



CONTRACT

**For the Maintenance of and Associated
Support for
the SCADA System at
Wave Hub Hayle Towans Substation**

WAVE HUB LIMITED

(1)

CONTRACTOR

(2)

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THIS CONTRACT is dated [Add Date of Contract].

PARTIES

(1) **WAVE HUB LIMITED** incorporated and registered in England and Wales with company number 07875270 whose registered office is at Chi Gallos, Hayle Marine Renewables Business Park, North Quay, Hayle, Cornwall TR27 4DD ("**Client**").

(2) **CONTRACTOR** incorporated and registered in England and Wales with company number [XXXXXXX] whose registered office is at [Contractor's Address] ("**Contractor**").

BACKGROUND

(A) The Client is a private company limited by shares.

(B) The Client wishes to appoint the Contractor on the terms of this Contract to provide certain services in respect of the maintenance and associated services in respect of the High Voltage System installed at the Wave Hub Hayle Towans Substation ("**Project**").

AGREED TERMS

1. DEFINITIONS

1.1 In this Contract, except where the context otherwise requires, the following words and expressions have the following meanings:

"**Applicable Law**" means the law of England and any relevant European Community laws, including any legislation, statutes, ordinances, bye-laws, rules and regulations and all relevant guidance notes, regulations and directives as the same may be modified and amended from time to time during the term of the Contract.

"**Business Days**" means a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for business.

"**Consents**" means any and all permits, licences, consents, accreditations or other authorisations required by Applicable Law for the carrying out of the Services.

"**Contract**" means this Contract between the Client and the Contractor, including all Schedules attached, as the same may be modified or amended from time to time in accordance with the provisions hereof.

"**Contract Manager**" means [Add Contract Manager's Name].

"**Contract Sum**" means the total fixed price for the Services carried out in accordance with this Contract as set out in the Form of Tender at Appendix G of the Specification excluding VAT and includes all expenses, materials, plant costs and disbursements required for the provision of the Services.

"**Designated Site Engineer**" means [Add Designated Site Engineer's Name].

"**Good Operating Practice**" means the exercise of those standards, practices, methods and procedures conforming to the Applicable Law, and, where appropriate, manufacturers' recommendations and relevant codes of practice as would reasonably be applied by a skilled and experienced contractor utilising reasonable skill and care engaged in the same or a similar type of undertaking and under the same or similar conditions to the Contractor.

"**Material**" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

"**Services**" means those services set out in the Specification and Appendix G of the Specification (and any variation to such Services in accordance with the Contract) including, but not limited to:

planned maintenance of the high voltage switchgear, transformer and associated switchgear.

provision of engineering support on a call out basis.

provision of engineering support to assist the Client's operations.

remedial work to the existing system faults.

"**Specification**" means the specification attached to this Contract at Schedule 1.

"**Start Date**" means [Add Contract Start Date].

"**Term**" means a period which commences on the Start Date and continues until [Add Contract End Date], and which may be extended in accordance with clause 3.2 3.2below, or until (if earlier) this Contract is terminated in accordance with the express provisions of this Contract.

- 1.2. The definitions and rules of interpretation in this clause apply in this Contract.
- 1.3. In the event of any conflict between the terms and conditions of this Contract and any of the Schedules, the provisions of this Contract shall prevail.
- 1.4. The Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules.
- 1.5. A reference to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.6. A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

2. THE SERVICES

- 2.1. The Client appoints the Contractor to carry out the Services for the duration of the Term.
- 2.2. The Contractor shall perform the Services in accordance with the terms of this Contract.

3. THE TERM

- 3.1. The Contractor shall commence the Services from the Start Date and shall continue to perform the Services for the duration of the Term.
- 3.2. At the Client's discretion, the Term may (up to one month before the end of the Term current at that time) be extended by a further 12 months upon written notice to the Contractor. Upon such notice, the Term shall be extended for the period stated in the notice and this Contract shall continue on the same terms and conditions under this Contract as at that date, save that any additions to the Contract Sum proposed by the Contractor shall be measured against the Contract Sum for the previous year and adjusted for any increase in the Consumer Price Index (CPI) indices for the prevailing period.

4. THE CONTRACTOR'S OBLIGATIONS

- 4.1. The Contractor warrants that the Services shall be performed:
 - 4.11. in accordance with the terms of this Contract including the provisions of the manuals as required to be provided in accordance with the Specification;
 - 4.12. in a manner consistent with the Specification;
 - 4.13. by appropriately qualified, competent and experienced staff;
 - 4.14. in accordance with all Applicable Law and Consents; and
 - 4.15. with such degree of reasonable skill, care and diligence to be expected of an experienced, competent and professional contractor experienced in the scale and nature of the works and services comprised in the Services and in a good and workmanlike manner and in accordance with Good Operating Practice.
- 4.2. The Contractor shall provide all equipment associated with the delivery of the Services.

5. The Contract Sum

- 5.1. In consideration for the provision of the Services, the Client shall pay to the Contractor the Contract Sum.
- 5.2. The Contract Sum is a fixed price sum for the duration of the Term for the maintenance element of services as detailed within Section 2.2, (HV Maintenance Contract Scope of Work), of the Tender Specification and shall not be adjusted or altered in any way other than in accordance with the express provisions of this Contract.
- 5.3. The Contract Sum shall include free telephone help whereby the allocated Contract Manager and/or Designated Site Engineer can be contacted. On the basis that queries can be dealt with on the telephone. This service shall be deemed to be included within the Contract Sum and the Contractor shall not be entitled to any increase in the same.
- 5.4. The Client may direct the Contractor by written instruction ("**Variation Order**") to:
 - a). vary, omit or cease to perform any part of the Services; and/or
 - b). perform an additional service as detailed within Section 2.3, (Additional HV System Support Duties), of the Tender Specification at the rates stated in Appendix G – Form of Tender;
- 5.5. The Contractor shall diligently comply with any Variation Order in accordance with and subject to all the terms of this Contract and subject to clause 5.7 below.
- 5.6. If the effect of a Variation Order is to increase or decrease the Contractor's costs of performing and providing the Services in accordance with this Contract the Contractor shall provide an estimate of such variation to the Contract Sum to the Client for consideration. The Contract Sum shall be adjusted by such reasonable amount calculated by reference to the existing Contract Sum and to the Schedule of Rates set out in the Form of Tender at Appendix G of the Specification ("**Variation Fee**").
- 5.7. The Contractor shall only proceed with the Variation Order (and be entitled to payment of the Variation Fee) once the Variation Fee has been agreed in writing by the Client and a purchase order issued in respect of the Variation Fee.

6. PAYMENT

- 6.1. The Contractor may submit an invoice for the Services performed to date on a monthly basis.
- 6.2. The invoice shall be accompanied by a valid VAT invoice and shall set out details of the Services performed together with any reasonable supporting information and the valid purchase order number. The invoice shall set out details of:
 - a). Value of work completed for each defined price section of work in the Summary of Tender set out at Appendix G of the Specification.
 - b). Priced schedule of unfixed materials on site.
 - c). Value of work complete against each agreed Variation Order.
 - d). Value of unfixed materials on site for each agreed Variation Order.
- 6.3. The invoice shall specify the sum that the Contractor considers will become due on the due date for payment and the basis upon which that sum is calculated.
- 6.4. The due date for payment of the invoice will be 5 Business Days after receipt of the valid VAT invoice.
- 6.5. The Client shall not be under any obligation to make any payment to the Contractor unless and until it receives from the Contractor the Contractor's valid VAT invoice and a copy of this Contract signed by or on behalf of the Contractor.
- 6.6. No later than 5 Business Days after the due date for payment the Client may notify the Contractor of the sum that the Client considers to have been due at the due date for payment in respect of the payment and the basis upon which that sum is calculated.

- 6.7. In respect of any payment, the final date for payment shall be 25 Business Days after the due date for payment (the "**Final Date for Payment**").
- 6.8. Unless the Client has served a notice under clause 6.9 below, it shall pay the Contractor the sum referred to in the Client's notice under clause 6.6 above (or, if the Client has not served such a notice, the sum referred to in the invoice issued by the Contractor) ("**Notified Sum**") on or before the Final Date for Payment.
- 6.9. Not less than two Business Days before the Final Date for Payment, the Client may give the Contractor notice that it intends to pay less than the Notified Sum. Any such pay less notice shall specify:
- a). the sum that the Client considers to be due on the date the pay less notice is served and;
 - b). the basis upon which that sum is calculated.

For the avoidance of doubt, the Client shall be permitted to deduct such sums from the Contract Sum which are reasonable and commensurate to the failure of the Contractor to perform the Services in accordance with the Contract.

7. INSURANCE

- 7.1. The Contractor shall maintain in force at the Contractor's own cost such insurance policies as are appropriate and adequate having regard to the Contractor's obligations and liabilities under this Contract including, but not limited to:
- a). Professional indemnity insurance of a minimum of two million pounds (£2,000,000) for each and every claim throughout the Term of this Contract and for 6 years following expiry of the Term.
 - b). Public liability insurance for the Term of this Contract for a minimum sum of five million pounds (£5,000,000) for each and every claim.
- 7.2. Whenever the Client reasonably requests, the Contractor shall provide evidence that the above insurances are in force.
- 7.3. Neither party shall be liable to the other for any loss of profits or for any other special, indirect or consequential loss arising out of or in connection with the Contract

8. SUB-CONTRACTING

- 8.1. No sub-contractors are to be used by the Contractor without prior written approval from the Client.
- 8.2. The Contractor may not assign or charge any part of this Contract. The Client shall be entitled to assign or transfer this Contract without the consent of the Contractor.

9. COPYRIGHT

- 9.1. The Contractor grants to the Client, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Project, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension and repair of the Project.
- 9.2. This licence carries the right to grant sub-licences and is transferable to third parties without the Contractor's consent.

10. TERMINATION

- 10.1. This Contract may be terminated immediately by the Client if the Contractor:

- a). commits any material breach of its obligations under this Contract and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request by the Client to remedy it; or
 - b). fails to comply with the requirements of the Service Level Agreement as detailed within Section 4 of the Specification; or
 - c). becomes bankrupt or insolvent, go into liquidation or administration or takes any formal step (including the passing of a board or members' resolution or issue of any notice of intention to appoint) with a view to placing the Contractor into liquidation or administration, has a receiving order made against it or receiver appointed over any material part of its assets, compounds with its creditors or institutes or proposes any voluntary arrangement or scheme of arrangement with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under Applicable Laws or any other laws relevant to the country where such parties are registered) has a similar effect to any of these acts or events. The term "insolvent" for the purposes of giving effect to the rights of the Client under this clause shall have the meaning given to it in Section 123 of the Insolvency Act 1986; or
 - d). changes the Contract Manager or the Contract Manager ceases to be employed by the Contractor or ceases to be employed in relation to this Contract (unless the Client's prior agreement has been obtained).
- 10.2. Any termination of the Contract pursuant to this clause 10.1 or clause 12 shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party not the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination.

11. SUSPENSION

The Contractor shall on the receipt of 28 days' written notice from the Client suspend the whole of the Services or any part thereof and shall take all measures necessary to protect and secure the same. The Client may at any time by written notice to the Contractor authorise the Contractor to resume all or any part of the suspended Services and the Contractor shall, on being given such notice, promptly resume performance of the Services or part thereof in accordance with the terms of the notice. Where the Services are suspended by the Client as a result of a default by the Contractor of its obligations pursuant to this Contract, then the Contractor will not be entitled to any payment for any costs incurred relating to the suspension of such Services. In the event that the Services are suspended by the Client for a reason (other than default by the Contractor of its obligations pursuant to this Contract) then the Contractor shall be entitled to payment of any reasonable costs or expenses incurred as a direct result of the suspension. Should the Client give the Contractor notice of suspension, the Contractor shall comply with the requirements and principles of the Specification of the Services in relation to such suspension.

12. FORCE MAJEURE

- 12.1. Neither party to the Contract shall be liable for any breach of its obligations under the Contract resulting from causes beyond its reasonable control including but not limited to insurrection, riots, delays in transportation, inability to obtain supplies or regulations of any civil or military authority ("**Force Majeure Event**").
- 12.2. If a default due to a Force Majeure Event shall continue for more than 4 weeks then the party not in default shall be entitled to terminate the Contract. Neither party shall have any liability to the other in respect of the termination of the Contract as a result of such an event.

13. CONFIDENTIALITY

The Contractor must keep the particulars of this Contract and the Services confidential provided that to the extent necessary to perform the Contractor's duties hereunder. The Contractor must not

otherwise release, or permit the release, of any confidential information concerning the business, affairs, customers, clients or suppliers of the Client for any purpose other than to perform its obligations under this Contract, except as required by law, court order or any governmental or regulatory authority. The Contractor must not make any public comment or statement on any matter relating to or arising from the Contract or the Services.

Third Party Rights

A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract.

14. THIRD PARTY RIGHTS

A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract.

15. DATA PROTECTION ACT

The Contractor shall comply with the provisions of the Data Protection Act 1998 ("**DPA**") and shall do everything that the Client may reasonably request for the purpose of enabling the Client or the Contractor to comply with the DPA. Where the Contractor processes personal data on the Client's behalf, the Contractor shall comply with the Client's instructions and shall employ technical and organisational measures which are at least sufficient to avoid the Client being in breach of its obligations under the Seventh Data Protection Principle of the Act.

16. FREEDOM OF INFORMATION ACT

The Contractor acknowledges that the Client is subject to the requirements of the Freedom of Information Act 2000 (the "**Act**") and related legislation and the Environmental Information Regulations 2004 (the "**Regulations**") and the Contractor shall assist and cooperate with the Client to enable it to comply with its information disclosure requirements. The Client shall, if required to do so, make all information regarding these Services accessible to public scrutiny. The Contractor acknowledges that the Client may disclose information without consulting the Contractor where required to do so under the Act and/ or the Regulations.

17. CONFLICT OF INTEREST

The Contractor shall advise the Client immediately if the Contractor accepts or intends to accept instructions from, or take up an engagement with, another party that might lead to a conflict of interest.

18. GOVERNING LAW

This appointment is governed by English law, and the parties submit to the jurisdiction of the English courts in relation to this Contract.

Signed for and on behalf of
Wave Hub Limited (the Client)
by

Name:.....

Position:.....

Signed for and on behalf of
[Consultant](The Consultant)(You)
by

Name:.....

Position:.....