

Terms and Conditions (“Terms”)

Last updated – 11 March 2025

Background

The European Marine Energy Centre Limited, a company incorporated in Scotland under the Companies Acts (registered number SC249331) and having its registered office at The Charles Clouston Building, ORIC, Back Road, Stromness, Orkney KW16 3AW (“EMEC”) is a company based in Orkney, Scotland, and have entered into a contract with Offshore Wind Power Limited a company incorporated in Scotland under the Companies Acts (registered Number SC605260) and having its registered office at Clava House, Cradlehall Business Park, Inverness, United Kingdom, IV2 5GH (“OWPL”) to facilitate specific aspects of the development of the West of Orkney Windfarm; which is a project aiming to provide power to more than two million homes and deliver long-term economic benefits to communities across the north of Scotland.

On behalf of OWPL, EMEC released an Offshore Research and Innovation Programme to sponsor innovative projects to help the supply chain bring new solutions to market, build operational capacity and scale up activities. The innovation calls were designed to support companies to explore ways to overcome the technical challenges of offshore wind development, embedding economic benefits in the North of Scotland (the “Programme”).

These Terms and Conditions will form the Terms of a contract between EMEC and the companies' submitting applications under the Programme.

1. Definitions

"Applicable Law" means any and every binding law, statute, proclamation, by-law, directive, decision, regulation, rule, order, notice, rule of court or delegated or subordinated legislation (including directions or guidance relative to any of the foregoing issued by any court or governmental or regulatory body, department or authority) having effect in Scotland and/or the United Kingdom which in any way affects or impinges upon any of the matters referred to or requiring to be done under these Terms.

"Background Intellectual Property" means any Intellectual Property Rights that are in the possession of a Party prior to the commencement of the provision of the Project deliverables or the date of these Terms, whichever is earlier.

"Company" means the company applying to the Programme for Funding.

"Confidential Information" means any proprietary, secret or confidential commercial, financial, or technical information, know-how, trade secrets, inventions, software and other information whatsoever in whatever medium whether disclosed orally or in writing together with all reproductions in whatsoever form or medium and any part or parts thereof, which is designated as confidential information or which ought to be considered as confidential information.

"Force Majeure Event" means an event outside the reasonable control of either Party affecting its ability to perform any of its obligations (other than payment) under the Contract including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) 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;
- (d) nuclear, chemical or biological contamination or sonic boom;

- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident;
- (g) non-performance by suppliers or subcontractors; and
- (h) interruption or failure of utility service.

"Funding" means the funding payable by EMEC to the Company for the Project.

"Intellectual Property Rights" means patents, copyright and related rights, moral rights, trademarks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Permit to Access Procedure" means the permit to access procedure set out in the standard operating procedure 'Control of Work' SOP003 and available from EMEC on request, and **"Permit to Access"** shall be construed accordingly.

"Programme Manager" shall be Abbie Sinclair, abbie.sinclair@emec.org.uk unless otherwise amended in writing by both Parties.

"Project" means the detailed application of innovation call under the programme incorporating deliverables which may be broken down into work packages.

"Quarterly Invoice" means a claim for funding submitted for the three month period ending on each of 31 January, 30 April, 31 July and 31 October¹.

"Site" means any area of work on land or offshore that is as agreed and defined within the scope of the Project.

"VAT" shall have the meaning given to it in the Value Added Tax Act 1994 and shall include any similar tax whether in substitution therefor or in addition thereto.

"Working Days" means any day other than a Saturday, Sunday or public holiday in Scotland.

"Work Packages" are the breakdown of the Project into deliverables.

"Works" means all records, reports, documents, papers, drawings, designs, transparencies, photos, artwork, graphics, logos, typographical arrangements, creative works and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Company in the provision of the Project.

2. Interpretation

A reference to a company shall include any company, corporation, or other body corporate, wherever and however incorporated or established operating under the control or influence of the named company.

These Terms shall be binding on, and enure to the benefit of, the Parties to these Terms and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted

¹ To be finalised following funding award.

assigns.

A reference to writing or written includes email and any communications media which enables transmission of written content.

Any obligation in these Terms on a person not to do something includes an obligation not to agree or allow that thing to be done by others within that person's control or influence.

Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

3. Contract

The Contract consists of the following documents:

- (i) These Terms; and
- (ii) An express written agreement from EMEC to the Company which is attached to these Terms which includes the Project and Funding details.

4. General Duties of the Company

The Company shall deliver the Project to EMEC in accordance with these Terms and in a professional manner with reasonable skill and care.

The Company shall ensure that it and all staff and associates supplying the Work Packages shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper delivery of the Project.

In case of illness or accident preventing the delivery of any aspect of the Project, the Company shall promptly notify EMEC of such illness or accident.

The Company shall inform EMEC promptly:

- of any issue or material change that could affect the progress, delivery, or exploitation of the Programme, and of any changes to its constitution, legal form, membership structure (if applicable) or ownership.
- If staff, officers or volunteers are subject to any complaint or investigation into dishonestly, fraudulent activities or business misconduct, carried out by any regulatory body or the police.
- Of any allegations, whether proven or not, of fraud, criminal convictions, bankruptcy arrangements, or disqualifications.

The Company will fully cooperate with EMEC, responding to any requests of information promptly and comprehensively, allowing reasonable (audit) access to its sites and staff upon request.

The Company shall comply with all Applicable Laws and regulations in carrying out its activities under these Terms.

The Company shall have and maintain adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest in any personal, business or professional activities by it or its representatives which conflict or could conflict with any obligations under these Terms.

Should the Company fail to carry out the Project in accordance with these Terms, the Company shall be obliged at EMEC's request (and without prejudice to any other right it may

have) and at EMEC's expense to re-perform those parts of the Project which have not been carried out in accordance with these Terms.

5. Funding

The Funding shall be as stated in the expressed written agreement as detailed in clause 3 of these Terms ("**Funding**").

EMEC will not make Funding Payments for any aspect of the Project that the Company is already in receipt of, whether from EMEC (in a separate project award), or any other funding organisation. If separate funding has been awarded for costs associated with the same Project deliverables, it is the responsibility of the Company to notify EMEC and any other funding organisation. If the Company is found to be claiming duplicate Project costs whilst in receipt of separate funding, EMEC will consider terminating the Project, recovering all Project costs and where there is evidence, or dishonesty (Fraud Act 2006), referring the matter to the Police.

6. Payment

The Company shall submit a Quarterly Invoice which outlines the Project progress, and financial claim. This should be submitted to emec@offshoreinnovation.scot for review within 30 days of the period end.

Payment of the Funding (plus VAT if applicable) or any part of the Funding will be made by EMEC within 30 days of approving the Company's Quarterly Invoice unless further information is required to support the claim.

EMEC does not have to pay any Quarterly Invoice which is received more than 30 days after the end of the period to which it relates.

7. Subcontracting

Where the Company wishes to utilise the services of subcontractors, permission must be sought first from EMEC.

In the event of permission being sought for the utilisation of a subcontractor/s EMEC reserves the right to request further information and conduct further checks. Any relationship between the Project and subcontractor must be declared.

Should permission be granted for the Company to enter into a subcontract for services then the Company remains responsible for such third party's compliance with the provisions of the Project as if it were undertaking the work itself and as such all provisions contained herewith must be passed on to the third-party.

8. Delivery

EMEC shall engage the Company to deliver the Project and the Company shall deliver the Project based on the conditions detailed within these Terms.

It is understood that the Project delivered by the Company to EMEC will be shared with OWPL for their benefit.

The Project shall be performed at the Company's premises or where granted the subcontractor's premises unless otherwise stipulated within the Schedule.

9. Monitoring

Throughout the term of these Terms, the Company's progress will be monitored by EMEC through the Programme Manager. The Programme Manager is the Company's first point of contact for all official notifications and queries. The Company should comply with any

reasonable request for information and deadlines by the Programme Manager.

The Company will meet with the Programme Manager and OWPL to review the Quarterly Invoice for the period since the last monitoring meeting. This meeting will take place within ten (10) working days of the submission of the claim.

The Programme Manager will require the Company to provide satisfactory evidence of the Work Package delivery in relation to technical, financial, and project management.

Failure to provide satisfactory evidence in any one of these areas will prevent the Programme Manager from validating the Quarterly Invoice and Funding being paid.

10. Site Attendance

Access to the Site for the Company is prohibited unless expressly permitted by EMEC through the Permit to Access Procedure (which permission shall not be unreasonably withheld or delayed).

If the Company is required to attend the Site for any activity whatsoever, it is required that it and all its employees, agents and contractors have the authority and that a Permit to Access has been granted.

EMEC will not be held responsible for any costs incurred by the Company for failure to arrange access.

11. Health, Safety and Environment

The Company agrees to comply, and to ensure that its Personnel comply, with all relevant health, safety and environmental legislation and laws in force from time to time. Without limiting any other provision of the Contract, the Company must familiarise itself with the work area and any potential hazards prior to commencing work.

The Company will observe the principles of ecologically sustainable development where its activities and operations affect the environment. The Company will ensure that it does not pollute, contaminate or damage the environment and keep EMEC's premises clean and tidy and free of refuse during the performance of the Project.

Notwithstanding any other term, in the event of any breach of this clause 11, EMEC may:

- Require the Company, Company's Personnel and/or any other person to leave the Site immediately; and
- Require the Company and/or any of its Personnel to remove any material or substance from the Site, and the Company must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

12. Insurance

The Company shall, throughout the duration of the Contract and for a period of one year following the termination of its appointment (howsoever arising) maintain with an insurer of good repute:

- Where delivering an office based Project - professional indemnity insurance to cover any negligent act, omission or default (including breach of statutory duty) on the part of the Company. Such insurance shall have a minimum level of indemnity of £1 million for each and every claim;

- Where delivering a site based Project – public liability insurance to cover any negligent act, omission or default (including breach of statutory duty) on the part of the Company. Such insurance shall have a minimum level of indemnity of £1 million for each and every claim;
- Where delivering both site and office based Projects then both of the above apply;
- employer's liability insurance in respect of its employees in accordance with any legal requirement for the time being in force; and
- any other insurances required by Applicable Law in each case for such sum as would be maintained in accordance with Industry Practice and subject to obligations equivalent to those assumed by the Contractor in terms of these Terms.

13. Limitation of Liability

The Company shall not be liable to EMEC in contract, delict (including without limitation negligence) and/or breach of statutory duty for any loss or damage which EMEC may suffer by reason of any act, omission, neglect or default (including negligence) in the performance or non-performance of these Terms by the Company, its employees, officers, representatives, servants or agents, in a sum which is greater than the total Funding which has been paid by EMEC.

EMEC shall not be liable to the Company in contract, delict (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Company may suffer by reason of any act, omission, neglect or default (including negligence) in the performance or non-performance of the Contract by EMEC, its employees, officers, representatives, servants or agents, in a sum which is greater than the total Funding (whether or not such Funding or any part thereof have been paid by EMEC).

Neither Party shall be liable to the other in contract, delict (including without limitation negligence) and/or breach of statutory duty for any loss of profits and/or loss of production or any indirect or consequential (including economic) loss of any kind arising from or in connection with these Terms.

Nothing in the Contract shall operate so as to exclude or limit any liability which cannot be legally excluded or limited, including:

- a Party's liability in respect of death or personal injury caused by its negligence or the negligence of its employees, officers, representatives, servants or agents; or
- a Party's liability for fraud or fraudulent misrepresentation.

14. Force Majeure

Provided it has complied with the paragraph immediately below this one, if a Party is prevented, hindered or delayed in or from performing any of its obligations under these Terms by a Force Majeure Event (the "**Affected Party**") (other than a payment obligation), the Affected Party shall not be in breach of these Terms or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

If a Party is affected by a Force Majeure Event, it shall (i) forthwith inform the other Party in writing of the matters constituting the Force Majeure Event and shall keep the Party fully informed of the continuance and of any change of circumstances whilst such Force Majeure Event continues and (ii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

If the Force Majeure continues for longer than 3 months either Party may at any time whilst such Force Majeure Event continues, by notice in writing to the other, terminate the Contract.

15. Intellectual Property Rights

All Background Intellectual Property Rights remain the property of the Party which created and/or possessed them.

The Company agrees and undertakes to procure that ownership and licences of any Works generated by the Company (or any person employed by the Company or any sub-consultancy) in connection with the Project shall vest in EMEC and no reproduction, sale, disposal, licence or disclosure of such Works shall be granted or permitted without the prior written consent of EMEC for this purpose.

The Parties agree that ownership of the Works will in turn be transferred to OWPL and that any rights and permissions granted will in turn be transferred to and vest with OWPL.

The Company agrees to make the Works detailed in this clause 15 available to EMEC in a fully accessible format.

This clause 15 does not include any software developed during the Project which will be made available if required through a license agreement to be agreed in writing between the Parties.

The Company agrees to indemnify EMEC and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by EMEC, or for which EMEC may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works supplied by the Company to EMEC under these Terms.

16. Termination

Notwithstanding any other provision of the Contract, The Contract may be terminated by either party giving to the other not less than 4 weeks written notice of intention to terminate at the expiry of the notice.

EMEC shall have the right to terminate the Contract forthwith by notice in writing on the occurrence of any of the following events:

- The Company shall have been sequestrated or become apparently insolvent or shall have compounded with or granted a trust deed for the benefit of creditors; or
- The Company shall have omitted or committed any act which constitutes a material or persistent breach of the terms of the Contract.

17. Consequences of Termination

EMEC shall pay the Company the Funding properly due to the Company in respect of the approved Project delivered up to and including the date of termination.

Termination shall not affect any rights or remedies of either Party which have accrued prior to the date of termination.

18. Variation

No variation or alteration of any of the provisions of these Terms shall be effective unless it is in writing and is signed by a duly authorised signatory of EMEC and by a duly authorised signatory of the Company.

19. Confidentiality

Each Party:

- shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of these Terms or except where disclosure is otherwise expressly permitted by the provisions of these Terms.

Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other Party under or in connection with these Terms:

- is given only to such of the staff and professional advisors engaged to advise it in connection with these Terms as is strictly necessary for the performance by that Party of its other obligations under these Terms and only to the extent necessary for the performance by that Party of obligations under these Terms ; and
- is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors otherwise than for the purposes of these Terms.

Where it is considered necessary by either Party, the other Party shall ensure that staff or such professional advisors sign a confidentiality undertaking before commencing work in connection with these Terms.

Neither Party shall use any Confidential Information it receives from the other Party otherwise than for the purposes of these Terms.

The provisions of this clause 19 shall not apply to:

- any information which is or becomes public knowledge (otherwise than by breach of this clause);
- any information which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- any information which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- any information which is independently developed without access to the Confidential Information; and
- any disclosure pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure.

Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of these Terms in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of the other Party's Intellectual Property Rights.

20. Publicity

EMEC reserves the right to publicise information about the Programme, including names of companies, and the outcomes of activities undertaken. Any information due to be disseminated publicly will be agreed with the Company in advance of publicity.

Should the Company seek to make any press announcements or publicity around the Programme approval should be sought from EMEC prior to dissemination.

21. Notices

No notice or other communication from one Party to the other shall have any validity under these Terms unless made in writing by or on behalf of the Party sending the communication.

Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) to the registered office address of the other Party, or by electronic mail between suitably senior, authorised representatives of each Party (confirmed by delivery receipt) to an email to be mutually agreed in writing.

22. General

Any failure or delay on the part of either Party to exercise any of its rights under the Contract shall not operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by either Party of any breach by the other Party of any of its obligations under the Contract shall not affect the rights of that Party in the event of any further or additional breach or breaches.

The Contract shall not create or evidence, nor be deemed to create or evidence any agency, partnership or relationship of employer and employee between EMEC and the Company.

The Contract sets out the entire agreement between the Parties with respect to the subject matter of the Contract and supersedes all previous agreements and understandings between the Parties with respect thereto and may not be modified except by an instrument in writing duly signed by or on behalf of the Parties.

If any provision of the Contract is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect.

For the avoidance of doubt, save as expressly provided herein, nothing in the Contract shall confer on any third party any benefit or the right to enforce any provision of the Contract. Clauses 9 Monitoring, 11 Intellectual Property Rights and any additional terms as provided within the express written agreement forming the Contract are intended to be enforceable by OWPL.

Neither Party shall be entitled to assign, novate, or otherwise transfer the Contract without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed.

23. Law and Jurisdiction

The Contract shall be governed by and construed in accordance with the laws of Scotland and the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or its subject matter or formation. The Parties confirm that they will not raise any defence based on *forum non conveniens* in any proceedings.