke, forfeit, terminate, surrender or otherwise render ineffective the Project Delivery Agreement or the Letter of Offer; and

(b) it shall not take any action, or permit any action to be taken by another person (except by the Minister), to suspend, cancel, revoke, forfeit, terminate, surrender or otherwise render the ORESS Tonn Nua Project ineligible for ORESS Tonn Nua Support or to otherwise breach or undermine the ORESS Tonn Nua Commitment.

12.1.3 The Generator further undertakes that until the occurrence of the ORESS Tonn Nua Support End Date:

(a) it shall be, and shall remain, the sole and exclusive owner of the ORESS Tonn Nua Project (and all elements thereof); and

(b) it shall not, without the prior written consent of the Minister:

(i) transfer, or permit the transfer of, ownership of the ORESS Tonn Nua Project (or any elements thereof); or

(ii) engage in any business or activities, other than the construction, development, financing, consenting, planning permission, community benefit fund activities, ownership, operation and maintenance of the ORESS Tonn Nua Project (and any activities ancillary thereto); or

(iii) hold any material assets, other than the ORESS Tonn Nua Project (and

any assets ancillary thereto).

12.1.4 The Generator agrees and acknowledges that if the Generator fails to comply with its obligations under this Section 12.1, then the Minister shall be entitled to take any such action as the Minister (in her or her sole discretion) deems necessary to give full force and effect to the ORESS Tonn Nua Commitment. Without prejudice to the generality of the foregoing, the Minister shall (in his or her sole discretion) be entitled to take any or all of the following actions:

(a) the Minister may terminate the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua and revoke the Letter of Offer;

(b) the Minister may draw down on the full amount of the Performance Security;

(c) if and to the extent the ORESS Tonn Nua Project generates electricity, the Minister may require the Generator to pay to the Minister any and all Difference Payments which would have been made in respect of the ORESS Tonn Nua Project during the ORESS Tonn Nua Support Period.

The Generator will take all such actions, including executing documents, as may be requested by the Minister in order to give full force and effect to the ORESS Tonn Nua Commitment and the Minister's rights under this Section 12.1.4.

12.1.5 The Generator shall be entitled to withdraw the ORESS Tonn Nua Project from ORESS Tonn Nua only in the case of:

(a) a Planning Consent Failure Withdrawal, in accordance with and subject to Section 12.2;

(b) an Unsuitable Site Conditions Withdrawal, in accordance with and subject to Section 12.3; or

(c) an Onerous Planning Condition Event Withdrawal, in accordance with and subject to Section 12.4,

(each a "**Permitted Generator Withdrawal**").

12.2 Planning Consent Failure Withdrawal

12.2.1 If a Planning Consent Failure Event occurs in respect of the ORESS Tonn Nua 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 sixty (60) Working Days after the occurrence of such Planning Consent Failure Event) (a "**Planning Consent Failure Notification**").

12.2.2 A Planning Consent Failure Notification must be accompanied by evidence (satisfactory to the Minister) demonstrating the occurrence of the Planning Consent Failure Event.

12.2.3 No later than sixty (60) 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 Tonn Nua Project from ORESS Tonn Nua 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 Tonn Nua Project in ORESS Tonn Nua and to use all reasonable endeavours to resolve the Planning Consent Failure Event as soon as practicable (a "**Planning Consent Failure Commitment**").

12.2.4 If the Planning Consent Failure Commitment relates to a Planning Consent Failure Event which has occurred under limb (c) of the definition of "Planning Consent Failure Event":

(a) the Minister shall (in his or her sole discretion) enter into discussions with the Generator to agree a revised Planning Consent Longstop and other arrangements which may be reasonably required to give effect to the Planning Consent Failure Commitment;

(b) any such revised Planning Consent Longstop shall be the earlier of (1) the date by which the Minister and the Generator (each acting reasonably) anticipate that the Planning Consent for the ORESS Tonn Nua Project will be decided upon and (2) the date by which the Planning Consent for the ORESS Tonn Nua Project is decided upon; and

(c) if the Planning Consent for the ORESS Tonn Nua Project has not been decided upon by the revised Planning Consent Longstop agreed under sub-paragraph (b) above, then a further Planning Consent Failure Event shall be deemed to have occurred.

12.2.5 A Planning Consent Failure Withdrawal Request will be accompanied by a director's declaration (acceptable to the Minister) from the Generator in respect of the ORESS Tonn Nua Project, confirming that the director believes, having made due enquiries, that the Planning Consent Failure Event will prevent the ORESS Tonn Nua Project achieving Commercial Operation by the Longstop Date.

12.2.6 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. For the avoidance of doubt, it shall not be unreasonable for the Minister to reject the Planning Consent Failure Withdrawal Request if the Minister determines that the Planning Consent Failure Event is attributable to the Generator's acts or omissions.

12.2.7 If the Generator fails to provide a Planning Consent Failure Notification within sixty (60) Working Days of the Planning Consent Failure Event, it will not be entitled to withdraw from ORESS Tonn Nua under this Section 12.2 as a result of such Planning Consent Failure Event.

12.2.8 If, in respect of a Planning Consent Failure Event:

(a) the Generator fails, within the sixty (60) Working Day period referred to in Section 12.2.1, to provide a Planning Consent Failure Notification; or

(b) the Generator issues a Planning Consent Failure Commitment; or

(c) the Generator fails, within the sixty (60) Working Day period referred to in Section 12.2.3, 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 Section 12.2.6,

then the Generator shall not be entitled to withdraw from ORESS Tonn Nua under this Section 12.2 as a result of such Planning Consent Failure Event.

12.2.9 If the Minister accepts a Planning Consent Failure Withdrawal Request under Section 12.2.6 then:

(a) The Letter of Offer in respect of the ORESS Tonn Nua Project shall be withdrawn immediately; and

(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 the Project Delivery Agreement.

12.2.10 The occurrence of a Planning Consent Failure Event will not, in and of itself, entitle the Minister to make a demand for payment under the Performance Security.

12.2.11 This Section 12.2 contains the sole and exclusive rights of the Generator and ORESS Tonn Nua Project in respect of a Planning Consent Failure Event.

12.3 Unsuitable Site Conditions Withdrawal

12.3.1 If the Generator determines (acting reasonably and in good faith) that Unsuitable Site Conditions exist in respect of the Offshore Site, the Generator shall notify the Minister of such Unsuitable Site Conditions as soon as practicable (and in any event no later than thirty (30) Working Days of receipt of the surveys notifying the Generator of the existence of such Unsuitable Site Conditions) (an "**Unsuitable Site Conditions Notification**").

12.3.2 The Generator shall not be entitled to issue an Unsuitable Site Conditions Notification after the expiry of the Unsuitable Site Conditions Withdrawal Period.

12.3.3 No later than sixty (60) Working Days after an Unsuitable Site Conditions Notification, the Generator will issue to the Minister either:

(a) an irrevocable confirmation that it intends to withdraw the ORESS Tonn Nua Project from ORESS Tonn Nua due to the Unsuitable Site Conditions (an "**Unsuitable Site Conditions Withdrawal Notification**"); or

(b) an irrevocable confirmation that it has elected to keep the ORESS Tonn Nua Project in ORESS Tonn Nua and to use all reasonable endeavours to mitigate the effects of the Unsuitable Site Conditions (an "**Unsuitable Site Conditions Commitment**").

12.3.4 An Unsuitable Site Conditions Withdrawal Notification must be accompanied by:

(a) Comprehensive analysis from at least two (2) reputable independent third parties with sufficient industry knowledge and experience on the subject matter concerned, which evidences the existence of Unsuitable Site Conditions; and

(b) Reasonable supporting documentation and data in respect of the Unsuitable Site Conditions identified in respect of the Offshore Site.

12.3.5 If:

(a) the Generator issues an Unsuitable Site Conditions Commitment; or

(b) the Generator fails, within the sixty (60) Working Day period referred to in Section 12.3.3, to issue an Unsuitable Site Conditions Withdrawal Notification or an Unsuitable Site Conditions Commitment,

then the Generator shall not be entitled to withdraw from ORESS Tonn Nua pursuant to the relevant Unsuitable Site Conditions Notification.

12.3.6 If the Generator issues an Unsuitable Site Conditions Withdrawal Notification then:

(a) the Minister shall revoke the Letter of Offer in respect of the ORESS Tonn Nua Project; and

(b) the Minister shall return the Performance Security in full, less any amounts deducted at that date in accordance with the Terms and Conditions and the Project Delivery Agreement, if the Minister:

(i) receives a comprehensive assessment from a reputable independent third party with sufficient industry knowledge and experience on the subject matter concerned, which evidences that the Project Information Document was submitted in accordance with all requirements of these Terms and Conditions, and by reference to information that was known or, where not knowable, reasonably understood at the time; and

(ii) in his or her sole discretion, utilising data and analysis provided by the Generator and independent third-party qualified sources, determines that the ORESS Tonn Nua Project would be financially viable but for the Unsuitable Site Conditions in respect of the Unsuitable Site Conditions Withdrawal Notification.

12.3.7 This Section 12.3 contains the sole and exclusive rights of the Generator and ORESS Tonn Nua Project in respect of Unsuitable Site Conditions.

12.4 Onerous Planning Condition Event Withdrawal

12.4.1 If, prior to the beginning of the Performance Security (Third Period), an Onerous Planning Condition Event occurs in respect of the ORESS Tonn Nua Project then the Generator shall notify the Minister of such Onerous Planning Condition Event as soon as practicable (and in any event no later than twenty (20) Working Days of receipt of the Planning Consent notifying the Generator of the occurrence of the Onerous Planning Condition Event) (an "**Onerous Planning Condition Event Notification**").

12.4.2 The Generator shall not be entitled to issue an Onerous Planning Condition Event Notification after the beginning of the Performance Security (Third Period).

12.4.3 An Onerous Planning Condition Event Notification must be accompanied by evidence (satisfactory to the Minister) demonstrating the occurrence of the Onerous Planning Condition Event.

12.4.4 No later than thirty (30) Working Days after an Onerous Planning Condition Event Notification, the Generator may issue to the Minister an irrevocable confirmation that it intends to withdraw the ORESS Tonn Nua Project from ORESS Tonn Nua due to the Onerous Planning Condition Event (an "**Onerous Planning Condition Event Withdrawal Request**").

12.4.5 As soon as practicable following receipt of an Onerous Planning Condition Event Withdrawal Request, the Minister shall (in his or her sole discretion) accept or reject the Onerous Planning Condition Event Withdrawal Request.

12.4.6 If, in respect of an Onerous Planning Condition Event:

(a) the Generator fails, within the twenty (20) Working Day period referred to in Section 12.4.1, to provide an Onerous Planning Condition Event Notification; or

(b) the Generator fails, within the thirty (30) Working Day period referred to in Section 12.4.4, to issue an Onerous Planning Condition Event Withdrawal Request;

(c) the Minister rejects an Onerous Planning Condition Event Withdrawal Request under Section 12.4.5,

then the Generator shall not be entitled to withdraw from ORESS Tonn Nua under this

Section 12.4 as a result of such Onerous Planning Condition Event.

12.4.7 If the Minister accepts an Onerous Planning Condition Event Withdrawal Request under Section 12.4.5 then:

(a) The Letter of Offer in respect of the ORESS Tonn Nua Project shall be withdrawn immediately; and

(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 the Project Delivery Agreement.

12.4.8 If the Generator seeks any changes identified as 'Elective PID Changes' in the Updated Project Information Document in accordance with Section 11.5.2 of these Terms and Conditions, the Generator cannot claim relief for an Onerous Planning Condition Event under this Section 12.4 where such changes result in, or contribute to, the occurrence of an Onerous Planning Condition Event.

12.4.9 The occurrence of an Onerous Planning Condition Event will not, in and of itself, entitle the Minister to make a demand for payment under the Performance Security.

12.4.10 This Section 12.4 contains the sole and exclusive rights of the Generator and ORESS Tonn Nua Project in respect of an Onerous Planning Condition Event.

13 Community Aspects of ORESS Tonn Nua

Community participation in ORESS Tonn Nua is via the Community Benefit Fund. If the Generator fails to comply or to procure compliance (as the case may be) with this Section 13, the Letter of Offer may be withdrawn.

13.1 General

13.1.1 The Generator shall ensure that community participation in ORESS Tonn Nua shall be through a community benefit fund established by the Generator for the ORESS Tonn Nua Project (the "**Community Benefit Fund**" or "**CBF**") in accordance with the provisions of this Section 13 and any community benefit fund rules and guidelines for the Generator and Fund Administrator in respect of ORESS Tonn Nua which may be published from time to time by the Minister or a nominated body (the "**ORESS Tonn Nua CBF Rulebook**").

13.1.2 Without prejudice to the Minister's other rights under this Section 13, if the Generator fails to either (a) comply with its obligations under this Section 13, (b) comply with its obligations under the ORESS Tonn Nua CBF Rulebook, or (c) procure compliance with the relevant obligations under this Section 13 or the ORESS Tonn Nua CBF Rulebook by the Fund Administrator or the CBF Committee (each as hereinafter defined), the Letter of Offer for the ORESS Tonn Nua Project may (in the Minister's sole discretion) be withdrawn by the Minister.

13.1.3 The Generator expressly acknowledges and agrees that the provisions of this Section 13 are strictly subject to Section 14.5 (*Liability*) of these Terms and Conditions and without prejudice to the foregoing the 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) the Generator, or (b) any Fund Administrator or CBF Committee appointed or established by the 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 Tonn Nua 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.

13.1.4 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 13 and the ORESS Tonn Nua CBF Rulebook. The Generator and Fund Administrator will comply with such direction as soon as practicable and in any event no later than five (5) Working Days following such direction.

13.2 Community Benefit Fund

13.2.1 The Generator is required to establish a Community Benefit Fund no later than 1 year after the Commencement Date of the ORESS Tonn Nua Project. Subject to Section 13.2.2, with effect from the Commercial Operation Date of the ORESS Tonn Nua Project, and in respect of each PSO Levy Year (or pro rata part thereof) during the ORESS Tonn Nua Support Period for the ORESS Tonn Nua Project, the Generator shall be required to make a contribution calculated as the sum of (i) the Loss-Adjusted RESS Metered Quantity and (ii) the Loss-Adjusted Eligible Available Quantity for the ORESS Tonn Nua Project, multiplied by €2/MWh (the "**ORESS Tonn Nua 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 13.2.1:

(a) the amount being the Target Annual Energy Quantity multiplied by 1,000 to convert from GWh to MWh of the ORESS Tonn Nua 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 (1) 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 sum of (i) the Loss-Adjusted RESS Metered Quantity and (ii) the Loss-Adjusted Eligible Available Quantity for the ORESS Tonn Nua 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 sub-Section (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 sub-Section (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 13.2.1.

To the extent that Grid Delay Compensation is accruing to the Generator, contribution to the CBF shall be made on a comparable basis to that set out in this Section 13.2.1 whereby the ORESS Tonn Nua Annual CBF Contribution Payment is calculated in each hour as the Grid-Delayed Quantity multiplied by €2/MWh equivalent of Grid-Delayed Quantity.

13.2.2 For each twelve (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 Target Annual Energy Quantity (as specified below), annually (in arrears) no later than one (1) month after the end of the relevant Early Contribution Year (or part thereof), as follows:

(a) 30% of the Target Annual Energy Quantity for one year of the ORESS Tonn Nua Project 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 Target Annual Energy Quantity for one year of the ORESS Tonn Nua Project 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 Target Annual Energy Quantity for one year of the ORESS Tonn

Nua Project 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 Target Annual Energy Quantity for one year of the ORESS Tonn Nua Project 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 ORESS Tonn Nua Project occurs,

(each payment above in sub-Section (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 13.2.2.

13.2.3 With effect from the date which is three years following the Commercial Operation Date for the ORESS Tonn Nua Project, the Generator shall be entitled to offset the amount of any Early Contribution Payments paid by it in accordance with Section 13.2.2 against the amount of the ORESS Tonn Nua Annual CBF Contribution Payments to be paid by it under Section 13.2.1 (as such payments may be reconciled and adjusted pursuant to Section 13.2.1), subject to the following provisions:

(a) in each twelve (12) month period following the date which is three (3) years from the date of Commercial Operation for the ORESS Tonn Nua Project (the "**Relevant Year**") the Generator may offset Early Contribution Payments previously paid by it under Section 13.2.2 provided that the amount to be offset in the Relevant Year is not greater than 30% of the amount of the ORESS Tonn Nua Annual CBF Contribution Payment to be paid by the Generator in the Relevant Year under Section 13.2.1 (as such payments may be reconciled and adjusted pursuant to Section 13.2.1); and

(b) the amount of Early Contribution Payments which have previously been paid by the Generator under Section 13.2.2 but which may not be offset by the Generator pursuant to sub-Section (a) above may be offset by the Generator in the subsequent Relevant Year(s) against the amount of the ORESS Tonn Nua Annual CBF Contribution Payments to be paid by it under Section 13.2.1 (as such payments may be reconciled and adjusted pursuant to Section

13.2.1).

13.3 Fund Administrator

13.3.1 The Generator shall, prior to the establishment of the Community Benefit Fund under Section 13.2.1, select and appoint through an open competition or procurement process an ORESS Tonn Nua CBF fund administrator (the "**Fund Administrator**") to administer the Community Benefit Fund for the ORESS Tonn Nua Project in accordance with these Terms and Conditions and the ORESS Tonn Nua CBF Rulebook. Further, the 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 (a), 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 13.3.1 has the requisite experience, skills, qualifications and competencies in order to perform its obligations as the administrator of the Community Benefit Fund for the ORESS Tonn Nua Project in accordance with these Terms and Conditions, the ORESS Tonn Nua 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 Tonn Nua CBF Rulebook and all applicable laws;

(d) procure that the Fund Administrator is selected and appointed in accordance with the ORESS Tonn Nua 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 Tonn Nua 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 sub-Section (e).

13.3.2 The Generator shall establish (or shall procure that the Fund Administrator establishes) a local ORESS Tonn Nua Community Benefit Fund Committee (the "**CBF Committee**"). The Generator shall procure that the CBF Committee established by it shall ensure (a) the successful operation and delivery of Community Benefit Funds for the ORESS Tonn Nua Project and (b) community participation in fund decision making for the allocation of funds in the relevant Community Benefit Fund.

13.3.3 The 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 one (1) year after the Commencement Date for the ORESS Tonn Nua Project.

13.3.4 If any information in the SEAI CBF National Register in respect of the Community Benefit Fund, the Fund Administrator or the CBF Committee for the ORESS Tonn Nua Project becomes inaccurate or untrue in any respect, the Generator shall update (or shall procure that the Fund Administrator updates) such information as soon as practicable.

13.3.5 The Generator shall procure that the Fund Administrator and CBF Committee appointed by it for the ORESS Tonn Nua Project shall comply with (a) the ORESS Tonn Nua CBF Rulebook and (b) any reporting requirements as may be specified by the SEAI from time to time.

13.3.6 The 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 Tonn Nua Project (as such local community for the ORESS Tonn Nua Project shall be defined

by the CBF Committee for the ORESS Tonn Nua Project in accordance with the ORESS Tonn Nua CBF Rulebook) (the "**CBF Target Local Community**"); and

(ii) is allocated by the relevant Fund Administrator for the ORESS Tonn Nua Project to the committees, clubs, associations, entities, corporates or any other persons or bodies 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.

13.3.7 The Generator shall, and shall procure that 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 ORESS Tonn Nua Project to the CBF Target Local Community before the end of the ORESS Tonn Nua Support Period in respect of the ORESS Tonn Nua Project.

13.3.8 If, at the end of the ORESS Tonn Nua Support Period, there are funds remaining in the Community Benefit Fund then the Generator and the Fund Administrator shall (subject to Section 13.1.4) 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 13 and the ORESS Tonn Nua CBF Rulebook.

13.3.9 The 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 the Generator for the ORESS Tonn Nua Project for compliance with these Terms and Conditions and the ORESS Tonn Nua CBF Rulebook (including all documents and records demonstrating compliance by the Fund Administrator with these Terms and Conditions and the ORESS Tonn Nua CBF Rulebook).

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

13.4.1 The 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 Tonn Nua Support Period (or during the time that Early Contribution Payments are made) for the ORESS Tonn Nua 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.

14 General

14.1 Condition of Offer

It shall be a condition of any Letter of Offer for ORESS Tonn Nua that the Generator and the ORESS Tonn Nua Project shall comply on an ongoing basis with these Terms and Conditions and any other legal or regulatory requirements applicable to the ORESS Tonn Nua Project.

In the case of any material breach of any of these Terms and Conditions, or of any legal or regulatory requirements, the Minister may:

(1) terminate the participation of the ORESS Tonn Nua Project in ORESS Tonn Nua and revoke the Letter of Offer; and/or

(2) direct that the Applicant, and the Affiliates of such Applicant, be excluded from any future RESS auctions in the Project Development Area.

14.2 Changes to Plant or Equipment

14.2.1 Pursuant to condition 6 of the Letter of Offer, the Minister may agree to material changes to plant or equipment within the ORESS Tonn Nua 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 Tonn Nua Project remains otherwise compliant with these Terms and Conditions;

(d) the changes do not increase or decrease the Installed Renewable Capacity of the ORESS Tonn Nua Project (save in accordance with Section 11.2.1 of these Terms and Conditions or Clause 6.4 of the Project Delivery Agreement) nor the MEC of the ORESS Tonn Nua Project;

(e) the change does not violate the Maritime Area Consent for the ORESS Tonn Nua Project;

(f) the change does not result in the ORESS Tonn Nua Project no longer using

the Eligible Technology; and

(g) the change does not result in energy produced by the ORESS Tonn Nua Project bypassing the meter of the ORESS Tonn Nua Project, or being delivered in a form other than electrical energy.

14.2.2 Subject to the conditions at sub-Sections 14.2.1(c) to 14.2.1(f), minor changes to plant and equipment within the ORESS Tonn Nua Project do not require the Minister's approval.

14.3 Freedom of Information Act

14.3.1 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 "**FoI Act**") and may be subject to disclosure in the public interest in accordance with the FoI Act.

14.3.2 The FoI 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 FoI Act to any application, information or documentation submitted under these Terms and Conditions.

14.4 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 Tonn Nua Auction or submitting an Offer or otherwise participating in ORESS Tonn Nua regardless of the conduct or outcome of the Application for Qualification or the ORESS Tonn Nua Auction or otherwise.

14.5 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 the Minister or any of his or her officers, employees, servants, advisers, contractors, or agents 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.

14.6 Change of Control

The Generator 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 Generator (whether by ownership of shares or the power to control or direct the management of the Generator) changed or passed to any person not having effective control as at the date of the Application for Qualification.

14.7 Access and Performance Monitoring

It is a condition of ORESS Tonn Nua that the Generator who receives a Letter of Offer will be required to provide reasonable access to the Offshore 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.

14.8 Consultation with Third Parties

It is a condition of entry to the ORESS Tonn Nua 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.

14.9 Extension of Time

In the event of a delay in grid connection build-out affecting (or likely to affect) the ORESS Tonn Nua Project, the Minister may, even where no applications for extensions of time limits have been received, issue a notice extending a specified deadline, or all deadlines, in respect of the ORESS Tonn Nua Project by a specified period of time or until a specified date within the conditions of the state aid clearance decision for ORESS Tonn Nua.

14.10 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 Tonn Nua if any information requested in a letter warning of the possibility of such exclusion is not received within twenty-one (21) days after being requested in such a letter.

14.11 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 Tonn Nua. For further information on how the Minister processes personal data in connection with ORESS Tonn Nua, 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 Project Delivery Agreement, Performance Security and Letter of Offer

The Minister for the Environment, Climate and Communications

ORESS Tonn Nua

Project Delivery Agreement

[●] 20[●]

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THIS PROJECT DELIVERY AGREEMENT ("**AGREEMENT**") is made the day of 20[●]

BETWEEN:

THE MINISTER FOR THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS, of Tom Johnson House, Beggars Bush, Haddington Road, Dublin 4, D04K7X4

(1) (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 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 Tonn Nua Auction in respect of the ORESS Tonn Nua Project was accepted by the TSO and an Offer was submitted into the ORESS Tonn Nua Auction in respect of the ORESS Tonn Nua Project.

C. By Notice of Award, the Generator was informed that the ORESS Tonn Nua Project was successful in the ORESS Tonn Nua Auction.

D. In accordance with the Terms and Conditions, the Generator (as the successful bidder) shall be entitled to receive a Letter of Offer for ORESS Tonn Nua 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.

F. The Parties intended that this document take effect as a deed.

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);

"**Additional Installed Renewable Capacity**" has the meaning given to that term in Clause 6.4;

"**Adjusted Final Installed Renewable Capacity**" has the meaning given to that term in Clause 6.4;

"**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);

"**Capacity Shortfall Amount (Initial)**" means the Target Installed Renewable Capacity minus the Final Installed Renewable Capacity, as at the Longstop Date. If the Final Installed Renewable Capacity as at the Longstop Date is equal to, or greater than, the Target Installed Renewable Capacity then the Capacity Shortfall Amount (Initial) shall be deemed to be 0 MW.

"**Capacity Shortfall Amount (Final)**" means the Target Installed Renewable Capacity minus the Adjusted Final Installed Renewable Capacity, as at the date falling one (1) year after the Longstop Date. If the Adjusted Final Installed Renewable Capacity as at the date falling one (1) year after the Longstop Date is equal to, or greater than, the Target Installed Renewable Capacity then the Capacity Shortfall Amount (Final) shall be deemed to be 0 MW.

"**Capacity Shortfall Damages**" means €130,000/MW, multiplied by the Capacity Shortfall Amount (Initial). If such Capacity Shortfall Damages calculation results in a number equal to or less than €0, no Capacity Shortfall Damages will be payable;

"**Capacity Shortfall Damages Refund**" means €100,000/MW, multiplied by the product of (a) Capacity Shortfall Amount (Initial) minus (b) the Capacity Shortfall Amount (Final). If such Capacity Shortfall Damages Refund calculation results in a number equal to or less than €0, no Capacity Shortfall Damages Refund will be payable.

"**Commercial Operation**" means the ORESS Tonn Nua Project:

(a) has obtained an Interim Operational Notification; and

(b) has 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 Tonn Nua Project achieved Commercial Operation;

"**Commercial Operation Declaration**" has the meaning given to that term in Clause 5.4;

"**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;

"**Department**" means the Department of the Environment, Climate and Communications;

"**EU Clean Energy Package**" has the meaning given to it in the Terms and Conditions;

"**Event of Default**" has the meaning given to that term in Clause 13.1;

"**Final Installed Renewable Capacity**" has the meaning given to that term in Clause 6.2;

"**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 Tonn Nua Project, shutting down or reducing the output of the ORESS Tonn Nua Project or (where applicable) interrupting the supply of electricity to the ORESS Tonn Nua 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 (i) lack of funds and/or the inability of a Party to pay or (ii) a Grid Delay Event;

"**Further Installed Renewable Capacity Notice**" has the meaning given to that term in Clause 6.2;

"**Generator Planning Consent Default**" means:

(a) a circumstance where (i) the Generator has not complied with Section 11.1.5 of the Terms and Conditions; and (ii) the Planning Consent Longstop has occurred; and (iii) the Planning Consent for the ORESS Tonn Nua Project has not been granted; or

(b) a circumstance where (i) the Generator has issued a Planning Consent Failure Commitment following a Planning Consent Failure Event under limb (a) or (b) of that definition and (ii) any application for Planning Consent in respect of the ORESS Tonn Nua Project subsequent to such Planning Consent Failure Commitment is either refused, or is quashed as a result of a Third Party Judicial Review Challenge.

"**Grid-Delayed Quantity**" is used to calculate Grid Delay Compensation and means the Installed Renewable Capacity of the ORESS Tonn Nua Project, installed and onsite, during a period where the Generator is entitled to Grid Delay Compensation in accordance with Clause 11. If the Grid-Delayed Quantity is greater than the Target Installed Renewable Capacity, then the Grid-Delayed Quantity will equal the Target Installed Renewable Capacity. For the avoidance of doubt, the Grid-Delayed Quantity shall be zero if the capacity installed and onsite is less than the Minimum Installed Renewable Capacity.

"**Grid Delay Compensation Conditions**" is defined in Clause 11;

"**Grid Delay Event**" is defined in Clause 10.1;

"**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;

"**Interim Operational Notification**" means the interim operational notification (ION) issued by the TSO in respect of the ORESS Tonn Nua Project, pursuant to the Grid Code.

"**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 Tonn Nua 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) a material breach by the Generator of this Agreement, or a material failure by the Generator to comply with this Agreement and/or the Terms and Conditions, in each case in respect of which the Minister has given notice (a "**Material Breach Notice**") to the Generator requiring the breach of failure to be rectified and the Generator has failed to rectify the breach of failure within twenty (20) Working Days of the Material Breach Notice, or such longer period as the Minister may in his or her sole discretion specify in the Material Breach Notice; or

(b) a breach by the Generator of 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;

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

"**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 Tonn Nua Project was successful in the ORESS Tonn Nua Auction;

"**Offer**" has the meaning given to it in the Terms and Conditions;

"**ORESS Tonn Nua Auction**" has the meaning given to it in the Terms and Conditions;

"**ORESS Tonn Nua Project**" means the renewable energy project, to be developed by the Generator, as detailed in its Application for Qualification;

"**ORESS Tonn Nua Support**" has the meaning given to it in the Terms and Conditions;

"**ORESS Tonn Nua Support End Date**" has the meaning given to it in the Terms and Conditions;

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

"**Planning Consent Date**" has the meaning given to it in the Terms and Conditions;

"**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 of the ORESS Tonn Nua Project;

"**Regulatory Authority**" has the meaning given to it in the Terms and Conditions;

"**Renewable Energy Directive**" has the meaning given to it in the Terms and Conditions;

"**Replacement Performance Security**" is defined in Clause 8.7;

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

"**Target Commercial Operation Date**" has the meaning given to it in the Terms and Conditions;

"**Target Installed Renewable Capacity**" has the meaning given to it in the Terms and

Conditions;

"**Terms and Conditions**" means the terms and conditions governing the ORESS Tonn Nua Auction (as may be amended or updated in accordance with the Terms and Conditions);

"**Third Party Judicial Review Challenge**" has the meaning given to it in the Terms and Conditions;

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

"**TSO Judicial Review Challenge**" means any judicial review proceedings initiated 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 2023 in respect of the planning consent for the Connection Assets in respect of the ORESS Tonn Nua Project; 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 ORESS Tonn Nua Support End 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 Clause 8.5; and

3.1.2 design, finance, construct, complete, commission and operate the ORESS Tonn Nua 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 Tonn Nua 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 Generator shall ensure that all Milestones are completed by the time prescribed in Appendix 2.

5.2 The Generator shall:

(a) use its best endeavours to ensure that the ORESS Tonn Nua Project achieves Commercial Operation as soon as practicable following first export of the ORESS Tonn Nua Project; and

(b) ensure that the ORESS Tonn Nua Project achieves Commercial Operation by the Longstop Date.

5.3 If the ORESS Tonn Nua Project cannot achieve:

(a) a particular Milestone by the relevant Milestone Completion Date; or

(b) Commercial Operation by the Target Commercial Operation Date,

in each case due to Force Majeure, then, always subject to the Generator's compliance with Clause 9.1 and the Minister's right to terminate for extended Force Majeure under Clause 9.3, 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 twelve (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.

5.4 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**").

5.5 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.

5.6 The Generator shall notify the Minister as soon as possible, and in any event no later than five (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 Capacity Shortfall

6.1 If, at the Commercial Operation Date, the Installed Renewable Capacity of the ORESS Tonn Nua Project is less than the Target Installed Renewable Capacity, the Generator will use all reasonable endeavours to install the remaining capacity by no later than the Longstop Date.

6.2 If the Commercial Operation Date has occurred and, at the Longstop Date, the Installed Renewable Capacity of the ORESS Tonn Nua Project remains less than the Target Installed Renewable Capacity, then the Generator shall no later than ten (10) Working Days after the Longstop Date either:

(a) notify the Minister in writing of the Installed Renewable Capacity of the ORESS Tonn Nua Project as at the Longstop Date (the "**Final Installed Renewable Capacity**") and pay to the Minister the Capacity Shortfall Damages; or

(b) if the Installed Renewable Capacity of the ORESS Tonn Nua Project is above the Minimum Installed Renewable Capacity and the Generator intends to install further Installed Renewable Capacity in respect of the ORESS Tonn Nua Project, notify the Minister in writing of such circumstance (a "**Further Installed Renewable Capacity Notice**").

6.3 If the Generator does not pay the Capacity Shortfall Damages by the due date under Clause 6.2, the Minister shall be entitled to make a demand for payment under the Performance Security in an amount equal to the Capacity Shortfall Damages.

6.4 If the Generator has issued a Further Installed Renewable Capacity Notice:

(a) the Generator shall be entitled up to the date falling one (1) year after the Longstop Date to install further Installed Renewable Capacity in respect of the ORESS Tonn Nua Project ("**Additional Installed Renewable Capacity**"), provided that such further Installed Renewable Capacity complies with the Terms and Conditions;

(b) the Generator shall notify the Minister in writing of the Installed Renewable Capacity of the ORESS Tonn Nua Project as at the date falling one (1) year after the Longstop Date (the "**Adjusted Final Installed Renewable Capacity**"); and

(c) the Minister (in his or her sole discretion) shall be entitled to elect to include any Additional Installed Renewable Capacity in the PSO Order.

6.5 Following receipt by the Minister of a notice pursuant to Clause 6.4(b), the Minister shall pay to the Generator the Capacity Shortfall Damage Refund (if any).

7 Third Party Judicial Review Challenge

7.1 The Generator shall notify the Minister as soon as practicable if the Generator becomes aware that any authorisations, licences, permits or similar in respect of the ORESS Tonn Nua Project are subject to a Third Party Judicial Review Challenge.

7.2 For each month during which a Third Party Judicial Review Challenge subsists in respect of (1) the Planning Consent for the ORESS Tonn Nua Project or (2) the MAC application for the ORESS Tonn Nua Project:

(a) Where such Third Party Judicial Review Challenge subsists during the period on or before the Planning Consent Longstop, then the Planning Consent Longstop will be extended by a month to take account of such Third Party Judicial Review Challenge; or

(b) Where such Third Party Judicial Review Challenge subsists during the period after the Planning Consent Longstop, then the Target Commercial Operation Date, the Milestone Completion Dates which are explicitly linked to a matter which is subject to such Third Party Judicial Review Challenge, and the Longstop Date will each be extended by a month to take account of such Third Party Judicial Review Challenge.

7.3 For each month during which a Third Party Judicial Review Challenge subsists in respect of a decision made by any administrative or public body in respect of any consent, licence, permission, authorisation or similar item in respect of the ORESS Tonn Nua Project (other than the Planning Consent and the MAC application):

(a) Where such Third Party Judicial Review Challenge subsists during the period on or before the Planning Consent Longstop, then the Planning Consent Longstop will be extended by a month to take account of such Third Party Judicial Review Challenge; or

(b) Where such Third Party Judicial Review Challenge subsists during the period after the Planning Consent Longstop, then the Target Commercial Operation Date, the Milestone Completion Dates which are explicitly linked to a matter which is subject to such Third Party Judicial Review Challenge, and the Longstop Date will each be extended by a month to take account of such Third Party Judicial Review Challenge,

in each case, strictly subject to the Generator having provided evidence (satisfactory to the Minister) which demonstrates that such Third Party Judicial Review Challenge has had a material adverse impact on the critical path of the ORESS Tonn Nua Project, by reference to the Updated PID Gantt Chart and other supporting documentation.

7.4 This Clause 7, and the provisions of the Terms and Conditions which relate to a Planning Consent Failure Event, contain the sole and exclusive rights of the Generator and the ORESS Tonn Nua Project in respect of a Third Party Judicial Review Challenge.

7.5 This Clause 7 shall not apply to any Third Party Judicial Review Challenge of a decision of the Minister, the Department or the TSO under this Agreement and the Terms and Conditions.

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, in an amount equal to the Performance Security Required Amount, by a security provider with an Approved Credit Rating to the Minister no later than the Project Delivery Agreement and Performance Security Return Date.

8.2 The Performance Security must be in the form attached to this Agreement and alternative forms of security (including cash) are not permitted. The provision of more than one Performance Security instrument of less than the Performance Security Required Amount is not permitted.

8.3 The Performance Security must be for a minimum period of twelve (12) months. The Generator must renew or replace the Performance Security not less than thirty (30) Working Days before its expiration.

8.4 The Generator shall be entitled, by providing reasonable prior written notice to the Minister, to replace the existing Performance Security with replacement Performance Security, solely in connection with an increase to the Performance Security Required Amount (in accordance with the Terms and Conditions). The Generator's ability to replace existing Performance Security is strictly subject to (i) such replacement Performance Security being in the form set out in Appendix 3, (ii) such replacement Performance Security complying with all requirements and conditions in this Agreement and the Terms and Conditions and (iii) Performance Security remaining in place at all times in an amount equal to the Performance Security Required Amount. The Generator shall bear all costs and expenses in connection with any replacement Performance Security.

8.5 If:

8.5.1 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

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

8.5.3 the ORESS Tonn Nua Project is Abandoned; or

8.5.4 a Generator Planning Consent Default has occurred; or

8.5.5 any of the matters listed in Clause 13 arise, allowing the Minister to terminate this Agreement and/or make a demand for payment under the Performance Security in accordance with Clause 13.2; or

8.5.6 the Generator fails to renew or replace the Performance Security not less than twenty (20) Working Days before its expiration; or

8.5.7 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.

8.6 [Not Used]

8.7 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), the 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:

8.7.1 be issued by a financial company with an Approved Credit Rating

8.7.2 be in the form set out at Appendix 3 to this Agreement.

8.7.3 be effective so there is no gap in security cover.

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

The Department of the Environment, Climate and Communications, Tom Johnson

House, Beggars Bush, Haddington Road, Dublin 4, D04K7X4

For the Attention of: Principal Officer, Offshore Energy Long Term Strategic Planning Division, The Department of the Environment, Climate and Communications.

8.9 Following receipt of the Replacement Performance Security which satisfies the requirements of Clause 8.7, the Minister shall return the previous Performance Security provided to the Generator.

8.10 The Minister shall return the Performance Security or Replacement Performance Security (as applicable) following receipt of the documentation at Clauses 5.4 and 5.5 for the ORESS Tonn Nua 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.

9.2 Further:

9.2.1 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;

9.2.2 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;

9.2.3 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;

9.2.4 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;

9.2.5 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

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

9.3 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 9.3, the Parties acknowledge that the Letter of Offer will be withdrawn by the Minister.

9.4 This Clause 9 shall cease to apply on and from the Commercial Operation Date.

10 Grid Delay Event

10.1 A "**Grid Delay Event**" will occur where (i) the Target Grid Delivery Date is updated or (ii) Grid Delivery has not occurred or will not occur by the Target Grid Delivery Date, and the Generator can in each case demonstrate (to the Minister's satisfaction):

(a) if before the Target Commercial Operation Date, that such circumstance would prevent the ORESS Tonn Nua Project from achieving Commercial Operation by the Target Commercial Operation Date; or

(b) if after the Target Commercial Operation Date, that such circumstance would prevent the ORESS Tonn Nua Project from achieving Commercial Operation by the Longstop Date.

If a Grid Delay Event occurs before the Target Commercial Operation Date, then the Target Commercial Operation Date and the Longstop Date will be extended on a day-for-day basis equal to the delay caused by such Grid Delay Event.

If a Grid Delay Event occurs after the Target Commercial Operation Date, then the Longstop Date will be extended on a day-for-day basis equal to the delay caused by such Grid Delay Event.

10.2 The Generator must, acting in good faith, submit evidence (satisfactory to the Minister) demonstrating:

(a) that the circumstance giving rise to the Grid Delay Event would prevent the ORESS Tonn Nua Project from achieving Commercial Operation by (as applicable) the Target Commercial Operation Date or the Longstop Date;

(b) the impact of (as applicable) the updated Target Grid Delivery Date and/or non-occurrence of Grid Delivery on the key deliverables and milestones of the ORESS Tonn Nua Project outlined in the PID Gantt Chart or Updated PID Gantt Chart (as applicable); and

(c) that the Generator has acted in good faith and as a Prudent Industry Operator to mitigate the impact of the Grid Delay Event.

10.3 The Generator must, acting in good faith, use all reasonable endeavours (1) to continue to act as a Prudent Industry Operator to mitigate the impact of the Grid Delay Event and (2) to proceed without undue delay to achieve Commercial Operation as soon as reasonably practicable.

10.4 With effect from the Grid Standstill Date, no further extensions to the Target Commercial Operation Date will be permissible under this Clause 10.

11 Grid Delay Compensation

11.1 Grid Delay Compensation will accrue to the Generator on and from the first date on which the Generator demonstrates (to the Minister's satisfaction) that all of the following conditions have been satisfied:

(a) The Fixed Grid Date has occurred;

(b) The Longstop Date has not occurred;

(c) Grid Delivery has not occurred; and

(d) The ORESS Tonn Nua Project has achieved an Installed Renewable Capacity, installed and onsite, equal to or greater than the Minimum Installed Renewable Capacity,

(the "**Grid Delay Compensation Conditions**").

11.2 Grid Delay Compensation will be calculated by the Generator on a monthly basis using a methodology determined by the Regulatory Authority. It will be paid monthly and will compensate the Generator by reference to the Grid-Delayed Quantity for the relevant day, multiplied by an appropriate capacity factor (based on P50), multiplied by 100% of the Strike Price (as may have been adjusted in accordance with the Terms and Conditions), adjusted for transmission and distribution losses (as applicable), and subtracting any revenues in respect of the Grid-Delayed Quantity.

11.3 In respect of any period during which Grid Delay Compensation is accruing, the Generator must, acting in good faith, provide the TSO with all reasonable assistance as the TSO may require in order to ensure that Grid Delivery is achieved and shall not, through its acts or omissions, delay or frustrate such outcome.

11.4 Grid Delay Compensation will cease to accrue to the Generator on and from the date on which Grid Delivery is achieved. The Generator shall promptly notify the Minister on such occurrence and shall use its best endeavours to ensure that the ORESS Tonn Nua Project achieves Commercial Operation as soon as practicable following such date.

11.5 The Longstop Date will be extended on a day-for-day basis for each day in respect of which Grid Delay Compensation accrues.

11.6 No Grid Delay Compensation shall accrue after the occurrence of the Commercial Operation Date. For the avoidance of doubt, no portion of the Installed Renewable Capacity of the ORESS Tonn Nua Project shall simultaneously be eligible for both Grid Delay Compensation and Unrealised Available Energy Compensation.

12 TSO Judicial Review Challenge

12.1 For each month after the Planning Consent Date during which a TSO Judicial Review Challenge subsists in respect of the planning consent for the Connection Assets in respect of the ORESS Tonn Nua Project then the Grid Standstill Date will be extended by a month to take account of such TSO Judicial Review Challenge.

13 Events of Default and Termination

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

13.1.1 the Generator does not comply with its obligations under Clause 7.1 of this Agreement; or

13.1.2 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

13.1.3 the Generator is in Material Breach; or

13.1.4 the ORESS Tonn Nua Project is Abandoned; or

13.1.5 any other act, default or omission which is in breach of this Agreement occurs and in respect of which the Minister has given 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 his or her sole discretion specify in the breach notice; or

13.1.6 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 (a) – (c) above occurs in any jurisdiction in relation to the Generator;

13.1.7 Commercial Operation is not achieved by the Longstop Date;

13.1.8 a Generator Planning Consent Default has occurred;

13.1.9 the Minister has revoked the Letter of Offer in accordance with the Terms and Conditions.

13.2 Where an Event of Default arises or the Minister proposed to terminate this Agreement in accordance with Clause 9.3, the Minister shall be entitled to:

13.2.1 make an immediate demand under the Performance Security (except where explicitly provided otherwise in the Terms and Conditions); and / or

13.2.2 terminate this Agreement and revoke the Letter of Offer with immediate effect; and / or

13.2.3 require the Generator take all such actions as may be requested by the Minister in order to ensure compliance with these Terms and Conditions and the Generator shall comply with any such requests from the Minister.

13.3 The Minister shall have no liability to the Generator by reason of exercising its rights under this Clause 13.

14 Effects of Termination

14.1 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.

14.2 Termination of this Agreement by the Minister as a whole under Clause 13 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.

15 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.

16 Notices

16.1 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

16.4. Either Party may, by notice to the other, given in compliance with this Clause 16, change its address or the person in that Party to which such notices are to be sent or delivered.

16.2 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.

16.3 Any notice so delivered, posted or transferred shall be deemed to have been given:

16.3.1 in the case of personal delivery, when delivered; or

16.3.2 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.

16.4 **The Minister**

Address: Principal Officer, Offshore Energy Long Term Strategic Planning Division

The Department of the Environment, Climate and Communications, Tom Johnson House, Beggars Bush, Haddington Road, Dublin 4, D04K7X4

For the attention of: ORESS Team, Offshore Energy Long Term Strategic Planning Division

The Generator

Address: [●]

For the attention of: [●]

17 Entire Agreement

This Agreement, the Terms and Conditions 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 Tonn Nua Project.

18 Variation

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

19 Waiver

19.1 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:

19.1.1 affect that right, power or remedy; or

19.1.2 operate as a waiver of it.

19.2 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.

20 Counterparts

20.1 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.

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

21 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 as a deed on the day and year first herein written.

Appendix 1

Form of Letter of Offer

Our Ref: ORESS Tonn Nua/X/YYY

[●] 20[●]

[Legal name of Applicant]

[Address (including EirCode)]

[email address]

ORESS Tonn Nua Competition

Letter of Offer

RE: [ORESS Tonn Nua Project Name] - ORESS Tonn Nua Ref. No: 2/YYY (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 Tonn Nua Auction.

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

Applicant	**ORESS Tonn Nua Project**	**Offer Price**
[Legal Name of Applicant] [Address (including EirCode)]	[ORESS Tonn Nua Project name], [●] MW [Location]	€[ORESSTonnNuaOfferPrice]/MWh

The ORESS Tonn Nua Ref. No in respect of this ORESS Tonn Nua 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 Tonn Nua terms and conditions which are publicly available at [insert link].

Conditions of this offer

1. That you shall comply with the ORESS Tonn Nua terms and conditions.

2. You are required to comply with the Project Delivery Agreement including the achievement of all Milestones required to be completed under the Project Delivery Agreement by their respective completion dates.

3. A Maritime Area Consent is required at all times in respect of your ORESS Tonn Nua Project in order to remain compliant with the ORESS Tonn Nua terms and conditions.

4. A Grid Connection Agreement is required at all times during the ORESS Tonn Nua Support Period in respect of your ORESS Tonn Nua Project in order to remain compliant with the ORESS Tonn Nua terms and conditions.

5. You are reminded of the requirement for official metering, including the requirement that the ORESS Tonn Nua Project must be metered separately.

6. Any material changes to the ORESS Tonn Nua Project as accepted into ORESS Tonn Nua must be approved by the Minister.

7. The ORESS Tonn Nua Project cannot benefit from any other support scheme funded via the PSO Levy.

Conditions of this offer relating to the PSO Order

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

8. Confirmation that a Guarantee of Origin in respect of the output of the ORESS Tonn Nua Project will not be sought;

9. Evidence that the supplier with whom the Generator has entered into a PPA in respect of the ORESS Tonn Nua Project has notified the Regulatory Authority that the ORESS Tonn Nua Project is eligible for ORESS Tonn Nua 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 Tonn Nua Project is to be included in the calculations for the upcoming PSO Levy Year.

It is noted that ORESS Tonn Nua Support can only be paid to the ORESS Tonn Nua Project in any given year subject to two conditions:

1. that the ORESS Tonn Nua Project has been included in the Regulatory Authority's annual PSO decision; and
2. that the ORESS Tonn Nua Project has been 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
Offshore Energy Long Term Strategic Planning Division

Cc: EirGrid: RESS@EirGrid.com

Appendix 2

Milestones

#	Milestone	Interim Milestone Date	Final Milestone Date
1.	The Generator shall apply for a Full Connection Offer in accordance with Section 11.1.4.	N/A	If not complete by the time period specified in Section 11.1.4, the Minister will be entitled to drawdown up to a maximum of 5% of the Performance Security.
2.	The Generator shall complete and submit the Project Delivery Plan Questionnaire in accordance with Section 11.1.1(a).	N/A	If not complete by six (6) months after the Project Delivery Agreement and Performance Security Return Date, the Minister will be entitled to drawdown up to a maximum of 5% of the Performance Security.
3.	The Generator shall submit a copy of the Planning Consent in respect of the ORESS Tonn Nua Project.	N/A	Planning Consent Longstop Date. If a Generator Planning Consent Default has occurred, the Letter of Offer will be revoked and the remaining portion of the Performance Security will be drawn down.
4.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 11.1.1(b).	N/A	To be submitted within six (6) months of the Planning Consent Date. 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

#	Milestone	Interim Milestone Date	Final Milestone Date
			respect of a failure to achieve Milestone 2).
5.	The Generator shall submit evidence of the Commencement Date.	If not complete by eighteen (18) 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 twenty four (24) months following the Planning Consent Date, the Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
6.	The Generator shall achieve Commercial Operation.	If not complete by the Target Commercial Operation Date, erosion of the ORESS Tonn Nua Support Period in accordance with the Terms and Conditions.	If not complete by the Longstop Date, Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
7.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 11.1.1(c).	N/A	To be submitted within six (6) months after the Commercial Operation Date. 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 2 or Milestone 4).

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 Project Delivery Agreement in the amount of €[●]

Under the Project Delivery Agreement between the Minister for the Environment, Climate and Communications (the "**Beneficiary**") and [●] (the "**Generator**") (the "**Project Delivery 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 [insert date at least 12 months after issuance];[1]

"**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

[1] **Note**: The Expiry Date must be at least twelve months after the date of issuance. The only exception to this is the 'final' period where the Expiry Date will be the Performance Security End Date.

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 8 (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 8 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 12 of this Performance Security,

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

6 This Performance Security will be deemed automatically extended for successive periods of twelve months from the present or any future Expiry Date unless the Issuer notifies the Beneficiary in writing not less than ninety (90) days prior to any such date, that the Issuer has elected not to extend such Expiry Date for such additional period. Any such notice not to extend the Expiry Date shall be effective only upon actual delivery to the Beneficiary and no such notice will have any effect absent such actual delivery.

7 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 Project Delivery Agreement;

(c) any invalidity in, or irregularity or unenforceability of the obligations of any person under the Project Delivery 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.

8 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, Tom Johnson House, Beggars Bush, Haddington Road, Dublin 4, D04K7X4 For the attention of: Principal Officer, Offshore Energy Long Term Strategic Planning 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][2]

9 This Performance Security may be amended only by an instrument in writing signed on behalf of the Beneficiary and the Issuer.

10 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.

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

12 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.

13 All charges and fees under this Performance Security shall be for the account of the Generator.

Yours faithfully

[●]

[2] **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.

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]

GIVEN under the seal of
THE MINISTER FOR THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS by

_____

a person duly authorised pursuant to section 15(4) of the Minister and Secretaries Act 1924.

GIVEN under the common seal
of **[GENERATOR]**
and delivered as a deed in the
presence of:-

_____
(Witness' Signature)

_____
(Witness' Address)

_____
(Witness' Occupation)

_____
(Authorised Officer)

_____
(Authorised Officer)

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 of 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. If the Department of 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 of 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 anonymised basis.

Each Applicant acknowledges and agrees that the Minister shall be entitled to share, on a confidential basis, the responses to this Financial Questionnaire with other governmental departments and/or agencies of the Irish government.

Information request	Applicant response
Project Details What is the ORESS application reference number of your project?	Insert application reference number as provided by the TSO 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: • > 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 not 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: • > 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 not 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.	• 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
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'). Project Cashflows: — include project revenues, capital and operating costs (see definitions below), and working capital adjustments; and — exclude all Financing Costs, Taxes and Accrual Items. Whereby: — 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.	Select one of the following: • PIRR >= 10%; • 10% > PIRR >= 8%; • 8% > PIRR >= 6%; • 6% > PIRR >= 4%; • 4% > PIRR >= 2%; or • 2% > PIRR.
Capital costs Please indicate the total Nominal Capital Costs associated with your project, relative to the Target Installed Renewable Capacity. Nominal Capital Costs: — 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.	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'.
Annual Operating costs Please indicate the Annual Operating Costs associated with your project, relative to the Target Installed Renewable Capacity.	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

Information request	Applicant response
Operating Costs: — include all repairs, maintenance, operations 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.	nominal'.

Annex C

Relevant Grid Connection Parameters

1.1 The relevant grid connection parameters in respect of ORESS Tonn Nua will be published by the TSO in accordance with applicable decision paper(s) issued by the CRU.

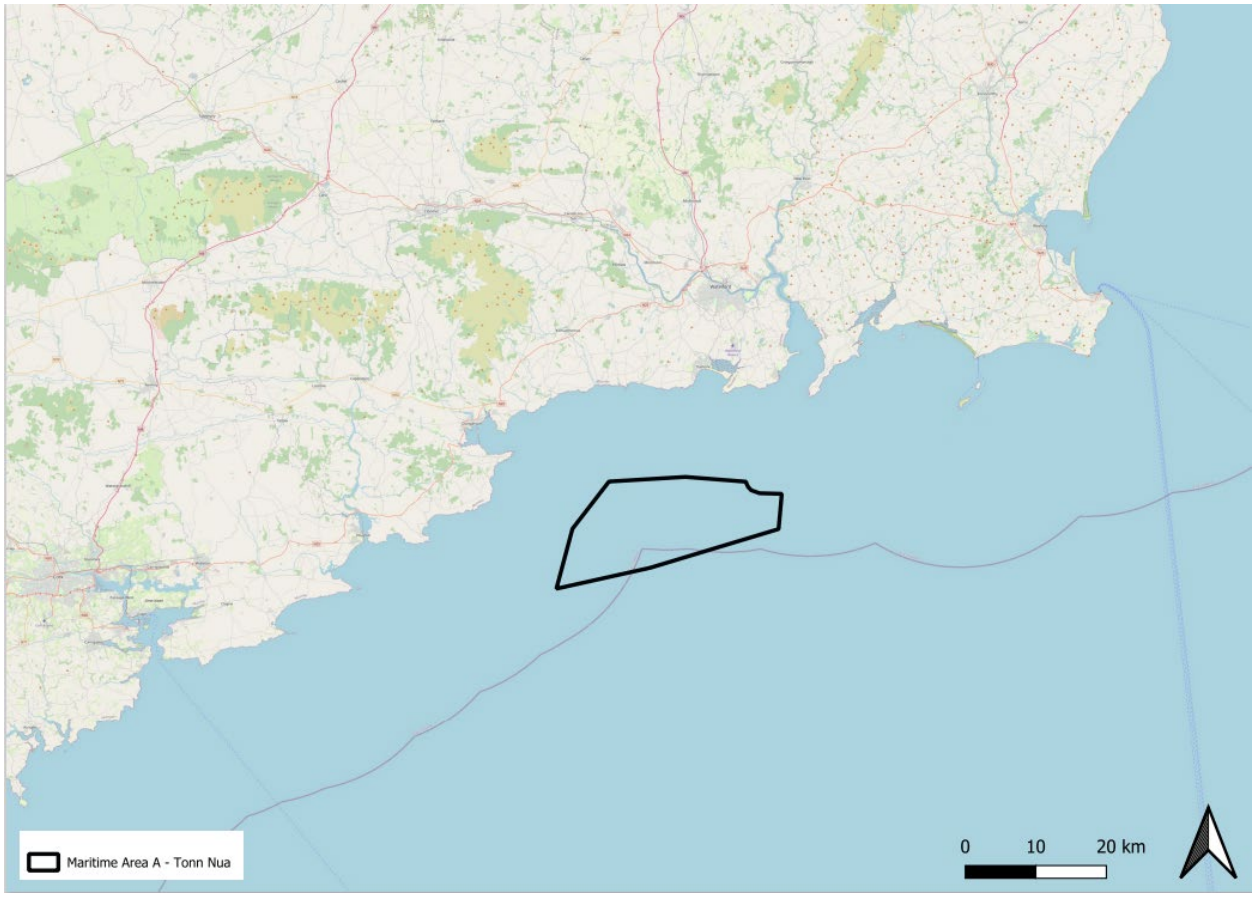
1.2 As soon as reasonably practicable after the Final Auction Results Date, the TSO and the Generator shall enter into an agreement for collaboration in accordance with the terms of the Grid Connection Information or updated Grid Connection Information as updated in accordance with the applicable decision paper(s) issued by the CRU (as applicable). The Generator shall as soon as reasonably practicable provide to the Minister a copy of the executed agreement for collaboration.

Item	Description
MEC	**The lower of:** **(a) 900 MW; or** **(b) The maximum export capacity of the ORESS Tonn Nua Project as set out in the Grid Connection Agreement.**
Target Grid Delivery Date	**30 June 2032**

Annex D

Offshore Site

Offshore Site	Description
Coordinates	<table><tr><th>Vertex</th><th>X (Easting)</th><th>Y (Northing)</th></tr><tr><td>1</td><td>606819.1531</td><td>5748934.281</td></tr><tr><td>2</td><td>608893.283</td><td>5757378.953</td></tr><tr><td>3</td><td>613868.9274</td><td>5764106.697</td></tr><tr><td>4</td><td>624552.4787</td><td>5765006.882</td></tr><tr><td>5</td><td>633075.6677</td><td>5764557.335</td></tr><tr><td>6</td><td>633104.0103</td><td>5764378.822</td></tr><tr><td>7</td><td>633388.0639</td><td>5763821.644</td></tr><tr><td>8</td><td>633830.3256</td><td>5763379.447</td></tr><tr><td>9</td><td>635005.2311</td><td>5762997.496</td></tr><tr><td>10</td><td>638127.7019</td><td>5762996.541</td></tr><tr><td>11</td><td>637813.4772</td><td>5758058.227</td></tr><tr><td>12</td><td>619912.0352</td><td>5752159.504</td></tr><tr><td>13</td><td>606819.1531</td><td>5748934.281</td></tr></table> CRS to EPSG:32629 (WGS 84 / UTM zone 29N).


Maritime Area A - Tonn Nua
0
10
20 km