

Date [INSERT DATE]

Celtic Sea Power Ltd

and

[DEVELOPER NAME]

**MASTER DATA SHARING AGREEMENT
FOR THE CELTIC SEA DATA HUB**



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DRAFT

This agreement is dated [DATE]

Parties

- (1) **Celtic Sea Power Ltd** incorporated and registered in England and Wales with company number 10166467 whose registered office is at Chi Gallos, Hayle Marine Renewables Business Park, North Quay, Hayle, Cornwall TR27 4DD (**CSP**); and
- (2) **[DEVELOPER NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Developer**).

Background

- (A) CSP owns or is the licensor of the Intellectual Property Rights (as defined below) in the CSP Data (as defined below) for various Campaigns.
- (B) The Developers owns or is the licensor of the Intellectual Property Rights (as defined below) in the Developer Data (as defined below) for various Campaigns.
- (C) In order to facilitate the various Campaigns (as defined below), CSP has agreed to share the CSP Data with the Developer and the Developer has agreed to share the Developer Data with CSP and to grant each other licences of Intellectual Property Rights (as defined below) in their respective Data (as defined below) on the terms set out in this agreement.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement and in any other agreement between the parties.

Affiliate: with respect to any person or entity, any other person or entity that, directly or indirectly, controls, is controlled by or is under common control with such specified person or entity, including but not limited to any holding company or subsidiary of that person or entity or any subsidiary of any holding company of that person or entity. For the purposes of this definition, “control” means the direct or indirect beneficial ownership of more than fifty percent (50%) of the issued share capital, stock or other participating interest or the legal power to direct or cause the direction of the general management, of the company, partnership or other person in question whether through voting securities, contract or otherwise, and “controlled” and “controlling” shall be construed accordingly. The current Affiliates of each party are listed at Schedule 1 Parts 3 and 4, and may be updated as notified to the other party in writing from time to time.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Campaign: the data collection campaign in relation to the offshore wind project as described in Part 1 of the Key Details document to be completed by the parties for each Campaign using the agreed form document at Schedule 1.

Commencement Date: the date this Agreement commences in relation to each Campaign as agreed between the parties and as specified in Part 2 of the Key Details document to be completed by the parties using the agreed form document at 0.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its Representatives or any Affiliate of a party or the Affiliate's Representatives to the other party and that party's Representatives or any Affiliate of a party or the Affiliate's Representatives in connection with this Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure, including but not limited to the Data and Manipulated Data.

CSP Data: the Data detailed CSP Data Specification.

CSP Data Specification: the format of the CSP Data as detailed in Part 3 of the Key Details document to be completed by the parties for each Campaign using the agreed form document at Schedule 1 as may be updated from time to time and as notified to the other party.

CSP User: any employee of CSP or any of its Affiliates authorised by CSP to access and use the Developer Data (wholly or in part).

CSP User Restrictions: the User Restrictions applicable to CSP.

Data: the raw data or information, in whatever form including measurements, images, still and moving, sound recordings, and any other data, in relation to the Campaign.

Derived Data: any Data (wholly or in part) Manipulated to such a degree that it:

- a) cannot be identified as originating or deriving directly from the Data and cannot be reverse-engineered such that it can be so identified; and
- b) is not capable of use substantially as a substitute for the Data.

Developer Data: The Data detailed in the Developer Data Specification.

Developer Data Specification: the format of the Developer Data as detailed in Part 4 of the Key Details document to be completed by the parties for each Campaign using the agreed form document at Schedule 1 as may be updated from time to time and as notified to the other party.

Developer User: any employee of the Developer or any of its Affiliates authorised by the Developer to access and use the CSP Data (wholly or in part), using their own unique identifier provided by CSP.

Developer User Restrictions: the User Restrictions applicable to the Developer.

Distribute: to make Data accessible (including the provision of access through a database or other application populated with the Data, reselling, sub-licensing, transferring or disclosing the Data) by any means, including any electronic means, to any Developer User or CSP User, as applicable.

Effective Date: the date this Agreement comes into effect being the date at stated at the beginning of this Agreement.

holding company and subsidiary: mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.

Initial Period: a period of three years commencing on the Effective Date.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Manipulate: to combine or aggregate the Data (wholly or in part) with other data or information or to adapt the Data (wholly or in part).

Manipulated Data: any Data which has been Manipulated. Manipulated Data includes any Derived Data.

Normal Business Hours: 9am to 5pm GMT on a Business Day.

Permitted Use: any and all use in relation to the Campaign (which shall not include the use of the Data by, or for the benefit of, any person other than an employee or a Sub-Licensee of the party being granted rights under this Agreement).

Portal: the information technology system or systems owned or operated by CSP on which the CSP Data is made available and to which the Developer Data is to be uploaded in accordance with this Agreement.

Quarterly Summary: a summary of the Data created by one party to be supplied to the other for the periods of three months commencing on 1 January, 1 April, 1 July and 1 October respectively.

Representatives: in respect of a party, that party's and its Affiliate's employees, officers, representatives or professional advisers involved in the Campaign who need to know the confidential information in question.

Renewal Period: each successive 12-month period after the Initial Period for which this Agreement is renewed.

Security Feature: any security feature including any key, PIN, password, token or smartcard.

Sub-Licensee: a person to whom a party wishes to grant a sub-licence of its rights under this Agreement in accordance with clause 13. The proposed sub-licences of each party known at the

Commencement Date are to be listed in Parts 5 and 6 of the Key Details document to be completed by the parties for each Campaign using the agreed form document at Schedule 1 and this list may be updated by the parties and notified to the other party to seek their prior written consent for additional sub-licence from time to time during the Term in accordance with clause 13.

Term: the Initial Period and any Renewal Periods.

User Restrictions: the obligations set out in Schedule 2.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 The obligations under this Agreement of any party comprising two or more persons (each such person being a "Co-obligor") are the joint and several obligations of all Co-obligors, comprising that party and each Co-obligor, who are each bound by their obligations and the failure of any Co-obligor to sign this Agreement shall not render this Agreement void or unenforceable against any other Co-obligor. For the avoidance of doubt CSP may take action against, or release or compromise the liability of, a Co-obligor, without affecting the liability of any other Co-obligor;
- 1.7 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 A reference to **writing** or **written** includes email but not faxes.
- 1.12 References to clauses and schedules are to the clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.

- 1.13 Any words following the terms **including, include, in particular** or **for example** or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.14 If there is any uncertainty between:
- (a) any provision contained in the body of this Agreement and any provision contained in the Schedules or appendices, the provision in the body of this Agreement shall prevail;
 - (b) the terms of any other documents annexed to this Agreement and any provision contained in the schedules or appendices, the provision contained in the schedules or appendices shall prevail; and
 - (c) any of the provisions of this Agreement and the provisions of the Portal Terms and Conditions of Use, the provisions of this Agreement shall prevail.

2. Scope

- 2.1 During the Term, for the relevant Campaign(s), CSP will supply the CSP Data to the Developer, in consideration of which and in return the Developer will supply the Developer Data to CSP, in accordance with the terms of this Agreement.
- 2.2 This Agreement shall form a master agreement between the parties and the terms of this Agreement shall apply to the supply of Data from each party to the other for each and every Campaign.
- 2.3 For each Campaign, the parties will provide the details of the Data to be shared in relation to that Campaign and all other relevant Campaign details using the agreed format of the Key Details document specified in Schedule 1. Each Campaign's Key Details document shall be part of this Agreement and shall not form a separate contract to it.
- 2.4 Neither party shall seek to, nor shall, through any act or omission circumvent any of its obligations under this Agreement including but not limited to the obligations on the parties to share their Data.

3. CSP Data sharing

- 3.1 CSP will make the CSP Data that has been collected by the Commencement Date available to the Developer on the Commencement Date. CSP will make the CSP Data collected after the Commencement Date available during the Term within one calendar month of the data being collected and in accordance with the CSP Data Specification. CSP will use reasonable endeavours to ensure the continuity of the provision of the data during the Term with a view to ensuring the continuity and availability of the CSP Data.

- 3.2 If requested by the Developer, CSP will provide the Developer with a Quarterly Summary within 10 days of the end of each quarter.
- 3.3 CSP will use reasonable efforts to ensure the CSP Data is in the format specified in the CSP Data Specification. CSP may change the content, format or nature of the CSP Data at any time, acting reasonably and with as much prior notice to the Developer as is reasonably practicable.
- 3.4 The Developer will have access to the CSP Data through the Portal. Should the Portal be unavailable at the Commencement Date or at any time during the Term the parties will agree an alternative method of access for the Developer to the CSP Data. The Developer will ensure that it promptly complies with any minimum hardware and software configuration requirements specified by CSP for the purpose of receiving the CSP Data via the Portal or by any other method agreed between the parties. CSP may change the means of access to the CSP Data at any time, with as much prior notice to the Developer as is reasonably practicable.

4. Developer Data sharing

- 4.1 The Developer will make the Developer Data that has been collected by the Commencement Date available to CSP on the Commencement Date. The Developer will make the Developer Data collected after the Commencement Date available to CSP during the Term within one calendar month of the data being collected and in accordance with the Developer Data Specification. The Developer will use reasonable endeavours to ensure the continuity of the provision of the data at all times during the Term with a view to ensuring the continuity and availability of the Developer Data.
- 4.2 The Developer will use reasonable efforts to ensure the Developer Data is in the format specified in the Developer Data Specification. The Developer may change the content, format or nature of the Developer Data at any time, acting reasonably and with as much prior notice to CSP as is reasonably practicable.
- 4.3 The Developer will make the Developer Data available to CSP by uploading the Developer Data to the Portal. Should the Portal be unavailable at the Commencement Date or at any time during the Term the parties will agree an alternative method of access for CSP to the Developer Data.
- 4.4 The Developer will bear its own costs of establishing its access to and use of the Portal.
- 4.5 Where Data has been collected by an Affiliate of the Developer and the Developer has a right of access to that Data, this shall be held to be Developer Data under this Agreement and the Developer warrants that it will share such Affiliate Developer Data with CSP as Developer Data in accordance with this Agreement.

5. Audit

- 5.1 Both parties shall keep detailed, accurate and up-to-date records (**Records**) showing, during the previous 12 months, the steps taken by the party to comply with the User Restrictions. Each party shall ensure that the Records are sufficient to enable the other party to verify the party's compliance with its obligations under this clause 5.
- 5.2 Each party shall permit the other party and its third party representatives (including its designated auditor), on reasonable notice during Normal Business Hours and no more than once a year to:
- (a) gain (physical and remote electronic) access to, and take copies of, the Records and any other information held at the party's premises; and
 - (b) inspect all Records relating to the use, Distribution, redistribution, permissioning and control of the other party's Data,

which is strictly necessary for the sole purpose of auditing the party's compliance with its obligations under this agreement including the User Restrictions. Such audit rights shall continue for two years after termination of this Agreement. Both parties shall give all necessary assistance to the conduct of such audits during the term of this Agreement and for a period of two years after termination of this Agreement.

6. Unauthorised use

- 6.1 If any unauthorised use is made of a party's (**Party 1**) Data and such use is attributable to the negligence or breach of duty (statutory or otherwise), act, omission or default of, or through, the other party (**Party 2**) (including breach of any User Restrictions) then, without prejudice to Party 1's other rights and remedies, Party 2 shall immediately be liable to compensate Party 1 for any loss or damage suffered as a consequence of the unauthorised use and Party 2 hereby indemnifies Party 1 against all such loss or damage. Without prejudice to its other rights and remedies, Party 1 shall be entitled to immediately suspend performance of its obligations under this Agreement and/or immediately terminate this Agreement.
- 6.2 The Parties agree and acknowledge that monetary damages may not be a sufficient remedy for any actual or threatened breach of this Agreement and that, in addition to all other remedies, the Party 1 shall be entitled to seek the remedy of injunction, specific performance and any other equitable relief for any threatened or actual breach of the provisions of this Agreement.

7. Confidentiality

- 7.1 The term Confidential Information does not include any information that:
- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives or by any of the receiving party's Affiliates or their Representatives in breach of this clause 7);

- (b) was available to the receiving party or any of the receiving party's Affiliates or their Representatives on a non-confidential basis before disclosure by the disclosing party;
 - (c) was, is, or becomes, available to the receiving party or any of the receiving party's Affiliates or their Representatives on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - (d) was known to the receiving party or any of the receiving party's Affiliates or their Representatives before the information was disclosed to it by the disclosing party; or
 - (e) the parties agree in writing is not confidential or may be disclosed.
- 7.2 Each party shall keep the other party's Confidential Information confidential and shall not:
 - (a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (**Permitted Purpose**); or
 - (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 7.3 A party may disclose the other party's Confidential Information to those of its Representatives, Affiliates and their Affiliate's Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
 - (a) it informs those Representatives, Affiliates and Affiliate's Representatives of the confidential nature of the Confidential Information before disclosure; and
 - (b) at all times, it is responsible for the Representatives', Affiliates' and Affiliate's Representatives' compliance with the confidentiality obligations set out in this clause 7.
- 7.4 Each party acknowledges that the other party's Confidential Information includes any software or other materials created by the other party in connection with the provision of the other party's Data but does not include any Derived Data.
- 7.5 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, by a court or other authority of competent jurisdiction, or by the rules of any listing authority or stock exchange on which its shares or those of any of its Affiliates are listed or traded, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 7.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this Agreement, are granted to the other party, or are to be implied from this Agreement.

- 7.7 The provisions of this clause 7 shall continue to apply for five (5) years from the date of termination of this Agreement.

8. Announcements

No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction. The parties shall consult together on the timing, contents and manner of release of any announcement.

9. Security and passwords

- 9.1 Each party shall ensure that the other party's Data is kept secure and in an encrypted form, and shall use the best available security practices and systems applicable to the use of the other party's Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the other party's Data.
- 9.2 If either party becomes aware of any misuse of the other party's Data, or any security breach in connection with this Agreement that could compromise the security or integrity of the other party's Data or otherwise adversely affect the other party or if either party learns or suspects that any Security Feature has been revealed to or obtained by any unauthorised person, that party shall, at its own expense, promptly notify the other party and fully co-operate with the other party to remedy the issue as soon as reasonably practicable.
- 9.3 Each party agrees to co-operate with the other party's reasonable security investigations.
- 9.4 Where CSP uses Security Features in relation to the provision of the CSP Data (wholly or in part), or in relation to the Portal, the Security Features must, unless CSP notifies the Developer otherwise, be kept confidential and not lent, shared, transferred or otherwise misused.
- 9.5 CSP may change Security Features on notice to the Developer or the Developer Users for security reasons.

10. Data protection

- 10.1 The parties do not anticipate any personal data will be shared under this Agreement. If the position should change the parties will in good faith agree a data processing agreement or data sharing agreement as appropriate and in accordance with applicable data protection laws.

11. Export

- 11.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 11.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it which substantially replicates the one set out in clause 11.1; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

12. Licences

- 12.1 CSP grants to the Developer a non-exclusive, non-transferable, revocable, worldwide licence in perpetuity for the Permitted Use only, subject to the Developer User Restrictions, to:
- (a) access, view and Manipulate the CSP Data and create Derived Data from the CSP Data;
 - (b) store the CSP Data and Manipulated CSP Data on the Developer's internal systems; and
 - (c) Distribute the CSP Data and Manipulated CSP Data to Developer Users on the Developer's internal systems.
- 12.2 The Developer grants CSP a non-exclusive, non-transferable, revocable, worldwide licence in perpetuity for the Permitted Use only, subject to the CSP User Restrictions, to:
- (a) access, view and Manipulate the Developer Data and create Derived Data from the Developer Data;
 - (b) store the Developer Data and Manipulated Developer Data on CSP's internal systems; and
 - (c) Distribute the Developer Data and Manipulated Developer Data to CSP Users on the CSP's internal systems.
- 12.3 Except as expressly provided in this Agreement, neither party shall:
- (a) use the Data (wholly or in part) in its products or services; or
 - (b) redistribute the Data (wholly or in part).

- 12.4 Both parties shall observe the applicable User Restrictions.
- 12.5 The parties are responsible for the acts or omissions of their respective Users (which for the avoidance of doubt includes Users employed by each parties' Affiliates) and the acts or omissions of their respective Affiliates with whom Data is shared and/or accessed under this Agreement.

13. Sub-Licences

- 13.1 Each party (**Licensee**) shall have the right to grant a sub-licence of any of its rights under this agreement to the Sub-Licensees provided that:
- (a) the Licensee obtains the prior written consent of the other party (**Licensor**), such consent not to be unreasonably withheld;
 - (b) the Licensee shall ensure that the terms of any sub-licence are in writing and are substantially the same as the terms of this agreement (except that the Sub-Licensee shall not have the right to sub-licence its rights) and the Licensee shall provide the Licensor with a copy of the sub-licence on request; and
 - (c) the Licensee shall be liable for all acts and omissions of any Sub-Licensee and shall indemnify the Licensor against all costs, expenses, claims, loss or damage incurred or suffered by the Licensor, or for which the Licensor may become liable (whether direct, indirect or consequential and including any economic loss or other loss of profits, business or goodwill), arising out of any act or omission of any Sub-Licensee, including any claim in relation to unauthorised use of the Data under clause 6.
- 13.2 Each party will keep a detailed list of their Sub-Licensees together with copies of the terms on which each sub-licence is granted, both of which will be available to the other party for inspection in accordance with clause 5 and for this purpose clause 5 shall be read as if the references to User Restrictions are to Sub-Licensees and sub-licences.

14. Intellectual property rights ownership

- 14.1 All Derived Data and all Intellectual Property Rights in the Derived Data shall be owned exclusively by the party that creates it and there shall be no limitations or restrictions on that party's use or distribution of Derived Data.
- 14.2 Subject to clause 14.1, the Developer acknowledges that:
- (a) all Intellectual Property Rights in the CSP Data are the property of CSP or its licensors, as the case may be;
 - (b) it shall have no rights in or to the CSP Data other than the right to use them in accordance with the express terms of this Agreement;

- (c) CSP or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the CSP Data;
- (d) any goodwill generated through the Developer's use of any CSP trade marks shall belong only to CSP.

14.3 Subject to clause 14.1, CSP acknowledges that:

- (a) all Intellectual Property Rights in the Developer Data are the property of the Developer or its licensors, as the case may be;
- (b) it shall have no rights in or to the Developer Data other than the right to use them in accordance with the express terms of this Agreement;
- (c) the Developer or its licensors has or have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Developer Data;
- (d) any goodwill generated through CSP's use of any Developer trade marks shall belong only to the Developer.

14.4 Subject to clause 14.1, the Developer assigns to CSP, and shall assign to it, with full title guarantee all Intellectual Property Rights in any Manipulated CSP Data it may create, by way of future assignment.

14.5 The Developer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at CSP's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

14.6 The Intellectual Property Rights assigned to CSP under clause 14.4 shall be deemed to be included in the Licence from the date when such rights arise.

14.7 Subject to clause 14.1, CSP assigns to the Developer, and shall assign to it, with full title guarantee all Intellectual Property Rights in any Manipulated Developer Data it may create, by way of future assignment.

14.8 CSP shall, and shall use all reasonable endeavours to procure that any necessary third party shall, at the Developer's cost, promptly execute such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.

14.9 The Intellectual Property Rights assigned to the Developer under clause 14.7 shall be deemed to be included in the Licence from the date when such rights arise.

14.10 Each party shall co-operate with the other party to protect the goodwill and reputation of the other party's Data and, without limitation, shall comply with Part 2 of Schedule 2.

- 14.11 Any display by one party of the other party's Data shall credit, wherever technically and commercially feasible, the other party, any licensor of the other party or any other source of the other party's Data specified by the other party as the source of the other party's Data.

15. Intellectual property rights obligations

15.1 In relation to CSP:

- (a) CSP undertakes to indemnify, defend and hold harmless the Developer and its Affiliates from and against any claim or action that the provision, receipt or use of the Data (wholly or in part) infringes any UK Intellectual Property Right of a third party (**IPR Claim**) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Developer or its Affiliates as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against the Developer or its Affiliates, the Developer shall:
 - (i) give written notice of the IPR Claim to CSP as soon as reasonably practicable;
 - (ii) not make any admission of liability in relation to the IPR Claim without the prior written consent of CSP;
 - (iii) at CSP's request and expense, allow CSP to conduct the defence of the IPR Claim including settlement; and
 - (iv) at CSP's expense, co-operate and assist to a reasonable extent with CSP's defence of the IPR Claim.
- (b) clause 15.1 shall not apply where the IPR Claim in question is attributable to:
 - (i) possession, use, development, modification or retention of the Data (wholly or in part) by the Developer other than in accordance with this Agreement, provided that the obligations in clause 15.1 shall not apply to the extent that the relevant Claim was attributable to the use of any Manipulated Data;
 - (ii) the Developer's failure to provide a suitable environment for the Developer's internal system to receive the CSP Data;
 - (iii) use of the Data (wholly or in part) in combination with any hardware or software not supplied or specified by CSP to the extent that the infringement would have been avoided by the use of the Data (wholly or in part) not so combined; or
 - (iv) use of the Data (wholly or in part) in combination with any data not supplied or specified by CSP to the extent that the infringement would have been avoided by the use of the Data (wholly or in part) not so combined.
- (c) If any IPR Claim is made, or in CSP's reasonable opinion is likely to be made, against the Developer or its Affiliates, CSP may at its sole option and expense:

- (i) procure for the Developer or its Affiliates the right to continue using, developing, modifying or retaining the Data (wholly or in part) in accordance with this Agreement;
 - (ii) modify the Data (wholly or in part) so that they cease to be infringing;
 - (iii) replace the Data (wholly or in part) with non-infringing items; or
 - (iv) terminate this Agreement immediately by notice in writing to the Developer.
- (d) This clause 15 constitutes the Developer's and its Affiliates' sole and exclusive remedy and CSP's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 17.4.

15.2 In relation to the Developer:

- (a) the Developer undertakes to indemnify, defend and hold harmless CSP and its Affiliates from and against any claim or action that the provision, receipt or use of the Data (wholly or in part) infringes any UK Intellectual Property Right of a third party (**IPR Claim**) and shall be responsible for any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against CSP or its Affiliates as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against CSP or its Affiliates, CSP shall:
 - (i) give written notice of the IPR Claim to the Developer as soon as reasonably practicable;
 - (ii) not make any admission of liability in relation to the IPR Claim without the prior written consent of the Developer;
 - (iii) at the Developer 's request and expense, allow the Developer to conduct the defence of the IPR Claim including settlement; and
 - (iv) at the Developer 's expense, co-operate and assist to a reasonable extent with the Developer's defence of the IPR Claim.
- (b) clause 15.1(a) shall not apply where the IPR Claim in question is attributable to:
 - (i) possession, use, development, modification or retention of the Data (wholly or in part) by CSP other than in accordance with this Agreement, provided that the obligations in clause 15.1(a) shall not apply to the extent that the relevant Claim was attributable to the use of any Manipulated Data;
 - (ii) CSP's failure to provide a suitable environment for CSP's internal system to receive the Developer Data;
 - (iii) use of the Data (wholly or in part) in combination with any hardware or software not supplied or specified by the Developer to the extent that the infringement would have been avoided by the use of the Data (wholly or in part) not so combined; or

- (iv) use of the Data (wholly or in part) in combination with any data not supplied or specified by the Developer to the extent that the infringement would have been avoided by the use of the Data (wholly or in part) not so combined.
- (c) If any IPR Claim is made, or in the Developer's reasonable opinion is likely to be made, against the CSP or its Affiliates, the Developer may at its sole option and expense:
 - (i) procure for CSP or its Affiliates the right to continue using, developing, modifying or retaining the Data (wholly or in part) in accordance with this Agreement;
 - (ii) modify the Data (wholly or in part) so that they cease to be infringing;
 - (iii) replace the Data (wholly or in part) with non-infringing items; or
 - (iv) terminate this Agreement immediately by notice in writing to CSP.
- (d) This clause 15.1 constitutes CSP's or its Affiliates' sole and exclusive remedy and the Developer's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 17.4.

16. Warranties

- 16.1 Each party warrants that it has the right to license the receipt and use of its Data as specified in this Agreement.
- 16.2 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 16.3 Without limiting the effect of clause 16.2, neither party warrants that:
 - (a) the supply of its Data will be free from interruption;
 - (b) its Data will run on the other party's internal systems;
 - (c) its Data is accurate, complete, reliable, secure, useful, fit for purpose or timely; or
 - (d) its Data has been tested for use by the other party or any third party or that its Data will be suitable for or be capable of being used by the other party or any third party.

17. Limitation of liability

- 17.1 Neither party excludes or limits liability to the other party for:
 - (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any matter in respect of which it would be unlawful for the parties to exclude liability.

- 17.2 Subject to clause 17.1, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
 - (b) any loss or corruption (whether direct or indirect) of data or information;
 - (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
 - (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 17.3 Clause 17.2 shall not prevent claims, which fall within the scope of clause 17.4, for:
- (a) direct financial loss that are not excluded under any of the categories set out in clause 17.2(a); or
 - (b) tangible property or physical damage.
- 17.4 Subject to clause 17.1, each party's total aggregate liability in contract, tort (including negligence and breach of duty (statutory or otherwise) howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall in all circumstances be limited to £100,000.
- 17.5 Any dates quoted for delivery of each party's Data are approximate only, and the time of delivery is not of the essence. Neither party shall be liable for any delay in delivery of its Data that is caused by an event within the scope of clause 19 or the failure by the other party to provide any other instructions that are relevant to the supply of its Data.

18. Term and termination

- 18.1 This Agreement shall commence on the Effective Date. Unless terminated earlier in accordance with clause 18.2 or this clause 18.1, this Agreement shall continue for the Initial Period and shall automatically extend for a Renewal Period at the end of the Initial Period and at the end of each Renewal Period. Either party may give written notice to the other party, not later than 60 days before the end of the Initial Period or the relevant Renewal Period, to terminate this Agreement at the end of the Initial Period or the relevant Renewal Period, as the case may be.
- 18.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any material term of this Agreement and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified [in writing] to do so;
- (b) the other party:
 - (i) suspends, or threatens to suspend, payment of its debts;
 - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
 - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - (v) (being a partnership) has any partner to whom any of clause 18.2(b)(i) apply;
- (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;

- (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.2(b) (inclusive);
- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (l) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy; or
- (m) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

18.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

18.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

19. Force majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident; any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or that party Affiliates); interruption or failure of utility service ("**Force Majeure Event**"). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations and the corresponding obligation of the other party will be extended accordingly to the same extent as the affected party. The affected party shall as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations. If the period of delay or non-performance continues for three (3) months, the party not affected may terminate this Agreement by giving ten (10) Business Days' written notice to the affected party.

20. Assignment

- 20.1 Subject to clause 20.2, neither party shall assign, transfer, mortgage, charge, sub-contract, declare a trust of or deal in any other manner with any of its rights and obligations under this Agreement without the prior written consent of the other party (which is not to be unreasonably withheld or delayed).
- 20.2 Either party may, after giving written notice to the other party, assign or subcontract any or all of its rights and obligations under this agreement to an Affiliate for so long as they remains an Affiliate. A party who assigns its rights under this agreement to an Affiliate shall procure that the Affiliate assigns such rights back to it or to such other Affiliate as it may nominate immediately before that Affiliate ceases to be an Affiliate. A party who subcontracts the performance of any or all of its obligations under this agreement to an Affiliate shall immediately resume the performance of such obligations on such company ceasing to be an Affiliate, or delegate the performance of such obligations to such other Affilaite as it may nominate.
- 20.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22. Remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. Notice

- 23.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the email address notified by one party to the other as the email address to be used in relation to this Agreement.
- 23.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at 9.00 am on the next Business Day after transmission.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. Entire agreement

24.1 This Agreement constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

24.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.

24.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

25. Variation

Except as expressly provided in this Agreement, no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

26. Severance

26.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

26.2 If any provision or part-provision of this Agreement is deemed deleted under clause 26.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

27. No partnership or agency

27.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

28. Third-party rights

- 28.1 Except as expressly provided elsewhere in this Agreement, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 28.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

29. Governing law

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

30. Jurisdiction

Each party irrevocably agrees 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 or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Agreed Form of Key Details Document to be completed for each Campaign

Key Details Document for the [INSERT CAMPAIGN NAME] Campaign

Parties

- (1) **Wave Hub Development Services Limited trading as Celtic Sea Power** incorporated and registered in England and Wales with company number 10166467 whose registered office is at Chi Gallos, Hayle Marine Renewables Business Park, North Quay, Hayle, Cornwall TR27 4DD (**CSP**); and
- (2) **[DEVELOPER NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**Developer**).

This document sets out the Key Details for the **[INSERT CAMPAIGN NAME]** Campaign and forms part of the Master Data Sharing Agreement between the parties dated **[INSERT DATE OF MAIN AGREEMENT]** (“**Main Agreement**”).

Part 1 The Campaign

[Insert a description of the specific campaign]. For example for the wind campaign this would be: “The Celtic Sea Power 12 month wind resource campaign and regional wind resource model development is intended to be the first in a programme of new data acquisition for the Celtic Sea. Activities are being scoped to target critical areas in the licensing and consenting process that could be accelerated and de-risked with the availability of a sound single evidence base, approved by regulators and made available to the FLOW sector”]

Part 2 Commencement Date

[INSERT DATE – either the date of the master agreement or a later date from when CSP/the Developer will share the data for this specific Campaign]

Part 3 CSP Data Specification

[INSERT SPECIFICATION FOR THE DATA FROM CSP for this specific Campaign]

Part 4 The Developer Data Specification

[INSERT SPECIFICATION FOR THE DATA FROM THE DEVELOPERS]

Part 5 Part 1 - CSP Sub-Licensees

- (a) **[INSERT KNOWN SUB-LICENSEES OF CSP]**
- (b) **[INSERT ANY OTHER KNOWN SUB-LICENSEES OF CSP]**

Part 6 Developer Sub-Licensees

[INSERT KNOWN DEVELOPER SUB-LICENSEES HERE]

.....

Signed by **[NAME OF CSP REPRESENTATIVE]** for and on behalf of CSP.

.....

Signed by **[NAME OF DEVELOPER REPRESENTATIVE]** for and on behalf of the Developer.

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Schedule 2 User Restrictions

Part 1

1. User Restrictions

1.1 Each party shall:

- (a) limit access to the other party's Data to its Users;
- (b) only make copies of the other party's Data to the extent reasonably necessary for the following purposes: back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing;
- (c) not use the other party's Data for any purpose contrary to any law or regulation or any regulatory code, guidance or request;
- (d) not extract, reutilise, use, exploit, redistribute, disseminate, copy or store the other party's Data for any purpose not expressly permitted by this Agreement; and
- (e) not do anything which may damage the reputation of the other party or the other party's Data, including by way of using the other party's Data (wholly or in part) in any manner which is pornographic, racist or that incites religious hatred or violence.

Part 2

1.2 Neither party shall use the name, logos, trade mark of the other party without the prior written consent of the other party.

1.3 The Developer shall use CSP's trade marks and logos in the following manner:

- (a) Celtic Sea Power is the trading name for Wave Hub Development Services Ltd. The brand is used to present the services provided by the company in helping to lead and develop the floating offshore wind sector in the Celtic Sea. As a company wholly owned by Cornwall Council, the primary brand (Celtic Sea Power) should always be seen in association with the secondary brand, Cornwall Council, so that the ownership is clearly communicated.
- (b) Use of CSP trade marks or logos in advertising, websites or other communications should be made in accordance with the CSP brand guidelines, if any, as notified to the Developer from time to time.
- (c) All Attribution/credit statements should refer to 'Celtic Sea Power – Strategically developing Floating Offshore wind for the Celtic Sea region.'

1.4 CSP shall use the Developer's trade marks and logos in the following manner:

- (a) Use of the Developer's trade marks may be subject to a separate written agreement. The parties shall negotiate any such agreement in good faith.

- (b) Use of Developer's trade marks in advertising, websites or other communications should be made in accordance with Developer's brand guideline, if any, as notified to CSP from time to time.
- (c) All attribution/credit statements should refer to the Developer by name. The Developer may give further instructions in writing in relation to attribution from time to time which CSP agrees to follow.

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Signed by [NAME OF DIRECTOR] for and on behalf
of Celtic Sea Power Limited

.....

Director

Signed by [NAME OF DIRECTOR] for and on behalf
of [NAME OF DEVELOPER]

.....

Director

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