

## **Annex 1: Terms & Conditions**

Unless stated otherwise, defined terms in the Offer Letter have the same meanings within these Terms and Conditions.

### **1. General**

- a) OWGP reserves the right to change these Terms and Conditions unilaterally and at any time by giving the Recipient a minimum of 3 months' written notice.
- b) The Recipient shall not assign, transfer or sub-contract any of its rights or obligations under these Terms and Conditions to any third party, without the prior written consent of OWGP, such consent not to be unreasonably withheld.
- c) Rights and/or remedies under these Terms and Conditions, whether exercised or not, remain available throughout the duration of the Funding and the Project.
- d) The award of Funding does not operate to create any partnership or joint venture between the Parties in law.
- e) OWGP accepts no liability for any consequences, whether direct or indirect, that may arise from the Recipient undertaking the Project, using the Funding, or termination of the Funding in accordance with these Terms and Conditions.
- f) The provision of the Funding and these Terms and Conditions are subject to the laws of England and Wales.
- g) The Funding must be used solely for the carrying out of the Project and not for any other purpose.
- h) The Funding cannot be used for or in connection with any political or lobbying activity or purpose.
- i) The Funding must not be used in connection with a purpose for which the Recipient is benefitting from other grant funding from a third party.

### **2. Duration**

These Terms and Conditions shall come into effect on the start date provided in the Offer Letter and shall remain in place until completion of the Project or until the award of the Funding has ended, whichever falls later, subject to any rights and remedies which, by implication, survive termination.

### **3. Your obligations**

- a) The Recipient shall comply with these Terms and Conditions.
- b) The Recipient shall ensure that the Project is managed in accordance with the Project Management Plan as reviewed and approved by OWGP ("**PMP**") (a template of which shall be provided to the Recipient prior to Project kick-off) and these Terms and Conditions.
- c) The Recipient shall meet all its obligations and responsibilities set out in the PMP and acknowledges and agrees that the PMP will be used by OWGP to monitor, amongst other things, progress of the Project. The Recipient shall promptly notify OWGP in writing ("**PMP Change Notice**") of any material changes required to the PMP and provide sufficient explanation around such changes including details of reasonable alternatives and justification for recommended course of action. OWGP may accept or reject a PMP Change Notice, but where it is rejected, the parties shall use reasonable endeavours to work in good

faith to agree acceptable changes to the PMP. If no agreement can be reached, paragraph 6 shall apply in relation to suspension or withdrawal.

- d) The Recipient shall inform OWGP promptly of any issue or material change that may affect the progress, delivery or exploitation of the Project.
- e) The Recipient shall notify OWGP promptly if it is experiencing or expects to experience financial difficulties, including but not limited to those set out in clause 6b) iii and iv of these Terms and Conditions.
- f) The Recipient shall provide an internal champion or project manager, known as Recipient Representative to own the relationship with OWGP, to manage the agreed communications and activities aligned to the Project.
- g) The Recipient shall during the Project and for a period of 5 years thereafter, report on results and major business milestones to OWGP to allow OWGP to monitor and evaluate the impact of the Funding.
- h) The Recipient shall during the Project and for a period of 5 years thereafter, provide feedback to OWGP on the impact of Funding against turnover, jobs, exports and intellectual property.
- i) The Recipient shall during the Project and for a period of 5 years thereafter, be open to publicity about participation in the OWGP Funding Programme and where reasonably requested to do so, the Recipient shall participate in case studies to promote OWGP and its impact.
- j) The Funding is subject to the Project starting on or around [insert date]. OWGP reserves the right to withdraw the offer of the Funding if the Recipient does not sign the agreement within 30 days of notification.

#### **4. Payment of Funding**

- a) OWGP will make Funding payments at agreed milestone delivery dates, in accordance with the payment milestones in the PMP.
- b) Payments will be made against the Recipient's net eligible costs incurred over the duration of the Project.
- c) Claims must be supported with updates to the PMP.
- d) OWGP will normally pay the Funding within 30 days of receiving the claim, unless further information is required from the Recipient to support the claim.
- e) OWGP is not obliged to pay any claim received more than 30 days after the end of the quarter to which it relates. OWGP may not pay any claims received later than 3 months after completion of the Project.
- f) OWGP will not pay more than 85% of the Funding until all outstanding claims and supporting information have been received.
- g) The Recipient is responsible for maintaining detailed records and documentation relating to the Funding. These should provide evidence that eligible Project costs comply with the Funding agreement and the approved PMP as communicated by OWGP to the Recipient or as otherwise agreed in writing between the Parties. These records must be kept for 6 years following the award of the Funding. OWGP reserves the right to view records on reasonable notice.
- h) OWGP may appoint an auditor to ensure that the Recipient is complying with these Terms and Conditions. The Recipient shall give the auditor access to Project records within 2 weeks of notice of an auditor's appointment. If the auditor determines that the Recipient should

repay the Funding to OWGP, OWGP may recover the cost of the auditor's work from the Recipient

## **5. Monitoring**

- a) OWGP will appoint a single representative to monitor the Project "OWGP Representative".
- b) The Recipient shall meet with the assigned OWGP Representative as often as is specified by OWGP at the start of the Project.

## **6. Suspension, withdrawal or clawback of Funding.**

- a) **"Default"** means:
  - i. a material breach of the Recipient's obligations under these Terms and Conditions or the Offer Letter;
  - ii. a breach of applicable laws;
  - iii. negligent or fraudulent misstatement, or misappropriation of the Funding.
- b) OWGP shall act reasonably and fairly at all times in relation to provision of the Funding. However, OWGP shall be entitled to re-assess, vary, reduce, suspend or withhold, or clawback the Funding or any part of it, in the event of the following:
  - i. The Recipient commits a Default and, if that Default is capable of being remedied, the Recipient fails to remedy that Default within a period of 30 days after being notified in writing to do so;
  - ii. The Funding or any part of it is not used for the purposes of the Project;
  - iii. the Recipient passes a resolution for winding up, or a court makes an order for winding up, in either case otherwise than for the purposes of solvent reconstruction or amalgamation, or circumstances arise which would enable a court to make such an order;
  - iv. the Recipient suspends, or threatens to suspend, payment of debts or are unable to pay debts as they fall due or admit inability to pay debts or is deemed unable to pay debts within the meaning of section 123 of the Insolvency Act 1986 or a receiver, manager, administrator or administrative receiver is appointed, or over all or any part of the Recipient's property, or circumstances arise which would entitle a court or a creditor to appoint such a receiver, manager, administrator or administrative receiver;
  - v. there is a material change to the Recipient's business, meaning it no longer meets the eligibility criteria for the funding programme, which may include, but is not limited to, moving its principal place of business or business activities outside of the UK or where the Recipient undergoes a change of control.
  - vi. OWGP reasonably considers that any change in the Project warrants an alteration in the amount of the Funding;
  - vii. The Recipient fails to carry out the Project in accordance with the PMP or otherwise in accordance with milestones and/or timescales agreed between the Parties in writing;
  - viii. The Funder terminates the funding, in which case OWGP shall be entitled to withdraw funding without any liability to make any more Funding available or to pay any Funding to the Recipient.

- c) Where OWGP intends to enforce any of the rights above, it shall use reasonable endeavours, where appropriate, to give the Recipient proportionate notice in writing.
- d) In the event that the Recipient becomes bound to pay any sum to OWGP in terms of clause 6, the Recipient shall pay OWGP the required sum within 14 days of written demand from OWGP. If the Recipient fails to pay the sum within this period, OWGP shall be entitled to charge interest on the amount due, at the rate of 4 per cent per annum above the Bank of England base rate prevailing at the time of the written demand, from the date of the written demand until payment in full of both the sum and interest.

#### **7. Confidentiality and information management**

- a) **"Confidential Information"** means: information about the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of each party or each party's affiliates, the operations, processes, product information, know-how, intellectual property, technical information, designs, trade secrets or software, or any other information which would be considered as confidential by a reasonable person.

**"Group"** means: in relation to a company, that company, each and any subsidiary and holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.

**"Representative"** means: employees, directors, officers, agents, advisers, consultants and other representatives of a party and/or that party's Group.

- b) Each party shall, for a period of 5 years, keep in strict confidence all Confidential Information which has been received or disclosed between the Parties under these Terms and Conditions.
- c) Each party shall only use Confidential Information for the purposes of exercising or performing any rights and obligations under or in connection with these Terms and Conditions in relation to the Project.
- d) Neither party shall disclose Confidential Information in whole or in part to any third party, except as expressly permitted by this clause or with the prior written agreement of the other party in writing.
- e) Each party may disclose Confidential Information to those of its Representatives who need to know such Confidential Information for the Project, provided that it informs such Representatives of the confidential nature of the Confidential Information before disclosure and at all times, it is responsible for such Representative's compliance with the confidentiality obligations set out in this clause.
- f) Each party may disclose Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- g) Confidential Information does not include information which was publicly available (or available on a non-confidential basis), or is or becomes so, other than by breach of these Terms and Conditions.

## **8. Intellectual property**

- a) **"Intellectual Property Rights"** means all intellectual property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trademarks, registered designs, models, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright, database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions
- b) Nothing in these Terms and Conditions operates to transfer, assign or licence any Intellectual Property Rights unless expressly set out in herein.
- c) The Recipient warrants and undertakes that it has all the necessary rights to use or access any Intellectual Property Rights that it uses during or in the connection with the Project. OWGP shall not be liable for any claims by a third party that there has been a breach of third-party Intellectual Property Rights as a result of information the Recipient has either used in the Project or shared with OWGP in connection with the Project.

## **9. Exploitation of Project results**

Funding has been made available to OWGP by the Funder to support the growth of the UK offshore wind supply chain through the increase in UK jobs, revenue, exports and IP. As such, for a period of 5 years from the end of the Project, the Recipient shall use all reasonable endeavours to exploit the results of the Project within the UK. OWGP may evaluate the impact of the Funding in this respect and the Recipient shall provide reasonable assistance as requested by OWGP in respect of such evaluation.

## **10. Legislation and Regulation**

The Parties shall comply with all applicable laws, statutes and regulations from time to time in force applicable to them in the carrying out of the Project, in particular but not limited to data protection legislation, the Bribery Act 2010, the Fraud Act 2006 and the Modern Slavery Act 2015.

## **11. Publication of information**

- a) Subject to clause 7, OWGP encourages the Recipient to publicise its involvement in the Project. Any publication shall not bring, or seek to bring, OWGP into disrepute. Where publications discuss OWGP's involvement in detail, the Recipient shall seek approval of the publication from OWGP in advance.

- b) Subject always to clause 7, OWGP may publish information about the Project for the purposes of case studies and demonstrating the impact of OWGP's activities to stakeholders and funders.

#### **12. Dispute resolution**

Where a dispute arises between the Parties, a senior member of each party shall meet to discuss the matter in good faith in an attempt to find a resolution. If a mutually acceptable resolution cannot be found following those discussions, the Parties may attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (ADR notice) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than ten (10) days after the date of the ADR notice.

#### **13. Notices**

Any notice under these Terms and Conditions shall be sent by first class tracked mail to the registered office address of the party and shall be deemed to have been served on the second Business Day after posting unless evidence can be shown to the contrary. Any notice sent by post shall also be sent by email, in the case of the Recipient to legal@ore.catapult.org.uk and in the case of the Recipient to [insert address].

#### **14. Fair Work First**

- a) The Recipient shall comply with the following fair work first criteria:
- i. Equal pay; take action to tackle the gender pay gap and create a more diverse and inclusive workplace
  - ii. Payment of the real Living Wage; pay the real living wage or higher to all employees involved in the Project.
  - iii. Fair contracts; employ staff without the inappropriate use of zero hours contracts and will oppose the use of fire and rehire practice.
  - iv. Flexible working: will offer flexible and family friendly working practices for all workers from day one of their employment
  - v. Workforce Development: will invest in workforce development opportunities.