Rialtas na hÉireann
Government of Ireland

DRAFT for Consultation

ORESS 2.1 Terms and Conditions Tonn Nua Offshore Wind Auction

3 May 2024

Version Control

Version	Author	Date	Changes
1.0	DECC	01/05/2024	Draft for consultation

Submission of Consultation Responses

Submissions with the subject 'ORESS Tonn Nua Draft T&Cs Consultation' should be made to the following email address: oress@decc.gov.ie

The closing date for submissions is **Friday 7 June 2024**.

Responses to this consultation are subject to the provisions of the Freedom of Information act 2014 and Access to Information on the Environment Regulations 2007-2014.

Confidential or commercially sensitive information should be clearly identified in your submission, however parties should also note that any or all responses to the consultations are subject in their entirety to the provisions of the FOI acts and will be published on the website of the Department of the Environment, Climate and Communications.

Given the volume and the variety of comments anticipated, the Department does not intend to respond to individual submissions.

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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 2.1 Auction.

1.3 The document is structured as follows:

- Section 1 provides an overview of the overarching principles of RESS
- Section 2 provides definitions and interpretation provisions
- Section 3 provides for the legal basis for ORESS 2.1
- Section 4 sets out the roles for the Auction Monitor and the Market Auditor
- Section 5 sets out the form of ORESS 2.1 Support
- Section 6 sets out the processes that will be employed by the TSO to administer the ORESS 2.1 Auction
- Section 7 sets out the parameters around the qualification stage of the ORESS 2.1 Auction
- Section 8 sets out the parameters around the post-qualification stage of the ORESS 2.1 Auction
- Section 9 sets out the parameters around the winner selection stage of the ORESS 2.1 Auction

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- 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 2.1 Project from ORESS 2.1
- Section 13 sets out additional general terms and conditions applicable to ORESS 2.1
- Annex A sets out the form of Project Delivery Agreement that will be provided to the Successful Applicant in the ORESS 2.1 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 a Project Delivery Plan Questionnaire that must be completed by the Generator

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 34.1%, as set under the National Energy and Climate Plan, by 2030 which is expected to increase under the next iteration of the National Energy and Climate Plan.
- 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

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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 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.

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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 on the compliance with TSO's obligations detailed above in these Terms and Conditions.

1.8 These Terms and Conditions apply to ORESS 2.1 only. Future RESS auctions and supports will be subject to such terms and conditions as shall be issued in respect of those future RESS auctions and supports. All description of and references to future RESS auctions and supports are provided solely for information purposes only and should not be construed so as to create legally binding obligations as between or impose rights and duties on any persons.

1.9 ORESS 2.1 has been designed to be consistent with Articles 107 to 109 of the Treaty on the Functioning of the European Union together with all associated relevant European Union rules, regulations, guidance and notices applicable to state aid.

1.10 ORESS 2.1 is subject to any and all clearances required from the EU Commission and any consents, clearances or licenses which might be required from any other competent regulatory or statutory body. For the avoidance of doubt, the Minister reserves the right to amend these Terms and Conditions as a consequence of notifications to the EU Commission pursuant to Articles 107 to 109 of the Treaty on the Functioning of the European Union.

1.11 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 2.1 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 2.1 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 2.1.

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2 Definitions and Interpretations

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

"**Act**" means the Electricity Regulation Act 1999 (as amended).

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

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

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

"**Applicant**" means a person applying to qualify for the ORESS 2.1 Auction.

"**Application for Qualification**" means an application to be submitted by an Applicant seeking to qualify for the ORESS 2.1 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 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 2.1 Auction.

"**Auction Information Pack Publication Date**" means the scheduled publication date for the Auction Information Pack.

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"**Auction Monitor**" is defined in Section 4.1 of these Terms and Conditions.

"**Award**" means the award of ORESS 2.1 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).

"**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 2.1 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.

"**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.

"**Connection Offer**" means an offer issued by the TSO to the Generator to connect the ORESS 2.1 Project to the transmission system in accordance with [Insert CRU

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decision paper].[1]

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

"**Declaration of Prior PSO Funding**" is defined in Section 7.3.7 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.

"**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,*

[1] **Note to draft**: Provisions in relation to grid connection process for ORESS 2.1 remain subject to CRU final decision on Phase 2 process and are subject to change to align with such CRU final decision.

energy and competition policy.

"**Final Auction Results**" means the final auction results issued by the Minister in respect of the outcome of the ORESS 2.1 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 2.1 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 2.1 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 2.1, the operation of which is further set out at Section 5.2 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 2.1 Project.

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

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

"**Grid Connection Information**" means the grid connection information issued by the TSO in respect of the Proposed ORESS 2.1 Project.

"**Grid Costs**" means, in respect of a PSO Levy Year, the Grid Connection Charges and TUoS Charges paid by the Generator in respect of the ORESS 2.1 Project.

"**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 date on which Grid Delay Compensation becomes payable to the Generator under the Project Delivery Agreement.

"**Grid Delay Event**" means an action or inaction by the TSO (including its agents or contractors), which is outside of the reasonable control of the Generator acting as a Prudent Industry Operator, that prevents or delays the Generator from achieving Commercial Operation on or before the Longstop Date.

"**Grid Delivery Date**" means the expiry of the 'Connection Works Completion Period', as specified in the Connection Offer issued by the TSO to the Generator in respect of the ORESS 2.1 Project.

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"**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 6 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 2.1 Project, but not including the capacity of any energy storage facilities such as battery storage systems.

"**Irish Content**" means the cost to the Successful Applicant of procuring goods and services in respect of the ORESS 2.1 Project, where such goods and services are supplied by companies incorporated in Ireland and/or contractors which carry on the majority of their business in Ireland, in each case expressed as both (i) a euro (€) amount and (ii) a percentage of total overall costs over the lifetime of the ORESS 2.1 Project.

"**kW**" means kilowatt.

"**Letter of Offer**" means the letter of offer for ORESS 2.1 Support from the Minister to the Generator, in the form set out in Appendix 1 of the Project Delivery Agreement.

"**Longstop Date**" means the earlier to occur of (1) the Target Commercial Operation Date and (2) [December 2034], as such date may be extended in accordance with Clause 7.3 of the Project Delivery Agreement.

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

(a) capped in each hour by the MWh equivalent of Installed Renewable Capacity; and then

(b) further adjusted to reflect transmission losses and distribution losses (as determined by the TSO and DSO from time to time).

"**Loss-Adjusted RESS Metered Quantity**" means Metered Quantity adjusted as follows:

(a) capped in each hour by the MWh equivalent of Installed Renewable Capacity; and then

(b) further adjusted to reflect transmission losses and distribution losses (as determined by the TSO and DSO from time to time).

"**Maritime Area Consent**" 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 2.1 Project as stated in its Grid Connection Agreement.

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"**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 2.1 Auction and such maximum Offer Price for the ORESS 2.1 Auction will be specified in the Auction Information Pack.

"**Metered Quantity**" means the Active Power produced by the ORESS 2.1 Project and recorded each hour by the meter of the ORESS 2.1 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**" or "**NECP**" means the National Energy and Climate Plans developed by the Irish Government in order to meet the European Union's energy and climate targets for 2030 and as required under the European Regulation (EU) 2018/1999 of the European Parliament and of the Council on 11 December 2018 on the Governance of the Energy Union and Climate Action.

"**New Project**" means 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 2.1 Project in the ORESS 2.1 Auction.

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

"**Offshore Site**" means the relevant marine area as identified in the Project Development Area, within which the electricity generating plant, offshore grid connection and (if applicable) offshore substation for the ORESS 2.1 Project is intended to be developed, constructed and operated.

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

"**Onerous Planning Condition**" means, in respect of the ORESS 2.1 Project, any of the following conditions contained in the Planning Consent for that ORESS 2.1 Project:

(a) A condition that will require the ORESS 2.1 Project to cease operations before the date falling twenty (20) years from the Longstop Date;

(b) A condition that will directly prevent the ORESS 2.1 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 2.1 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 11.1.4 of these Terms and Conditions.

"**Onerous Planning Condition Event**" means, in respect of the ORESS 2.1 Project, a circumstance where:

(a) an Onerous Planning Condition is contained in the Planning Consent for the ORESS 2.1 Project; and

(b) the Planning Consent for the ORESS 2.1 Project does not permit the development and operation of a project with the key characteristics detailed in the Updated Project Information Document,

in each case as at the date on which the Planning Consent for the ORESS 2.1 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 2.1 in accordance with Section 12.3 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 2.1 Auction and to be published by the TSO in the Qualification Information Pack and Auction Information Pack.

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"**ORESS 2.1**" means the first phase of the second offshore RESS competition and includes the ORESS 2.1 Auction and the ORESS 2.1 Support.

"**ORESS 2.1 Auction**" means the auction, to be conducted under Section 8 of these Terms and Conditions, for the award of ORESS 2.1 Support.

"**ORESS 2.1 Auction Submission Deadline Date**" means the closing date for receipt of Offers.

"**ORESS 2.1 Auction Timetable**" means the schedule of events leading up to and following the ORESS 2.1 Auction, as may be amended or updated by the Minister and/or the TSO from time to time.

"**ORESS 2.1 Commitment**" is defined in Section 12.1.1 of these Terms and Conditions.

"**ORESS 2.1 Payment**" means (as applicable) Support Payments and Difference Payments (as each may be adjusted to account for capacity market revenues, in accordance with Section 5.2.8) and Unrealised Available Energy Compensation.

"**ORESS 2.1 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 2.1 Project, and "**PPA**" shall be construed accordingly.

"**ORESS 2.1 Project**" means the renewable energy project, to be developed by the Generator, as detailed in its Application for Qualification.

"**ORESS 2.1 Support**" means:

(a) an entitlement to receive Support Payments and an obligation to pay Difference Payments (as may be adjusted to account for capacity market revenues, in accordance with Section 5.2.8);

(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 10.4 of the Project Delivery Agreement.

"**ORESS 2.1 Support End Date**" means, in respect of the ORESS 2.1 Project, the

earliest of:

(a) the date which falls twenty (20) years after the Target Commercial Operation Date for the ORESS 2.1 Project;

(b) the date which falls twenty (20) years after the ORESS 2.1 Support Start Date; and

(c) where the ORESS 2.1 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 2.1 Support Period**" means, in respect of the ORESS 2.1 Project, the period beginning on the ORESS 2.1 Support Start Date and ending on the ORESS 2.1 Support End Date.

"**ORESS 2.1 Support Start Date**" means, in respect of the ORESS 2.1 Project, the earlier of:

(a) the Grid Delay Compensation Start Date; and

(b) the date on which the ORESS 2.1 Project has achieved Commercial Operation, subject always to the ORESS 2.1 Project having achieved Commercial Operation prior to the Longstop Date.

"**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 Working Days after the date falling eight weeks after

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the Planning Consent Date and ending on the Performance Security End Date; or

(b) if, on the date falling eight weeks after the Planning Consent Date, the Planning Consent is subject to a Third Party Judicial Review Challenge, the date beginning ten 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 (1) the date falling seven (7) months after the Commercial Operation Date and (2) the date falling seven (7) months after the Longstop Date.

"**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).

"**Physical Availability**" is defined in Section 5.6.5 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 2.1 Project at the Offshore Site.

"**Planning Consent Date**" means, in respect of the ORESS 2.1 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 2.1 Project:

(a) the application for Planning Consent in respect of the ORESS 2.1 Project is refused; or

(b) the Planning Consent for the ORESS 2.1 Project is quashed as a result of a

Third Party Judicial Review Challenge; or

(c) the Planning Consent for the ORESS 2.1 Project has not been decided upon by the Planning Consent Longstop, except where Section 11.1.4 of the Terms and Conditions has not been complied with in respect of the ORESS 2.1 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 2.1 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 [December 2029], as such date may be extended in accordance with Clause 7.3 of the Project Delivery Agreement.

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

(a) provides an indication of what Offer Price an Applicant may submit in the ORESS 2.1 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 2.1 Auction and the terms under which an entity would provide equity or debt financing or otherwise acquire an interest upon the ORESS 2.1 Project receiving an Award.

"**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.

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

"**Project Development Area**" means a maritime area designated by the State for offshore wind development to be utilised by the ORESS 2.1 Project and contained with the relevant DMAP for ORESS 2.1.

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

"**Proposed ORESS 2.1 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 2.1 Auction will become the ORESS 2.1 Project.

"**Provisional Auction Results**" means the provisional auction results issued by the Minister in respect of the outcome of the ORESS 2.1 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 2.1 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.

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"**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 2.1 Auction.

"**Qualification Decisions Submission Date**" means the indicative date for submission of Final Qualification Decisions to the Minister for approval in accordance with Section 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 2.1 Auction.

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

"**Qualified Applicant**" means an Applicant whose Application for Qualification has been included in the Qualification Results 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.

"**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.

"**SEM**" or "**Single Electricity Market**" means the arrangements in the State and Northern Ireland initially described in the Memorandum of Understanding between

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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.

"**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 2.1 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 2.1 Auction was successful.

"**Successful Applicant Judicial Review Challenge**" means any judicial review proceedings initiated 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 2022 in respect of the Planning Consent for the ORESS 2.1 Project; or

(b) a decision made by MARA under the Maritime Area Planning Act 2021 in

respect of a MAC application in connection with the ORESS 2.1 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 Project Development Area for ORESS 2.1.

"**Target Annual Energy Quantity**" means [3,547.8] GWh.[2]

"**Target Commercial Operation Date**" means the date which falls [sixty (60) months after the Planning Consent Date][3], as such date may be extended in accordance with Clause 5.3 or Clause 7.2 of the Project Delivery Agreement.

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

"**Terms and Conditions**" means these ORESS 2.1 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 (including, without limitation, its agents, directors, employees or any "connected person" (as defined in the Companies Act 2014) 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 2022 in respect of the Planning Consent for the ORESS 2.1 Project; or

(b) a decision made by MARA under the Maritime Area Planning Act 2021 in respect of a MAC application in connection with the ORESS 2.1 Project.

[2] **Note to draft**: Assumes a 900 MW project capacity.
[3] **Note to draft**: To be confirmed.

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

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

"**TSO RESS Account**" means the bank account held by the TSO whereby Applicants must post a Bid Bond, details of which will be communicated to Applicants by the TSO.

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

"**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.

"**Unsuitable Site Conditions**" means, in respect of the ORESS 2.1 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 2.1 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 industry norms for proceeding with the development, construction and/or operation of the ORESS 2.1 Project (with key characteristics as detailed in the Project Information Document) at the Offshore Site.

Any such conditions must be supported by comprehensive analysis and evidence from a reputable independent third party with sufficient industry knowledge and

experience on the subject matter concerned.

"**Unsuitable Site Conditions Commitment**" is defined in Section 12.3.4 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 2.1 in accordance with Section 12.3 of these Terms and Conditions.

"**Unsuitable Site Conditions Withdrawal Notification**" is defined in Section 12.3.4 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 Planning Consent Date.

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

"**Working Day**" means a weekday which is not:

(a) a public holiday or a bank holiday in Ireland; or

(b) a non-processing day, as advised by the TSO Bank.

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

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

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

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

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

2.2.5 time shall be expressed to the nearest second.

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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;

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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.

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3 Legal Basis for ORESS 2.1

3.1 This Section provides information on the applicable legal basis for ORESS 2.1, including the conducting of the ORESS 2.1 Auction and the provision of ORESS 2.1 Support in accordance with these Terms and Conditions.

3.2 ORESS 2.1 is established by the Minister and ORESS 2.1 Support will be funded through the PSO Levy charged to all final electricity customers. Section 39 of the Act sets out the legal basis for the PSO Levy.

3.3 Statutory Instrument No. 217 of 2002 (as amended) made under Section 39 of the Act requires that the Regulatory Authority calculates and certifies the costs associated with the PSO, including each of the relevant PSO schemes, and sets the associated PSO Levy.

3.4 ORESS 2.1 is part of the overall RESS package, which is subject to state aid approval by the EU Commission and is consistent with the European Union's Clean Energy Package, in particular the Renewable Energy Directive, and S.I. 365/2020 – European Union (Renewable Energy) Regulations 2020 which gives effect to Articles 4 and 6 of the Renewable Energy Directive.

3.5 Copies of legislation referred to in these Terms and Conditions are available online at http://www.irishstatutebook.ie. EU Directives are available online at http://eur-lex.europa.eu/en/index.htm. Regulatory Authority decisions are available at http://www.cru.ie.

3.6 These Terms and Conditions shall be governed by and construed in accordance with the laws of Ireland and, subject to Sections 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.

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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 2.1 Auction under these Terms and Conditions and the Operational Processes.

4.2 The Regulatory Authority will appoint a person or firm to act as the RESS market auditor (the "**Market Auditor**"). In accordance with the Information Paper, the Market Auditor shall conduct an audit of the operation and implementation of the ORESS 2.1 Auction, procedures and processes under these Terms and Conditions and the Operational Processes at least annually, in accordance with the terms of reference determined by the Regulatory Authority.

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5 ORESS 2.1 Support

5.1 Overview

5.1.1 Eligible prospective renewable electricity generators may compete in the ORESS 2.1 Auction (as further detailed in this Section 5 of these Terms and Conditions) for ORESS 2.1 Support, subject to and in accordance with these Terms and Conditions.

5.1.2 The Successful Applicant in the ORESS 2.1 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 2.1 Support for a period beginning no earlier than the ORESS 2.1 Support Start Date and ending no later than the ORESS 2.1 Support End Date.

For the avoidance of doubt, it will not be possible for a Supplier to submit a claim ex-ante to the Regulatory Authority for PSO payments associated with the ORESS 2.1 Support prior to the PSO Levy Year before the ORESS 2.1 Support Start Date. However, if applicable, an ex-post payment claim can be made by an eligible Supplier in the following PSO Levy Year for Commercial Operation in the period between 1 January and 30 September in the year during which the ORESS 2.1 Support Start Date falls.

5.1.4 The ORESS 2.1 Payment calculation process will be administered by the Regulatory Authority and the process for settlement of ORESS 2.1 Payments will be administered by the TSO, based on their existing PSO payment procedures.

5.1.5 The Letter of Offer will contain a unique ORESS 2.1 reference number in respect of the ORESS 2.1 Project. Once issued and to facilitate the administration of ORESS 2.1, it is a requirement that this reference number be quoted in all communications with the Minister.

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5.1.6 The Regulatory Authority will be responsible for implementing and administering the arrangements set out in this Section 5 of these Terms and Conditions. The Regulatory Authority may consult on any modification of these arrangements where it deems appropriate and provide recommendations to the Minister where, following such consultation, the Regulatory Authority is of the view that the arrangements set out in this Section 5 should be modified. Any modification of this Section 5 shall be made by the Minister in accordance with Section 1.11 of these Terms and Conditions.

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

5.2.1 ORESS 2.1 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 2.1 Auction.

If successful in the ORESS 2.1 Auction, this Offer Price shall be used to calculate the 'strike price' (the "**Strike Price**") which is used to settle the ORESS 2.1 Payments for the ORESS 2.1 Project.

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

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

And where:

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

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

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

"**Grid Costs Adjustment Amount**" is the Grid Costs Adjustment Amount, as determined in accordance with Section 5.2.4, expressed in €/MWh.

5.2.3 Indexation Factor

(a) On 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 2.1 Auction Submission Deadline Date

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

"**HICP**" means 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 the Indexation Date (Interim), the Regulatory Authority will calculate the Indexation Factor in accordance with the following formula:

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

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 each Indexation Date (Annual), the Regulatory Authority will calculate the Indexation Factor in accordance with the following formula:

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

And where:

"**I**" is the Indexation Factor

"**N**" means the Indexation Date (Annual)

"**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 Regulatory Authority will calculate 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 2.1 Support Start Date, or (b) where the ORESS 2.1 Support Start Date occurs on 1 October, the ORESS 2.1 Support Start Date.

The Grid Costs Adjustment Date will thereafter be each 1 October during the ORESS 2.1 Support Period.

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

Grid Costs Adjustment Amount$_N$ = (Grid Connection Charges$_N$ + Total Annual TUoS Charges$_N$) / Total Annual Physical Availability$_N$

Where:

"**Grid Connection Charges**" means the total charges, other than TUoS Charges, levied by the TSO under the Grid Connection Agreement in respect of the ORESS 2.1 Project in year $_N$ (expressed in €)

"**TUoS Charges**" means the total charges levied by the TSO in respect of the ORESS 2.1 Project's use of the transmission system in year $_N$ (expressed in €)

"**Total Annual Physical Availability**" means the total availability of the ORESS 2.1 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.

The Grid Costs Adjustment Amount will only apply in respect of Grid Costs applicable to the Installed Renewable Capacity or MEC of the ORESS 2.1 Project, whichever is lower.

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 2.1 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.

5.2.7 Annual Forecasts

ORESS 2.1 Support will be calculated annually based on forecasts and will be reconciled by the Regulatory Authority after the end of the following PSO Levy Year.

5.2.8 Overview of the Arrangements for Calculating RESS PSO Monies

The FIP will be calculated according to arrangements to be developed by the Regulatory Authority that will compare costs to market revenues (in each case as

further described below). If costs exceed market revenues, payments will flow from the PSO Levy in the direction of the Supplier to the PPA for the ORESS 2.1 Project. If market revenues exceed costs, payments will flow from the Supplier to the PPA for the ORESS 2.1 Project in the direction of the PSO Levy. In general terms, costs are represented by the Strike Price of the ORESS 2.1 Project applied to its Loss-Adjusted RESS Metered Quantity, and market revenues are represented by the deemed energy revenues and the realised capacity revenues applicable to the ORESS 2.1 Project. This process is described in further detail below.

The FIP is described as being 2-way because when costs exceed market revenues a Support Payment will be due to the Supplier, and when market revenues exceed costs a Difference Payment will be due from the Supplier.

The descriptions provided in this Section 5.2.8 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 2.1 Project applied to the Strike Price and the Loss-Adjusted RESS Metered Quantity of the ORESS 2.1 Project applied to the Market Reference Price. Specifically:

- For hours in which:

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

  exceeds

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

  then if the DAM Price equals or exceeds zero euro per MWh and, for the avoidance of doubt, the ORESS 2.1 Project is compliant with TSO dispatch instructions in that hour, the Supplier will be entitled to receive a payment equal to (a) minus (b), otherwise it will be entitled to a payment of zero (the "**Support Payment**"); and

- For hours in which:

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

exceeds

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

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

In calculating the level of ORESS 2.1 Support, the Support Payment and the Difference Payment will be further adjusted to account for capacity market revenues actually received. The market revenue calculations for the purposes of calculating the PSO Levy for the ORESS 2.1 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 2.1 Project associated with non-performance under a CRM reliability option). Capacity market revenues will (as applicable) decrease the Support Payment or increase the Difference Payment for the PSO Levy Year.

ORESS 2.1 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 2.1 Support.

ORESS 2.1 Support, inclusive of the net difference between the aggregate of Support Payments and Difference Payments over the relevant PSO Levy Year and adjusted for capacity market revenues and Unrealised Available Energy Compensation and Grid Delay Compensation as applicable, will be funded (or refunded) through the PSO Levy. For the avoidance of any doubt, payments will therefore have a statutory basis described by these Terms and Conditions but shall not derive by way of a contract pursuant to these Terms and Conditions.

5.2.9 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 2.1 PPA and a reconciliation to adjust for deviations between forecasts and actual outcomes of generation, availability, loss factors, DAM Prices and any other factors (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 2.1 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 2.1 PPA for a PSO Levy Year is negative after adjusting for any reconciliation, the Supplier that is a party to the ORESS 2.1 PPA will be required to make monthly payments over the course of the next applicable PSO Levy Year to the TSO as opposed to receiving payments.

If, at the end of the ORESS 2.1 Support Period for the ORESS 2.1 Project, the final reconciliation calculation indicates that there is an amount due from the Supplier, such amount will be the joint and several responsibility of the Supplier and the Generator. This provision will apply to the ORESS 2.1 Project without regard to ownership of the ORESS 2.1 Project after the final year of ORESS 2.1 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 2.1 PPA, on behalf of whom it will be eligible to receive (and, when applicable, required to make) ORESS 2.1 Payments in the upcoming PSO Levy Year.

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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 2.1 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 2.1 Project will only be eligible to receive ORESS 2.1 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 2.1 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 2.1 Project has been included in the PSO S.I. (in accordance with Section 5.3.3).

The Generator will be liable to the Minister for all ORESS 2.1 Payments in respect of an ORESS 2.1 Project which would have been paid, if the Generator (and/or its Supplier) had complied with its or their obligations under these Terms and Conditions, the Project Delivery Agreement and/or if the Generator (and/or its Supplier) had ensured that the ORESS 2.1 Project was included on the PSO Order during the applicable time period.

Further, to the extent that prior to the Commercial Operation Date, the market revenues of the ORESS 2.1 Project are greater than the Strike Price multiplied by the metered output of the ORESS 2.1 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 of the ORESS 2.1 Project prior to the Commercial Operation Date minus (b) the Strike Price multiplied by metered output of the ORESS 2.1 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 2.1 Project eligible for PSO payments in the upcoming PSO Levy Year. Payments cannot be made unless the ORESS 2.1 Project is both listed in the PSO S.I. for the upcoming PSO Levy Year and has been included by the Regulatory Authority in the PSO Levy decision. The ORESS 2.1 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

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ORESS 2.1 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 2.1 Project takes, all necessary steps to ensure that:

(a) the ORESS 2.1 Project is listed in the PSO Order as soon as practicable prior to the Commercial Operation Date, in accordance with this Section 5.3; and

(b) all necessary information and documentation required for the purposes of ensuring that its ORESS 2.1 Project is entitled to (as applicable) make or receive ORESS 2.1 Payments is provided to the Regulatory Authority as soon as practicable,

in each case such that ORESS 2.1 Payments may be made in respect of the ORESS 2.1 Project with effect from the Commercial Operation Date for such ORESS 2.1 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 2.1 Payments subsequently paid in respect of the ORESS 2.1 Project in the next following PSO Levy Year will be subject to an adjustment equal to (i) the market revenues of the ORESS 2.1 Project in respect of the period of non-compliance minus (ii) the Strike Price for the ORESS 2.1 Project multiplied by the metered output of the ORESS 2.1 Project in respect of the period of non-compliance (provided that where such calculation results in a negative number, no adjustment will be made) (the "**Adjustment Amount**"). The Adjustment Amount will (as applicable) be applied to (i) decrease Support Payments subsequently paid in respect of the ORESS 2.1 Project or (ii) increase Difference Payments subsequently paid in respect of the ORESS 2.1 Project; or

(b) the participation of the ORESS 2.1 Project in ORESS 2.1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable).

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5.4 ORESS 2.1 PPA

5.4.1 The Minister will not be a party to the ORESS 2.1 PPA, which is a commercially negotiated arrangement between the Supplier and the Generator in respect of the ORESS 2.1 Project.

5.4.2 Any termination or expiry of the ORESS 2.1 PPA, or any event which causes the ORESS 2.1 PPA to cease to be in full force and effect, shall be notified in writing by the Supplier or its permitted successor or assign to the Minister and the Regulatory Authority forthwith. A Supplier shall cease to have any entitlement to receive future ORESS 2.1 Payments with effect from the date of termination or expiry of the ORESS 2.1 PPA, or on the date the ORESS 2.1 PPA ceases to be in full force and effect, but shall have the right to receive ORESS 2.1 Payments and any reconciliation payments owed to it (and the obligation to make Difference Payments and to make any reconciliation payments it owes) for the period up to such date of termination or expiry, as the case may be. Unless and until the ORESS 2.1 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 2.1 PPA and any reconciliation payments. Parties to the ORESS 2.1 PPA shall notify the Minister and the Regulatory Authority immediately in writing if the ORESS 2.1 Project intends to cease to operate or ceases to operate in any PSO Levy Year or for the remaining term of the ORESS 2.1 PPA.

5.4.3 On the application of the Generator and with the prior written consent of the Regulatory Authority, the Generator may enter into a new ORESS 2.1 PPA with a new Supplier if the original Supplier is unable to perform its obligations under the original ORESS 2.1 PPA or these Terms and Conditions and if the new PPA is compliant with these Terms and Conditions and is for the remainder of the term of the original ORESS 2.1 PPA. The new Supplier shall assume liability for any unpaid Difference Payments and reconciliation payments owed by the original Supplier in respect of the period prior to the date on which the change in Supplier takes effect. In circumstances where the Generator and Supplier are in compliance with these Terms and Conditions, and the Generator's ORESS 2.1 PPA is terminated for reasons beyond the control of the Generator including any successor(s) thereto, the Generator may, with the prior consent of the Regulatory Authority, enter into a new ORESS 2.1 PPA with a new Supplier provided that the new PPA is compliant with these Terms and Conditions and is for the remainder of the term of the original ORESS 2.1 PPA.

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5.4.4 Where the ORESS 2.1 Project has been included in the PSO Order and a Supplier is a PPA counterparty for the ORESS 2.1 Project, the Minister and the Regulatory Authority may in their discretion include the ORESS 2.1 Project in the PSO S.I. and PSO Order for subsequent PSO Levy Years without having regard as to whether the ORESS 2.1 Project has applied to be in the PSO for that year and without regard as to whether the 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 2.1 PPA is not in full force and effect, the Generator will be liable to the Minister for all ORESS 2.1 Payments in respect of an ORESS 2.1 Project which would have been paid, if such ORESS 2.1 PPA had been in place during the applicable time period.

5.5 Metering

5.5.1 The ORESS 2.1 Project must be metered separately. It is a requirement of ORESS 2.1 that official TSO meters are installed and polled by the TSO. The metering of the ORESS 2.1 Project must relate to the size and Installed Renewable Capacity of the ORESS 2.1 Project. Where there is additional electricity generation installed on an Offshore Site beyond the flexibility provided for in Section 11.2.1, this must be metered separately to the ORESS 2.1 Project.

5.5.2 All electrical energy generated by the ORESS 2.1 Project must be delivered across the ORESS 2.1 Project's meter. No portion of the ORESS 2.1 Project's generated electricity shall bypass that ORESS 2.1 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 2.1 Project 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.

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

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5.6.3 The "**Unrealised Available Energy**" of the ORESS 2.1 Project in an hour (expressed in MWh) is defined as the Loss-Adjusted Eligible Available Quantity minus the Loss-Adjusted RESS Metered Quantity of the ORESS 2.1 Project in that hour. If either:

(a) the ORESS 2.1 Project does not comply with a TSO dispatch instruction in that hour; or

(b) the Loss-Adjusted RESS Metered Quantity is greater than the Loss-Adjusted Eligible Available Quantity in that hour,

then the Unrealised Available Energy shall be zero.

5.6.4 The "**Eligible Available Quantity**" of the ORESS 2.1 Project in an hour (expressed in MWh) is defined as the Physical Availability of the ORESS 2.1 Project in that hour. The Eligible Available Quantity shall:

(a) not include availability in that hour in respect of which generation of the ORESS 2.1 Project has been limited due to forced or planned transmission connection asset outages.

(b) only apply if the ORESS 2.1 Project was offered into the DAM or an applicable intra-day market and/or the balancing market for the hour concerned and at an offer price no greater than the variable cost of generation.

5.6.5 The "**Physical Availability**" of the ORESS 2.1 Project in an hour (expressed in MWh) is its actual availability to produce Active Power, measured to a revenue quality standard that will be specified by the Regulatory Authority, using physical measurement of availability from anemometers or similar, and subject to any new measurement, testing and verification procedures that may be required for the use of availability as a billing determinant for the ORESS 2.1 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 2.1 Project cannot exceed (1) its MEC, (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 2.1 Project.

5.6.6 "**Other Compensation for Unrealised Available Energy**" is any other compensation (expressed in €) that the ORESS 2.1 Project receives outside of the provisions of these Terms and Conditions for Unrealised Available Energy, including any compensation for

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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 2.1 Project securing a position in the DAM or in an intra-day market.

5.6.9 To support the provision of Unrealised Available Energy Compensation arrangements the Regulatory Authority will:

(a) ensure that the TSO has appropriate methodologies for the purposes of Section 5.6.4(a);

(b) ensure that the TSO has appropriate methodologies (to be developed and implemented by the TSO) by which Physical Availability of the ORESS 2.1 Project shall be measured for the purposes of Section 5.6.5. This may include requirements on the ORESS 2.1 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).

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6 Auction Administration Processes

6.1 Auction Timetable

6.1.1 The TSO shall publish the ORESS 2.1 Auction Timetable which shall include indicative dates for the following:

(a) the date by which the Auction Information Pack will be published;

(b) the opening and closing dates for receipt of Applications for Qualification;

(c) the Bid Bond Posting Date;

(d) the Final Withdrawal Date;

(e) the Provisional Qualification Decision Date;

(f) the Qualification Decisions Submission Date;

(g) the Final Qualification Decisions Date;

(h) the Financial Questionnaire Submission Opening Date;

(i) the Financial Questionnaire Submission Closing Date;

(j) the Auction Information Pack Publication Date;

(k) the opening for receipt of Offers;

(l) the ORESS 2.1 Auction Submission Deadline Date;

(m) the date for conclusion of the ORESS 2.1 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

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

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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 2.1 Auction.

All declarations provided in connection with the ORESS 2.1 Auction must be in the form contained in the Qualification Information Pack. Any declarations submitted which are edited, amended or otherwise altered in any way which is not permitted by the form of declaration will be deemed invalid.

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.

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7 ORESS 2.1 Auction – Qualification Process

7.1 Overview

7.1.1 The ORESS 2.1 Auction will be open to the Eligible Technology.

7.1.2 The ORESS 2.1 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 2.1 Auction will be administered in accordance with, inter alia, the following high level steps:

(a) the TSO will accept Applications for Qualification;

(b) Applicants will post their Bid Bonds no later than the Bid Bond Posting Date;

(c) the eligibility criteria set out in Section 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 2.1 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 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 2.1 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.

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(b) The TSO shall consider and review an Application for Qualification and determine whether the relevant Applicant is eligible to participate in the ORESS 2.1 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 2.1 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 2.1 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 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 pursuant to Section 7.3.8(c)(i), excluding any finance provider or advisor bound by confidentiality obligations restricting the disclosure of such Pricing Information (provided that such finance provider or advisor is not an Applicant or the Principal Owner or Affiliate of an Applicant).

(b) During the Standstill Period, Applicants shall not engage in commercial discussions with third parties that were not disclosed pursuant to Section 7.3.8(c)(ii) regarding potential changes of Principal Owners.

(c) During the Standstill Period Applicants shall not engage in commercial discussions with third parties that were not disclosed pursuant to Section 7.3.8(e) regarding any commercial agreements or arrangements that are contingent upon the result of the ORESS 2.1 Auction, with the exception of technical input providers such as engineers, construction contractors and equipment manufacturers.

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 2.1 Auction where the Proposed ORESS 2.1 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 7.2 have been met.

7.3.3 All declarations provided by a director in connection with the ORESS 2.1 Auction must be true and accurate and made by way of a sworn affidavit having regard to the fiduciary duties that a director has to the company whose board (or equivalent) it sits on, in each case under applicable company law legislation.

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 2.1 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 2.1 Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS 2.1 Auction has been held, the participation of the ORESS 2.1 Project in ORESS 2.1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and

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(c) regardless of whether or not the ORESS 2.1 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 2.1 Auction will be open to New Projects which are connected directly to the electricity network and metered independently of any other electricity generating plant and which use Offshore Wind to produce electricity (the "**Eligible Technology**").

Compliance with this Section 7.3.4 must be evidenced by information submitted by the Applicant describing the Proposed ORESS 2.1 Project, including the equipment to be used.

7.3.5 Financeability

The Proposed ORESS 2.1 Project must be financeable under the Terms and Conditions and at the Offer Price to be submitted by the Qualified Applicant. In this context, "financeable" is understood as having expressions of interests or indications from investors or funders that they will provide the funding required to construct and operate the Proposed ORESS 2.1 Project, or that the Applicant has sufficient equity funding in place to construct and operate the Proposed ORESS 2.1 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 2.1 Project receives an Award.

If the Proposed ORESS 2.1 Project plans to use debt financing, the declaration must clearly state that the Applicant: (a) has or will have sufficient equity funding in place for the non-debt financing portion of the funding or commitments from investors to provide such equity funding and (b) has received indications or expressions of interest from lenders that the Proposed ORESS 2.1 Project should receive the debt financing required to construct and operate the Proposed ORESS 2.1 Project.

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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 2.1 Project as detailed in the Application for Qualification without any contingency based on securing financing.

7.3.6 New Project Requirements

The Proposed ORESS 2.1 Project must meet the requirements of a New Project. Compliance with this requirement must be evidenced by a director declaration ("**Declaration of New Project**"), the form of which will be provided in the Qualification Information Pack, that the Proposed ORESS 2.1 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 2.1.

7.3.7 Prior PSO Funding

The Applicant must not have previously received payments in respect of the Proposed ORESS 2.1 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 2.1.

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 2.1 Auction (the forms on which the information and / or declarations are to be provided will be included in the Qualification Information Pack):

(a) a declaration that the Applicant is in compliance with all applicable competition

legislation;

(b) a list of all persons that directly or indirectly own or control more than 10% of the shares of the Applicant (the "**Principal Owners**"). The Applicant shall also provide a certified structure chart showing the ownership of the Applicant up to ultimate beneficial owner level;

(c) a list of all entities (i) to which the Applicant or its Principal Owners have revealed Pricing Information, excluding any finance provider or advisor bound by confidentiality obligations restricting the disclosure of such Pricing Information (provided that such finance provider or advisor is not an Applicant or the Principal Owner or Affiliate of an Applicant) and / or (ii) which may become a Principal Owner of the Applicant prior to the ORESS 2.1 Auction Submission Deadline Date provided that commercial discussions have commenced between such entity (or entities) and the Applicant (or its Principal Owners) in this regard. It is the responsibility of the Applicant to obtain information from its Principal Owners;

(d) a list of all other entities that (i) the Applicant or its Principal Owners believe have submitted or may submit Applications for Qualification and (ii) in respect of which the Applicant or its Principal Owners are aware of Pricing Information, and the Proposed ORESS 2.1 Project to which the Pricing Information relates. It is the responsibility of the Applicant to obtain information from its Principal Owners; and

(e) a list that describes the party to and nature of any agreements or arrangements that the Applicant or its Principal Owners are aware of that are contingent upon the result of the ORESS 2.1 Auction. It is the responsibility of the Applicant to obtain information from its Principal Owners.

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

As at the ORESS 2.1 Auction Submission Deadline Date a Qualified Applicant will be required to confirm that all information provided in accordance with this Section 7.3.8 has remained true and correct in all respects throughout the Standstill Period and in

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accordance with Section 8.1.1 and Section 7.2.4, with the only exception being any information for which a change of status or change of the information itself was approved and accepted in writing by the TSO during the Standstill Period – for example in the case of change of contact details pursuant to Section 7.4.

If the Principal Owners and / or the structure chart have changed between the date of submission of the Application for Qualification and the date of submission of the Offer Price, the Applicant shall indicate this and provide an updated certified structure chart showing the ownership of the Applicant up to ultimate beneficial owner level. Any new Principal Owner can only be an entity that was listed by the Applicant in its Application for Qualification in accordance with Section 7.3.8(c).

7.3.9 MAC Application

Each Applicant must complete an application for a Maritime Area Consent in respect of its Proposed ORESS 2.1 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 2.1 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 2.1 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 2.1 Project.

7.3.10 Other Information

In addition to the information and requirements described above in Sections 7.3.1 to 7.3.9 (inclusive) of the Terms and Conditions, in order to be eligible for ORESS 2.1, Applicants will be required to provide the following information in the Application for Qualification:

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(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 2.1 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 2.1, the Minister is authorised to use information related to the Applicant and the Proposed ORESS 2.1 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 2.1 and to ensure the accuracy of information included in the relevant statutory instrument for the PSO Levy for the relevant PSO Levy Year;

(g) an acknowledgment that the Application for Qualification has been prepared at the expense of the Applicant and that the TSO and the Minister bear no responsibility or liability for any costs incurred by the Applicant in connection with the Application for Qualification;

(h) a description of the renewable energy equipment that will be utilised for the Proposed ORESS 2.1 Project;

(i) a description of the overall plant size i.e. aggregate installed (nameplate) rating for the Proposed ORESS 2.1 Project; and

(j) confirmation that a Guarantee of Origin will not be sought in respect of the output of the ORESS 2.1 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:

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(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 2.1, 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 2.1 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 2.1 Project (the "**Project Information Document**"), the form of which will be provided in the Qualification Information Pack.

7.6.2 The Project Information Document will detail the key characteristics of the Proposed ORESS 2.1 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 2.1 Project and which is available to the Applicant and/or (3) by raw data collected by the Applicant, as applicable.

7.6.3 The key characteristics of the Proposed ORESS 2.1 Project detailed in the Project Information Document must be true and accurate, provided in good faith, based on all available financial and technical data available at the date of the submission of the Project Information Document, and consistent with industry norms.

7.6.4 The Project Information Document must be consistent with the Applicant's Grid Connection Information and any other consents, licences, permissions, authorisations or similar items in respect of the Proposed ORESS 2.1 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 14 of the Project Delivery Agreement) at the same time at which the Financial Questionnaire in respect of the Proposed ORESS 2.1 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 2.1 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 2.1 Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS 2.1 Auction has been held, the participation of the ORESS 2.1 Project in ORESS 2.1 may be terminated, the Letter of Offer revoked (if

applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and

(c) regardless of whether or not the ORESS 2.1 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.

7.7 Declaration of Project Information

7.7.1 As part of an Offer, each Applicant must provide a director declaration in respect of their Proposed ORESS 2.1 Project ("**Declaration of Project Information**"), the form of which will be provided in the Qualification Information Pack, confirming that:

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

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

(c) the 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 2.1 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 2.1 Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS 2.1 Auction has been held, the participation of the ORESS 2.1 Project in ORESS 2.1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in

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place may be drawn down by the TSO or the Minister (as applicable); and

(c) regardless of whether or not the ORESS 2.1 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 2.1 Auction Submission Deadline Date.

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8 ORESS 2.1 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 2.1 Project. The Offer Price must be submitted before the ORESS 2.1 Auction Submission Deadline Date using the Offer Submission Form.

In its Offer, the Qualified Applicant must confirm (subject to Section 7.3.8 and 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 exception being any information for which a change of status, or change of the information itself, was approved and accepted in writing by the TSO within the Standstill Period – for example in the case of change of contact details pursuant to Section 7.4.

The Qualified Applicant must complete and submit the Financial Questionnaire attached at Annex B to the Minister (to be submitted for the attention of ORESS Team, International and Offshore Energy Division at the address specified at Clause 14 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 2.1 Auction has not been held, the Qualified Applicant on whose behalf the Financial Questionnaire is submitted will be disqualified from participating in the ORESS 2.1 Auction, and the full amount of any Bid Bond in place may be drawn down by the TSO;

(b) if the ORESS 2.1 Auction has been held, the participation of the ORESS 2.1 Project in ORESS 2.1 may be terminated, the Letter of Offer revoked (if applicable) and the full amount of any Bid Bond or Performance Security in place may be drawn down by the TSO or the Minister (as applicable); and

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(c) regardless of whether or not the ORESS 2.1 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 2.1 Auction Submission Deadline Date will not be considered in the ORESS 2.1 Auction and in such cases, the Offer will be disregarded and the TSO will be entitled to draw down on the full amount of the Bid Bond.

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 2.1 Auction.

8.3 Submission of Offers and Provisions Relating to Auction Results

(a) The TSO shall use reasonable endeavours to conclude the ORESS 2.1 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.

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(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.

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9 ORESS 2.1 Auction – Winner Determination

9.1 Winner Selection

9.1.1 The ORESS 2.1 Auction will be conducted on behalf of the Minister by the TSO.

9.1.2 The ORESS 2.1 Auction takes the form of a simple, sealed bid auction of eligible Offers.

9.1.3 There is no budget cap for the ORESS 2.1 Auction other than that which is implied by the terms of Section 7 of these Terms and Conditions.

9.1.4 The Minister shall determine the winner of the ORESS 2.1 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 the name of the Successful Applicant and the location, size (in MW) of the ORESS 2.1 Project.

The Minister will publish the Offer Price for the Generator after the Project Delivery Agreement and Performance Security Return Date.

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10 Obligations of the ORESS 2.1 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 2021, the application for a Maritime Area Consent in respect of the ORESS 2.1 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 2.1 Project (an "**Unsuccessful MAC Application**"); or

(b) MARA has determined to grant the Successful Applicant a Maritime Area Consent in respect of the ORESS 2.1 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 2.1 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 2.1 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:

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(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 "**Successful MAC Application Challenge**"); or

(c) an eight-week period elapses without an Unsuccessful MAC Application Challenge or 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 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 Successful MAC Application Challenge; and

(c) notify the Minister as soon as practicable of the outcome of any Unsuccessful MAC Application Challenge or 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 2.1 is quashed as a result of a Successful MAC Application Challenge (a "**Quashed MAC Application**"); or

(b) If, as a result of an Unsuccessful MAC Application Challenge or a Successful MAC Application Challenge, the decision on whether to grant a Maritime Area Consent in respect of the ORESS 2.1 has been remitted to MARA for determination (a "**Remitted 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 2.1 Project.

10.1.8 In the event of an Unsuccessful MAC Application or a Quashed MAC Application:

(a) The Successful Applicant will not receive (1) a Notice of Award or (2) 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 2.1 Auction.

10.1.9 In the event of (1) a Successful MAC Application where the MAC Application Challenge Period has expired without a Successful MAC Application Challenge or (2) a Successful MAC Application that is upheld following a 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 2.1 Auction.

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11 Obligations of the ORESS 2.1 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 Section 11.1.1(a) or Section 11.1.1(b) (as applicable).

11.1.2 O&M Services

The Generator must procure that operation and maintenance (O&M) services in respect of the ORESS 2.1 Project are primarily provided from a port in Ireland or Northern Ireland.

11.1.3 Connection Offer

The Generator must apply for a Connection Offer no later than **[**twenty (20) Working

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Days after the date on which it has received all of the following in respect of the ORESS 2.1 Project:

(a) A Notice of Award;

(b) A Maritime Area Consent; and

(c) Planning Consent.**]**

11.1.4 Planning Consent Application

(a) The Generator shall submit Planning Consent applications in respect of the ORESS 2.1 Project without undue delay.

(b) Any applications for Planning Consent in respect of the ORESS 2.1 Project must be consistent with the Updated Project Information Document.

(c) The Generator shall submit applications for Planning Consent in respect of the ORESS 2.1 Project in good faith and shall ensure such applications are consistent with industry norms.

(d) The Generator shall not submit applications for Planning Consent in respect of the ORESS 2.1 Project with the intention of frustrating the ORESS 2.1 Auction or relying on Section 12.2 or Section 12.3 of these Terms and Conditions.

11.1.5 Surveying Fee

The Generator shall, no later than 20 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).

11.1.6 Provision of Data

The Generator shall, on a monthly basis until the Commercial Operation Date, provide to the Minister a copy of all surveying data which the Generator received in the previous month in respect of the Offshore Site.

Such surveying data must include, but is not limited to:

(a) all geophysical site data, site surveys, all studies undertaken at the Offshore Site, all environmental surveys and assessments, and any technical and generation information including statistical data as may be requested by the

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Minister;

(b) all geotechnical, metocean, wind, wave, current, barometric, shipping, hazard, constraint, bird, fish, all benthic habitat and marine archaeological data, unexploded ordnance (UXO) data, and any other environmental data as may be requested by the Minister; and

(c) any post-processed data and / or associated reporting and any other data pertaining to the Offshore Site as may be requested by the Minister.

Surveying data must be sent in a format specified by the Minister.

Surveying data includes, for the avoidance of doubt, data collected, purchased or otherwise procured by or on behalf of the Generator, whether based on on-site data collection or measurement, or desk-top studies. Surveying data must be provided in both raw and summarised form, and in a format consistent with normal industry practice.

The Generator shall provide to the Minister as soon as is reasonably practicable a schedule of all proposed surveys to be carried out at the Offshore Site and shall notify the Minister of any material updates to such schedule as may take place from time to time.

The provision of surveying data must irrevocably enable the Minister (and its agents) to review, consider, analyse, transmit to third parties, publish, and use the surveying data without any restriction and free of charge.

The Generator agrees and acknowledges that data provided to the Minister in accordance with this Section 11.1.6 shall not be subject to any confidentiality restrictions with regards to the use and dissemination of such data for a period of one (1) year of receiving such data. The Generator further agrees and acknowledges that if, in his or her sole discretion, the Minister directs the TSO to re-run the ORESS 2.1 Auction, that the data provided by the Generator may be made available for future RESS auctions.

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 after the

Commercial Operation Date be able to demonstrate that the Installed Renewable Capacity of the ORESS 2.1 Project is at least equal to 90% of the Target Installed Renewable Capacity (the "**Minimum Installed Renewable Capacity**").

Maximum Installed Renewable Capacity

The ORESS 2.1 Project may over-install above its MEC where there is over-installation allowed pursuant to the decision paper of the Regulatory Authority (ref: CER/14/047) ("**RA Decision Paper 14/047**") provided that the ORESS 2.1 Project remains compliant with these Terms and Conditions including compliance with Section 11.2.2.

In any case, the Installed Renewable Capacity of the ORESS 2.1 Project shall be no more than 120% of the Target Installed Renewable Capacity (the "**Maximum Installed Renewable Capacity**").

11.2.2 Maximum Export Capacity

Where there is over-installation relative to MEC for the ORESS 2.1 Project pursuant to Section 11.2.1:

(a) the ORESS 2.1 Project must be technically controlled to ensure that the MEC cannot be exceeded;

(b) the Supplier with whom the Generator enters into the ORESS 2.1 PPA must provide evidence of this technical control to the Regulatory Authority when making their annual returns; and

(c) the Generator must undertake in writing not to raise the MEC of the ORESS 2.1 Project, except with the prior written agreement of the Minister and the Regulatory Authority. This includes agreeing a methodology for suitable metering arrangements to separately record generation at the Offshore Site which would be above the capacity approved for ORESS 2.1 Support.

11.3 Guarantees of Origin

11.3.1 In accordance with Statutory Instrument 350 of 2022, where the ORESS 2.1 Project receives a Guarantee of Origin for a renewable energy unit, no ORESS 2.1 Payment

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for the same unit of electricity shall be made.

11.3.2 If the ORESS 2.1 Project receives a Guarantee of Origin in respect of its output then the Minister may terminate the participation of the ORESS 2.1 Project in ORESS 2.1 and revoke the Letter of Offer (and the ORESS 2.1 Project will not be eligible to return to ORESS 2.1).

11.4 Prudent Electric Utility Practice and Availability

11.4.1 The ORESS 2.1 Project must be operated in accordance with Prudent Electric Utility Practice in order to ensure the ORESS 2.1 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 2.1 Project must use reasonable endeavours to conduct planned outages at times of system surplus and lower than usual, zero, or negative market prices.

11.4.3 The ORESS 2.1 Project must comply at all times with TSO dispatch instructions.

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 2.1 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 2.1 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 2.1 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 Project Information Document, if not already provided pursuant to these Terms and Conditions).

11.5.3 The key characteristics of the ORESS 2.1 Project, as amended by the Updated Project Information Document, must be true and accurate, provided in good faith, based on all available financial and technical data available at the date of the submission of the Updated Project Information Document, and consistent with industry norms.

11.5.4 The Updated Project Information Document must be consistent with the Generator's Maritime Area Consent in respect of the ORESS 2.1 Project, its Grid Connection

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Information, its Planning Consent application, and any other consents, licences, permissions, authorisations or similar items in respect of the ORESS 2.1 Project which exist as at the date on which the Updated Project Information Document is submitted.

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

11.5.6 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 14 of the Project Delivery Agreement) on the same date on which the Generator submits its Planning Consent application in respect of the ORESS 2.1 Project.

11.5.7 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 2.1 Project in ORESS 2.1 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.

11.6 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 2.1 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 2.1 Project in ORESS 2.1 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.

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12 Withdrawal from ORESS 2.1

12.1 ORESS 2.1 Commitment and Prohibition on Withdrawal

12.1.1 Subject to Section 12.1.5, the ORESS 2.1 Project must at all times remain in ORESS 2.1, such that it can at all times make or receive (as applicable) ORESS 2.1 Payments until the occurrence of the ORESS 2.1 Support End Date (the "**ORESS 2.1 Commitment**").

12.1.2 Subject to Section 12.1.5, the Generator undertakes that until the occurrence of the ORESS 2.1 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 2.1 Project ineligible for ORESS 2.1 Support or to otherwise breach or undermine the ORESS 2.1 Commitment.

12.1.3 The Generator further undertakes that until the occurrence of the ORESS 2.1 Support End Date:

(a) it shall be, and shall remain, the sole and exclusive owner of the ORESS 2.1 Project (and all elements thereof);

(b) it shall not transfer, or permit the transfer of, ownership of the ORESS 2.1 Project (or any elements thereof);

(c) it shall not engage in any business or activities, other than the construction, ownership, operation and maintenance of the ORESS 2.1 Project; and

(d) it shall not hold any assets, other than the ORESS 2.1 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

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action as the Minister (in her or her sole discretion) deems necessary to give full force and effect to the ORESS 2.1 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 2.1 Project in ORESS 2.1 and revoke the Letter of Offer;

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

(c) 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 2.1 Project during the ORESS 2.1 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 2.1 Commitment and the Minister's rights under this Section 12.1.3.

12.1.5 The Generator shall be entitled to withdraw the ORESS 2.1 Project from ORESS 2.1 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 2.1 Project then the Generator shall notify the Minister of such Planning Consent Failure Event as soon as practicable (and in any event no later than twenty (20) 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 thirty (30) Working Days after a Planning Consent Failure Notification, the Generator will issue to the Minister either:

(a) an irrevocable confirmation that it intends to withdraw the ORESS 2.1 Project from ORESS 2.1 due to the Planning Consent Failure Event (a "**Planning Consent Failure Withdrawal Request**"); or

(b) an irrevocable confirmation that it has elected to keep the ORESS 2.1 Project in ORESS 2.1 and to use its best endeavours to resolve the Planning Consent Failure Event as soon as practicable (a "**Planning Consent Failure Commitment**").

12.2.4 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 2.1 Project, confirming that the director believes, having made due enquiries, that the Planning Consent Failure Event will prevent the ORESS 2.1 Project achieving Commercial Operation by the Longstop Date.

12.2.5 As soon as practicable following receipt of a Planning Consent Failure Withdrawal Request, the Minister shall (in his or her sole discretion) accept or reject the Planning Consent Failure Withdrawal Request. 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.

12.2.6 If the Generator fails to provide a Planning Consent Failure Notification within twenty (20) Working Days of the Planning Consent Failure Event, it will not be entitled to withdraw from ORESS 2.1 under this Section 12.2 as a result of such Planning Consent Failure Event.

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

(a) the Generator fails, within the twenty (20) 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 thirty (30) 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 12.2.5,

then the Generator shall not be entitled to withdraw from ORESS 2.1 under this Section 12.2 as a result of such Planning Consent Failure Event.

12.2.8 If the Minister accepts a Planning Consent Failure Withdrawal Request under Section 12.2.5 then:

(a) The Letter of Offer in respect of the ORESS 2.1 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.

12.2.9 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.

12.2.10 This Section 12.2 contains the sole and exclusive rights of the Generator and ORESS 2.1 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 An Unsuitable Site Conditions Notification must be accompanied by reasonable supporting documentation and data in respect of the Unsuitable Site Conditions identified in respect of the Offshore Site.

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12.3.4 No later than thirty (30) 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 2.1 Project from ORESS 2.1 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 2.1 Project in ORESS 2.1 and to use its best endeavours to mitigate the effects of the Unsuitable Site Conditions (an "**Unsuitable Site Conditions Commitment**").

12.3.5 If:

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

(b) the Generator fails, within the thirty (30) 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 2.1 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 2.1 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 in his or her sole discretion, utilising data and analysis provided by the Generator and independent third-party qualified sources, determines that the ORESS 2.1 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 2.1 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 2.1 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 2.1 Project from ORESS 2.1 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 2.1 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 2.1 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 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.

12.4.9 This Section 12.4 contains the sole and exclusive rights of the Generator and ORESS 2.1 Project in respect of an Onerous Planning Condition Event.

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13 General

13.1 Condition of Offer

It shall be a condition of any Letter of Offer for ORESS 2.1 that the Generator and the ORESS 2.1 Project shall comply on an ongoing basis with these Terms and Conditions and any other legal or regulatory requirements applicable to the ORESS 2.1 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 2.1 Project in ORESS 2.1 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.

13.2 Changes to Plant or Equipment

13.2.1 Pursuant to condition 6 of the Letter of Offer, the Minister may agree to material changes to plant or equipment within the ORESS 2.1 Project subject to the following conditions:

(a) the change is notified in writing to the Minister sufficiently in advance of the change;

(b) the change is agreed by response in writing by the Minister;

(c) the changes to the plant or equipment are reasonable and the ORESS 2.1 Project remains otherwise compliant with these Terms and Conditions;

(d) the changes do not increase or decrease the Installed Renewable Capacity of the ORESS 2.1 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 2.1 Project;

(e) the change does not violate the Maritime Area Consent for the ORESS 2.1 Project;

(f) the change does not result in the ORESS 2.1 Project no longer using the Eligible Technology; and

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(g) the change does not result in energy produced by the ORESS 2.1 Project bypassing the meter of the ORESS 2.1 Project, or being delivered in a form other than electrical energy.

13.2.2 Subject to the conditions at sub-Sections 13.2.1(c) to 13.2.1(f), minor changes to plant and equipment within the ORESS 2.1 Project do not require the Minister's approval.

13.3 Freedom of Information Act

13.3.1 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.

13.3.2 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.

13.4 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 2.1 Auction or submitting an Offer or otherwise participating in ORESS 2.1 regardless of the conduct or outcome of the Application for Qualification or the ORESS 2.1 Auction or otherwise.

13.5 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

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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.

13.6 Change of Control

Any Change of Control of the Generator shall be subject to the prior written consent of the Minister.

Any Change of Control of the Generator without the prior written consent of the Minister shall (1) be null and void (2) be deemed a breach of these Terms and Conditions.

13.7 Access and Performance Monitoring

It is a condition of ORESS 2.1 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.

13.8 Consultation with Third Parties

It is a condition of entry to the ORESS 2.1 Auction that the Applicant accepts that the Minister may correspond with the appropriate regulatory authority (including the Regulatory Authority and the TSO) about related applications to construct or operate the electricity generating plant or permissions, consents or authorisations issued by it and to communicate with the appropriate network operator regarding the status of related connections to the network.

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13.9 Extension of Time

In the event of a delay in grid connection build-out affecting (or likely to affect) the ORESS 2.1 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 2.1 Project by a specified period of time or until a specified date within the conditions of the state aid clearance decision for ORESS 2.1.

13.10 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 2.1 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.

13.11 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 2.1. For further information on how the Minister processes personal data in connection with ORESS 2.1, and the parties that personal data may be shared with, please see the privacy note contained on the Department of the Environment, Climate and Communications website.

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Annex A

Form of Project Delivery Agreement, Performance Security and Letter of Offer

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The Minister for the Environment, Climate and Communications

ORESS 2.1

Project Delivery Agreement

[●] 20[●]

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

BETWEEN:

(1) **THE MINISTER FOR THE ENVIRONMENT, CLIMATE AND COMMUNICATIONS**, of 29 – 31 Adelaide Road, Dublin, D02 X285 (the "**Minister**"); and

(2) [[●]], a [[●] company] incorporated under the laws of [●], with [registration number [●]] and having its registered office at [[●]] (the "**Generator**"),

each a "**Party**" and together the "**Parties**".

WHEREAS:

A. The Minister has developed the 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 2.1 Auction in respect of the ORESS 2.1 Project was accepted by the TSO and an Offer was submitted into the ORESS 2.1 Auction in respect of the ORESS 2.1 Project.

C. By Notice of Award, the Generator was informed that the ORESS 2.1 Project was successful in the ORESS 2.1 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 2.1 Support (in the form set out in Appendix 1 to this Agreement) subject to and in accordance with the terms of this Agreement.

E. In accordance with the Terms and Conditions, the Parties have agreed to enter into this Agreement subject to and upon the terms and conditions hereafter set forth.

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:

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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;

"**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 [€1,300,000/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 [€1,000,000/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 2.1 Project:

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(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 2.1 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;

"**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 11.1;

"**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;

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(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 2.1 Project, shutting down or reducing the output of the ORESS 2.1 Project or (where applicable) interrupting the supply of electricity to the ORESS 2.1 Project; and

(f) any strike which is part of a labour dispute of a national character occurring in the Republic of Ireland or which is part of a national electricity industry strike within the Republic of Ireland,

provided that Force Majeure shall not include (i) lack of funds and/or the inability of a Party to pay or (ii) a Grid Delay Event;

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

"**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 2.1 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 2.1 Support from the Minister to the Generator, in the form set out in Appendix 1 to this Agreement;

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

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

(a) the Terms and Conditions; or

(b) Clause 8.1 or Clause 8.5 of this Agreement; or

(c) any warranties, representations or confirmations contained in Clause 4 of this Agreement;

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

"**Milestones**" means the milestones prescribed in Appendix 2;

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"**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 2.1 Project was successful in the ORESS 2.1 Auction;

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

"**ORESS 2.1 Auction**" has the meaning given to it in the Terms and Conditions;

"**ORESS 2.1 Project**" means the renewable energy project, to be developed by the Generator, as detailed in its Application for Qualification;

"**ORESS 2.1 Support**" has the meaning given to it in the Terms and Conditions;

"**ORESS 2.1 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 2.1 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;

"**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

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Conditions;

"**Terms and Conditions**" means the terms and conditions governing the ORESS 2.1 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; 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;

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(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 2.1 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

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3.1.2 design, finance, construct, complete, commission and operate the ORESS 2.1 Project in accordance with this Agreement, the Terms and Conditions and all Laws.

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

4 Confirmations

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

4.1.1 that the representations and warranties contained in the Application for Qualification for the ORESS 2.1 Project are true, valid and correct, complete and accurate in all material respects as of the date hereof;

4.1.2 the Generator is a company duly organised, validly existing and in a good standing under the laws of the country in which it is established and has full power and authority to carry on its business as provided for in this Agreement;

4.1.3 the Generator has the corporate power and authority to enter into this Agreement and the transactions provided for and contemplated in it;

4.1.4 the execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Generator is a party or any Laws applicable to the Generator or its assets; and

4.1.5 the Generator is entering into this Agreement with a full understanding of its terms and risks and is capable of assuming those risks.

5 Achievement of Milestones and Commercial Operation

5.1 The 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 2.1 Project achieves Commercial Operation as soon as practicable following first export of the ORESS 2.1 Project; and

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(b) ensure that the ORESS 2.1 Project achieves Commercial Operation by the Longstop Date.

5.3 If the ORESS 2.1 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 (i) 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 2.1 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, at the Longstop Date, the Installed Renewable Capacity of the ORESS 2.1 Project remains less than the Target Installed Renewable Capacity, then the Generator shall no later than ten (10) Working Days after the Longstop Date:

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(a) notify the Minister in writing of the Installed Renewable Capacity of the ORESS 2.1 Project as at the Longstop Date (the "**Final Installed Renewable Capacity**");

(b) pay to the Minister the Capacity Shortfall Damages; and

(c) notify the Minister in writing if the Generator intends to install further Installed Renewable Capacity in respect of the ORESS 2.1 Project (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(b), 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 2.1 Project ("**Additional Installed Renewable Capacity**"), provided that such further Installed Renewable Capacity complies with the Terms and Conditions; and

(b) the Generator shall notify the Minister in writing of the Installed Renewable Capacity of the ORESS 2.1 Project as at the date falling one (1) year after the Longstop Date (the "**Adjusted Final Installed Renewable Capacity**").

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 the Planning Consent for the ORESS 2.1 Project is subject to a Third Party Judicial Review Challenge.

7.2 For each month during which the Planning Consent for the ORESS 2.1 Project is subject to a Third Party Judicial Review Challenge, the Target Commercial Operation Date and the Milestone Completion Dates which are explicitly linked to the occurrence of the Planning Consent Date will be extended by a month to take account of such Third Party Judicial Review Challenge. For the avoidance of doubt, neither the Planning Consent Longstop nor the Longstop Date may be extended pursuant to this Clause 7.2.

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7.3 Without prejudice to Clause 7.2, if a Third Party Judicial Review Challenge in respect of the Planning Consent for the ORESS 2.1 Project remains outstanding at any stage during the period between [*December 2028*] and [*December 2029*], the Minister may (in his or her sole discretion) grant an extension to the Planning Consent Longstop and the Longstop Date, subject to a maximum extension of two (2) years.

7.4 This Clause 7 contains the sole and exclusive rights of the Generator and the ORESS 2.1 Project in respect of a Third Party Judicial Review Challenge in respect of the Planning Consent.

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 Project Development 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:

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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 development of the ORESS 2.1 Project is abandoned (which for the avoidance of doubt will include a failure to achieve a Milestone by the relevant Final Milestone Date); or

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

8.5.5 any of the matters listed in Clause 11 arise, allowing the Minister to terminate this Agreement and/or make a demand for payment under the Performance Security in accordance with Clause 11.2; 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:

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

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

8.9 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 2.1 Project including any additional information/documents required by the Minister to verify the documentation provided by the Generator.

9 Force Majeure

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

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;

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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 If a Grid Delay Event occurs, the Generator will notify the Minister in writing as soon as reasonably practicable and no later than fifteen (15) Working Days after the Grid Delay Event occurs (a "**Grid Delay Event Notice**").

10.2 A Grid Delay Event Notice must:

(a) describe the Grid Delay Event (including all relevant supporting information and documentation); and

(b) be accompanied by evidence (satisfactory to the Minister) demonstrating the occurrence of the Grid Delay Event.

10.3 The Target Commercial Operation Date and the Longstop Date will be extended on a day-for-day basis equal to the duration of any Grid Delay Event that delays construction or the commencement of operation of the ORESS 2.1 Project. The number of days of such extension will be calculated from the date on which the Grid Delay Event begins. This Clause 10.3 shall cease to apply on and from the Commercial Operation Date.

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10.4 Grid Delay Compensation will be payable in respect of each day after the Grid Delivery Date during which a Grid Delay Event occurs or subsists. This Clause 10.4 shall cease to apply on and from the date on which the TSO has constructed and commissioned the ORESS 2.1 Project's connection to the transmission system.

10.5 "**Grid Delay Compensation**" will be an amount, payable to the Generator, in respect of any Grid Delay Event that occurs or subsists after the Grid Delivery Date. Grid Delay Compensation will be calculated using a methodology determined by the Regulatory Authority and will compensate the Generator by reference to 90% of its Strike Price.

11 Events of Default and Termination

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

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

11.1.2 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

11.1.3 the Generator is in Material Breach; or

11.1.4 the Generator abandons the ORESS 2.1 Project (which for the avoidance of doubt will include a failure to achieve a Milestone by the relevant Final Milestone Date); or

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

11.1.6 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

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

11.1.7 Commercial Operation is not achieved by the Longstop Date;

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

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

11.2 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:

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

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

11.2.3 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.

11.3 The Minister shall have no liability to the Generator by reason of exercising its rights under this Clause 11.

12 Effects of Termination

12.1 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.

12.2 Termination of this Agreement by the Minister as a whole under Clause 11 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.

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13 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.

14 Notices

14.1 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 14.4. Either Party may, by notice to the other, given in compliance with this Clause 14, change its address or the person in that Party to which such notices are to be sent or delivered.

14.2 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.

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

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

14.3.2 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.

14.4 **The Minister**

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

The Department for the Environment, Climate and Communications, Tom Johnson House, Beggars Bush,

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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: [●]

15 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 2.1 Project.

16 Variation

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

17 Waiver

17.1 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:

17.1.1 affect that right, power or remedy; or

17.1.2 operate as a waiver of it.

17.2 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.

18 Counterparts

18.1 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.

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

19 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.

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Appendix 1

Form of Letter of Offer

Our Ref: ORESS 2.1/X/YYY

[●] 20[●]

[Legal name of Applicant]

[Address (including EirCode)]

[email address]

ORESS 2.1 Competition

Letter of Offer

RE: [ORESS 2.1 Project Name] - ORESS 2.1 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 2.1 Auction.

I am pleased to inform you that the ORESS 2.1 Project identified in the following table has been accepted into ORESS 2.1, subject to the conditions notified below:

Applicant	ORESS 2.1 Project	Offer Price
[Legal Name of Applicant] [Address (including EirCode)]	[ORESS 2.1 Project name], [●] MW [Location]	€[ORESS2.1OfferPrice]/MWh

The ORESS 2.1 Ref. No in respect of this ORESS 2.1 Project is [●] and should be quoted in all your correspondence with the Minister.

Capitalised terms used but not defined herein shall have the meaning given to them in the ORESS 2.1 terms and conditions which are publicly available at [insert link].

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Conditions of this offer

1. That you shall comply with the ORESS 2.1 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 2.1 Project in order to remain compliant with the ORESS 2.1 terms and conditions.

4. A Grid Connection Agreement is required at all times during the ORESS 2.1 Support Period in respect of your ORESS 2.1 Project in order to remain compliant with the ORESS 2.1 terms and conditions.

5. The ORESS 2.1 Project is required to be metered separately.

6. Any material changes to the ORESS 2.1 Project as accepted into ORESS 2.1 must be approved by the Minister.

7. You are reminded of the requirement for official metering and of the requirement for the relevant supplier to provide evidence to the Regulatory Authority regarding technical control to ensure that the MEC cannot physically be exceeded.

8. The ORESS 2.1 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 2.1 Project to be included in the PSO Order:

9. Confirmation that a Guarantee of Origin in respect of the output of the ORESS 2.1 Project will not be sought;

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10. Evidence that the supplier with whom the Generator has entered into a PPA in respect of the ORESS 2.1 Project has notified the Regulatory Authority that the ORESS 2.1 Project is eligible for ORESS 2.1 Payments in the upcoming PSO Levy Year; and

11. 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 2.1 Project is to be included in the calculations for the upcoming PSO Levy Year.

It is noted that ORESS 2.1 Support can only be paid to the ORESS 2.1 Project in any given year subject to two conditions:

1. that the ORESS 2.1 Project has been included in the Regulatory Authority's annual PSO decision; and
2. that the ORESS 2.1 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

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Appendix 2

Milestones

#	Milestone	Interim Milestone Date	Final Milestone Date
1.	The Generator shall apply for a Connection Offer in accordance with Section 11.1.3.	N/A	If not complete by the time period specified in Section 11.1.3, 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 complete all necessary geophysical site surveys.	N/A	If not complete by three (3) years 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.
4.	The Generator shall submit a copy of the Planning Consent in respect of the ORESS 2.1 Project.	N/A	If not complete by the Planning Consent Longstop, the Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
5.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 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

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#	Milestone	Interim Milestone Date	Final Milestone Date
			entitlement the Minister may have to drawdown in respect of a failure to achieve Milestone 2).
6.	The Generator shall submit evidence of the Commencement Date.	If not complete by twelve (12) months following the Planning Consent Date, the Minister will be entitled to drawdown up to a maximum of 25% of the Performance Security (4% per month).	If not complete by eighteen (18) months following the Planning Consent Date, the Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
7.	The Generator shall achieve Commercial Operation.	If not complete by the Target Commercial Operation Date, erosion of the contract term equivalent to the period of time between the Target Commercial Operation Date and Commercial Operation Date.	If not complete by the Longstop Date, Letter of Offer will be revoked and remaining portion of the Performance Security will be drawn down.
8.	The Generator shall complete and submit an updated Project Delivery Plan Questionnaire in accordance with Section 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 5).

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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];[4]

"**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

[4] **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.

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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.

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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

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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][5]

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

[●]

[5] **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.

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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]

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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.

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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)

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Annex B

Financial Questionnaire

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Dear ORESS Applicant,

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

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 EirGrid during the auction process.
Importance of ORESS Please estimate the likelihood of you being able to deliver your project, without ORESS or other financial support from the State.	Select one of the following: • > 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:

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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 not 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

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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'.

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Annex C

Project Delivery Plan Questionnaire

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

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

The Generator acknowledges and agrees that the Minister shall be entitled to share, on a confidential basis, the responses to this Project Delivery Plan Questionnaire with other governmental departments and/or agencies of the Irish government.

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

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

1 Project Summary

Please provide an overview of the status of your ORESS 2.1 Project (maximum 4 pages). This should include, but is not limited to, the following information:

1.1 **Size of the ORESS 2.1 Project** and key locations (expressed in installed capacity MW).

1.2 **Ownership structure** with explanation.

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

1.4 Describe efforts to gather **market information** on the availability of capable Irish suppliers[6] and potential consortia or alliances of Irish suppliers, and Irish and international suppliers, for consideration in competitive tenders associated with the ORESS 2.1 Project.

1.5 As far as information is available at the time of submission, and in tabular format, provide **all current and anticipated future** contracts, sub-contracts and purchase orders greater than €1 million to be issued by you and your 1st tier contractors and suppliers for the project broken down by (i) Development Expenditure, (ii) Capital Expenditure, (iii) Operational Expenditure and (iv) Decommissioning Expenditure phases (the "**Summary Supply Chain Plan**").

1.6 Please provide a comprehensive inventory of **all** activities and their expected outcomes contained in your Summary Supply Chain Plan to facilitate the efficient monitoring and delivery of your Summary Supply Chain Plan.

2 Business Environment

This section of the questionnaire investigates the ORESS 2.1 Project regarding the promotion of competitive procurement processes that broaden supply chains, reduce costs and carbon footprints and remove barriers to entry for local suppliers. Of particular relevance are activities supporting developing and increasing the productivity, competitiveness, and capacity of businesses and suppliers, directly or through alliances. (There is no maximum number of pages for this section).

2.1 Renewable energy deployment should deliver economic growth in the places where these developments are located and contribute to both the country's short-term economic recovery from the global pandemic and longer-term industrial transformation to renewable energy and a green economy.

(a) Please quantify the expected **levels of Irish Content** to be delivered over the ORESS 2.1 Project's lifetime, broken down by (i) Development Expenditure, (ii)

[6] **Note**: In this Project Delivery Plan Questionnaire, 'suppliers' refers to contractors and other suppliers of goods and services in respect of the ORESS 2.1 Project, but for the avoidance of doubt does not include electricity offtakers in respect of the ORESS 2.1 Project.

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Capital Expenditure, (iii) Operational Expenditure and (iv) Decommissioning Expenditure and by the ORESS 2.1 Project's major components.

(b) Please provide a written commentary of no more than 500 words to explain the reasons for your anticipated levels of Irish content in each phase of the ORESS 2.1 Project. Commentaries may be publicised and should not disclose commercially sensitive information.

2.2 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to **incentivise your supply chains to ensure a low carbon footprint** in the goods and services they provide to the ORESS 2.1 Project.

2.3 Describe and support with evidence the three most impactful activities you plan to undertake in the development, construction and operational phases of the ORESS 2.1 Project to **identify and resolve gaps in capability and productivity in your international and Irish supply chains** to improve competitiveness and thereby reduce project costs and risk. **Identify how your activities, directly or in coordination with the wider industry, will support delivery of your commitments to Irish Content**.

2.4 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to **improve the visibility of opportunities** to suppliers within international and Irish supply chains, and ensure greater collaboration of opportunity across the industry**.**

2.5 Describe and support with evidence how your ORESS 2.1 Project's contracting strategy and procurement processes will assure full and fair opportunity for Irish suppliers to access open tenders to compete for supply chain opportunities. Provide responses to the following:

(a) The value drivers of your **Contracting Strategy**, the role of framework agreements and other strategic sourcing arrangements, the application of sole/single sourcing criteria, and consideration of consortia bids and supplier collaboration to meet procurement requirements including between Irish suppliers and between Irish and international suppliers.

(b) How you provide full and fair opportunity at the Expression of Interest stage.

(c) How you provide full and fair opportunity for suppliers to pre-qualify and/or be selected for a bid list.

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(d) How you provide full and fair tender requirements and contract clauses that do not unnecessarily prohibit market access.

(e) What the mechanisms are for feedback to unsuccessful suppliers at all stage of tendering.

(f) What processes and practices you have in place for fair and timely payment of suppliers.

2.6 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to identify and promote new entrants into your supply chains through this ORESS 2.1 Project and remove barriers to new entrants, including actions to specifically support SMEs.

2.7 Please describe the most significant supply chain risks and issues across the ORESS 2.1 Project's life cycle and the measures to be put in place to mitigate these risks or manage the issues. This may include risks relating to bribery and corruption, supply distribution and delivery, custom and boarder administration, supplier capacity constraints, community and other stakeholder grievances, environmental pollution and harm to the natural environment.

3 Infrastructure

This section of the questionnaire investigates the ORESS 2.1 Project regarding the removal of barriers and increasing investment in infrastructure. Of particular relevance are activities that will broaden the opportunities for low carbon electricity generation and increase the capabilities of local supply chains to meet the requirements of the new technologies. (There is no maximum number of pages for this section).

3.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to **coordinate supply chain activity** within the ORESS 2.1 Project and between different projects to mitigate and offset the impacts that the electricity network infrastructure directly associated with your ORESS 2.1 Project will have on **local communities** and the **marine and terrestrial environments.**

3.2 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to make sure that your project supply chains will help maintain

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reliability and resilience for the Irish electricity system and assist with integrating increasing amounts of renewable, intermittent generation.

3.3 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to **strengthen infrastructure that supports your international and Irish supply chains,** so as to achieve improved productivity and competitiveness, reduce project costs and risk and facilitate the adoption of innovative renewable power generation technologies**.** Identify how your activities, directly or in coordination with the wider industry, will support delivery of your commitments to Irish content.

4 People

This section of the questionnaire investigates the ORESS 2.1 Project regarding the development of a diverse, skilled workforce and increasing local employment opportunities. Of particular relevance are activities supporting the training and transitioning of the workforce to attain the skills needed for low carbon electricity generation, in ways that minimise skill shortages, increase productivity, achieve diversity and are ethical and safe. (There is no maximum number of pages for this section).

4.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project (including the major supply chain components) to:

(a) gather information on the Irish labour market; match the current and future skill requirements of the ORESS 2.1 Project with the skills, qualifications and experience of the Irish labour market,

(b) identify skill gaps in the Irish labour market and how these gaps can be filled,

(c) support the transition of Irish workers from non-renewable sectors (including oil and gas) to the low carbon electricity generation sector,

(d) and/or collaborate with Irish educational and vocational education institutions to build a pipeline of experienced and qualified Irish workers.

4.2 Describe with supporting evidence how your **recruitment and hiring strategy** across the development, construction and operational phases of the ORESS 2.1 Project will assure no discrimination of suitably qualified and experienced Irish residents to access employment and temporary work opportunities in your company group and within supply chain contracts.

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Provide responses to the following:

(a) a description of how you reach out and alert the Irish labour market in general, and the Irish labour market in the location of the ORESS 2.1 Project in particular, to recruitment and hiring opportunities relating to the ORESS 2.1 Project within your company group and within supply chain contracts,

(b) a description of how your recruitment process removes barriers to recruitment of suitably qualified and skilled Irish workers and provides equal and fair consideration of Irish residents,

(c) an aggregated Project Skills Plan (or equivalent e.g. People Schedules) combining labour requirements across the development, construction and operational phases of the ORESS 2.1 Project, broken down into job positions for (i) Professionals and (ii) Technicians, and for each job position the approximate number of FTE (or person-hours of work) required for each.

4.3 How many **Irish apprenticeship** and **trainee positions** of greater than six (6) months duration are you taking on at each stage of the project and how many **scholarship positions** at Irish education institutions of one (1) year or more duration are you planning to sponsor? Of these positions, what proportion of do you anticipate will turn into long-term employment opportunities with the project of two (2) years or more?

4.4 What **number of jobs** in terms of Full Time Equivalent (FTE) workers are anticipated at each stage of the ORESS 2.1 Project within the developer organisation and within the supply chain of the ORESS 2.1 Project and how are you gathering this information? Please break these anticipated jobs down by 'Ireland' and 'Rest of the World' and by 'Professional', 'Technicians' and 'Basic' skill.

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

5 Place

This section of the questionnaire investigates the ORESS 2.1 Project regarding the creation of local opportunities, supporting communities and strengthening the local economy of regions close to low carbon electricity generation projects. Of particular interest are activities encouraging the development of competitive local supply chains, infrastructure and skills, aligning with local

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development strategies and engaging with communities and universities. (There is no maximum number of pages for this section).

5.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to create more opportunities for **investment and growth in the ORESS 2.1 Project's local economy** (the region where the ORESS 2.1 Project is located).

5.2 What **engagement** have you had, and plan to have, to align development, construction and operational activities with the development of any **Local Industrial Strategies/economic development plans** in relation to the ORESS 2.1 Project?

5.3 What strategy have you developed, or will develop, for **community engagement** in relation to the ORESS 2.1 Project and the objective of increasing opportunities for investment and growth in the local economy?

6 Ideas

This section of the questionnaire investigates the ORESS 2.1 Project regarding how to bring about innovation through nurturing and commercialising innovative technologies. Of particular relevance are activities that will create more efficient equipment, improve installation methods and develop new types of procurement and contracting strategies. Also relevant are any other activities that will reduce the costs of projects and overcome the technical challenges of renewable electricity generation. (There is no maximum number of pages for this section).

6.1 Describe and support with evidence the three most impactful activities you plan to undertake across the development, construction, operational and decommissioning phases of the ORESS 2.1 Project to **invest in R&D in Ireland** that relate to the challenges faced by the ORESS 2.1 Project and by associated technologies.

6.2 Describe and support with evidence the three most impactful activities your **supply chain partners** plan to undertake across the development, construction and operational phases of the ORESS 2.1 Project to invest in **R&D in Ireland** that relate to the challenges faced by the ORESS 2.1 Project and by associated technologies.

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