

1. ABOUT OUR TERMS

1.1 These terms apply if you have received a grant award from WES which is subject to our standard grant terms and conditions. In these terms, your grant award is referred to as the Offer. When you sign and return the Offer, you are entering into a contract with us which is made up of the Offer and these terms. This contract is referred to in these terms as the Agreement.

In these terms...
<p>Confidential Information means any information disclosed by one of us to the other under or pursuant to this Agreement, whether verbally or written (including in electronic format), which is designated as confidential or which should reasonably be regarded as confidential.</p>
<p>Fair Work First means the obligations set out in Condition 10 and the Scottish Government’s Fair Work First criteria which can be accessed here: https://www.gov.scot/publications/fair-work-first-guidance-2/documents/.</p>
<p>FOISA means the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004 and any amendment, update or replacement.</p>
<p>Gender Pay Gap Report means a report or information to be provided pursuant to regulation 2 of The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017, Schedule 1 of The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 or regulation 7 of The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012.</p>
<p>Grant, Last Claim-by Date, Project, Project Location, and Programme End Date are as described in the Offer.</p>
<p>Independent Accountant means an accountant who is: (a) independent of you and any of your subsidiary or parent undertakings as defined in section 1162 of the Companies Act 2006; (b) eligible under section 1212 of the Companies Act 2006 for appointment as a Company auditor; or (c) for companies which are not quoted on the Stock Exchange of Great Britain or elsewhere, eligible under section 1222 of that Act.</p>
<p>IPR means patents, inventions, trade marks, service marks, logos, get up, trade names, goodwill, internet domain names, rights in designs, copyright and related rights (including rights in computer software), moral rights, topography rights, database rights, rights in know-how, trade secrets and other intellectual property rights, in each case whether registered or unregistered and including renewals, extensions, applications for registration, rights to apply and rights of action in relation to the foregoing, and all rights or forms of protection having equivalent or similar effect anywhere in the world, which subsist now or in the future.</p>

In these terms...
<p>Last Claim-by Date is the date referred to in the Offer.</p>
<p>Law means (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any applicable guidance or determination with which you are bound to comply to the extent that same are published and publicly available or the existence or contents of them have been notified to you by WES; and (c) any applicable judgment of a relevant court of law which is a binding precedent in Scotland, in each case in force in Scotland.</p>
<p>Offer means (a) the grant award letter issued by us setting out the details of the Grant and the Project. The Offer refers to these terms and sets out any other conditions which apply; and/or (b) a letter issued by us amending the Agreement after the letter referred to in (a) has been accepted by you.</p>
<p>Party means WES or you, Parties means WES and you.</p>
<p>Period of Obligation is the period referred to in the Offer or, where no period is set out, the period commencing on the date on which you signed the Offer and ending after five (5) years</p>
<p>Regulatory Bodies means all competent national and supra-national government, regulatory and judicial authorities or bodies including but not limited to Scottish Government, Scottish Funding Council, Competition and Markets Authority (CMA), Competition Appeals Tribunal Department for Business, Energy and Industrial Strategy (BEIS), UK Government, European Commission, Auditor General, Accounts Commission and/or the European Court of Auditors.</p>
<p>Subsidy, Subsidy Control, Subsidy Schemes and SCA are defined in Condition 9.</p>
<p>Tax Haven means a jurisdiction included in the EU list of non-cooperative jurisdictions for tax purposes listed here: https://www.consilium.europa.eu/en/policies/eu-list-of-non-cooperative-jurisdictions/</p>
<p>we, us, our and WES means WAVE ENERGY SCOTLAND LIMITED a company limited by guarantee incorporated under the Companies Acts (Registered Number SC493764) and having its principal office at An Lòchran, 10 Inverness Campus, Inverness, Highland IV2 5NA and a subsidiary of Highlands & Islands Enterprise (HIE)</p>
<p>HIE means Highlands and Islands Enterprise, established under the Enterprise and New Towns (Scotland) Act 1990 and having its principal office at An Lòchran, 10 Inverness Campus, Inverness, Highland IV2 5NA.</p>

In these terms...

you means the entity awarded a Grant, described as Grant Recipient in the Offer. Where more than one entity is described in the Offer, “you” includes all of those entities. Each of those entities will be liable on a joint and several basis for the matters set out in this Agreement. “You” includes your parent company or parent institution for the purposes of Conditions 5.1.6, 5.1.7, 5.1.8, 5.1.9, 5.1.10.

2. YOUR CONFIRMATIONS

- 2.1 By accepting the Offer, you confirm and undertake to us that:
- 2.1.1 the information you submitted to us (including financial details) in support of your application for grant funding for the Project was and remains true and accurate and you are not subject to any insolvency proceedings or are at risk of being placed in insolvency proceedings;
 - 2.1.2 you have the capacity and authority to enter into the Agreement;
 - 2.1.3 you will comply with and/or discharge your obligations under the Agreement;
 - 2.1.4 you own or have unrestricted rights to use all buildings, plant, equipment and other assets required to carry out the Project and your obligations under the Agreement;
 - 2.1.5 you have provided us with full details of all offers of any Subsidy/State Aid which you have received or accepted from any public sector body (including WES or HIE) over the last three (3) calendar years;
 - 2.1.6 you hold and will maintain all necessary consents, licences, permits and/or authorisations required to carry out the Project and your obligations under the Agreement;
 - 2.1.7 you will use and where relevant ensure the use of the Grant only in relation to the Project and in accordance with your application for grant funding;
 - 2.1.8 you own or have the right to use any and all rights in and to any IPR required to enable you to carry out the Project;
 - 2.1.9 you will own or have the right to use all IPR generated by you or by any third party (including subcontractors or consultants) engaged to work on the Project and you will take all steps necessary to protect this IPR; and
 - 2.1.10 any assets which will be wholly or partly funded by the Grant are and will continue to be free from liens, claims, taxes and encumbrances of any kind and nature.
- 2.2 You must also meet any conditions set out in the Offer where they are to be satisfied before any Grant is paid. If any of those conditions are of a continuing nature, you must continue to comply with them for the whole Period of Obligation.

3. YOUR OBLIGATIONS

- 3.1 You will:
- 3.1.1 comply with all Law, carry out the Project in compliance with the Agreement, and the information submitted by you and

- approved by us, and ensure that any party acting on your behalf does the same;
- 3.1.2 inform us immediately of any change to the information you provided in your application for Grant funding (and any subsequent information requested by us and/or provided by you to us) including but not limited to: any change in your corporate structure, or your ultimate beneficial ownership, and/or whether any company or entity in your corporate or group structure is based or incorporated in a Tax Haven;
- 3.1.3 only use, and where relevant ensure the use of, the Grant for the purposes of the Project and in accordance with this Agreement;
- 3.1.4 not use the Grant to fund the costs of improving export performance of goods or services;
- 3.1.5 not be obliged to favour UK suppliers and goods in carrying out the Project;
- 3.1.6 undertake the Project with all the skill and care which can reasonably be expected from a business, organisation or institution with your skill and experience;
- 3.1.7 undertake the Project in a manner which does not (i) in our reasonable opinion detract from or damage the image and reputation of WES, HIE and/or the Scottish Government and/or (ii) unreasonably impede, prevent or increase the cost to us of discharging our obligations, duties, and statutory functions;
- 3.1.8 maintain (and make sure that any contractors and consultants you appoint maintain) adequate insurance in respect of the Project at all times and if we require ensure that our interest is noted / endorsed on all relevant insurance policies;
- 3.1.9 ensure that consultants, contractors and/or suppliers engaged in the Project are paid on time;
- 3.1.10 provide us with regular reports on the progress of the Project in such form and at such intervals as we may reasonably require;
- 3.1.11 provide us with any other information and documentation relating to the Project as we may request from time to time during the Period of Obligation;
- 3.1.12 maintain well-ordered, complete and up to date records and accounts in connection with the Project including in relation to funding in accordance with the Offer for the duration of the Project and for either 3 years after completion of the Project or for the Period of Obligation, whichever is longer;
- 3.1.13 give us and our auditors and representatives access to your business premises and to all records, reports, analysis and books of account relating to the Project during normal business hours on two (2) days written notice and you will give all reasonable assistance to anyone exercising this right of access;
- 3.1.14 provide us, HIE, Scottish Ministers and any other Regulatory Body any information reasonably required to establish that the Project is consistent with Subsidy Control rules, including prompt access to any information reasonably required to ensure compliance with the Agreement;

- 3.1.15 during the Period of Obligation not move your business or any plant, equipment or other assets acquired in connection with the Project out of Scotland, substantially reduce the scale of your operations at and/or change the Project Location without our prior written consent;
- 3.1.16 during the Period of Obligation keep all your property, buildings, plant, equipment and other assets in a good state of repair and in good condition (to our reasonable satisfaction) and let us inspect them on reasonable notice;
- 3.1.17 where the Grant is applied to fund the purchase of assets and the value of an asset is £2,500 or more, maintain during the Period of Obligation an asset register showing which assets have been purchased with the Grant and provide us with a copy when requested;
- 3.1.18 where property, buildings, plant, equipment or other assets have been acquired or improved with any part of the Grant, not sell, lease, grant security or otherwise dispose of, or remove any of them during the Period of Obligation without our prior written consent; and
- 3.1.19 where you prepare accounts, during the Period of Obligation (i) where requested by us, give us your monthly management accounts in a form to be approved by us within 6 weeks of the end of the period to which they relate, and, (ii) in each year, also give us an annual audited statement of accounts of your business within 6 months of the date to which that statement is made up.
- 3.2 You will ensure that any publicity you make in respect of the Project and/or the Grant contains an acknowledgement of funding support provided to you under this Agreement and you will display whatever plaque, sticker or logo we ask you to. You will not issue any press release or make any public announcement or statement regarding the Project, Results, and/or Grant without our prior written consent. Any academic publications in relation to the Results shall be conducted in accordance with project specific terms set out in the grant award letter, if applicable.
- 3.3 We may publicise the Grant and include information relating to the Grant and the Project in public records and other documents.
- 3.4 You must not change the Project, including its timescale or budget, or discontinue or dispose of it without our prior written consent. You must keep us informed of any possible changes to the Project and, if we request, meet with us to consider the extent to which any changes may affect the eligibility of the Project for ongoing support from us.
- 3.5 If a third party claims against us for costs, losses, damages and/or expenses arising out of, or in connection with the Project and/or any failure by you to comply with your obligations under this Agreement you will indemnify us in respect of any costs, losses damages and/or expenses which we incur, including the cost and/or expense of defending such a claim.

4. PAYMENT

- 4.1 Subject to you complying with the terms and conditions of the Agreement, we will pay the Grant (including any instalment) to you by electronic bank transfer.
- 4.2 We reserve the right to withdraw any element of Grant which has not been claimed by the Last Claim-by Date. You will not be entitled to claim any Grant and we will be under no obligation to pay any Grant to you after the Last Claim-by Date, including where we receive an invoice and/or Claim Form from you after the Last Claim-by Date.
- 4.3 If we agree to pay any part of the Grant before we have received from you any appropriate evidence of expenditure and payment on Eligible Costs, you must give us the missing information as soon as possible and in any event not later than 30 days from the date of such expenditure. If you do not do this, we may demand the immediate repayment of all or part of the Grant.
- 4.4 No payment of Grant will include any element of VAT unless agreed by us.
- 4.5 We shall be entitled to set off any amount you owe us which has fallen due and payable against any amount due to you under this Agreement.
- 4.6 We are not obliged to pay the Grant where, as at the due date for payment, an event allowing us to stop paying or to seek repayment of Grant as set out at Conditions 5.1.1 to 5.1.14 (inclusive) or any event which, with the giving of notice or lapse of time or other condition may constitute an event allowing us to stop paying or seek repayment of Grant as set out at Conditions 5.1.1 to 5.1.14 (inclusive), has occurred.

5. WHEN WE CAN STOP PAYING OR SEEK REPAYMENT

- 5.1 We may withhold payment of, or reclaim (together with interest) all or any part of, or decide not to make any future payments of, the Grant:
 - 5.1.1 if you breach any of the terms of this Agreement or any other agreement in place between us;
 - 5.1.2 if we are required to do so by any Regulatory Body, or if a consent from a Regulatory Body is required in relation to you or in relation to the Project, your assets or assets used or to be used in connection with or for the delivery of the Project and the consent has not been obtained;
 - 5.1.3 to the extent necessary to ensure that the Grant, either on its own or when taken together with other financial assistance given or likely to be given in respect of the Project, is within the rules on Subsidy laid down by any Regulatory Body from time to time;
 - 5.1.4 if you fail to progress with, carry out or complete the Project to our satisfaction;
 - 5.1.5 if you apply for or receive notice of entitlement to or an offer of or you receive any contribution in connection with the Project, either in cash or in kind, from any public sector body (excluding WES);

- 5.1.6 if at any time you provide us with information which is fraudulent, misleading or incorrect;
- 5.1.7 if you become unable or admit inability to pay your debts as they fall due, you suspend making payment of any of your debts as they fall due, or you commence negotiation with one or more creditors with a view to rescheduling any of your indebtedness;
- 5.1.8 if you become insolvent or make any arrangement with your creditors or are liquidated or wound up, or take any steps preparatory to liquidation or winding up or to the appointment of a liquidator, receiver or administrator, or you commit or suffer any act comparable to the foregoing in any jurisdiction;
- 5.1.9 if you have a change of ownership or control or a material change in your constitution and/or management or the nature of your business and/or activities, as carried out at the date of this Agreement, changes (in our opinion) to a material extent;
- 5.1.10 if you wholly or substantially cease to or threaten to cease to carry on business and/or activities or to own or use any of the assets which are required for the Project;
- 5.1.11 if the nature of the Project changes such that it is no longer eligible for support under the relevant Subsidy regulations;
- 5.1.12 if you confirm to us in writing that you no longer wish to proceed with the Project;
- 5.1.13 if there is any withdrawal of third-party funding for the Project or there are any changes which we consider to be material or detrimental to the financing or resourcing of the Project;
- 5.1.14 if any guarantee and/or other form or instrument of security provided by your parent company or parent institution or any other party as referred to in the Offer becomes ineffective; and
- 5.2 You must tell us as soon as any of these things happen, or as soon as you become aware that any of them are likely to happen.
- 5.3 If we become aware of one or more of the events listed in Conditions 5.1.1 to 5.1.14 (inclusive) happening, either because you tell us or otherwise, we may by written notice to you at any time:
 - 5.3.1 vary or withhold any or all remaining payments of Grant;
 - 5.3.2 where it is remediable, require you to remedy the event within whatever time period we consider to be reasonable;
 - 5.3.3 terminate this Agreement on whatever date we decide;
 - 5.3.4 declare that all sums previously paid by way of Grant are immediately due and payable to us and our notice shall operate as a demand for payment of all such sums; and/or
 - 5.3.5 take any action available to us at law and/or under common law,

and our right to take the steps set out in Conditions 5.3.4 and/or 5.3.5 will continue for a minimum of ten (10) years from the last date of payment of any instalment of Grant, irrespective of whether this Agreement has already terminated.

- 5.4 You agree that, save in the event of manifest error, a certificate signed by any duly authorised officer of WES shall be sufficient to ascertain conclusively and fix all sums due resting and owing by you to us including any amount of Grant made over to you and repayable to us by virtue of the provisions contained in this Agreement.
- 5.5 Any amount due to us under this Agreement shall be repaid by you within fourteen (14) days of receipt of our written notice.

6. BRINGING THIS AGREEMENT TO AN END

- 6.1 This Agreement may be terminated at any time by agreement between us.
- 6.2 Termination of this Agreement will be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination.
- 6.3 Termination of this Agreement shall not affect the following Conditions: 5.3.4, 5.3.5, 5.4, 5.5, 6.2, 7, 8, 9.7, 9.8 and 11.

7. CONFIDENTIALITY

- 7.1 You and we agree not to use Confidential Information for any purpose other than the Project and the performance of this Agreement.
- 7.2 You and we agree not to disclose Confidential Information to any third party (which does not include our employees, officers, contractors, agents, representatives or public partners) without obtaining the prior written consent of the other Party.
- 7.3 Conditions 7.1 and 7.2 do not apply:
 - 7.3.1 to the extent confidential information is public knowledge or already known to the third party at the time of disclosure, other than by breach of this Agreement, or where required to be disclosed by law or applicable regulatory requirement or code, including FOISA and you will provide such assistance as WES may reasonably require in relation to such disclosure. If FOISA applies to you, WES will provide such assistance as you may reasonably require in relation to such disclosure;
 - 7.3.2 to the publication or disclosure by us of details of the Grant. You waive all rights to prevent or restrict disclosure on the grounds of commercial confidentiality or otherwise; and/or
 - 7.3.3 to the disclosure of Confidential Information or information relating to this Agreement and the Project to Regulatory Bodies.
- 7.4 You will cooperate with and assist us by providing such information as we or such Regulatory Bodies require. You may identify information you consider commercially confidential and provide us with an explanation as to why you consider it commercially confidential. We will consider your representations and both Parties shall act reasonably in seeking to agree the extent to which such information may be shared.

8. DATA PROTECTION

8.1

In this part....
Personal Data means the personal data (as such term is defined in Data Protection Law) being processed by either you or us pursuant to the terms of the Agreement.
Controller, Process and Processing have the same meanings as they do in Data Protection Law.
Data Protection Law means any applicable law relating to data protection and the processing of personal data from time to time under the Agreement, including: <ul style="list-style-type: none">(a) the Data Protection Act 2018;(b) the UK GDPR;(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and(d) any legislation that, in respect of the United Kingdom, replaces, or enacts into United Kingdom domestic law, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union.
UK GDPR means the terms of the General Data Protection Regulation (EU) 2016/679 as transposed into UK law as a consequence of the United Kingdom leaving the European Union.

8.2 You and we agree that any transfer of Personal Data between you and WES is on a Controller-to-Controller basis. You and we shall each comply with our obligations under all Data Protection Law and shall provide each other with any information reasonably requested and necessary to enable that other party to meet the requirements of Data Protection Law.

8.3 You agree that where you disclose Personal Data to us in relation to the terms of the Agreement, such disclosure must be fair, transparent and lawful and not contravene Data Protection Law:

8.3.1 we will Process that Personal Data as a Controller in accordance with our published privacy statement from time to time. This privacy statement is at <https://www.waveenergyscotland.co.uk/privacy-policy/>

8.3.2 we may share such Personal Data with Regulatory Bodies, HIE, South of Scotland Enterprise and/or Scottish Enterprise, and in accordance with our legal requirements, as detailed in our published privacy statement.

9. SUBSIDY CONTROL

9.1

In this part
Agreement on Agriculture (AoA) means the WTO Agreement on Agriculture which was implemented on 1 January 1995 and part of Annex 1A to the WTO Agreement (as modified from time to time).
Agreement on Subsidies and Countervailing Measures (ASCM) means the WTO Agreement on Subsidies and Countervailing Measures, which came into force in 1995.
De Minimis Aid means State Aid which is exempt by falling under the thresholds set out in European Commission Regulation (EU) No 1407/2013, Commission Regulation (EU) 1408/2013 or Commission Regulation (EU) No 717/2014.
EU State Aid means all funding constituting aid under the EU State Aid Law.
EU State Aid Law means the law embodied in Articles 107 -109 of Section 2, Title VII, of the Common Rules on Competition, Taxation and Approximation of Laws Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union' (2008/C 115/01)
Group means You and all enterprises that are related to You through: (a) a majority of the shareholders' or members' voting rights; (b) the right to appoint or remove a majority of the members of any administrative, management or supervisory body; (c) the right to exercise a dominant influence pursuant to a contract entered into with that enterprise or to a provision in its memorandum or articles of association; and/or (d) a shareholder in or member of and control alone, pursuant to an agreement with other shareholders or members of that enterprise, a majority of shareholders' or members' voting rights.
Minimal Financial Assistance (MFA) means a Subsidy which is exempt by falling under the threshold set out in Section 36 of the SCA
NI Protocol means the Northern Ireland Protocol to the UK-EU Withdrawal Agreement agreed on 17 October 2019 (as implemented by section 7A of the European Union (Withdrawal) Act 2018, as amended).
SCA means the Subsidy Control Act 2022 which received Royal Assent 28 April 2022.
Subsidy means funding constituting a Subsidy within the meaning of Section 2 of the Subsidy Control Act 2022 or an award of financial assistance which falls within the scope of the AoA or the ASCM or which constitutes EU State Aid.

In this part	
	Subsidy Control means the SCA and United Kingdom's international commitments on Subsidy control arising from, amongst others, the TCA, the NI Protocol, World Trade Organisation Membership and commitments arising from other international treaties and agreements to which the United Kingdom is a party.
	Subsidy Schemes means the funding schemes adopted from time to time by us and available at: https://www.hie.co.uk/subsidy-schemes
	TCA means the UK-EU Trade and Cooperation Agreement signed on 30 December 2020 (as implemented by section 29 of the European Union (Future Relationship) Act 2020), and as ratified and entered into force on 1 May 2021.
	WTO means the World Trade Organisation.

- 9.2 Following the expiry of the Brexit transition period on 31 December 2020, the UK is no longer subject to EU State Aid Law for Subsidy granted after this date. The only exception to this is for financial assistance that is caught by the NI Protocol.
- 9.3 If the Grant (or any part or condition of the Grant) does not comply with applicable Subsidy Control obligations, the Scottish Ministers or other Regulatory Bodies may require repayment of the Grant or any part of it together with interest at such rate and on such basis as may be determined from time to time in accordance with law.
- 9.4 WES is required to comply with its Subsidy Control obligations under the SCA and may also be required to comply with commitments arising from international treaties and agreements to which the United Kingdom is a party including EU State Aid Law pursuant to the NI Protocol, the AoA, the ASCM and any guidance from Regulatory Bodies as may be updated from time to time.
- 9.5 If your Offer says the Grant is made under the terms of one of our Subsidy Schemes, we consider it to have been made on terms consistent with Subsidy Control rules.
- 9.6 If your Offer says the Grant is made in response to a national or global economic emergency, we consider it to have been made on terms consistent with the Section 44 of the SCA.
- 9.7 If your Offer says the Grant is made as Minimal Financial Assistance there is a ceiling of £315,000 for your Group over the last consecutive three fiscal years. For the purposes of calculating your MFA allowance you need to include any De Minimis Aid under EU State Aid Law and any Subsidy given since 31 December 2020 under the exemption in Article 364.4 of Chapter 3 of Title XI of the TCA commonly referred to as 'Small Amounts of Financial Assistance'. The Grant will be relevant if you or any other entity or entities which form your Group wish or wishes to apply, or have or has applied, for any other Minimal Financial Assistance. For these purposes, you must retain details of the Grant for at least 3 years from the date on which you receive the last instalment of the Grant and produce it on request by any Regulatory Body.

- 9.8 If your Offer says the Grant is made as De Minimis Aid within the scope of Article 10 of the NI Protocol, there is a ceiling of €200,000 applied by the European Commission Regulation (EU) No 1407/2013 provided to your Group over the last three fiscal years (including prior State Aid awards). The Grant will be relevant if you or any other entity or entities which form your Group wish or wishes to apply, or have or has applied, for any other De Minimis Aid within the scope of Article 10 of the NI Protocol. For these purposes, you must retain details of the Grant for at least 3 years from the date on which you receive the last instalment of the Grant and produce it on request by any Regulatory Body.

10. INTELLECTUAL PROPERTY

In this part....	
	Results means any tangible or intangible output generated, such as data, knowledge or information, that is generated as part of the Grant, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including IPRs.
	Background means any data, know-how or information, whatever its form or nature (tangible or intangible), including any attached rights such as IPRs, that is held prior to entering into the Grant, identified by you or us as Background and needed to exploit the Results.
	Sideground means any data, know-how or information, whatever its form or nature (tangible or intangible), including any attached rights such as IPRs, that is generated during the duration of the Grant but not as part of the Grant or needed to exploit the Results.
	fair and reasonable conditions means appropriate conditions, including financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access (for example, the actual or potential value of Results or Background and the scope, duration or other characteristics of exploitation).

Ownership:

- 10.1 You will be the owner of any Results and you are responsible for the management and protection of the IPRs within the Results at your own cost, subject to compliance with Clauses 10.2, 10.3 and 10.9:
- 10.2 You will grant to us a permanent irrevocable. royalty free, non-exclusive, world-wide licence (including a right to sub-licence) to access, use, reproduce modify or adapt the Results for our own purposes. In circumstances where the Results are an implementation of design specifications into simulations, prototypes, demonstrators or first product/services, the access rights granted under this Clause 10.2 are limited to a duration of five (5) years from expiry of the Grant and for the purposes of fulfilling our research and development objectives, to assess the system effectiveness of the wave energy converter technology (energy yield, availability, process, efficiency), cost of ownership and commercial viability.

- 10.3 Following our request, in writing, you will grant non-exclusive licences to third parties to exploit the Results under fair and reasonable conditions (without the right to sub-licence).
- 10.4 The ownership of Background used in connection with the Grant shall remain the property of the party introducing it. A list of Background and Sideground is included in the Offer Letter (if applicable). We will inform each other about the generation of/changes in Background and Sideground within thirty (30) days from the generation/change, and any such generation/change shall be [noted in writing, including email, to the project officer].
- 10.5 In relation to the Background and Sideground, we each have the right to:
- 10.5.1 access to each other's Background, under fair and reasonable conditions and on a non-exclusive basis, for exploitation of the Results, and for using the Results for their own purposes; and
- 10.5.2 access to each other's Sideground, under fair and reasonable conditions and on a non-exclusive basis, for exploitation of Results and for using the Results for its own purposes.
- 10.6 You may transfer ownership of your Results provided that:
- 10.6.1 we have the first right of refusal of ownership of your Results;
- 10.6.2 you ensure that your obligations in respect of the Results apply to the new owner and that this new owner is obliged to pass them on in any subsequent transfer, but including a requirement to do so in their contractual arrangement with the new owner;
- 10.6.3 prior to any transfer, you must provide us with at least forty-five (45) days advanced notice of your intention to transfer ownership of the Results; and
- 10.6.4 the notification must include sufficient information on the new owner to enable us to assess capacity of the new owner to meet contractual obligations in respect of the Results, including the obligation to commercially exploit, and the effect on our access rights to the Results.
- 10.7 We have the right to object within thirty (30) days of receiving notification of intention to transfer the Results, if we can show that it would adversely affect the obligations in respect of the Results, including an obligation to commercially exploit or our right of access to the Results. If an objection is raised, the transfer will not take place until an agreement has been reached between us.

Exploitation:

- 10.8 You will, for at least [five (5) years] following termination or expiry of the Grant, take measures to ensure that the Results are exploited commercially (directly or indirectly) through transfer or licensing. During this period, you will submit to us a report of the measures taken to commercially exploit the Results on an annual basis, or a time period separately agreed between us.
- 10.9 If you fail to take measures to commercially exploit the Results in accordance with paragraph 10.8, or use the Results to the

detriment of the public interest, including security interests, we have the right to require that ownership of the Results is transferred to us, or to a third party appointed by us, on a free of charge basis.

- 10.10 You will monitor the management of the Results and its IPRs and bear the costs associated with this. We will have the right to monitor the management of any IPRs associated with the Grant. You must inform us of Results that can be exploited, regardless of whether they can be protected or not, within thirty (30) days from when the Results are generated, including providing information on the contents of the Results, proposed approach for protecting the Results and the timing for doing so. If you do not seek protection for the Results that should be protected, we have the right to request that the Results are transferred to us.

Infringement:

- 10.11 You will notify us of any claim or demand made or action brought against you for infringement or alleged infringement of IPRs which might affect your ability to fulfil your obligations under the Grant.

11. FAIR WORK PRACTICE

- 11.1 You will:
- 11.1.1 ensure that all of your employees (including apprentices and those aged 16 and over), and any UK based workers who are not directly employed by you but are directly engaged in delivering the Project are paid at least the Real Living Wage as calculated and published by the Living Wage Foundation an initiative of Citizens UK (registered charity number 1107264) from time to time for the Period of Obligation;
- 11.1.2 not employ anyone using a zero-hours contract where it is inappropriate to do so. Whether or not it is "appropriate" will depend on the nature, type and/or location of the particular job;
- 11.1.3 make a copy of your Gender Pay Gap Report available to us, if there is a legal requirement for your organisation to produce one;
- 11.1.4 ensure that there are appropriate communication channels in your organisations to support employee feedback and engagement;
- 11.1.5 actively reduce and/or remove any gender pay gap and take positive steps to create a more diverse and inclusive workplace;
- 11.1.6 invest in, and develop your workforce;
- 11.1.7 offer flexible and family friendly working practices for all workers from day one of their employment;
- 11.1.8 oppose the use of fire and rehire practices;
- 11.1.9 (if you have or operate a website at any time prior to the Last Claim-by Date) include a statement on your website by the Last Claim by Date confirming your commitment to Fair Work First. You must maintain this statement for the whole Period

of Obligation. You will provide us with a link to this statement at our request; and

- 11.1.10 provide us, on request, with any information and documents we may request from time to time to monitor your compliance during the Period of Obligation with this Condition 10. We might need to audit your compliance and Condition 3.1.13 will apply.

12. OTHER IMPORTANT INFORMATION

- 12.1 If there is any inconsistency between the Offer and these terms, the Offer shall prevail.
- 12.2 The laws of Scotland apply to these terms and our Agreement and any non-contractual obligations arising from or in connection with them. The Scottish courts will have exclusive jurisdiction over any dispute arising out of or connected with this Agreement.
- 12.3 If we do not enforce one of more of our rights or remedies straight away, this does not mean that we will not do so in future. We will give up our right to enforce the Agreement only if we tell you in writing.
- 12.4 You cannot transfer, subcontract or sublet any of your rights and/or obligations under the Agreement to anyone else.
- 12.5 The Agreement does not confer a right on any other person to enforce any term of this Agreement under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.
- 12.6 If any provision of the Agreement is or becomes illegal or invalid it will not affect the legality or validity of any other part of this Agreement.
- 12.7 We will not be responsible for the quality of any work being produced or undertaken because of or in connection with the Project or for any professional advice or services funded wholly or partly by the Grant.
- 12.8 No amendments to this Agreement can be made unless they are in writing and have been signed by or on behalf of both of us.
- 12.9 Any notice given under this Agreement must be in writing and addressed to the Party at its principal place of business (or such other address as that party may have specified to the other Party in writing) and be delivered personally, sent by pre-paid first-class post or recorded delivery or sent by email.
- 12.10 This Agreement may be executed in counterparts. Where executed in counterparts:
 - 12.10.1 this Agreement shall not take effect until all of the counterparts have been delivered; and
 - 12.10.2 delivery will take place when the date of delivery is agreed between the Parties after execution of this Agreement as evidenced by the date inserted at the end of the Offer.