Market Improvement Fund

STRATEGIC PANEL & Committees

Market Improvement Fund

Applicant Terms and Conditions

Contents

1. Introduction

These Terms and Conditions of the Market Improvement Fund ("**The Terms**") are binding on all applicants to the Market Improvement Fund ("**MIF**") and apply at all stages of the application to MIF, including through to funding and post project evaluation.

The MIF is administered by Market Operator Services Limited ("**MOSL**") on behalf of the Strategic Panel and the MIF Selection Committee.

The following documents should be read in conjunction with these Terms, however, in the event of a conflict, these Terms prevail:

- Market Improvement Fund Application Form and Guidance – For applicant completion to apply for funding and to provide guidance on completing the application form
- Market Improvement Fund Project Selection and Governance Document – sets out the overall governance arrangements
- Market Improvement Fund Applicant Handbook – a guide to the MIF.

Applicants should familiarise themselves with these documents to ensure their applications meet the expected standards.

In these Terms "you" and "your" means the lead applicant that submits an entry to the MIF. "We" and "us" means, as the context determines, MOSL, the Strategic Panel ("**Strategic Panel**") and the MIF Selection Committee. MOSL, for the purposes of these Terms, is acting on behalf of the Strategic Panel and the MIF Selection Committee as an administrator of the MIF.

Please read these Terms carefully before submitting an entry to the MIF. By submitting an entry, you accept these Terms on behalf of your organisation and agree to comply with them and that MOSL, as administrator of the MIF, may enforce these Terms, in the event of a breach or dispute. By submitting an entry, you also confirm that you have authorisation to accept these Terms on behalf of any partners, and other participants, identified within your application, and you acknowledge that you are responsible for making sure that those partners and participants comply with these Terms.

2. Participating in the Market Improvement Fund

2.1 Entries received by the relevant deadline will be assessed against the relevant application criteria, by the MIF Selection Committee, as set out in the Market Improvement Fund Project Selection and Governance Document, including the Market Arrangements Code Sections 9.6.2 and 9.6.3. Entries which do not meet the criteria shall not be accepted. The assessment will be conducted by the MIF Selection Committee, which will make a recommendation to the Strategic Panel. Each reserves the right to refuse any application that does not, in its assessment, meet the application criteria.

2.2. The lead applicant of any entry must be a member of MOSL, as defined under its Articles of Association. MOSL may also be an applicant, subject to the further conditions set out in these Terms, relating to conflict of interests. The lead applicant must comply with and must ensure that its partners and participants comply with these Terms.

2.3. The Strategic Panel and the MIF Selection Committee reserve the right to refuse any application, the terms of which they consider to be inconsistent with these Terms.

2.4. Where an application includes MOSL as one of the applicants, additional safeguards will be implemented to ensure there are no actual or perceived conflicts of interest within the decision-making process. For any MOSL application recommended for award by the MIF Selection Committee, a paper will be provided to the Strategic Panel, setting out the rationale for the score awarded and the highest scoring application which was not judged to be successful by the MIF Selection Committee.

2.5 You can submit more than one entry to the MIF. However, the Strategic Panel and MIF Selection Committee reserve the right not to make multiple awards to the same lead applicant should other suitable applications also be received, and to take into account where a lead applicant has already been successful in an application. You must bear all the costs of entering and participating in the MIF, including travel costs and other out of pocket expenses. Please note for the avoidance of doubt that your responsibility for all costs will apply regardless of the outcome of your application.

2.6 The Strategic Panel and MIF Selection Committee reserve the right (in their sole discretion) not to accept late applications. We are not responsible for, and may in our discretion disregard, entries that are lost, incomplete, damaged, or late due to computer, network or telecommunications failure based on third party telephone or data networks.

2.7 The contact details you provide will be used to contact you about the MIF. If you do not respond within 14 days, or if you withdraw or are disqualified from the MIF for any reason, another entry may be selected in your place, but there is no requirement or obligation for this to happen.

2.8 Eligible entries will be assessed against the relevant application criteria, by the MIF Selection Committee, as set out in the Market Improvement Fund Project Selection and Governance Document including the Market Arrangements Code Sections 9.6.2 and 9.6.3, in order to determine the winners of the MIF awards. The Strategic Panel's decision on the selection of winner(s) and the amount of the awards (including in relation to queries on the assessment process) is final. The Strategic Panel may at its sole discretion decide not to award any funding in relation to the MIF. Correspondence will not be entered into, although the Strategic Panel and MIF Selection Committee may at their sole discretion provide generalised or individual feedback to entrants or winners.

2.9 We may vary the form or substance of the MIF (including deadlines and event dates) as we deem appropriate in the circumstances to ensure the MIF objectives, as set out within the Market Arrangements Code, are achieved. We may suspend or withdraw the MIF if we consider that it will no longer achieve its objectives.

2.10 We reserve the right to vary these Terms. Variations will take effect from the date they are posted on the MIF website. We will notify current applicants by email of any changes.

3. Market Improvement Fund Awards

3.1 The payment of any funds awarded through the MIF shall be administered by MOSL. Neither MOSL, nor the Strategic Panel nor the MIF Selection Committee shall have any responsibility or liability to anyone, however, arising for the non-payment or delay in payment of any funds awarded through the MIF.

3.2 Funding will be awarded in pounds sterling and the recipient is responsible for payment of tax and other charges, including Value Added Tax. However, in all bid documentation, funding amount requests in all application documents should be shown net (i.e. excluding VAT).

3.3 If you are selected as a winner of the MIF you will be required to enter into a MIF award agreement before funds will be awarded, so please do factor in additional time into any project schedules for legal agreements to be agreed. Data sharing or data processing agreements may also be required where personal data, such as market data, is involved. Any funds awarded by the MIF must only be used to fund the project described in your application. Such usage must comply with the terms of the MIF award agreement and must promote and comply with the objectives of the MIF as described in the Market Improvement Fund Project Selection and Governance Document including the Market Arrangements Code Sections 9.62 and 9.6.3. You must comply with all reasonable monitoring requirements specified by us, to verify the proper use of such funds, and you consent to the sharing of all monitoring information between MOSL, the Strategic Panel and any third party we may in future appoint in respect of the monitoring of the MIF.

3.4 We reserve the right to include terms within the MIF award agreement which may impose additional conditions on the release of funds during the course of the project if we, in our sole opinion, form the view that such conditions are required or are appropriate in light of other legal or regulatory requirements.

3.5 If you fail to comply with the provisions of a MIF award agreement, we reserve the right to refuse your entry to future competitions.

4. Your obligations

4.1 To participate in the MIF, you must:

- satisfy the relevant application criteria and ensure that all information submitted by you is true, accurate and complete;
- submit a proposal which is your own original idea and not copied from anyone else;
- have, or will obtain, all authorisations, consents and permissions, including any relevant legal or regulatory requirements, necessary to submit your entry, carry out your proposal and comply with these Terms;
- ensure that your entry will not infringe any intellectual property or other third-party rights or breach any contractual obligation. You may be disqualified if we receive notice that your entry infringes any third-party rights;
- act lawfully, ethically and in good faith and comply with these Terms, any MIF award agreement, the MIF Privacy Notice, any other rules of the MIF and any relevant laws, regulations, guidelines or codes of practice;
- comply with all reasonable instructions while participating in the MIF, including in relation to health & safety and security, including data security.

4.2 You must:

- at the time of submitting an application to the MIF and at any other point during the MIF, declare and procure that your partners and participants declare any actual or potential conflict of interest with MOSL, the Strategic Panel or the MIF Selection Committee, and provide us with all information reasonably requested in relation to such conflict;
- take reasonable steps, and procure that your partners and participants take reasonable steps, to manage any such conflict including (without limitation) by implementing such measures as we may reasonably require. Where a conflict cannot be avoided and/or where we determine (in its sole discretion) that a conflict cannot be appropriately managed you may be disqualified from participating in the MIF.

4.3 We reserve the right at our sole discretion to disqualify you from the MIF if you or your partners do not comply with these Terms, if you or your partners behave in a way which is misleading, disruptive, inappropriate or potentially dangerous, if you or your partners fail to participate fully or do anything to damage the reputation of us.

4.4 We reserve the right to require repayment of any funding awarded to you and/or your partners through the MIF if you and/or your partners fail to comply with these Terms and/or the terms of any MIF award agreement and/or the terms of the MIF Privacy Notice.

5. Intellectual Property

5.1 In these Terms:

The applicants must explain their approach to agree fair and reasonable terms for the future use of any Intellectual Property Rights (IPR)and commercial products developed as a result of the MIF.

The MIF distinguishes between “background IPR” and “foreground IPR”:

“IPR” shall mean any copyright and related rights, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trademarks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Background IPR" is pre-existing IPR, which exists prior to the submission of any bids to the MIF.

"Foreground IPR" is all IPR that is created by applicants through a project funded by the MIF

5.2 Each applicant should retain all rights in and to its background IPR, including where a bid involves more than one applicant. However, an appropriate form of licence should be granted to all applicants in any project, which is the subject of a bid, for the sole purpose of the project, in order to enable it to go ahead.

5.3 With regards to the ownership of foreground IPR, where a project funded through the MIF involves more than one applicant, then any jointly created IPR should be shared proportionately as agreed by the project applicants, however where any IPR is created independently by one of the project applicants then it should be owned by the applicant who created it rather than by all the project applicants.

5.4 Project applicants will usually be required to grant to all MOSL members (whether currently existing or in the future) in England and Wales a non-exclusive, royalty free licence to use both background and Foreground IPR within the non-household water market for the purposes of the project, and potentially beyond this. The MIF award agreement shall contain such provisions.

5.5 Applicants will be able to propose alternative IPR arrangements, which will be considered on a case-by-case basis. In such cases, it will be important for the bid to clearly show how the project will benefit all customers in the non-household water market and that any alternative arrangements do not result in additional costs to customers and that they align to the objectives of the MIF.

5.6 The default for IPR arising as a result of the MIF shall be treated in accordance with this clause 5 unless any alternative arrangements are agreed by us, whereby these will be documented in the MIF award agreement.

6. Use of personal information

6.1 Please see the MIF Privacy Notice for information about how we will use personal information obtained for the purposes of participating in the MIF.

7. Publicity

7.1 We may carry out publicity and promotion for the MIF and publish research and evaluation in relation to the MIF. You agree, and you confirm that your partners agree, to the use of each of your organisation names and a summary of your proposal in promotion and publications in any media and online and to participate in any other publicity reasonably required by us in connection with the MIF. Before publication, any concerns you have about the confidentiality of your entry will be considered. You should specifically draw any such concerns to the attention of us within the terms of your entry. We may ask you and your partners to support and/or participate in promotional activities related to the MIF on reasonable notice.

7.2 Any public statements made by you or your partners in relation to the MIF must acknowledge the support of the Strategic Panel and must be approved in advance by the MOSL. For the avoidance of doubt, you and your partners will not announce our decision on the outcome of your MIF application without the prior written approval of us.

8. Limitation of Liability

8.1 For the purposes of these Terms, MOSL is the legal entity entering into the arrangements with you and any liability of us to you, shall be the liability of MOSL.

8.2 To the extent permitted by applicable law, we exclude all liability for any direct or indirect loss or liability, costs, claims, taxes, charges or expenses arising from your participation in the MIF or your reliance on statements made or advice given by MOSL, the Strategic Panel or the MIF Selection Committee. If you submit any materials or items as part of your entry to the MIF, this is at your own risk. We do not give any undertakings to keep safely, maintain or return any materials or items.

8.3 Without prejudice to Clause 8.2, our maximum liability to you in connection with the MIF (if any) is limited to £1000. Nothing in these Terms excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation or for any other liability which is prohibited by law.

9. Governing Law and Jurisdiction

These terms and conditions shall be governed by and interpreted in accordance with the laws of England and Wales and you hereby submit to the exclusive jurisdiction of the English courts.