GUIDANCE NOTE

STANDARDISED TECHNOLOGY DEMONSTRATOR AGREEMENT

June 2024

Important Notice

This guidance is not a replacement for independent specialist advice and those who use it should ensure that they take appropriate legal, insurance, financial and technical advice when using this document. OWGP and its advisers accept no liability whatsoever for any expense, liability, loss, claim or proceedings arising from reliance place upon this guidance or any part of it (including drafting provisions). Users must satisfy themselves as to the applicability of the relevant part(s) of this guidance to the particulars of their demonstration, technology, product and/or project.

1. Introduction

1.1 Background

The Offshore Wind Growth Partnership (**"OWGP"**) was set up in 2019 and is the UK's flagship supply chain growth funding and business support organisation dedicated to offshore wind.

In April 2023, the independent report by the UK's Offshore Wind Champion, Tim Pick, was published. In this report entitled "*Seizing our opportunities: independent report of the Offshore Wind Champion*", he identified that:

"***Innovation is a key component of anchoring jobs, intellectual property and manufacturers in the UK. The UK has world-class capabilities in some key areas and excels at primary research but lacks a mid to late-stage innovation focus, often where real long-lasting value is created***."

He also made recommendations to Government and Industry to accelerate the deployment of offshore wind farms in the UK, including the following recommendation to Industry:

"***OWIC and OWGP should promote the development of an industry standard approach to technology demonstration agreements for innovators seeking access to commercial Offshore Wind Farms for testing and demonstration***."

1.2 STDA Taskforce and Industry Engagement

To address this recommendation, OWGP as the lead and sponsor has convened a task force and produced this standardised technology demonstrator agreement ("**STDA"**).

The STDA has been developed in conjunction with Ashurst LLP, Osborne Clarke LLP and Howden Insurance as well as incorporating feedback from technology developers and offshore wind farm owners. OWGP are extremely grateful to Echobolt, JET Engineering, Renewable UK, Crown Estate Scotland, Equinor, Anakata, Orsted and BP for providing their feedback which has been invaluable in developing the STDA. Further industry engagement and feedback is welcome and should be submitted via the STDA Feedback Submission form found on the STDA webpage.

A copy of the STDA, this guidance ("**Guidance**") and the STDA feedback submission form can be found at *https://owgp.org.uk/standardised-technology-demonstration-agreement/*.

1.3 Purpose of the STDA

The STDA template is intended to provide a ready-to-use model agreement for Technology Providers and Offshore Wind owners and operators. The model agreement provisions cover critical aspects such as access rights, intellectual property, liability, insurance and confidentiality. The STDA also includes 11 schedules that are customisable for the application. Using the schedules the Parties can clarify the scope of the demonstration, allocate responsibilities and set the success criteria that would demonstrate the successful completion of the demonstration.

1.4 Purpose of this Guidance

To facilitate the interpretation of the STDA by individuals not of a legal background, this Guidance has been produced which can be read in conjunction with the STDA to help explain the purpose and rationale for each of the key clauses. In addition to this, the Guidance also highlights items for further consideration throughout the STDA.

1.5 Assumptions

The following assumptions apply to this Guidance, unless otherwise indicated:

- the innovator has developed a product and/or technology for use in connection with offshore wind farms, and such product and/or technology is at technology readiness level (TRL) 7 - 9 and ready for testing and demonstration on an operational UK offshore wind farm in order to become a marketable product and/or technology;

- the owner is the owner of an operational UK offshore wind farm and is willing to assist the innovator to test and demonstrate the product or technology by permitting the innovator to install, test, maintain and demonstrate the product and/or technology on that operational UK offshore wind farm; and

- all contractual consents required for the innovator and the owner to permit the technology and/or product on the offshore wind farm and the entry into the agreement by the owner have been or will be obtained.

1.6 Terminology

In this Guidance:

- the innovator is referred to as the "**Technology Provider**", the owner is referred to as the "**Owner**", and each is referred to a "**Party**";

- the product and/or technology to be demonstrated are referred to as the "**Technology Assets**";

- the agreement to be entered into by the Technology Provider and the Owner is referred to as the "**Agreement**"; and

- the site comprising the relevant wind farm is referred to as the "**Site**" (and will be more particularly described in Schedule 1 (Site) of the Agreement).

2. Guidance by Clause

1.3 Term

The Agreement specifies a "**Term**" (or duration) of one year. The Term commences on the "**Effective Date**" (which is defined as the date of the Agreement) and expires one calendar year later. It should be noted that certain rights and obligations (e.g. in connection with decommissioning and confidentiality requirements) will continue after the expiry of this one year term.

Following entry into the Agreement, the Parties can agree an extension to the Term in writing.

Further Considerations

It was thought that a one-year period should be a sufficient period to enable a Technology Provider to install, test and demonstrate the Technology Assets, but this will depend on the type and nature of the Technology Assets. The Parties are free to agree a longer or shorter Term and consideration should be given to this at the outset.

The Agreement governs the arrangements to enable the demonstration of the Technology Assets. If the demonstration is successful, the scope of the Agreement is not intended to govern any future service provision in respect of the Technology Assets and further contractual arrangements will be required to be entered into by the Parties in respect of that future service provision. The Parties could consider to what extent heads of terms or other mechanisms for future services in the event of successful demonstration should be agreed in advance.

1.4 Grant of Rights

The purpose of this clause is to recognise that the "**Rights**" (i.e. rights of access or similar rights) that a Party is minded to grant will be limited to a right of access (for a permitted purpose) only and is not intended to grant exclusive possession or proprietary or statutory rights (e.g. rights available to a tenant arising under a landlord and tenant arrangement).[1]

Although, the clause refers to the granting Rights by a Party, the clause is primarily concerned with the grant of Rights by the Owner. The Rights granted by the Owner to the Technology Provider are intended to continue for the duration of the Term and to permit subsequent decommissioning activities after which the Rights should cease to apply (without creating rights for the Technology Provider as if it were a tenant).

The Owner will likely have the benefit of a leasehold interest in the Site, and any Rights that the Owner grants under the Agreement must be consistent and compliant with the terms (and title) of that leasehold interest held by the Owner.

In addition, any Rights that are granted will only continue for so long as the Owner has the authority to grant such rights. If the consent of a landlord or other third party is required for such Rights to be granted (or maintained), then that consent will need to be obtained for such Rights to be effective.

Further Considerations

The Owner will need to carefully consider its leasehold and other arrangements in order to ensure that the Rights that it grants to the Technology Provider are effective and sufficient for the purposes of the Agreement.

1.5 Cooperation in Good Faith

Under this Agreement the Owner has chosen to assist the Technology Provider in order to facilitate the demonstration of the Technology Assets by the Technology Provider on the Site. The Agreement recognises that this should not be treated in the same was as standard supply arrangement, and anticipates that the Parties will want to cooperate in good faith to achieve the aims and objectives of

[1] For context, please see clause 2.1 (Right to install and retain assets) whereby the Owner grants Rights of Access for the Permitted Purpose. These Rights of Access are granted subject to clause 1.4 (Grant of Rights) and clause 7.1 (Non-intereference).

the demonstration for both Parties (which are to be identified and recognised in Schedule 9 (Success Conditions).

Accordingly, the clause provides that the Parties agree to co-operate in good faith with each other in exercising rights and performing obligations under the Agreement. This provision operates on a "without prejudice" basis (i.e. on a standalone basis which does not affect the interpretation of the remainder of the Agreement).

There is no duty of good faith implied into contracts as a default, so this is an additional obligation. The core requirement of the good-faith duty is that a party behaves honestly and not in bad faith.

Further Considerations

We assume this clause will not be controversial in most circumstances (and reflects the background to entering into the Agreement). However, if there is a concern with the concept of good faith it could either be deleted, or a concept of the Parties acting in a spirit of mutual trust and co-operation could be adopted (as is contained in the NEC type contracts).

1.6 Necessary Consents

The aim of this clause is to ensure that both Parties have obtained and will maintain the required consents for the purposes of performing rights and obligations under the Agreement.

The Owner is required to obtain and maintain the "**Owner Consents**". The Owner Consents will be specified in the definition and decided on a case-by-case basis, but may include those permissions, consents, approvals, licences, certificates and permits required by public or statutory persons of the United Kingdom which allow the deployment, maintenance and decommissioning of the Technology Assets at the Site.

Similarly, the Technology Provider is required to obtain and maintain the "**Technology Provider Consents**". The Technology Provider Consents will also be specified in the definition and decided on a case-by-case basis, but may include those permissions, consents, approvals, licences, certificates and permits required by public or statutory persons of the United Kingdom which permit the licensing of the technology at the Site.

The consents to be procured by each Party will vary depending on the type and composition of the technology, the planning regimes and any regulatory bodies that the Owner and/or the Technology Provider are subject to, amongst other factors.

Both Parties will provide such reasonable assistance as may be required by the other Party in respect of obtaining and maintaining the consents that the other Party is responsible for.

Further Considerations

Alternatively, the drafting could provide for one Party to obtain specific listed consents, and the other Party to obtain all other consents required for the performance of obligations under the Agreement.

In practice it might be that for any given consent etc., there is only one Party who is able to apply for it, so the other Party can only provide assistance.

2 Right to install and retain assets

The purpose of this clause is for the Owner to comprehensively grant sufficient rights to the Technology Provider to perform the Agreement. The rights so granted are intended to be broad and are expressed to cover the right to install and thereafter retain, Commission, operate, use, inspect, test, maintain, repair, alter, modify, Decommission, relocate, remove and replace the Technology Assets in accordance with the Agreement. Such rights are granted subject to the constraints set out in: (i) clause 1.4 (Grant of Rights) (see above); (ii) clause 4 (Decommissioning); (iii) clause 5 (Rights of Access) (see below); and (iv) clause 7.1 (Non-interference) (see below).

The Owner further grants "**Rights of Access**" which cross refers to a more detailed and negotiated set of access rights set out in Part A of Schedule 5 (Rights of Access).

The Rights of Access so granted will in all cases be limited for the "**Permitted Purpose**", the definition of which is intended to be sufficiently broad to capture the purpose of the Technology Provider's demonstration activities and covers the installation, Commissioning, operation, use, inspection, testing, removal, relocation, maintenance, testing, repair, alteration, modification, Decommissioning or replacement of the Technology Assets by (or on behalf of the Technology Provider) and all other reasonably incidental purposes.

It should be noted that such rights are granted subject to the constraints set out in: (i) clause 1.4 (Grant of Rights) (see above); and (ii) clause 7.1 (Non-interference) (see below).

Further Considerations	Both Parties will need to carefully consider the scope and nature of the required Rights of Access in order to ensure that the Technology Provider has appropriate Rights of Access to perform its obligations under the Agreement.

3	**Security and compliance**

Pursuant to this clause, the Technology Provider commits to complying with the security, health and safety requirements specified by and agreed with the Owner as outlined in Schedule 4 (Security, Health and Safety).

Each Party should carefully consider the security, health and safety requirements. The Technology Provider should ensure that the requirements permit the Technology Provider to install and maintain the Technology Assets.

More widely, each Party agrees to work together to comply with all relevant legislation and directives applicable to the Technology Assets, Owner Assets and/or the Site, informing the other Party of all matters relating to the same except where a Party has reasonable grounds for believing that the other Party is aware of the information.

Further Considerations	Health & Safety compliance is crucial to an operating site. Some Owners may require stricter obligations on these matters. For example, removing the notice period to terminate the Agreement if terminating the Agreement for breach of this provision.

4	**Decommissioning**

This clause, in conjunction with Schedule 8 (Decommissioning), outlines how the Technology Assets will be decommissioned and removed from the Site either on the expiry of the Term of the Agreement or termination of the Agreement by either Party under clause 18 (*Technology Demonstration Termination*).

In each instance, the Technology Provider may either: (i) choose to remove the Technology Assets; or (ii) be required to remove the Technology Assets following an instruction from the Owner on reasonable notice (having regard to the Technology Provider's access to the Site). Due to the requirement to provide "reasonable" notice, the Owner will need to consider the level of access that the Technology Provider has to the Site and adjust the notice period accordingly.

The steps required to Decommission the Technology Assets should be agreed at the outset and clearly outlined in Schedule 8 (Decommissioning) to minimise the potential for any dispute between the Parties on the expiry of the Agreement (or earlier instruction to remove).

If the Technology Provider fails to Decommission the Technology Assets within an appropriate timeframe, the Owner may remove the Technology Assets and return them to the Technology Provider, but the Technology Provider will then be responsible for the Owner's properly and

	reasonably incurred costs. The Technology Provider will reimburse the Owner for such costs within 30 days of receipt of a written request from the Owner fully outlining its costs.
Further Considerations	Some Owners may also prefer to control the Decommissioning process themselves and be reimbursed, rather than providing the Technology Provider the option to undertake the Decommissioning process.

5	**Rights of Access**
5.1	This purpose clause 5.1 is to further describe the Rights of Access granted to the Technology Provider pursuant to clause 2.2 (and as set out in Schedule 5 (Site Access) to clarify that: (i) these rights extend to bringing onto Site those personnel, plant, machinery, equipment and materials reasonably necessary for the Permitted Purpose (see explanation in clause 2.2 above); and (ii) these rights extend to the Technology Provider's sub-contractors or delegates permitted in accordance with clause 16.3. This are the sub-contractors or delegates of the Technology Provider set out in a pre-agreed list in Schedule 6 (Services) or approved in writing by the Owner.
5.2-5.3	It is assumed that access to the Site (for the purposes of transferring personnel, plant, machinery, equipment and materials) by the Technology Provider will rely on transfer vessels made available by the Owner. This is because the Owner may prefer to directly control access to the Site and/or procuring a transfer vessel may be prohibitively expensive for the Technology Provider. It is recognised that demand for access to Site will be high, be subject to competing operational and maintenance requirements, and impacted by sometimes unpredictable weather windows. The drafting contemplates that the Owner will include the Technology Provider's access requirements in its transfer vessel scheduling arrangements, but without being required to diverting its existing transfer vessels. As health and safety issues are paramount, personnel will require appropriate training, guidance, clothing and equipment and may need to be escorted in the performance of their duties. The Owner is considered best-placed to manage and facilitate the Technology Provider's access to the Site, and accordingly clause 5.2 provides that the Owner will ensure that all reasonable arrangements and provisions are made (and/or revised from time to time) to allow the Technology Provider to exercise its Rights of Access safely and with minimal disturbance, and clause 5.3 outlines requirements for the Owner in this regard. These arrangements and provisions will be Site-dependent, and clause 5.3 sets out a list of matters to be addressed. Owner's should familiarise themselves with the several matters that will be covered under this obligation. It should also be noted that this obligation will require the Owner to monitor its safety and access position throughout the duration of the Agreement.
5.4	This clause covers the Technology Provider's commitment to act in accordance with the access arrangements and provisions (made pursuant to clause 5.2), any related measures issued by the Owner that are relevant to the Site, and the Site Specific Safety Rules. The Technology Provider is also under a general obligation, when using the Rights of Access, to take all reasonable steps to: (i) avoid or limit damage to the Owner Assets, the Site and any other property thereon; and (ii) cause as minimal disruption and inconvenience as possible to the Owner or other occupiers of the Site. If the Technology Provider causes damage through an action, error or emission, whilst the loss arising from such damage may be covered by the Owner's material damage insurance policy and give rise to successful claim, the proceeds of such claim will be reduced by the amount of the Owner's excess or deductible applicable to that policy. Accordingly, clause 5.4.3 provides that the Technology Provider will be required to bear such excess or deductible. In seeking to mitigate this risk, the Technology Provider should engage with its insurance adviser to ensure that it takes out and maintains its own insurance policy which provides cover for this risk. In addition, to the extent that the Technology Provider causes damages in exercising the Rights of Access throughout the period that the Technology Assets are installed at the Site, the Technology Provider is required to indemnify the Owner against all related claims and losses. The Technology Provider's liability under this indemnity is subject to the aggregate cap on liability (see clause 13).

5.5 This clause provides the Technology Provider with Rights of Access without prior notice to the Owner for operation, inspection and in an emergency. An emergency is not defined and will cover a number of health and safety scenarios, but it will include loss of generation or transmission or demand or other emergency.

5.6 If (at any time) the Rights of Access are not sufficient for the purposes of the Agreement the Parties will need to discuss any necessary variations to facilitate the Permitted Purpose.

Further Considerations

The continued running of the wind farm will be a primary concern for an Owner which is why we consider an indemnity (in clause 5.4.4) to be appropriate here, but that can be considered on a case by case basis.

The practicalities of access will also have to be considered for each project. For example, it might be that it is not possible or too expensive for a Technology Provider to source their own access vessels, and so all access will need to be with sufficient notice to coordinate with availability of Owner's vessels.

The Parties should consider whether a detailed access protocol can be drawn up and included as a schedule.

With respect to clause 5.5, although the right is given for access without prior notice, in practice this might not be possible. The Parties should therefore consider whether the clause should be amended to reflect the realities of the situation.

6 Services and use of assets

This is the key operative clause requiring: (i) the Technology Provider to carry out the "**Technology Provider Services**"; and (ii) the Owner to carry out the "**Owner Services**" which are outlined at Schedule 6 (Services). The Technology Provider Services, the Owner Services and this clause are fundamental to the purpose of the Agreement and should be considered carefully by both Parties to ensure that it accurately defines their expectations of the demonstration exercise and accords with the contractual requirement to act in line with "**Good Industry Practice**" (i.e,. those practices typically used in good and prudent offshore wind farms based in the United Kingdom).

The Owner is required to provide any electricity or other services inside the boundaries of the Site and for the Technology Assets.

The Parties will agree between themselves the arrangements required in connection with the use of the Technology Assets. Clause 6.6 provides a standardised list of such provisions, however each Site and Technology Assets will require different procedural steps.

Any restrictions placed on the use of the Owner Assets, the Site and/or the Technology Provider Services which may inhibit emergency action are suspended to the extent that emergency action is taken by Emergency Personnel (i.e., employees of a Party with the knowledge and experience and recognised by that Party as being able to competently and safely carry out emergency action) in good faith to protect the property and personnel on the Site. In taking any emergency action the relevant Party is required to take all reasonable care. A Party will be considered as acting with all reasonable care if its actions are in accordance with the Emergency Response Plan and the instructions of the Emergency Coordinator.

Further Considerations

Consideration should be given to whether there are any services that the Owner needs to provide or carry out (noting that procuring electricity is already included).

Given that the Parties will not be paid for carrying out the servcies under this Agreement, we consider it appropriate that the requirement is solely to carry out those services in accordance with Good Industry Practice. However, this is something that the Parties may wish to consider.

7	**Non-interference**

The aim of the clause is to protect each Party's assets from interference by the other Party (without consent) other than as a result of properly taking emergency action or in order to comply with relevant site safety rules. Interference in this context could, for example, include moving, disconnecting, affixing, altering, damaging or removing assets.

The Technology Provider's assets will primarily comprise the Technology Assets, but the concept of "assets" is wider and will cover other assets of the Technology Provider. The Owner's assets essentially comprises the wind farm assets and equipment on the Site, but again this could encompass more.

There are two limited express exceptions:

(i) the restriction is suspended to the extent that emergency action is taken by Emergency Personnel (i.e. employees of a Party with the knowledge and experience and recognised by that Party as being able to competently and safely carry out emergency action). In taking any emergency action the relevant Party is required to take all reasonable care and will be liable for loss caused to the other Party for not taking such care. A Party can demonstrate that it has acted with all reasonable care if its actions are in accordance with the Emergency Response Plan and the instructions of the Emergency Coordinator; and

(ii) the restriction is subject to any express statements to the contrary in the Site Specific Safety Rules. This refers to the most recent safety rules, which are notified to the Technology Provider.

The Technology Provider (and its agents, suppliers and sub-contractors) should familiarise themselves with the Owner's Emergency Response Plan and the Site Specific Safety Rules.

In installing, testing, maintaining and decommissioning the Technology Assets, the Technology Provider should take care to ensure that it does not (and those for whom it is responsible do not) interfere with the Owner's assets.

The Technology Provider should be aware that there are limited grounds in which the Owner has the right to interfere with the Technology Provider's assets (including the Technology Assets).

Further Considerations

The concept of assets in this clause is not defined, so the Parties could consider whether it could be defined as a closed list or categories of asset. There could also be details included about the types of 'interference' which are consented to on day 1 (e.g. in connection with the installation and demonstration of the Technology Assets).

8	**Title to Assets**

The purpose of this clause is to ensure the Technology Provider retains its title, rights and interest to the Technology Assets.

The clause provides further assurance to the Technology Provider as follows: (i) the Owner confirms that (subject to exceptions specified in the Agreement or in another contractual arrangement) as at the date of the Agreement it does not (and will not) hold any title, rights or interest in the Technology Assets; and (ii) if the Owner does (as a matter of law) obtain title, rights or interest to the Technology Assets it shall transfer these to the Technology Provider or hold these on trust (or declare a trust) for the Technology Provider. This would mean that whilst the Owner would hold legal title, the Owner would hold that on trust for the Technology Provider (who would be the beneficiary under the trust).

The provisions above are reciprocal to the extent that the Technology Provider obtains rights, title or interest in the Owner's assets.

The Technology Provider further agrees not to do anything that would make the Owner's Assets or the Site liable to an enforcement action or other legal process. If this does occur, the Technology

Provider should immediately notify the Owner and the Party instigating the proceedings of the Owner's ownership of the Owner Assets and Site.

9	**Confidentiality**
9.1-9.4	Confidentiality provisions are key in the context of protecting confidential and sensitive information in relation to the Technology Provider's new product and/or technology. Similarly, in the course of the Agreement, the Technology Provider may need to become aware of confidential or sensitive information about the Owner or the project (e.g. operational and performance data) in order to demonstrate the Technology Assets. Accordingly, each Party undertakes to the other, unless with the prior written consent of the other Party, that it shall, and procure that its Representatives (i.e., its directors, officers, employers, agents or advisers) shall, keep confidential and shall, not by lack of care or other act or omission: (i) disclose any Party Confidential Information to an unauthorised third party; or (ii) use or leverage any of the confidential information of the other Party for its own gain. "**Party Confidential Information**" means the contents of and the negotiations relating to this agreement and: (i) any information concerning the business, assets, liabilities, dealings, transactions, Know-How, customers, suppliers, processes and affairs of the other Party (or any of its Affiliates); and (ii) any information which is expressly instructed to be confidential for the Disclosing Party (or any of its Affiliates), which either Party may receive or obtain, whether verbally, in writing or in electronic form, from the other Party in connection with the negotiation, completion or performance of this Agreement. There are various standard exemptions to this principle set out in clause 9.3, which permits a Party to disclose Party Confidential Information, which include disclosure: (i) to existing and potential providers (and their Affiliates) of debt or equity and credit agencies for the purpose of obtaining that financing provided that the Disclosing Party shall: (i) limit such disclosure for the purpose of financing only; and (ii) make the third party aware of its obligations under the Agreement and agree to adhere to the same restrictions on the use and disclosure of Party Confidential Information as agreed between the Parties under this Agreement); and (ii) to a bona fide third-party purchaser or investor, or adviser to the same in connection with a proposed sale, share issue, or investment in either Party provided that the Disclosing Party shall: (i) limit such disclosure for the purpose of financing only; and (ii) make the third party aware of its obligations under the Agreement and agree to adhere to the same restrictions on the use and disclosure of Party Confidential Information as agreed between the Parties under this Agreement). Liability for breach of the confidentiality provisions by a financier, credit rating agency, purchaser or investor will remain with the Disclosing Party. In addition, under clause 9.4, each Party will be held liable for a breach of confidentiality by any of its Representatives or any of its "**Affiliates**" (i.e,. any entity directly or indirectly controlled by either Party).
9.5-9.6	The confidentiality obligations shall continue after the expiry or termination of the Agreement for a period to be agreed between the Parties. It was felt that two years represented sufficient protection of the Parties' commercial interests, whilst not implementing overly onerous obligations on both Parties and their Affiliates. Injunctive relief is explicitly included as a remedy in the event of a breach of this clause 9 by the Disclosing Party where damages are insufficient to cover the loss of the other Party.
9.7-9.8	The Parties agree only to make any communications to the public in relation to the existence and contents of this Agreement, the context of the wider deal, or the relationship between the Parties, with the prior written consent of the other Party.

The Parties commit to collaborating on the timing, contents and manner of any announcement relating to this Agreement, and any press release will follow the template at Schedule 10 (Form of Press Release) as agreed between the Parties.

Further Considerations

Different projects and different Parties will likely have specific concerns and requirements, which may depend on replicating provisions in other project documents and / or reflecting corporate policies and structure.

11 and 12 Intellectual Property

This clause provides that all intellectual property created by a Party (or its officers, employees, agents or consultants) shall be owned by the Party who created it unless the Parties have agreed otherwise in writing.

In addition, as the purpose of the arrangement is to facilitate the commercialisation of the technology or product, this clause further provides that the all data and other information that arises out of testing of the Technology Assets (as per the Agreement) will be the intellectual property of the Technology Provider.

To ensure that the Owner can facilitate the demonstration of the Technology Asset, the Technology Provider grants the Owner a non-exclusive, transferable, irrevocable, perpetual royalty-free licence (with the right to grant sub-licenses) to use any Intellectual Property created for the purposes of demonstrating the Technology Assets.

To protect the Owner, the Technology Provider will be required to:

(i) warrant that its use (or the Owner's use) of any Intellectual Property Rights over which the Owner has been granted a licence will not infringe the intellectual property rights of any third parties; and

(ii) indemnify the Owner against loss arising from infringement of third party intellectual property rights (provided that the Owner notifies the Technology Provider of any third party claim as soon as reasonably practicable).

Further Considerations

This is a short form clause which can be developed as needed. Consideration should be given to what intellectual property requirements and provisions from other project documents will need to be reflected.

13 Limitation of Liability

Limitation of liability is a key clause from the perspective of the Technology Provider. In considering the appropriate total cap on liability for the Technology Provider, the Parties will need to recognise that (in some cases) the Technology Provider may have limited funding, may not yet have a marketable product and/or technology available at this stage and the consequences of a major liability for the longer term prospects of the business could be significant. In addition, the Parties should consider the likely risks that might arise, ways to minimise risk and the scope and availability of insurances to address risks. Limitation of liability can be a complex area. As a general principle, any exclusion of liability must be clear as ambiguities can be construed against the Party seeking to rely on the exclusion.

The drafting provides for a total liability of the Technology Provider to the Owner under the Agreement. A suggested figure of £1 million is included in square brackets as a total cap on liability but this will need to be appropriate in the circumstances. The rationale for this figure (and approach) is based on the approach adopted by the Parties in relation to insurance, with the proposed cap on liability being equal to the amount of the excess or deductible under the Owner's material damage insurance policy, but this will need to be considered on a case by case basis.

The Technology Provider should note that the exclusion of liability of the Technology Provider will not apply in the event of fraud, fraudulent misrepresentation, wilful misconduct, criminal sanctions, statutory fines or penalties or breach of anti-corruption laws (or for matters that cannot be excluded at law). The concept of "**Wilful Misconduct**" is defined and covers intentional or reckless disregard by senior managerial personnel of Good Industry Practice or the terms of the Agreement in utter disregard of avoidable and harmful consequences

In addition, the exclusion of liability will not apply to the extent that the liability is covered by the proceeds of any insurance maintained by the Owner (or would have been covered but for the Technology Provider's failure to comply with the relevant insurance). The Technology Provider should obtain clarify from the Owner on what it will need to do in order maintain compliance with the Owner's insurances.

It is also worth noting that neither Party will not be liable to the other for any indirect or consequential loss or damage incurred by the suffering Party, provide that this will not limit liability for fraud, fraudulent misrepresentation, wilful misconduct, criminal sanctions, statutory fines or penalties or breach of anti-corruption laws or any liability in respect of a breach by the Technology Provider of clause 9 (Confidentiality).

Further Considerations

The Parties should consider involving their insurance brokers to ensure that the scope of the insurances and approach to limitation on liabilities dovetail so as to effectively manage risk for the Technology Provider (given that the Technology Provider may have limited capacity to absorb losses).

14 Force Majeure

The Force Majeure clause is a standard contractual provision that excuses a party's performance to the extent that its failure to perform is due to circumstances outside of its control.

The Agreement specifies circumstances of "**Force Majeure"** as an event and/or circumstance beyond the reasonable control of the impacted Party which causes a failure to perform and specifies a non-exhaustive list of events, but it is worth noting that weather conditions which are reasonably to be expected at the location of the event or circumstance are not considered beyond the control of the Parties.

If a Force Majeure event occurs, as a result of which a Party is unable to carry out its obligations under the Agreement (the **"Non-Performing Party"**), that Party's obligations under the Agreement will be suspended for however long the Force Majeure event continues, provided that:

(i) the Non-Performing Party gives the other Party prompt notice of the Force Majeure event and provides regular reports whilst the event is ongoing;

(ii) the Non-Performing Party's performance is suspended only for the same duration of, and only to the extent to which it is affected by, the Force Majeure;

(iii) the Non-Performing Party makes all reasonable efforts to mitigate the impact of the Force Majeure on its ability to perform under the Agreement; and

(iv) the Parties discuss how best to continue operations under the Agreement as soon as practicable after the Force Majeure event.

Both Parties should make sure they are comfortable with the Force Majeure circumstances as listed. In any event, the Non-Performing Party should be aware that these circumstances cannot be relied upon where the event constituting a Force Majeure has been caused as a result of its own failures or omissions.

Further Considerations	The definition of Force Majeure in the Agreement is non-exhaustive because it includes anything outside the reasonable control of a party. Given that nature and spirit of this Agreement, this is considered more appropriate than a closed definition or overly restrictive drafting.

15 Notices

The Agreement provides that any notice or other communication given by one Party to the other in connection with the Agreement must be: (i) addressed to the recipient (at the address and/or email address of that Party listed in Schedule 7 (Addresses)); and (ii) marked for the attention of the person so given, or such other address and recipient subsequently notified by the other Party (in accordance with clause 15).

Any notice must be in writing and sent by first class post, personally delivered or sent via email.

The receiving Party will be considered to have received a notice sent to it by the other Party in any of these formats: (i) if delivered by hand, when delivered; (ii) if sent by first-class post, on the second day after posting; or (iii) in the case of email, as soon as the email is received on the receiving Party's system.

The Parties should be aware that any notices required pursuant to the Agreement must be served correctly and in accordance with clause 15, or risk being considered as invalid should a dispute arise in relation to the service of the relevant notice

Further Considerations	The Parties should consider notices on a case by case basis, including what forms of communication are acceptable (e.g. should everything be via electronic means?).

16 Assignment and Sub-contracting

The Agreement specifies that neither Party shall be entitled to assign, transfer or novate its rights or obligations without the written consent of the other Party (such consent not to be unreasonably withheld or delayed). As part of their respective financing arrangements, each Party may be required to assign by way of security or charge its rights under the Agreement in favour of a funder. Accordingly, the Parties are permitted to do so.

In addition, the Owner will want to be in a position to approve any sub-contractors and delegates of the Technology Provider. Accordingly, neither Party is entitled to sub-contract or delegate its obligations or duties under the Agreement unless the sub-contractor or delegate: (i) has been pre-approved and is one of the entities listed in Schedule 6 (Services) of the Agreement; or (ii) approved by the other Party in writing (such approval not to be unreasonably withheld or delayed).

Parties should be aware that any sub-contracting of their rights or responsibilities under the Agreement will not absolve them of responsibility, and they remain liable for the performance of those obligations as well as the acts or omissions of the sub-contractor.

17 Representatives

Each of the Parties must appoint a representative to act on its behalf on any matters in connection with the Agreement, and must notify the other Party of its chosen representative and any changes to that person.

Parties should put in place their own procedures to ensure that its respective Representative properly acts as its representative in compliance with the Agreement.

18	**Technology Demonstration Termination**
	The purpose of this clause is to provide an appropriate mechanic and to specify the arrangements for what should happen if either Party no longer wishes to continue its dealings with the other in relation to the Site. In keeping with the good faith nature of this Agreement, the grounds for termination are limited and permit either Party to bring to an end the Technology Provider Services by providing written notice ("**Technology Demonstration Termination Notice**") to the other in accordance with Clause 15. The appropriate length of notice will need to be determined on a case by case basis. Following expiry of the required notice period, the Technology Provider will be required to Decommission the Technology Assets in accordance with clause 4 (Decommissioning). The Agreement will remain in force until the Technology Provider's Assets have been decommissioned, removed, demolished or dismantled from the Site. The Agreement provides that the Owner should be entitled to request an early termination of the Technology Provider Services, but in doing recognises that the Technology Provider may not have been able to fully demonstrate its technology or product and would be faced with decommissioning costs. Accordingly, if it is the Owner that serves a Technology Demonstration Termination Notice, the Owner will be required to pay the Technology Provider's decommissioning costs within 30 days of a written request from the Technology Provider evidencing that such costs have been incurred. However, if the Technology Provider fails to decommission its assets from the Site if instructed to do so by the Owner under Clause 4, the Technology Provider will be responsible for the reasonably and properly incurred costs of the Owner in removing (and returning) the Technology Assets (see clause 4 (Decommissioning). Any termination of the Agreement will not affect the rights or liabilities of either Party that have accrued up to the date of termination, and both Parties will remain subject to the Confidentiality and Limitation of Liability provisions in Clauses 9 and 13 respectively.
Further Considerations	This clause provides further detail on the apportionment of decommissioning costs and should be read in conjunction with Clause 4 (Decommissioning). Given the that the Owner is entitled to serve a Technology Demonstration Termination Notice at any point, the Technology Provider should make sure that it is well placed to decommission, remove, demolish or dismantle its assets from the Site as and when required and within the relevant stipulated time frame.
19	**Insurance**
	The approach to insurances will be fundamental to managing risk arising as result of the demonstration and other activities, and both Parties should consult their insurance advisers to ensure that they each take out and maintain insurance policies which adequately provide cover for risks and potential liabilities. The Agreement provides that the Owner is obliged to notify its insurance brokers (and confirm if the activities of the Technology Provider will impact the Owner's exiting material damage insurance). The Owner is also obliged to use reasonable endeavours to ensure that its existing material damage insurances are modified to provide coverage in respect of damage caused by the activities of the Technology Provider. In addition, the Owner is required notify the Technology Provider of the conditions and requirements under the Owner's material damage insurance cover. The Agreement sets out the insurances that the Technology Provider is required to establish and maintain ("**Required Insurances"**) will be set out in Schedule 11 (Required Insurances) which should be considered at the outset. The Technology Provider will be required to put in place the

Required Insurances with a reputable insurance company (on the terms set out in Schedule 11 (Required Insurances) provided that these terms are available at a reasonable commercial rate. The Owner may require the Technology Provider to provide confirmation that the Required Insurances are being properly maintained in accordance with the terms of Schedule 11 (Required Insurances).

If the Technology Provider is required to inform the Owner of either (i) or (ii), the Technology Provider shall discuss with the Owner the best means of protecting its position and, if required by the Owner, shall take out any such insurance with an indemnity limit that is available in the market on commercially reasonable rates and terms.

The Technology Provider shall not do or fail to anything that may result in the Required Insurances becoming void or unenforceable.

Further Considerations

The Owner should notify its insurance broker. Together with its insurance adviser, the Owner should consider whether the Technology Provider's use and/or installation of its assets carefully to discern if the risks identified are covered under its existing insurance cover.

The Parties should work together with their respective insurance advisers to ensure that the appropriate coverage is put in place for each demonstration and project on a case by case basis, and this position should be reflected in the final Agreement.

20 Dispute Resolution

The Agreement has a typical cascading dispute resolution process as follows:

(i) a one month initial resolution period;

(ii) a further one month resolution period with senior executive involvement;

(iii) expert determination (for matters relating to safety rules, of an operational or technical nature or if otherwise agreed); and

(iv) for issues not referred to expert determination, the courts of England and Wales.

Where an issue has been determined by the expert, that is final and binding save in the case of manifest error.

Further Considerations

The aim of these clauses is to provide a quick and cost-effective way of determining any dispute between the Owner and the Technology Provider in relation to the Technology Provider's assets in connection with the STDA.

The Parties should make sure that any written notice to refer the dispute to an expert should be served in accordance with the terms of clause 15 and clause 20.3.

The President of the Institution of Engineering and Technology has been chosen as appropriate authority to appoint an expert in relation to any disputes under the STDA, should the Parties not be able to agree.

Schedules

The Agreement also includes the following schedules:

- Schedule 1 (*Site*);
- Schedule 2 (*Owner Assets*);
- Schedule 3 (*Technology Assets*);
- Schedule 4 *(Security, Health and Safety*);
- Schedule 5 (*Site Access*);
- Schedule 6 (*Services*);
- Schedule 7 (*Addresses*);
- Schedule 8 (*Commissioning and Decommissioning*);
- Schedule 9 (*Success Conditions*);
- Schedule 10 (*Form of Press Release*); and
- Schedule 11 (*Insurance*).

These schedules will need to be populated by the Parties with regard to the above guidance.

Acknowledgements

OWGP would like to acknowledge and thank all those who have engaged and supported the development of the STDA to date.

We thank:

- **Ashurst LLP**: Nicholas Hilder (nicholas.hilder@ashurst.com) and Caroline Reid (caroline.reid@ashurst.com);

- **Osborne Clarke LLP**: Alistair Curzon (alistair.curzon@osborneclarke.com), John Deacon (john.deacon@osborneclarke.com) and Nicholas Grewal (nicholas.grewal@osborneclarke.com); and

- **Howden Group:** Deborah Duss (deborah.duss@howdenspeciality.com) and Severin Hegelbach (severin.hegelbach@howdenspeciality.com),

for their contributions to the STDA Delivery Task Force.