

DATED _____ **2023**

- (1) CELTIC SEA POWER LIMITED
- (2) [INSERT NAME OF CONSULTANCY]

CONSULTANCY AGREEMENT



HM Government



European Union
European Regional
Development Fund

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THIS AGREEMENT is made on _____ 2023

PARTIES

- (1) Celtic Sea Power Ltd, a company incorporated in England with registered number 10166467 whose registered office is at Chi Gallos Hayle Marine Renewables Business Park, North Quay, Hayle, Cornwall, United Kingdom, TR27 4DD (the **Company**); and
- (2) [Name of **Consultancy**] a company incorporated in [location] with registered number [insert company number] whose registered office is at [address] (the **Consultancy**).

BACKGROUND

- (A) The Company carries on business as a provider of advice and guidance to support the growth of the offshore renewable energy sector.
- (B) The Company wishes to engage the services of the Consultancy to provide Project Evaluation and Summative Assessment services to the Company on the terms and conditions of this Agreement.

THE PARTIES AGREE:

1. Definitions and interpretation

- 1.1. In this Agreement, unless the context requires otherwise, the following words and phrases have the meanings set opposite them:

Affiliate

Affiliate shall mean, in the case any (direct or indirect) Holding Company or Subsidiary Company (as such terms are defined in s1162 and s1159 Companies Act 2006 respectively) and/or any other Subsidiary of such a Holding Company and/or any other company which is in the same beneficial ownership or control of the Consultant or any entity which is owned or controlled (directly or indirectly) by the Consultancy or Company as the case maybe or which itself (directly or indirectly) owns and/or controls the Consultancy or Company.

this Agreement including Schedule 1;

Agreement

Board

the board of directors from time to time of the Company;

Bribery Legislation

the Bribery Act 2010, associated guidance published by the Secretary of State for Justice under the Bribery Act 2010 and all applicable UK legislation, statutory instruments, regulations, codes and sanctions relating to anti-bribery and anti-corruption and all relevant legislation in any other relevant jurisdiction;

Business Day

a day other than a Saturday or Sunday, on which banks are open for normal business in England;

Commencement Date	[enter date] (notwithstanding the date(s) of execution of this Agreement);
Confidential Information	all information or data (in whatever form) of a confidential or proprietary nature disclosed to or received by the Consultancy and/or the Individual (by any means) or to which the Consultancy and/or the Individual has access, whether or not labelled or designated as confidential, relating to the products, services, business or proposed business, finances, transactions, workforce and affairs of the Company or any customer, supplier, employee or client of any such company, including Intellectual Property Rights, trade secrets, information in respect of which the Company is bound by an obligation of confidentiality to a third party and any other information which is designated as confidential by the Company or which the Consultancy and/or the Individual should reasonably be aware is confidential;
Deemed Employment Engagement	an engagement to which Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 applies;
Engagement	the engagement of the Consultancy by the Company in accordance with the terms of this Agreement;
Fee	the meaning given to it in Clause 6.1;
FOIA	Freedom of Information Act 2000
Individual	[Insert name and address of named individual] OR such individual as may be agreed between the parties from time to time;
Insurance Policies	<ol style="list-style-type: none"> 1. Employers' liability insurance with a limit of liability of not less than £2,000,000 (two million pounds). 2. Third party liability insurance for any incident or series of incidents with cover of not less than £2,000,000 (two million pounds) for each and every claim. 3. Professional indemnity insurance with cover of not less than £1,000,000 (one million pounds) for each and every claim.
Intellectual Property Rights	any and all copyright, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, utility models, domain names and all similar rights and, in each case:

- (a) whether registered or not,
- (b) including any applications to protect or register such rights,
- (c) including all renewals and extensions of such rights or applications,
- (d) whether vested, contingent or future, and
- (e) wherever existing;

Personal Data

any information relating to a living individual who can be identified, directly or indirectly, in particular by reference to:

- (a) an identifier such as a name, an identification number, location data or an online identifier, or
- (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual;

Services

the services defined in Schedule 1 to this Agreement and such other services as may be agreed from time to time between the Consultancy and the Company;

Termination Date

the date of termination of this Agreement for whatever reason;

Work

without limitation any and all works of authorship, products, materials, discoveries, inventions, research, processes, systems, programs (including software programs and source code), formulae, component lists, operating and training manuals, databases, instructions, manuals, brochures, catalogues, process descriptions, know-how, data, diagrams, charts, results, reports, information, methodologies, ideas, concepts, designs, documents, models, prototypes, sketches, drawings, plans, photographs, specifications and studies created or developed by the Consultancy and/or the Individual in providing the Services (either alone or jointly with others).

Background IPR

the Intellectual Property Rights which have been provided by the Consultancy for the purpose of its provision of the Services, full particulars of which are set out in Schedule 2,."

1.2. In this Agreement:

- (a) Schedule 1 is incorporated into and forms part of this Agreement.

- (b) any reference to this Agreement or to any other document will include its Schedules, appendices and annexes (if any) and any permitted variation or amendment to this Agreement or such other document;
- (c) any reference to a Clause or Schedule is, except where expressly stated to the contrary, reference to the relevant Clause of or Schedule to this Agreement;
- (d) the table of contents, background section and any Clause, Schedule or other headings and the use of bold type in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;
- (e) a reference to any statute, statutory instrument, order, regulation or other similar instrument (including any EU order, regulation or instrument) will be construed as including references to any statutory modification, consideration or re-enactment of that provision (whether before, on or after the date of this Agreement) for the time being in force, including all instruments, orders or regulations then in force and made under or deriving validity from that legislation;
- (f) the words 'include', 'including', 'in particular' or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words;
- (g) the use of the singular includes the plural and vice versa and a reference to one gender includes a reference to the other gender;
- (h) a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;
- (i) a reference to a 'party' includes that party's personal representatives, successors and permitted assigns;
- (j) a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;
- (k) a reference to a 'company' includes any company, corporation or other body corporate, wherever and however incorporated or established.

2. Commencement and duration of engagement

Subject to the terms of this Agreement, the Consultancy's engagement will commence on the Commencement Date and will continue until completion of the Services to the satisfaction of the Company, when it will automatically terminate. Either the Company or the Consultancy may at any time give to the other not less than two weeks' notice in writing terminating this Agreement.

3. Provision of services

3.1. During the Engagement, the Consultancy will, and (where appropriate) will procure that the Individual will:

- (a) provide the Services to the Company with all due reasonable care, skill and diligence and use its or the Individual's best reasonable endeavours to promote the interests of the Company;
- (b) provide the Services to the Company on such days and at such times and in such places as may be necessary for the proper provision of the Services;

- (c) keep the Board informed of progress on projects in which the Consultancy and/or the Individual is engaged by reference to the agreed milestones set out in Schedule 1.
- 3.2. The Consultancy acknowledges that the Company will be relying upon its and the Individual's skill, expertise and experience in the [insert area of expertise] field and undertakes to the Company that:
- (a) it will, and will procure that the Individual will, provide the Services in the manner and to the standard reasonably specified by the Company;
 - (b) all advice and information given, all representations and statements made, and all documents provided by the Consultancy and the Individual will be materially accurate and appropriate for their purpose; and
 - (c) all intellectual property and information provided by the Consultancy and the Individual will be materially accurate and appropriate for its purpose.
- 3.3. The Consultancy will immediately notify the Company if, for any reason, either it or the Individual is unable to provide the Services as required by the Company in accordance with Clause 3.1.
- 3.4. While the Consultancy's (and the Individual's) method of work is its own, the Consultancy will, and will procure that the Individual will, comply with the reasonable requests of the Board and will work and co-operate with any servant or agent or other consultant of the Company as may be necessary for the provision of the Services.
- 3.5. The Consultancy will not, and will procure that the Individual will not:
- (a) hold itself and/or the Individual out as having authority to bind the Company; nor
 - (b) have any authority to incur any expenditure in the name of or on behalf of the Company, unless the Consultancy or the Individual has obtained the prior written consent of the Company.
- 3.6. The Consultancy may use another person, firm, company or organisation to perform any administrative, clerical or secretarial functions that are reasonably incidental to the provision of the Services provided that the Company will not be liable to pay the cost of such functions.
- 3.7. The Consultancy will, and will procure that the Individual will:
- (a) comply with all reasonable standards of safety at all times; and
 - (b) at all times comply with the Company's health and safety policies and procedures as are notified to the Consultancy from time to time.
- 3.8. The Consultancy will, and will procure that the Individual will, promptly give to the Company all information, documentation and materials as it may reasonably require from time to time in order for the Company to determine from time to time whether the Engagement is a Deemed Employment Engagement and, if the Company does so determine, in order for the Company to comply with any obligation to deduct tax and National Insurance contributions (NICs) from the Fee. The Consultancy will also, and will procure that the Individual will also, promptly advise the Company of any material change to any information, documentation or materials previously provided under this clause, and will also promptly give to the Company any other information, documentation and/or materials which the Consultancy or the Individual considers (or ought reasonably to consider) relevant to determining whether the Engagement is a Deemed Employment Engagement.
- 3.9. The Consultancy will, and will procure that the Individual will, comply with the Company's status disagreement process, notified to the Consultancy from time to time, for resolving any

disagreement over any determination made by the Company as to whether the Engagement is a Deemed Employment Engagement.

4. Right to provide a substitute

The Consultancy may at any time, with the prior written approval of the Company, (such approval not to be unreasonably withheld) appoint a substitute with equivalent skill and expertise to perform the Services instead of the Individual (the Substitute). The Consultancy will provide an overlap period during which the Individual will ensure that the Substitute fully understands the requirements of the Company and the work involved in the provision of the Services. The Consultancy will not charge the Company any extra fee for this overlap period. The Consultancy will continue to invoice the Company in accordance with Clause 6.2 and will be responsible for the remuneration of the Substitute. Any reference in this Agreement to the 'Individual will include any Substitute appointed in accordance with this clause.

5. Outside interests and protection of business interests

5.1. The Consultancy warrants that:

- (a) neither the Consultancy nor the Individual will, as a consequence of entering into and performing this Agreement, be in breach of any express or implied terms of any contract, agreement or other arrangement with, or any obligation to, any third party binding upon the Consultancy and/or the Individual; and
- (b) there is no contract, obligation, or other arrangement or interest that will or may give rise to any conflict of interest between the Consultancy and/or the Individual and the Company in relation to the provision of the Services.

5.2. The Consultancy will, and will procure that the Individual will, use all reasonable endeavours to avoid a conflict of interest arising between the Consultancy and/or the Individual and the Company and the Consultancy undertakes to notify the Company as soon as reasonably practicable should any actual or potential conflict of interest arise.

5.3. The Consultancy will not, and will procure that the Individual will not, use, or otherwise turn to its or the Individual's advantage, its or the Individual's knowledge of or any connection with any of the customers of or suppliers to the Company which it or the Individual acquired during the Engagement so as to take any direct or indirect advantage of the business and other connections of the Company except for the Company's advantage.

5.4. The Consultancy will not, and will procure that the Individual will not, receive or obtain directly or indirectly any discount, rebate, commission or other benefit in respect of any goods or services supplied to or acquired by the Company or any other business transacted by it and if it and/or the Individual does receive any such discount, rebate, commission or other benefit the Consultancy and/or the Individual will account to the Company for it immediately.

5.5. The Consultancy warrants that the Individual has given undertakings to the Consultancy in the same terms as this Clause 5.

6. Fees

6.1. The Company will pay to the Consultancy, in consideration of the provision of the Services, a consultancy fee of £[insert] exclusive of Value Added Tax (if applicable), less any deductions for tax or National Insurance contributions (NICs) as required by law in accordance with the determination made by the Company as to whether the Engagement is a Deemed Employment

Engagement (the **Fee**), within 30 days of receipt of an invoice submitted in accordance with Clause 6.2.

- 6.2. The Consultancy will render invoices to the Company in respect of the Fee in line with the agreed payment schedule, which gives details of the Services that have been provided, the amount of the Fee payable and, where the Consultancy is registered for VAT, will show any VAT separately.
- 6.3. Where the Company disputes in good faith on reasonable grounds any sum invoiced by the Consultancy, the Company will notify Consultancy of any disputed items on an invoice within 10 days of receipt of invoice. the Consultancy and the Company shall endeavour to resolve the disputed portion of the invoice(s) within ten (10) working days of the Company giving notice of any such dispute to the Consultancy and in any case the Company shall approve the undisputed portion of the invoice(s) and payment will be made of the undisputed portion within thirty (30) days of receipt of the original invoice. The disputed portion will be paid by Company immediately following its resolution.
- 6.4. The Company will be entitled to deduct from the Fee (and any other sums) due to the Consultancy any sums that the Consultancy and/or the Individual may owe to the Company at any time, including any sum under dispute in accordance with Clause 6.3.
- 6.5. For the avoidance of doubt, in the event that no Services are required, or if the Consultancy fails to provide the Services via the provision of the Individual (whether by reason of illness, accident or other incapacity, or for any other reason), no Fee will be payable.

7. Expenses

The Consultancy will be responsible for all out-of-pocket expenses incurred by it in the performance of its duties under this Agreement. For the avoidance of doubt the Consultancy will not be reimbursed separately for these expenses.

8. Tax and National Insurance contributions

- 8.1. The Consultancy will, as far as is required by law, be responsible for and will account to the appropriate authorities for all income tax liabilities and National Insurance contributions (NICs) or similar contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with fees paid and/or benefits provided as a result of the performance of the Services and/or any payment or benefit received by the Individual and/or any Substitute in respect of the Services.
- 8.2. Where the Engagement is a Deemed Employment Engagement, the Company will be permitted to make any such deductions for tax or NICs from the Fee as required by law in accordance with the determination made by the Company, as set out in Clause 6.1.
- 8.3. If any claim, assessment or demand is made against the Company for payment of any income tax or NICs or other similar contributions arising from or due in connection with either the performance of the Services or any payment or benefit received by the Consultancy and/or the Individual in respect of the Services, the Consultancy will, where such recovery is not prohibited by law, indemnify the Company against any liability, claim, assessment or demand. The Consultancy will further indemnify the Company against all costs and expenses and any penalty, fine or interest incurred or payable or paid by the Company in connection with or in consequence of any such liability, assessment or claim.

- 8.4. The indemnity in Clause 8.3 does not apply to any income tax or NICs deducted by the Company if the Engagement is a Deemed Employment Engagement and the Company makes the deductions from the Fee prior to payment to the Consultancy.
- 8.5. The Company may, at its sole discretion, satisfy the indemnity in Clause 8.3 (in whole or in part) by way of deduction from any payments to be made by the Company to the Consultancy.

9. No employment or benefits

- 9.1. While acting as a consultant for the Company, the status of the Consultancy will be that of an independent contractor and as such the Consultancy and/or the Individual and/or anyone else who works for the Consultancy will not be entitled to any pension, bonus, holiday, sickness or other fringe benefits from the Company and nothing in the terms of this Agreement will render the Consultancy or the Individual an agent, officer, employee, worker or partner of the Company and the Consultancy will not hold itself out as such, and will procure that the Individual will not hold themselves out as such.
- 9.2. The Consultancy will be fully responsible for, and will indemnify the Company for and in respect of any liability for any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by the Individual, anyone engaged by Consultancy and/or any Substitute against the Company arising out of or in connection with the provision of the Services.

10. Liability, indemnity and insurance

- 10.1. Subject to Clauses 10.2 and 10.3, the Consultancy will be liable for any loss, liability, costs (including reasonable legal costs), damages or expenses incurred by the Company arising directly as a sole result of breach of contract by Consultancy or the provision of the Services.
- 10.2. Subject to Clause 10.4, the total aggregate liability of either Party under this Agreement (whether resulting from breach of contract, breach of statute, tort (including negligence or breach of duty) or otherwise) shall not exceed the total sums received by Consultancy from Company in respect of the Services provided hereunder.
- 10.3. Subject to Clause 10.4, neither Party shall be liable to the other Party (on the basis of breach of contract, warranty or tort, including negligence and strict or absolute liability, or breach of statutory duty or otherwise) in respect of any loss incurred by the other Party in respect of loss of profit, loss of revenue, loss of sales or business, loss of contract, loss of anticipated savings, loss of or damage to goodwill and/or any indirect or consequential loss.
- 10.4. Nothing in this Agreement shall limit either Party's liability in respect of:
- (a) death or personal injury;
 - (b) wilful or deliberate breach;
 - (c) fraudulent misrepresentation;
 - (d) any indemnities provided pursuant to this Agreement; and
 - (e) acts or omissions for which liability cannot be legally limited.
- 10.5. The Consultancy shall maintain in force at all times during the Engagement (and for a period of 6 years following expiry or earlier termination of the Engagement) at its own cost, full and comprehensive Insurance Policies in respect of the provision of the Services.

- 10.6. The Consultancy will ensure that the Insurance Policies are taken out in its name with reputable insurers acceptable to the Company and that the level of cover and other terms of insurance are acceptable to and agreed by the Company.
- 10.7. The Consultancy will produce for inspection by the Company on the Commencement Date and at any time on request by the Company a copy of the Insurance Policies and/or relevant renewal confirmation.
- 10.8. The Consultancy will notify the insurers of the Company's interest and will (if possible) procure that such interest is noted and included on the Insurance Policies. .
- 10.9. The Consultancy will comply, and will procure that the Individual will comply, with all terms and conditions of the Insurance Policies at all times. The Consultancy will immediately notify the Company if cover under the Insurance Policies is not renewed, or lapses, or is subject to material change, and/ or if the Consultancy or the Individual becomes aware of any circumstances which may cause cover under the Insurance Policies not to be renewed, or to lapse, or to be subject to material change.

11. Confidential Information

- 11.1. Except in the proper performance of its obligations under this Agreement, the Consultancy and its Affiliates will not, and will procure that the Individual will not, during the period of this Agreement. or at any time after the Termination Date, without the prior written approval of the Company (such approval not to be unreasonably withheld), use for its or the Individual's own benefit or for the benefit of any other person, firm, company or organisation or directly or indirectly divulge or disclose to any person (and must use reasonable endeavours, and will procure that the Individual will use reasonable endeavours, to prevent publication or disclosure of) any Confidential Information which has come, or may come, to the Consultancy's or the Individual's knowledge during or in connection with the Engagement.
- 11.2. The Consultancy will not, and will procure that the Individual will not, during the period of this Agreement make (otherwise than for the benefit of the Company) any notes, memoranda, records, tape recordings, computer programs or any other form of record relating to any matter within the scope of the business of the Company or concerning any of the dealings or affairs of the Company.
- 11.3. The restrictions contained in this Clause 11 will not apply to:
- (a) any Confidential Information which is already in or (otherwise than through the Consultancy's or the Individual's unauthorised disclosure) becomes available to, or within the knowledge of, the public generally; and
 - (b) any use or disclosure authorised by the Company or required by law.
- 11.4. The Consultancy warrants to the Company that the Individual has given or will give written undertakings, in the same terms as those contained in this Clause 11, to the Consultancy.

12. Intellectual property

- 12.1. The Consultancy warrants to the Company that it:
- (a) has obtained from the Individual a written and valid transfer in favour of the Consultancy by way of present and future assignment with full title guarantee of all the Intellectual Property Rights in the Work:
 - 12.1.a.1. existing anywhere in the world;

- 12.1.a.2. relating to their use in any sector and for any purpose;
- 12.1.a.3. for the full term of such rights and any renewals;
- 12.1.a.4. including (with effect from their creation) all Intellectual Property Rights in Work created or developed in future by the Individual in respect of the Services.

(b) has obtained from the Individual a written waiver in favour of the Consultancy of their moral rights in the Work under the Copyright Designs and Patents Act 1988 (and all analogous legislation worldwide) to the extent permitted by law;

and the Consultancy agrees to provide to the Company a copy of the above transfer(s) and waiver(s) on or before the Commencement Date or, if later, the date on which the relevant individual starts to provide the Services.

12.1A All Background IPR shall remain the exclusive property of the Consultancy (or, where applicable, the third party from whom its right to use the Background IPR has derived). The Consultancy hereby grants (and shall procure the grant of) an irrevocable, perpetual, royalty-free, non-exclusive, worldwide licence to the Company to use the Background IPR in order to make use of the Works for its own purposes, and to sublicense any third party to do the same.

12.2. In consideration of the Company paying the Fee to the Consultancy, the Consultancy hereby transfers to the Company by way of present and future assignment with full title guarantee all the Intellectual Property Rights in the Work:

- (a) anywhere in the world;
- (b) in any sector and for any purpose;
- (c) for the full term of such rights and any renewals;
- (d) including (with effect from their creation) all Intellectual Property Rights in Work created or developed in future by the Consultancy and/or the Individual in respect of the Services.

12.3. For Work in respect of which Intellectual Property Rights are assigned to the Company pursuant to Clause 12.2, the Consultancy will waive its, and will procure the waiver by all third parties of their, moral rights in such Work under the Copyright, Designs and Patents Act 1988 (and all analogous legislation worldwide) to the extent permitted by law.

12.4. The Consultancy will, at the expense of the Company, at any time either during or after the Engagement give assistance and do all acts and things as may be in the opinion of the Company necessary or desirable to give the full benefit of this Agreement to the Company including registration of the Company as applicant or (as applicable) proprietor of the Intellectual Property Rights; and assisting the Company in obtaining, defending and enforcing the Intellectual Property Rights, and assisting with any other proceedings which may be brought by or against the Company against or by any third party relating to the Intellectual Property Rights. The Consultancy confirms that the Individual has given or will give written undertakings in the same terms to the Consultancy.

12.5. The Consultancy hereby irrevocably and by way of security appoints any director for the time being of the Company to be its attorney for the purposes of the Powers of Attorney Act 1971, with authority to do all such things and to execute all such documents in its name and on its behalf, as may be necessary to secure that the full benefit and advantage of Clauses 12.2, 12.3 and 12.4 of this Agreement and a letter signed by any director or secretary of the Company certifying that any

thing or any document has been done or executed within the authority conferred by this clause will be conclusive evidence of it.

- 12.6. The Consultancy warrants that it will not in the course of providing the Services infringe the Intellectual Property Rights of any other person. The Consultancy confirms that the Individual has given a written warranty in the same terms to the Consultancy.
- 12.7. The Consultancy will indemnify and keep indemnified and hold harmless the Company from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Company as a result of or in connection with any action, demand or claim that any of the Intellectual Property Rights or Work provided under this Agreement infringe the intellectual property rights of any third party.

13. Data protection and monitoring

- 13.1. In order for the Company to enter into and perform its obligations under this Agreement, the Consultancy will provide the Company with certain personal data relating to the Individual that the Company will process in accordance with the Company's data protection privacy notice that will be issued to the Individual.
- 13.2. The Consultancy will comply, and will procure that the Individual complies, with the Company's data protection policies and other relevant policies.
- 13.3. Without prejudice to the generality of Clause 13.2, the Consultancy will, and will procure that the Individual will, in relation to any Personal Data processed in connection with the Engagement:
- (a) co-operate fully with the Company in order to enable the Company to comply with its obligations under applicable data protection legislation;
 - (b) keep the Personal Data confidential;
 - (c) implement and maintain appropriate technical and organisational measures to protect against unauthorised and unlawful processing of Personal Data and against accidental loss and destruction of, or damage to, Personal Data;
 - (d) process any Personal Data disclosed to the Consultancy and/or the Individual by or on behalf of the Company only:
 - 13.3.d.1. on the written instructions of the Company;
 - 13.3.d.2. for the purposes of providing the Services; and
 - 13.3.d.3. for the purposes for which that Personal Data was obtained and is processed by the Company;
 - (e) maintain complete and accurate records and information to demonstrate compliance with applicable data protection legislation and immediately provide such evidence of compliance by the Consultancy and/or the Individual with the obligations under this Clause 13.3 as the Company may from time to time reasonably request;
 - (f) immediately upon notification by the Company, take all appropriate action to enable the Company to properly comply with any request from a data subject in relation to access to and/or rectification or erasure of Personal Data;
 - (g) immediately notify the Company of any data breach relating to Personal Data or any communication which relates to the Company's or the Consultancy's compliance with applicable data protection legislation about which the Consultancy and/or the Individual becomes aware; and

- (h) at the Company's written request, delete or return all Personal Data and any copies on termination of the Engagement, unless required to store the Personal Data under applicable data protection legislation;
- 13.4. The Company will process Personal Data and sensitive personal data (also known as 'special categories of personal data') relating to the Individual in accordance with its data protection policy and the data protection privacy notice to be provided to the Individual.

14. Freedom of Information and Transparency

- 14.1. The parties acknowledge their respective duties under the FOIA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 14.2. If the Consultancy is not a public authority, the Consultancy acknowledges that the Company is subject to the requirements of the FOIA and will assist and co-operate with the Company to enable it to comply with its disclosure obligations under the FOIA. Accordingly the Consultancy agrees:
- (a) that this Agreement and any other recorded information held by the Consultancy on the Company's behalf for the purposes of this Agreement are subject to the obligations and commitments of the Company under the FOIA;
 - (b) that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Company;
 - (c) that if the Consultancy receives a request for information under the FOIA, it will not respond to such request (unless directed to do so by the Company) and will promptly (and in any event within 2 working days) transfer the request to the Company;
 - (d) that the Company, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Consultancy and this Agreement either without consulting with the Consultancy, or following consultation with the Consultancy and having taken its views into account; and
 - (e) to assist the Company in responding to a request for information, by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by an authority within 5 working days of such request and without charge.
- 14.3. Notwithstanding any other provision of this Agreement, the Consultancy hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 14.4. In preparing a copy of this Agreement for publication pursuant to clause 14, the Company may consult with the Consultancy to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Company's absolute discretion.
- 14.5. The Consultancy shall assist and co-operate with the Company to enable the Company to publish this Agreement.
- 14.6. This clause 14 shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.

14.7. The Consultancy shall be responsible for any costs associated with compliance by the Consultancy with the provisions of this clause 14.

14.8. The Company reserves the right to monitor the Consultancy's compliance with this clause 14 and shall notify the Consultancy of how it intends to do this where appropriate.

15. Anti-bribery and corruption

15.1. The Consultancy will, and will procure that the Individual will:

- (a) comply with the Bribery Legislation;
- (b) not engage in any activity, conduct or practice which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, conduct or practice had been carried out in the United Kingdom;
- (c) comply with the Company's Anti-bribery and Corruption Policy;
- (d) ensure that it has in place adequate procedures to ensure compliance with the Bribery Legislation and use all reasonable endeavours to ensure that it complies with any Company policies relating to prevention of bribery and corruption (as updated from time to time).

15.2. Without limitation to the above sub-clause, neither party will make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such bribe or other improper payment to be made or received on its behalf, either in the United Kingdom or elsewhere, and each party will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

15.3. Each party will use all reasonable endeavours to ensure that:

- (a) all of that party's personnel;
- (b) all others associated with that party; and
- (c) all of that party's subcontractors

involved in performing the Services or with this Agreement comply with the obligations set out in Clauses 15.1 and 15.2.

15.4. In this Clause 15, the expressions 'adequate procedures' and 'associated' will be construed in accordance with the Bribery Act 2010 and documents published under it.

16. Statutory Obligations

16.1. The Consultancy shall at all times comply with the requirements of:

- (a) the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992 and all other statutory and regulatory requirements and the Company's policies and procedures relating to health and safety copies of which are available on request.
- (b) the Equality Act 2010 and all other relevant related statutory and regulatory requirements and the Company's policies and procedures, copies of which are available on request, relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, gender reassignment, age, disability, nationality, marital status or sexual orientation; and

- (c) all European and domestic statutory and regulatory requirements in particular procurement and publicity requirements where relevant to the provision by the Consultancy of the Services and to be observed and performed in connection with this Agreement including any obligations binding upon the Company

and shall indemnify the Company against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever and howsoever arising in respect of any breach by the Consultancy of this clause 16.

- 16.2. The Consultancy shall take all reasonable steps to prevent fraud by its employees and the Consultancy (including its shareholders, members, directors) in connection with the receipt of monies from the Company. The Consultancy shall notify the Company immediately if it has reason to suspect that any fraud has occurred or is likely to occur.

17. Obligations of the Company

- 17.1. During the Engagement the Company will afford the Consultancy and the Individual such access to its premises during its normal working hours only and to information, records and other materials of the Company as may be necessary to enable the Consultancy and the Individual to provide the Services.

- 17.2. The Company will:

- (a) advise the Consultancy and the Individual of the rules and regulations from time to time in force for the conduct of personnel at its premises and the Consultancy will ensure that the Individual complies with any such rules and regulations;
- (b) make available such working space and facilities at its premises as the Consultancy and the Company agree are necessary for the Consultancy and the Individual to provide the Services; and
- (c) confer with the Consultancy and the Individual to schedule work to the best convenience of both parties, and the Company will give as much advance notice as possible of any specific project which it wishes the Consultancy and/or the Individual to undertake and of its likely duration.

18. Termination

- 18.1. Notwithstanding the provisions of Clause 2, the Company may terminate this Agreement with immediate effect without liability to pay any fees, compensation or damages by written notice to the Consultancy if, at any time:

- (a) the Consultancy or the Individual commits any serious or repeated breach or non-observance of any of the terms or conditions of this Agreement; or
- (b) the Consultancy and/or the Individual is in the reasonable opinion of the Company grossly negligent or incompetent in the performance of the Services; or
- (c) the Consultancy and/or the Individual is guilty of any act of fraud or dishonesty in relation to the Company or acts in any manner which, in the reasonable opinion of the Board, brings or is likely to bring the Individual, the Consultancy and/or the Company into serious disrepute and/or is materially adverse to the interests of the Company; or
- (d) the Individual is charged with or convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed) which, in the reasonable opinion of the Board materially affects the Consultancy's ability to perform the Services; or

- (e) the Consultancy makes a resolution for its winding up, makes a formal arrangement or composition with its creditors or makes an application to a court of competent jurisdiction for protection from its creditors or an administration or winding up order is made or an administrator or receiver is appointed in relation to the Consultancy such that in the reasonable opinion of the Board the Consultancy is no longer able to provide the Services; or
 - (f) any of the warranties set out in this Agreement being found to be materially and significantly inaccurate, misleading or untrue;
- 18.2. Notwithstanding the provisions of Clause 2 and subject to the provisions of Clause 18.3, the Consultancy may terminate this Agreement with immediate effect without liability to pay any compensation or damages by written notice to the Company if, at any time:
- (a) the Company commits any serious or repeated breach or non-observance of any of the terms or conditions of this Agreement; or
 - (b) the Company makes a resolution for its winding up, makes an arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for protection from its creditors, or an administration or winding up order is made, or an administrator or receiver is appointed in relation to the Company; or
 - (c) the Company purports to assign the burden or benefit or to charge the benefit of this Agreement.
- 18.3. Neither party will be in breach of this Agreement if there is any total or partial failure of performance by it of its duties and obligations under this Agreement occasioned by any act of God, fire, act of government or state, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies and any other reason beyond the control of either party (each a Force Majeure Event). If either party is unable to perform its duties and obligations under this Agreement as a direct result of a Force Majeure Event, that party will give written notice to the other of the inability stating the reason in question. The operation of this Agreement will be suspended during the period (and only during the period) during which the Force Majeure Event continues and the Consultancy will be paid any of the Fee which is outstanding at the commencement of that suspension forthwith. Immediately upon the Force Majeure Event ceasing to exist the party relying upon it will give written notice to the other of this fact.

19. Obligations on termination

- 19.1. The Consultancy will, and will procure that the Individual will, immediately on the termination of this Agreement for any reason and at the request of the Company at any time during the Engagement surrender to a person duly authorised by the Company all computer programs, reports, manuals, files, notes, accounts, documents, correspondence, books, materials, papers and information (on whatever media and wherever located) any keys and any other property of the Company its business contacts that have been made or received by the Consultancy and/or the Individual during the course of providing the Services (whether under the terms of this Agreement or any other agreement or arrangement between the Company and the Consultancy) and which are in the Consultancy's and/or the Individual's possession or under the Consultancy's and/or the Individual's control and which are the property of the Company.
- 19.2. Immediately on the termination of this Agreement for any reason the Consultancy will, to the extent possible and without being required to delete or destroy any electronic back-up media or files that have been created solely by automatic or routine archiving and back-up procedures

which shall themselves continue to be protected by the provisions of this agreement, return information to the Company as required by Clause 19.1 and irrevocably delete any remaining information relating to the business of the Company stored in any magnetic or optical drive or memory and all matter derived from such sources which is in its possession or under its control and is outside the premises of the Company..

- 19.3. On the termination of this Agreement, the Consultancy will, and will procure that the Individual will, provide a signed statement that it has and the Individual has fully complied with this Clause 19.

20. Notices

- 20.1. Notices under this Agreement shall be in writing and sent to a party's address as set out on the first page of this Agreement (or to the email address set out below). Notices may be given, and shall be deemed received:

- (a) by first-class post: two Business Days after posting;
- (b) by hand: on delivery;
- (c) by email to enquiries@celticseapower.co.uk in the case of the Company and [email address] in the case of the Consultancy: at the time of delivery of the email to the recipient's computer.

- 20.2. This clause does not apply to notices given in legal proceedings or arbitration.

21. Entire agreement

- 21.1. The parties agree that this Agreement, together with the undertakings from the Individual to the Consultancy referred to in Clause 5.5 above, constitutes the entire agreement between them relating to the Engagement and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 21.2. Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.
- 21.3. Nothing in this Agreement purports to limit or exclude any liability for fraud.

22. Further assurance

Each party shall at the request of the other, and at the cost of the requesting party, do all acts and execute all documents which are necessary to give full effect to this Agreement.

23. Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party, except where the Company determines it appropriate to vary the Engagement's status as a Deemed Employment Engagement.

24. Set off

Except as expressly set out in this Agreement, each party shall pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

25. No partnership or agency

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

26. Remedies and waiver

Any remedy or right conferred upon the parties for breach of this Agreement will be in addition to and without prejudice to all other rights and remedies available to that party. No failure, delay or omission by the Company or the Consultancy in exercising any remedy, right, power or privilege under or in relation to this Agreement will operate as a waiver of that or any other right, power, remedy or privilege of the Company or the Consultancy, nor will any single or partial exercise of any right, power, remedy or privilege preclude any other or further exercise of that or any other right, power, remedy or privilege.

27. Equitable relief

Each party recognises that any breach or threatened breach of this Agreement may cause the other party irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the other party, each party acknowledges and agrees that the other party is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

28. Severance

If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of this Agreement shall not be affected.

29. Legal expenses

Each party to this Agreement will be responsible for their own legal and other costs and expenses in connection with the negotiation, preparation, execution and implementation of this Agreement.

30. Third party rights

30.1. The Contracts (Rights of Third Parties) Act 1999 will not apply to this Agreement and no person other than the Company and the Consultancy will have any rights under it other than in respect of Clauses 3 (Provision of Services), 5 (Outside interests and protection of business interests), 8.3 and 8.5 (Tax indemnity), 9.2 (Indemnity for employment claims), 10.5 (Liability of Consultancy and insurance), 10.9 (General indemnity), 11 (Confidential information), 19.1 (Return of property) and 19.2 (Deletion of information). For the avoidance of doubt the terms of this Agreement may be varied, amended or modified (whether in whole or in part) or this Agreement may be suspended, cancelled, terminated by agreement in writing between the Company and the Consultancy or this Agreement may be rescinded in each case without the consent of any Third Party.

30.2. For the purposes of this Clause a Third Party means any person who is not a party to this Agreement.

31. Governing law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

32. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

EXECUTED as a deed by the parties and delivered on the date set out at the head of this Agreement.

Executed as)

a Deed by **Celtic Sea Power Ltd**)

)

acting by)

Director

Director / Secretary

Executed as a deed by **APEM Ltd**)

acting by)

[Name of Director], a director)

in the presence of:) _____
Director

Witness Signature)

Witness Name)

Address)

)

Occupation)

Schedule 1

This Schedule describes the services to be performed by the Consultancy on the terms and conditions of this Agreement (the Services). Defined terms used in this Schedule shall have the meanings set out in the Agreement unless the context requires otherwise.

[Insert details of services or advice to be provided by the Consultancy to the Company including:

- services to be provided by the Consultancy to the Company;
- Location(s) where the Services are to be performed and any travel required;
- Milestones for completion of particular Services/projects;
- Reporting procedure; and
- Individual(s) responsible for the provision of the Services.

Set out detail of instalments for payment of the Fee, if applicable – see Clause 6.2]

Schedule 2

Background IPR – This Schedule is to be populated with all the background IPR the Consultancy intends to contribute for the purpose of of delivering the Services.