

# **Brexit Voluntary Permanent Cessation Scheme**

## **Appendix 1**

### **Grant Terms and Conditions**

## CONDITIONS OF GRANT OFFER

### BETWEEN

1. An Bord Iascaigh Mhara of Crofton Road, Dún Laoghaire, Co. Dublin (hereinafter referred to as "**BIM**"); and
2. **[INSERT NAME]** (hereinafter referred to as "**the Grantee**")

### WHEREAS:

- A. BIM has been entrusted by the Department of Agriculture, Food and the Marine ("**DAFM**") with the implementation, management, supervision and operation of the Brexit Voluntary Permanent Cessation Scheme ("**the Scheme**") under the Brexit Adjustment Reserve.
- B. BIM has agreed, following a call for applications under the Scheme issued on **[INSERT DATE]**), to grant-aid to the Grantee to carry out the permanent cessation of its vessel (hereinafter known as the "**Programme**"). BIM and the Grantee agree that grant-aid will be made available to the Grantee on the terms and subject to the conditions set out herein
- C. The Letter of Offer should be read in conjunction with these Grant Terms and Conditions and the rules of the Scheme as set out in the Guidelines for Applicants ("**Scheme Rules**") which together compromise the "**Agreement**" on which the Grant is offered by BIM to the Grantee.

**Ref. Number: [INSERT]**

- D. BIM and the Grantee agree that grant-aid will be made available to the Grantee on the terms and subject to the conditions set out herein.

### 1. The Programme

- 1.1 The Grantee shall agree to undertake the work necessary to carry out the Programme and any other amendments agreed in writing by BIM and appended to this Letter of Offer.
- 1.2 In signing this Letter of Offer, the Grantee agrees to carry out and complete the Programme subject to the terms and conditions of this Agreement.
- 1.3 Agreement and the obligations of the Grantee hereunder shall commence on the date of signing the Letter of Offer and shall continue for a period of five years unless sooner terminated pursuant to Clause 12.

## **2. General Grant Information**

- 2.1 The terms and conditions outlined below have been established by BIM. If the Grantee fails to comply with any or all of these terms and conditions of grant funding BIM may:
- (i) claim repayment of any or all monies previously advanced by BIM to the Grantee, and/or
  - (ii) suspend or withhold grant funding from the organisation, and/or
  - (iii) refuse to provide any further assistance to the Grantee (financial or otherwise).
- 2.2 In order to approve a grant and maintain grant funding BIM must be satisfied that the Grantee shall have adequate financial control system in place to manage granted funds and shall ensure that proper books and records concerning the grant are maintained, including records identifying the expenditure incurred on the Programme by the Grantee.
- 2.3 An independent audit of the interim and final cost statements may be undertaken by a registered auditor, engaged by BIM, prior to any Grant payments by BIM, upon reasonable notice.
- 2.4 The Grantees' financial management system(s) must be open to inspection by BIM, its parent Department and/or the Department of Finance, or their appointees, for the purpose of their financial control and audit procedures.
- 2.5 The Grantee shall be solely responsible for the payments lawfully due to any crew members of any eligible vessel owned or controlled by the Grantee.
- 2.6 Payment of grants will be made when BIM is satisfied that the Grantee has met all of its obligations under the Grant. The Grantee acknowledges that as regards payment of the Grant, time shall not be of the essence and the Grantee shall not hold BIM, DAFM or any other party providing or processing funds liable for any delay in making payment of the Grant or any portion thereof.

## **3. Use of Grant Funding**

- 3.1 All grant funding made available by BIM must be expended in accordance with the Programme as approved in writing by BIM (including such changes to the application as BIM may approve and any further conditions of such approval as may be set out in writing by BIM from time to time).
- 3.2 The Grantee must provide BIM with such evidence as BIM may request from time to time in order to verify that BIM's grant funding has been or is being expended in accordance with the Scheme and crew members have been lawfully paid.

- 3.3 Failure by the Grantee to expend grant funding in accordance with the rules governing the Scheme as approved by the European Commission (“the **Scheme Rules**”) will entitle BIM, at its discretion, to enforce any of the remedies available to it at Clause 2.1 above and any other remedies that may be available to it in law or in equity.
- 3.4 BIM has the right to seek from any vessel owner receiving assistance further information that BIM may require from time to time. If the required information is not forthcoming in a timely manner BIM may enforce any or all of the remedies available to it at Clause 2.1 above.

#### **4. Right to Audit**

- 4.1 At BIM’s election the Grantee be subject to an external audit by BIM’s appointed auditors.
- 4.2 BIM’s appointed auditors will have full, free and unrestricted access to any organisation’s records, assets and personnel deemed relevant to their review, including those controlled by subsidiaries and associates if any.
- 4.3 Appointed auditors are entitled to request and receive all the information and explanations they require for the proper performance of their Audit.
- 4.4 Failure to co-operate fully with the auditors on a timely basis entitles BIM, at its discretion, to enforce any of the remedies available to it at Clause 2.1 above.

#### **5. Financial Reporting**

- 5.1 BIM requires the Grantee to submit all reports via an online grant management system.
- 5.2 The Grantee shall furnish BIM with their full financial statements to include the requirements of Circular 13/2014 as outlined in Clause 6.2, if obligated to file full financial statements with the CRO. The Grantee must furnish BIM with their full financial statements as filed with the CRO within one month of filing them with the CRO.
- 5.3 The Grantee must retain all receipts and documentation in relation to grant expenditure for inspection by BIM’s auditors.
- 5.4 All grants received from BIM must be separately identifiable as income in the Grantee’s annual financial statements where applicable.
- 5.5 Accounting policies for the treatment of grants must be disclosed in the annual accounts.

#### **6. Obligations on the Grantee**

- 6.1 The Grantee shall apply the Grant exclusively to the Scheme and apply the Grant for the purpose for which it was intended.
- 6.2 The Grantee must comply with the Department of Public Expenditure and Reform Circular 13/2014 – Management of and Accountability for Grants from Exchequer Funds. Where a Grantee is obligated to file full financial statements with the Companies Registration Office (CRO) those accounts must contain the following information
- (i) the name of the grant making agency and sponsoring Government Department
  - (ii) the precise name of the grant scheme
  - (iii) purpose of the grant
  - (iv) the amount and the term of the total grant awarded, amount included as income in the financial statements and any grant deferred
  - (v) compliant with Tax Clearance obligations
  - (vi) accounting for Employee Costs.
- 6.3 The Grantee shall have adequate financial control systems in place to manage granted funds and shall ensure that proper books and records concerning the grant are maintained, including records identifying the expenditure incurred on the project by the Grantee.
- 6.4 The Grantee must notify BIM and make their books and accounts available to the Office of the Comptroller and Auditor General, when 50% or more of their total income in any 12-month period is sourced from Exchequer Funds.
- 6.5 The Grantee shall ensure that the vessel is insured to the market value up to the time when it is scrapped. If a vessel is lost between the date of the decision to grant a withdrawal premium and the actual date of permanent cessation of fishing activities, the implementing authority shall make a financial correction for the amount of the compensation paid by the insurance. In such cases payment will only be made subject to the insurance company paying out on the lost vessel. Uninsured or underinsured vessels will not receive a payment under the scheme.
- 6.6 The Grantee is advised to seek legal and taxation advice on the implications of accepting the offer and BIM accepts no responsibility for providing advice in respect of this agreement.

## **7. Payment**

- 7.1 The Grant payment will be drawn down by the Grantee in two separate tranches. Each drawdown will require a separate claim to be submitted to BIM through the BIM grants portal. Only claims submitted through the BIM grants portal will be considered for payment.

**Initial Grant Claim and Payment of 50% of the Grant**

- 7.2 The initial claim for payment may be submitted after the Grantee has:
- (i) Formally accepted the terms and conditions of the Letter of Offer. (Ref Condition 2a)
  - (ii) Formally accepted the Scheme Rules.
  - (iii) Permanently removed the vessel from the Irish Fishing Vessel Register and submitted a closure certificate as evidence of this. (Ref Condition 2b)
  - (iv) Surrendered the fishing boat licence within 12 weeks of the date of issue of the letter of offer (Ref Condition 2c)
  - (v) Repaid any outstanding unamortised grant aid to BIM. (Ref Condition 2d)
  - (vi) Demonstrated that no fees or harbour dues are owed to DAFM and that no monies are owed to BIM (Ref Condition 2e)
  - (vii) Furnished a transcript of registry showing that no mortgages or other charges have been registered against the vessel, subsequent to the application being made, or, where such charge has been registered, evidence has been supplied that the mortgage providers have been notified in writing of the proposed decommissioning of the vessel (Ref. condition 2f)
  - (viii) If a vessel is lost between the date of the decision of grant approval and the date of decommissioning, evidence of the compensation which an insurance company will pay (Ref. Condition 2g)
  - (ix) Continued to meet the admissibility requirements of article 11 EMFAF
  - (x) Meets all tax clearance requirements
  - (xi) Submitted and received approval for their proposed method of scrapping and the disposal of the residue of such scrapping (Ref. Condition 3a).
  - (xii) Submitted the names of the crew members, a copy of their safety card(s), and the Statutory Agreement as required by BIM for governance of the Scheme. (Ref Condition 4a)
  - (xiii) Submitted the signed Declarations
  - (xiv) The Grantee continues to meet the admissibility requirements of article 11 of the EMFAF
  - (xv) The Grantee meets all tax clearance requirements
- 7.3 The grant payment for 50% of the approved grant aid will take place. The payment will only be made when all Scheme Rules and any special conditions relevant to this stage

of the process have been fulfilled. Payment will be made automatically into the nominated bank account given on the Application when the above conditions have been met. BIM will endeavour to expedite payments in a timely manner

#### **Final Grant Claim and Payment of the final 50% of the Grant**

7.4 The final grant claim for payment will be processed after the Grantee has submitted:

- (i) Proof of payment to (the nominated crew members) by electronic bank transfer to an account held in the name of the crew member. Proof of payment shall be submitted to BIM within 4 weeks of the initial scheme payment to the Grantee (Ref Condition 4b).
- (ii) The Grantee has demonstrated that no licence fees or harbour dues are owed to the Department of Agriculture Food and the Marine and that no monies are owed to BIM (Ref Condition 2e)
- (iii) If a vessel is lost between the date of the decision of grant approval and the date of decommissioning, evidence of the compensation which an insurance company will pay (Ref. Condition 2g).
- (iv) The Grantee continues to meet the admissibility requirements of article 11 of the European Maritime Fisheries and Aquaculture Fund Regulation (EU) 2021/1139 (“the **EMFAF**”).
- (v) The Grantee meets all tax clearance requirements
- (vi) The SFPA has confirmed to BIM that the Grantee’s vessel was not found to be engaged in fishing at any point since the applicants surrender of the relevant fishing boat license.
- (vii) The Grantee must furnish a declaration, signed by an officer authorised by BIM, that the vessel has been scrapped in accordance with the terms and conditions set out in the letter of offer issued in respect of the Scheme (Ref. Condition 3d)

7.5 The final grant payment for 50% of the approved grant aid will take place. The payment will only be made when all scheme terms and conditions and any special conditions have been fulfilled. Payment will be made automatically into the nominated bank account given on the application form after the vessel has been scrapped and the above conditions have been met. BIM will endeavour to expedite

payments in a timely manner. The final date that payments can be made under this scheme is 31st December 2023.

## **8. Disclosure of Information**

- 8.1 Any information and documentation furnished by the organisation to BIM may be the subject of a request for information under the Freedom of Information Act, 2014.
- 8.2 Relevant information and documentation furnished by the organisation may be made available to the DAFM or Oireachtas Committees to assist in the planning and implementation of national policy.
- 8.3 By submitting its Application, the Grantee agrees to such disclosure as BIM considers appropriate or is legally obliged to make.
- 8.4 The General Data Protection Regulation (GDPR) is in force as of 25<sup>th</sup> May 2018. BIM only processes data where there is a clear legal basis for the processing and in line with the principles enshrined in the legislation. BIM staff are aware of their obligations under GDPR, and the organisation has appropriate technical and physical safeguards in place to fulfil these obligations.
- 8.5 When BIM considers it appropriate to disclose personal data, we will only disclose the amount of personal data that is necessary. Third parties that receive personal data from us must satisfy us as to the measures taken to protect and keep it secure.

## **9. Cessation and Repayment of Grant Funding**

- 9.1 Without limiting the generality of Clause 2.1 above BIM may enforce any of the remedies available to it pursuant to Clause 2.1 in the event that:
  - (i) BIM is dissatisfied that there are appropriate arrangements in place for the overall governance and management of the organisation
  - (ii) the Grantee fails to cooperate with any BIM audit as outlined above
  - (iii) the Grantee fails to expend grant funding in accordance with the Grant pursuant as outlined above
  - (iv) the Grantee fails to provide BIM with appropriate information pursuant as outlined above
  - (v) the Grantee ceases to satisfy the criteria for BIM recognition and/or assistance which are applicable to the grant funding made available to it, or
  - (vi) in the event that any clause or criteria outlined within these Terms and Conditions are not met.

9.2 For the avoidance of doubt, in any of the circumstances described in Clause 9.1, BIM shall be entitled to exercise any or all of the remedies available to it pursuant to Clause 2.1 above, as it may determine at its sole discretion, and such remedies shall be without prejudice to any other remedies available to it in law, equity or otherwise.

## **10. Termination**

10.1 BIM may terminate this Letter of Offer upon written notice to the Grantee at any time in the event that:

- a) This offer is not accepted, in the manner appended, within two weeks from the date of this letter.
- b) The Grantee commits any material breach of this Agreement and fails to remedy such breach (if capable of remedy) to the reasonable satisfaction of BIM within thirty (30) days of receiving notice from BIM.
- c) The Grantee, being a company, goes into liquidation (whether voluntary or compulsory) or receivership or has an examiner appointed to it, enters into arrangements with the Insolvency Service of Ireland or being an individual is declared bankrupt.
- d) The Grantee fails to carry out the Programme in accordance with the Agreement.
- e) The Grantee provides any information (including in relation to expenditure) or report to BIM or its agents which is inherently or substantially incorrect or inaccurate.

## **11. Indemnity**

11.1 The Grantee shall indemnify and keep indemnified BIM and DAFM against all reasonable costs, loss, damage and expenses sustained by either of them and against any claims that may be brought by any partner, employee, agent, sub-contractor or any third or other party arising out of the Programme or Grant award, whether by reason of, or on account of, the breach, default, neglect, non-performance or non-observance by the Grantee or any of them of the terms and conditions of this Letter of Offer or the Scheme Terms and Conditions.

## **12. Governing Law and Arbitration**

12.1 This Agreement shall be governed by Irish law and all disputes arising from this Agreement or the relationship between the parties shall be dealt with initially by mediation between the parties and if that fails, it shall be referred to arbitration by the parties under the Arbitration Act 2010.

## **13. Publicity Requirements**

13.1 BIM and the Department of Agriculture Food and the Marine will within six months of payment publicly acknowledge the aid provided via their website or other publications. This may include information such as the grantee name, vessel name,

the county, NUTS 2 Region, enterprise size, economic sector, grant aid paid, date of payment, form of aid. This information will be made available to the general public without restriction and will maintained for at least 10 years.