

# Agreement for the data usage

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- hereinafter referred to as »**Data User**« -

and

the Federal Republic of Germany, represented by the Federal Ministry of Transport and Digital Infrastructure, the latter represented by Bundesamt für Seeschifffahrt und Hydrographie (BSH), represented by the President Dr. Karin Kammann-Klippstein, Bernhard-Nocht-Straße 78, 20359 Hamburg, Germany

- hereinafter referred to as »**BSH**«

## Information given by the Data User

Name of responsible person:

.....

Title of research project or internal research:

.....  
.....  
.....

Time period of project or internal research, for which the data is used (please insert, but not longer than 3 years from signature, except for publicly funded projects, where the end of the project plus 6 months for reporting may be stated):

From .....

until.....

## Preamble

The research initiative RAVE (research at alpha ventus) was initiated 2007 by the German government to support the development of offshore wind energy. It conducted research at the first German offshore wind farm alpha ventus. As part of these research activities, a large amount of measurements were installed and operated at alpha ventus. Their measurement data are stored together with some data from the control systems of the wind turbines in the RAVE data base, which is administrated by BSH. BSH generally works in accordance with the 'DFG Proposals for Safeguarding Good Scientific Practice' (September 2013).

The RAVE partners wish to support research also beyond the RAVE consortium and therefore intend to make the collected data of the RAVE data base available for research outside of RAVE. The RAVE partners have therefore given BSH the mandate to make these data available to selected users.

The Data User shall obtain collected data of the RAVE data base for internal research purposes and the performance of publicly sponsored research projects ("Purpose").

For the above mentioned Purpose »Confidential Information« shall mean data disclosed by BSH to the **Data User** by granting access to the RAVE data base.

However, these data are Confidential Information, which belong to one or several of the partners participating in the RAVE initiative.

- 1 The Data User is therefore required to commit himself to the following obligations:
  - (a) **The Data User** undertakes to treat as confidential all and any Confidential Information and agrees not to disclose the same to any third party except with the prior written consent of BSH. Any other data user shall not be deemed being a third party as long as this data user is party of a valid agreement for the data usage with BSH.
  - (b) **The Data User** commits himself to use the Confidential Information only for carrying out internal research or publicly sponsored research projects. Any use for commercial analysis of the Confidential information or consultancy with the Confidential information is not permitted and will be subject to damage claims. For the avoidance of doubts, the **Data User** is not allowed to disclose any Confidential Information or the outputs obtained from them (directly or indirectly), if those outputs contain Confidential Information or allow conclusions to the Confidential Information to any third party, including customer's of RAVE partners, unless clearly agreed with BSH as detailed in § 6A. Furthermore **Data User** is not allowed to use or grant access to the Confidential Information (directly or indirectly) as evidence for any lawsuits brought to court by any third party against any of the RAVE

partners. The commercial use, including licensing of the output and knowledge gained with the Confidential information is permitted, if those results do not contain Confidential Information or allow conclusions to the Confidential Information.

- (c) At the expiration of this Agreement and at the request of BSH at any time, which must be made in writing (e-mail) all received Confidential Information and any copies made thereof must be either returned or, upon mutual agreement between the Contracting Parties, destroyed/deleted, within fourteen (14) days following the expiration or request.

2 The restrictions on the use and disclosure of Confidential Information shall not apply to any information which is:

- (a) proven to have been known to the **Data User** prior to the time of its receipt pursuant to this Agreement; or
- (b) in the public domain at the time of disclosure to the **Data User** or thereafter enters the public domain without breach of the terms of this Agreement; or
- (c) lawfully acquired by the **Data User** from an independent source having a bona fide right to disclose the same.

If a government authority or a court orders the disclosure of Confidential Information, then the **Data User** will be authorized to make a disclosure insofar as the order demands such disclosure, provided that the **Data User** – to the extent allowed by law - informs BSH without undue delay about any such order for purposes of protecting its rights and provided that the **Data User** limits the disclosure to the requisite minimum and informs about the confidentiality of the Confidential Information at the time of the disclosure.

3 Unless it is necessary for the Purpose and provided that any copy of Confidential Information is distributed to employees only who have a need to know, the **Data User** shall not, without the prior written consent of BSH, copy or reproduce any document provided to the **Data User** containing in whole or in part Confidential Information. This shall not apply to copies of the electronically exchanged Confidential Information made as a matter of routine information technology back-up and to Confidential Information or copies thereof which must be stored by **Data User** according to mandatory law, however always provided that such copies shall be safeguarded by **Data User** against third party access. The safeguarding must commensurate with the actual state of the art. The **Data User** is fully liable for any breach of this Agreement by its employees.

- 4** All Confidential Information supplied pursuant to this Agreement shall remain the property of the RAVE partner owning such information and no other rights as set forth in this Agreement, including but not limited to the right to apply for intellectual property rights, are granted to the **Data User**.
- 5** The **Data User** agrees that any Confidential Information is made available "as is" and that no warranties are given or liabilities of any kind are assumed with respect to the quality of such Confidential Information, including, but not limited, to its fitness for the purpose, non-infringement of third party rights, accuracy, completeness or its correctness.
- 6A** The **Data User** commits himself to inform BSH of the research, which it performed with the use of Confidential information (hereinafter: Feedback) annually and at the termination of this agreement. The Feedback shall consist of a written summary of the research goals, the data used, the conclusions drawn and a statement about the usefulness of the data for the research. It shall not exceed one page. BSH will make the Feedback available to the RAVE partners as confidential information. Instead of a written summary the Feedback may also be given in form of a presentation at an event organized by RAVE for this purpose.
- 6B** The **Data User** may use the Confidential Information disclosed only for the Purpose. Results, which it obtains with the use of Confidential information or which it – directly or indirectly - derives from the Confidential Information and which still contain Confidential Information or allow conclusions to Confidential Information shall neither be published nor disclosed to any third party without the prior written consent of BSH. BSH will grant such a consent if the turbine manufacturers agree. Their agreement is deemed granted if they do not object within 2 weeks after forwarding of the manuscript. The manufacturers may not deny the approval without good cause.
- 6C** If results obtained with the use of Confidential Information are published, due reference is to be made to the RAVE project in all publications.  
*"data was made available by the RAVE (research at alpha ventus) initiative, which was funded by the German Federal Ministry of Economic Affairs and Energy on the basis of a decision by the German Bundestag and coordinated by Fraunhofer IWES (see: [www.rave-offshore.de](http://www.rave-offshore.de))"*
- 7** This Agreement shall come into force on the date of the signature and shall thereafter be valid for the use of the **Data User** within the Purpose as stated above (Section 'Information of the Data User'). The obligation of confidentiality shall survive the term of this Agreement for a period of five years.

This Agreement can be terminated by either party if it gives written notice to the other party at least 6 months before the end of the calendar year. The

extraordinary and immediate termination of this Agreement is justified upon the occurrence for good cause only.

- 8** Ancillary agreements, amendments, additions to this Agreement must be made in writing.
- 9** Any violation of this agreement, which leads to damage to any of the RAVE partners, will be subject to damage claims. The **Data User** explicitly agrees to be liable towards the affected RAVE partners. The **Data User** shall indemnify and hold harmless BSH for all claims resulting from violation of this agreement by the **Data User**. If a RAVE partner signs this Agreement, in respect of liability between RAVE partners the provisions of the RAVE cooperation agreement (section 9 (2)) shall apply correspondingly.
- 10** The **Data User** allows BSH to store and make publically available the general information (name of responsible person and institution, address of institution, title and time period of research project or internal research) given by the **Data User** in this Agreement.
- 11** The laws of the Federal Republic of Germany apply. The place of jurisdiction will be Hamburg, Germany.
- 12** None of the Contracting Parties may assign this Agreement or transfer individual rights or obligations under this Agreement to a third party without the prior written consent of the other Contracting Party.

The Contracting Parties agree that the rights and duties under this Agreement should also apply to legal successors of both Contracting Parties. The Contracting Parties are therefore obligated to impose the terms and conditions of this Agreement upon their legal successors accordingly.

- 13** This Agreement governs the use and non-disclosure of Confidential Information only and does not create a joint venture, partnership, agency or commercial relationship between the Contracting Parties, nor does it bind either Contracting Party to enter into any further relationship.
- 14** This Agreement constitutes the entire agreement between the Contracting Parties and supersedes all prior agreements of the Contracting Parties relating to the subject matter of this Agreement.

Any side agreements to, modifications of or supplements to this Agreement must be made in writing in order to be effective. The foregoing also applies to any deviation from this written form requirement.

Failure to enforce any provision of this Agreement will not constitute a waiver of any provision of this Agreement. Waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

This Agreement may be signed in one document for each party of it. There will be two originals of this agreement, one for each party.

- 15** Should any provision of this Agreement be or become invalid or unenforceable, then the validity or enforceability of the remaining provisions hereof will not be affected thereby. The Contracting Parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the meaning and purpose of the invalid or unenforceable provision. The foregoing also applies in the event there is an unintended contractual gap.

Signed on behalf of **Data User:**

Place, Date

Name

Signature

Signed on behalf of BSH

Place, Date

Name

Signature