Department of
Trade and Industry

Address of Management Contractor

Direct line
Local fax
Our ref
Your ref
Date

WAVE AND TIDAL STREAM ENERGY DEMONSTRATION SCHEME

PROJECT REFERENCE NO.
PROJECT TITLE (2)

<u>Definitions</u>

"Scheme"	The Wave and Tidal Stream Energy Demonstration Scheme.
"Department"	The Department of Trade and Industry.
"Generator Unit"	A single physical device capable of converting wave energy or tidal stream energy into electrical energy.
"Manufacturer"	The organisation responsible for procurement of component parts, their assembly of into a Generator Unit, and responsible for the performance of the assembled Generator Unit until such time that the Generator Unit has satisfactorily completed any commissioning tests and trials and, if applicable, has been transferred in ownership to and accepted by the end user.
"Facility"	The generating station, comprising of multiple generator units and any associated infrastructure, which is capable of the metered export of electrical energy, the particulars of which are set out in Schedule 1.
"Eligible Facility"	That part of the Facility that is eligible for Capital Grant and Revenue Support from the Scheme.
"Project"	The work, costs, funding, payments, timeline and deliverables for the construction and operation of the Eligible Facility that is supported by the Department under the Scheme.

DRAFT

"Distributor"	The UK Public Electricity Supplier or the UK Transmission Line Operator that operates the electrical network into which electrical energy generated by the Facility is delivered.
"Host"	An intermediary providing local transmission of electrical energy between one or more Facilities and the Distributor.
"Metering System"	An electrical metering system compatible with the requirement specified in Schedule 8.
"Resource Monitoring System"	A monitoring system capable of measuring and recording the data specified in the Resource Monitoring Protocol.
"Resource Monitoring Protocol"	The resource-monitoring requirement specified in Schedule 9.
"Resource Data"	The record of resource energy inputs and intensities gathered using the Resource Monitoring System in accordance with the Resource Monitoring Protocol
"Metered Energy"	Electrical energy generated by the Eligible Facility and delivered to the Distributor net of any electrical energy imported into the Eligible Facility.
"kWh"; "MWh"	kilowatt hour; megawatt hour.
"MW"	megawatt
"$kW_{average}$"	The forecast average annual power of the Eligible Facility.
"Project Comparative Cost"	Calculated at £404/$kW_{average}$
"ROC"; "SROC"; "NIROC"	Renewables Obligation Certificate; Scottish Renewables Obligation Certificate; Northern Ireland Renewables Obligation Certificate.
Ofgem	The Gas and Electricity Markets Authority.
Renewables Obligation Certificate	A certificate issued by Ofgem under the Renewables Obligation Order 2002 pursuant to section 32 of the Electricity Act 1989.
Scottish Renewables Obligation Certificate	A certificate issued by Ofgem under the Renewables Obligation Order (Scotland) 2002 pursuant to the provisions of the Electricity Act 1989.

DRAFT

Northern Ireland Renewables Obligation Certificate	A certificate issued by Ofgem under the Renewables Obligation Order (Northern Ireland) 2006 pursuant to the provisions of the Electricity Act 1989.
"Contract Term"	The period from the Acceptance Date until the earliest to occur of: (i) 9 years from the Acceptance Date. (ii) 7 years from the Commissioning Date. (iii) Payment of the final claim for Revenue Support (iv) The date of termination of this Grant offer pursuant to paragraph 34.
"Acceptance Date"	The date on which the Grant offer acceptances duly signed by the Company/Participants are returned to the Secretary of State, accompanied if a condition of grant offer by evidence that all necessary private sector finance for the Project has been secured and is unconditional.
"Effective Date"	The date on which all the conditions of Grant offer have been fulfilled.
"End Date"	The date of expiration of the Contract Term.
"Commissioning Date"	The date on which the Company has declared the Eligible Facility to be commissioned, being (i) No earlier than the date on which the first kWh of Metered Energy has been delivered to the Distributor. (ii) No later than 2 years after the Acceptance Date.
"Construction Costs"	The costs of construction of the Eligible Facility.
"Net Eligible Costs"	The Construction Cost net of the cost of constructing a combined cycle gas turbine of the same forecast average annual power, the calculation of which is set out in Schedule 2.
"Grant"	Funding given by the Department toward the Project in accordance with the rules of the Scheme and the Terms and Conditions of this grant offer.
"Capital Grant"	That part of the Grant which is payable by the Department toward the Construction Costs incurred after the Acceptance Date and before the Commissioning Date.

DRAFT

"Revenue Support"	That part of the Grant which is payable by the Department for each MWh of Metered Energy generated after the Commissioning Date and before the End Date.
"Connected Company"	A company connected to any participant company named in this grant offer in that the companies are in the same group. For the purposes of this paragraph 'group' means any holding company of **the Company/any Participant** and any subsidiary of such holding company or of **the Company/any Participant**, and "holding company" and "subsidiary" have the respective meanings assigned to them in Section 736 of the Companies Act 1985
"Project Monitoring Officer"	The individual named in paragraph 56 who is monitoring the Project on behalf of the Secretary of State.

DRAFT

FOR THE ATTENTION OF **(1)**

Dear Sirs

If collaborative

1. I am pleased to inform you that subject to the terms and conditions of this letter the Secretary of State for Trade and Industry ("the Secretary of State") is prepared to pay **(3)** ("the Company") a grant not exceeding **(4)** under Section 5 of the Science and Technology Act 1965 over a period not exceeding the Contract Term to Project "**(5)**". The Project is to be carried out in collaboration with **(9)** (together with the Company "the Participants") in accordance with the terms of a collaboration agreement between the Participants, signed by all the Participants ("the Collaboration Agreement").

If not collaborative

1. I am pleased to inform you that subject to the terms and conditions of this letter the Secretary of State for Trade and Industry ("the Secretary of State") is prepared to pay **(3)** ("the Company") a grant not exceeding **(4)** under Section 5 of the Science and Technology Act 1965 over a period not exceeding the Contract Term to Project "**(5)**".

All

2. The project is to be undertaken in accordance with the following **(8):**

List Documentation

submitted to the Department under the Scheme.

Conditions of the Offer

3a. This offer is conditional on the Department receiving within three months of the date of this letter:

Either

- The grant offer acceptances duly signed by the Company's/Participants authorised representative/representatives.

Or, if firm unconditional commitments from all sources for finance were not in place at the time of application to the Scheme

- The grant offer acceptances duly signed by the Company/Participants accompanied by evidence that all necessary private sector finance for the Project has been secured and is unconditional.

If this condition is not met, the Grant offer shall lapse automatically.

If all necessary consents and permissions were not in place at the time of application to the Scheme insert paragraphs 3b, c and d.

3b. This offer is further conditional on the Department receiving within twelve months of the date of this letter:

- Evidence that all necessary consents and permissions for the Project have been secured.

If this condition is not met, the Grant offer shall lapse automatically.

3c. Subject to all conditions in paragraphs 3a and 3b of this offer letter being met, any Construction Costs from the Acceptance Date will qualify toward the Net Eligible Costs of the Project.

3d. Any Construction Costs between the Acceptance Date and the Effective Date are incurred or committed at the Company's/Participants own risk. If the condition in paragraph 3b is not met and the Grant offer lapses, the Secretary of State shall not be liable to pay Capital Grant or to contribute in any other way toward costs incurred or committed by the Participants toward the Project.

DRAFT

Financial – Capital Grant

4. The Capital Grant shall not exceed (**10**) and will be payable at **25%** of the Net Eligible Costs (as defined and detailed in Schedule 2) incurred and defrayed by the Company / Participants on or after the Acceptance Date. The table below sets out the forecast of costs for the Project, noting that the detailed forecast is presented in Schedule 2.

Forecast Construction Cost	£ **xx** million
Forecast Net Eligible Costs	£ **xx** million

5. The Capital Grant will be payable by instalments on successful completion of the milestones set out in Schedule 2.

6. Each milestone has a payment limit (as set out in Schedule 2). The Capital Grant will be payable on submission by the Company of an invoice accompanied by a statement of monies expended by the Company / Participants on the Project (in the format at Schedule 7).

7. Unless the Secretary of State otherwise agrees, payments will be made in accordance with the details in Schedule 2.

8. Claims for payment, submitted in accordance with the details in Schedule 2, shall be accompanied by the reports specified in Schedule 4, where applicable.

9a. Confirmation is required that the Company / Participants have expended the sums in respect of which claims are made. For this purpose, reports from an independent accountant must be provided with each claim, noting the terms of engagement are at Schedule 5 and the format of the report is at Schedule 6. Reports must be in the form set out in Schedule 6 and must be made by an independent accountant eligible under the terms of Section 25 of the Companies Acts 1989 for appointment as

auditor of a company. A person eligible under Section 34(1) of the Companies Act 1989 for appointment as auditor of a non-quoted company (as defined in that section) may only report on Grant claims made by such a company or by a business not incorporated under the Companies Acts.

If Collaborative

9b. Unless the appointed independent accountant is engaged to carry out a review of the costs incurred by each of the Participants involved in the Project, and the report provided covers all parties (noting the need to modify the wording thereof accordingly), it will be necessary to provide a report (prepared in accordance with the terms of Schedule 5 and submitted in the form set out in Schedule 6) for each of the Participants separately.

All

10. The Company/Any Participant may not subcontract any Connected Company without the prior written consent of the Project Monitoring Officer. Any such subcontracted Construction Costs are to be to be reviewed by an independent accountant, who shall provide a supplementary report, prepared in accordance with the terms of Schedule 5 and submitted in the form set out in Schedule 6. Any such subcontracted Construction Costs must exclude input VAT and any profit charged by the subcontractor.

11. In addition, should the supply of the Generator Units be subcontracted to a Manufacturer who is not the Company/a Participant in the Project, the cost to the Manufacturer of supply of those Generator Units within the Eligible Facility is to be reviewed by an independent accountant who shall provide a supplementary report, prepared in accordance with the terms of Schedule 5 and submitted in the form set out in Schedule 6, noting that:

(i) The Manufacturer, if a subcontractor and if not a company in the Company's/Participant's group, may charge the Company/Participants at other than cost of supply in that the Manufacturer may include profit and VAT in the fee, or may supply at less than cost provided such under-recovery of costs is not financed through a grant or other payment toward the capital or operational costs of the Project as specified in Paragraph 44;

(ii) The cost of Generator Units reported in the audit of the Company's/Participants costs may be different to that reported in the audit of the Manufacturer subcontracted to supply the Generator Units. In such event the Construction Costs eligible for Capital Grant shall be those incurred and defrayed by the Company/Participants.

If Collaborative

12. The Secretary of State may also require a report from an independent accountant to be submitted at times other than that specified above in exceptional circumstances including:-

a) Termination of the Project or withdrawal of any Participant from the Project;

b) A change in the accounting reference date or accounting practice of any Participant.

If not Collaborative

12. The Secretary of State may also require a report from an independent accountant to be submitted at times other than that specified above in exceptional circumstances including:-

a) Termination of the Project

b) A change in the accounting reference date or accounting practice of the Company.

All

13. The Secretary of State shall be under no obligation to make any payment on Capital Grant claims received more than three months after the Commissioning Date or the date of termination of this grant offer (whichever is the sooner) and there will be a general presumption against paying claims received after this date, unless he/she has previously agreed in writing to an extension.

14. The Company shall provide the Secretary of State with evidences of commissioning in accordance with the requirements of Schedule 2.

15. Despite the provisions of paragraph 6 the Secretary of State is under no obligation to pay the final instalment of the Capital Grant until the commissioning report as specified in Schedule 4 has been completed to his/her satisfaction.

16. Costs incurred after the Commissioning Date shall be ineligible for Capital Grant.

17. If the Company does not claim the Maximum Capital Grant by the 6th and final Capital Grant claim, the balance of the maximum Capital Grant and the actual Capital Grant claimed may instead be claimed through the Revenue Support component. The sum total of Capital Grant and Revenue Support shall not exceed the grant amount specified in paragraph 1.

Financial – Revenue Support

18. The Project shall be eligible for Revenue Support from the Commissioning Date. Any exports of Metered Energy prior to the Commissioning Date shall be ineligible for Revenue Support.

19. The Secretary of State shall pay Revenue Support to the Company in respect of Metered Energy after the Commissioning Date. The electrical energy generated and delivered to the Distributor is to be monitored using a Metering System.

20. The Secretary of State shall pay Revenue Support to the Company at a rate of £100/MWh of Metered Energy.

21. Revenue Support will be payable on submission by the Company of a valid claim for payment. Claims for payment shall be accompanied by the reports specified in Schedule 4, where applicable. Claims for Revenue Support are to be submitted monthly/quarterly and no less frequently than annually. Successive claims must cover consecutive periods with no gaps. Unless the Secretary of State otherwise agrees, claims in respect of Metered Energy generated more than 12 months prior to the date of receipt of the claim will disqualified from Revenue Support.

22. Confirmation is required that the Company has generated and delivered to the Distributor the Metered Energy in respect of which claims are made in the period. For this purpose the Company must provide evidence, the nature, source, format and frequency of which is to be agreed in writing by the Project Monitoring Officer prior to the Commissioning Date and compatible with the principles set out in Schedule 10.

23. Despite the provisions of paragraph 21 the Secretary of State is under no obligation to pay any claim for Revenue Support whilst any report required for this Project has not been prepared to his/her satisfaction.

24. Despite the provisions of paragraph 21 the Secretary of State is under no obligation to pay more than 95% of the maximum Revenue Support until the final report due under the Revenue Support component has been prepared to his/her satisfaction.

Financial – General

25. No Grant shall be paid in respect of costs incurred or electricity generated after the End Date.

26. Claims for payment should be made to the **Programme Management Contractor** finance officer named in paragraph 57. Payment will be made by the **Programme Management Contractor**, on behalf of the Secretary of State following his/her authorisation of such payment.

27. Any overpayment of Grant, whether disclosed by a report or otherwise, must be refunded forthwith to the Secretary of State on his/her first demand or upon the Company becoming aware that Grant has been overpaid, whichever first occurs.

28. Once a fully documented claim has been received, Grant will normally be posted, or the claim rejected, within 30 days, unless it is necessary for the Department to seek further information to support the claim. All claims will be paid in pounds sterling.

20. The final claim for Revenue Support is to be marked "Final Claim".

Resource Monitoring

30. The resource energy inputs to the Eligible Facility shall be monitored in accordance with the requirements of the Resource Monitoring Protocol.

31. Resource Data is to be reported in the format and to the schedule specified in the Resource Monitoring Protocol.

Changes affecting the Project

If not Collaborative

32. Subject to the prior written agreement of the Company and the Secretary of State an additional participant may be accepted into the Project. The respective roles, obligations and rights of the Company and the additional participant shall be defined in a collaboration agreement. At his/her discretion the Secretary of State shall issue such amendment to this grant offer as he/she deems necessary to accommodate the inclusion to the Project of the additional participant within the Contract Term and the grant sum specified in paragraph 1. Such amendment shall be conditional on full acceptance of all terms and conditions by both the Company and the additional participant.

If Collaborative

32a. Subject to the prior written agreement of the Participants and the Secretary of State an additional participant may be accepted into the Project. The respective roles, obligations and rights of the existing Participants and the additional participant shall be defined in a revised collaboration agreement. At his/her discretion the Secretary of State shall issue such amendment to this grant offer as he/she deems necessary to accommodate the inclusion to the Project of the additional participant within the Contract Term and the grant sum specified in paragraph 1. Such amendment shall be conditional on full acceptance of all terms and conditions by all existing Participants and the additional participant.

DRAFT

32b. In the event of a Participant withdrawing the remaining Participants will co-operate with the Secretary of State in securing an alternative participant or participants, if it is necessary in the Secretary of State's view in order to complete the Project.

All

33. Entitlement to support under the Scheme ceases on change of beneficial ownership of the Facility or the Eligible Facility, or of the Company/any Participant unless otherwise agreed by the Secretary of State. Agreement to any change of ownership is at the Secretary of State's discretion and only within the terms of this Scheme.

34. While the Department in supporting the Project recognises the inherent technical and financial risks, there may be occasions when the Secretary of State considers that the payment of Grant should cease and this grant offer be terminated, or that Grant already paid should be reclaimed. The Secretary of State shall be under no obligation to pay the Grant, and any Grant already paid may become repayable, in whole or in part, at his/her discretion, if:

(i) He/she considers that the future of the Project is in jeopardy;

(ii) In his/her opinion progress towards completion of the Project, as specified and agreed, is unsatisfactory or if the Project has not been commissioned within 2 years of the date of acceptance of this grant offer, or if the company/Participants;

(iii) In his/her opinion the Company is not taking all reasonable steps to implement the Resource Monitoring Protocol and report Resource Data.

(iv) An asset, the cost of which has been included in the Net Eligible Costs, is not used for the purpose of the Project, except as previously agreed by the Secretary of State in writing;

(v) Within the period commencing on the date of acceptance of this grant offer and ending on the End Date.

(a) The Company/Any Participant becomes the subject of a proposal for a voluntary arrangement or has become subject to an Administration Order or has a petition for an Administration Order or a petition for a winding-up order brought against it or passes a resolution for a winding-up or makes any composition, arrangement, conveyance or assignment for the benefit of its creditors, or purports to do so, or if a receiver or any other person is appointed in respect of its undertaking or of all or any of its property or if the Participant does or suffers anything substantially equivalent to any of the foregoing.

(b) The Company/Any Participant ceases to be a subsidiary (as defined in the Companies Act 1985) of any company of which it is a subsidiary at the date of this letter or becomes a subsidiary (as so defined) of a company of which it is not a subsidiary at the date of this letter, and such change of status is likely in the opinion of the Secretary of State to affect adversely the Project or the exploitation in accordance with the provisions of this letter of the results of the Project;

If Collaborative

(c) There is a change of beneficial ownership of the Facility or any part of the Eligible Facility including changes of partners within the consortium, or a change of beneficial ownership of any Participant, unless otherwise agreed by the Secretary of State.

If not Collaborative

(c) There is a change of beneficial ownership of the Facility or any part of the Eligible Facility or a change of beneficial ownership of the Company, unless otherwise agreed by the Secretary of State.

All

(vi) The Company/Any Participant does not comply with or observe any condition of this letter;

(vii) In his/her opinion there has been a breach of, or failure to comply with any condition of the Scheme including any condition of this offer letter.

35. The Company shall inform the Department promptly in writing of any cessation of work on the Project and of any event or circumstance likely to affect significantly the satisfactory completion of the Project including any of the events referred to above.

General

36. At any time prior to the End Date the Company may not receive more than one ROC, SROC or NIROC per MWh of electrical energy exported from any Generator Unit that is or has been a part of the Eligible Facility. The Company may not benefit directly or indirectly as a consequence of issue to a Host or to any other party prior to the End Date of more than one ROC or SROC or NIROC per MWh of electrical energy exported from any Generator Unit that is or has been a part of the Eligible Facility

If Collaborative

37. The Company shall manage the Project in accordance with the terms of the Collaboration Agreement And shall carry out the duties of lead company, which are as follows:

(i) to use its best endeavours to ensure that the Participants do everything which is requisite to enable the terms and conditions of this letter to be fulfilled;

(ii) to receive Grant payments on behalf of itself and of other Participants and upon receipt of such payments to make corresponding payments to other Participants in accordance with the terms of the collaboration Agreement between the Participants.

If not Collborative

37. - Paragraph 37 is omitted from this Grant offer letter. -.

All

38. Any subcontract greater than £50,000 in value is to be procured through competitive tender and shall be subject to the written consent of the Project Monitoring Officer named in Paragraph **63** prior to the issue of the subcontract.

39. The Secretary of State and his/her representatives and advisers shall have the right to inspect the Eligible Facility and its component parts at any time including during manufacture, installation, operation, maintenance and refurbishment, and to inspect the records of the Project at any time and from time to time and to require such further information to be supplied as he/she or they see fit. Such further information may include but is not limited to information concerning the financial position of the Participants/Company. In addition, the Company shall permit the Secretary of State and his/her

representatives, including an independent auditor on request and at all reasonable times to examine all records and accounts at the offices of the Company or at such other places as the Secretary of State shall direct, and to take copies, and shall provide the Secretary of State or the representatives of the Secretary of State which may include an independent auditor with such explanations relating to those records and expenditure as it may request.

40. The Secretary of State and his/her representatives and advisers shall have the right to undertake independent monitoring of the Eligible Facility and to undertake such tests as he/she may require from time to time.

41. The Secretary of State and his/her representatives and advisers shall have the right to call and attend meetings with officers of the Company/Participants if necessary.

42. The Secretary of State shall be entitled to withhold payment and/or claim repayment of Grant under this letter to the extent of the amount of any grant or other payment which has been received, or is, in the opinion of the Secretary of State, likely to be received, toward the capital or operational costs of any part of the Eligible Facility or, or as a revenue subsidy for any part of the Eligible Facility, from any public authority and which the Secretary of State considers is payable towards the Eligible Facility. For the purposes of this paragraph:

(i) "grant or other payment toward the capital or operational costs of the Project" includes any grant or other payment from a public authority to a subcontractor or supplier to the Company/any Participant.

(ii) "public authority" includes any of the European Communities or their Institutions, any government department, research council, local authority, devolved administration, regional development agency, or body wholly or partly supported by public funds or charitable contributions.

The terms of this paragraph do not apply:

(i) to ROCs, SROCs or NIROCs issued to the Company at a rate of one per MWh exported by the Eligible Facilty.

(ii) to other payments whose availability has been disclosed by the Participants/Company to the Secretary of State before the date of this letter and which has been taken into account in making this offer.

43. Notwithstanding the provision of paragraph 42 the Secretary of State may:

(i) withhold payment of grant and/or reclaim any Grant paid to the extent necessary to ensure that any assistance given under this offer letter taken together with any other assistance which, in the opinion of the Secretary of State, has been or is likely to be received towards the Project is within the aid limits laid down by the European Communities;

(ii) withhold and/or reclaim grant with interest from the date of payment if required to do so by a decision of the Commission of the European Communities or as a result of any obligation arising under Community law.

44. In addition to the above, in the event that the Company/any of the Participants receive a financial award from the European Union or any award from any other UK state source, (and other

Member States), excluding Climate Change Levy exemption and ROCs, SROCs and NIROCs, the Secretary of State may reduce the Grant payable to the Company in accordance with State Aid rules.

45. The Secretary of State may provide the Commission of the European Communities with information about assistance under the Scheme in compliance with Treaty obligations.

46. No amendment to the terms of this offer will be effective unless and until agreed in writing on behalf of the Secretary of State.

Publicity and promotion of the Project

47. The Company must cooperate with the Secretary of State in the promotion of the Scheme and the Project through access to the site and through the provision of promotional material and licence to use or to gather such material at no extra charge to the Secretary of State.

Probity

48. The Company/Participants shall not do (and warrants that in signing the grant offer letter it/they has/have not done) any of the following (referred to in this paragraph as "prohibited acts"):

(i) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract/offer of grant with the Crown, or for showing or not showing favour or disfavour to any person in relation to this or any other contract/offer of grant with the Crown;

(ii) enter into this or any other contract/offer of grant with the Crown in connection with which commission has been paid or has been agreed to be paid by it/them or on its/their behalf, or to its/their knowledge, unless before acceptance of the grant offer letter particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Secretary of State.

49. If the Company/Participants, their employees, agents or any sub-contractor, or anyone acting on their behalf, do any of the prohibited acts or commit any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Company/Participants, in relation to this or any other contract with the Crown, the Secretary of State shall be entitled:

(i) to cease payment of the Grant and recover from the Company/Participants any payment already made;

(ii) to recover from the Company/Participants the amount or value of any such gift consideration or commission; and

(iii) to recover from the Company/Participants any other loss sustained in consequence of any breach of this clause, whether or not the grant offer ceases.

50. In exercising its rights or remedies under this clause, the Secretary of State shall:

(i) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;

(ii) give all due consideration, where appropriate, to action other than ceasing payment of the Grant/reclaiming Grant already paid, including (without limitation to):

(a) requiring the Company/ Participants to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;

(b) requiring the Company/Participants to procure the dismissal of an employee (whether its/their own or that of a sub-contractor) where the prohibited act is that of such employee.

Assignment

51. The Company/Participants shall not, without the written consent of the Secretary of State, assign the benefit or burden of this grant offer or any part thereof.

52. Not withstanding anything to the contrary herein, the Secretary of State shall henceforth be entitled to assign, novate or otherwise transfer any or all of [his/her] rights and/or obligations under this grant offer without further payment to:

(i) Any former department, office or agency of Her Majesty's Government (if such organisation should be privatised) and/or

(ii) Any private sector body which has been engaged by the Secretary of State or any other department, office or agency of her Majesty's Government substantially to perform any of the functions of the Department.

In the event that the Secretary of State excises his/her right under this clause in favour of a body that is not part of the Department, the said body shall only be able to assign, novate, sub-contract or otherwise dispose of any of its rights and obligations under this grant offer or any part thereof with the previous consent in writing of the Company/Participants.

Acceptance of Offer

53. Acceptance of this offer constitutes agreement in full to the terms and conditions set out in this letter.

If Collaborative

54. The offer should be accepted by a director of the Company signing the duplicate copy of the offer letter on behalf of the Company and by a director of each of the other Participants to be supported by the Department accepting on behalf of that Participant by signing the undertaking at the end of this letter. The letter and the Participants' acceptances should then be returned to me.

If not Collaborative

54. The offer should be accepted by a director of the Company signing the duplicate copy of the offer letter on behalf of the Company and returning it to me.

All

55. This offer letter shall be governed by and construed in accordance with English law in all respects.

56. If this offer is accepted, the Project will be monitored on behalf of the Secretary of State by **Programme Management Contractor** whose authorised representative shall be **(14)** ……..

Telephone –…..
Fax –
Email –

57. If this offer is accepted, claims for Capital Grant and Revenue Support are to be sent to the **Programme Management Contractor** for the attention of **(15)** ……..

Telephone –…..
Fax –
Email –

Yours faithfully

(15)

on behalf of the Secretary of State

[name of Company] accepts the offer set out above and in the Schedules

Signed
Director for and on behalf of

(16)

Date

DRAFT

If Collaborative

RESTRICTED - COMMERCIAL

Declaration by Participating Company

I .....*., on behalf of **(17)**, one of the companies participating in the Project which is the subject of the Secretary of State's offer letter of ..... hereby confirm that, in consideration of the Secretary of State's becoming bound to fulfil the obligations undertaken by him/her in the above offer letter upon acceptance thereof by **(16)**, **(17)** accepts all the terms and conditions set out in the offer letter and requiring the compliance of, or imposing any obligation on **(17)** as a Participant in the Project. I undertake to the Secretary of State that **(17)** will do all such things and provide all such information, documentation and assistance as is required of it or necessary to be produced by it under the terms of the offer letter.

I further undertake to the Secretary of State that **(17)** will indemnify **(16)** in regard to any repayment to be made to the Secretary of State under paragraph 27 of the offer letter to the extent of monies received by **(17)** from **(16)** under the Project. The obligation of **(17)** to indemnify **(16)** shall only arise in the case that actions or failures of **(17)** form part of the reasons of the Secretary of State in seeking repayment.

Signed .....Director for and on behalf of **(17)**

Date

* insert name

DRAFT

Schedule 1 – Particulars of the Facility

Name of the Facility:

LOCATION

Location of Facility:

Map reference[1]:

Name of Host (if applicable)

TECHNICAL:

Resource type:	Wave / Tidal-Stream *(delete as appropriate)*
Technology type:	*e.g. Tidal turbine / Oscillating column, etc*
Generator Unit brand name:	
No. of Generator Units in the Facility:	
No. of Generator Units in the Eligible Facility:	
Forecast average annual power of each Generator in the Eligible Facility ($kW_{average}$)	kW kW kW kW
Forecast average annual power of the Eligible Facility ($kW_{average}$)	kW
Project Comparative Cost:	

TIMETABLE

Acceptance Date:

Milestone 1. Design optimisation:

Milestone 2. Physical site preparation:

Milestone 3. Generator Units Manufacture:

Milestone 4. Generator Units Installation:

Milestone 5. Generator Units Grid Connection:

Milestone 6. Declared Commissioning:

Forecast End Date:

[1]Sufficient to distinguish the Facility from any adjacent generating stations.

RESTRICTED - COMMERCIAL

Schedule 2 – COSTS

S2.1. The provisions of this Schedule are subject to the terms and conditions of the offer letter.

CONSTRUCTION COSTS

S2.2. Construction Costs are those incurred and defrayed by the **Company/ Participants** from the Acceptance Date onwards until the Commissioning Date.

S2.3. Construction Costs [shall be the costs that are properly attributable exclusively to the construction of the Eligible Facility and] may include:

- Cost of all goods and services and purchases necessary to build and install the proposed Eligible Facility;
- Own labour costs, including agreed eligible overheads, for construction, installation, commissioning, and project management. The own labour costs of the **Company/Participants** will be treated as cost defrayed for the purpose of claims relating to time spent in connection with the Project.
- Grid connection costs.
- Cost of connection to a Host

S2.4. The following are ineligible and must be excluded or deducted (as appropriate) from the Construction Costs:

- Decommissioning costs
- Ineligible overheads
- Input Value Added Tax
- Profit
- Opportunity costs, notional costs, audit fees, purchase cost of any land on which the Project is sited;
- Interest, bad debts, marketing and sales costs, advertising costs, opportunity costs, waiting time entertainment costs, service charges and interest arising from hire purchase, leasing and credit arrangements;
- Liabilities which have been incurred but have not yet been defrayed.

S2.5. The costs claimed in respect of any supplies or services contracted to a Connected Company must exclude any ineligible costs and inadmissible overheads incurred by such Connected Companies. The costs must exclude any addition for profit by **the Company/any Participant** and profit earned by any Connected Company as a result of work relevant to the Project undertaken or sub-contracted to such company by **the Company/a Participant**.

DRAFT

S2.6. Construction Costs are to be fully verifiable through an independent audit in order to qualify for Grant payments.

S2.7. The Company must operate a management accounting system that records all costs incurred during the Project. This must be capable of recording all time bookings made on the Project and all supplier invoices paid. It must also be able to allocate costs to:

- The different categories of Project expenditure listed under "Forecast Construction Costs' below;
- Individual milestones;
- Within milestones, to individual Generator Units;
- That work that falls within the Project, and to that work that falls outside the project;
- Discrete time periods.

The data in the accounting system is to be made available to the independent accountant on request.

NET ELIGIBLE COSTS

S2.8. The Net Eligible Cost is derived from the Construction Cost and the Project Comparative Cost.

"Net Eligible Cost" = "Construction Cost" less the "Project Comparative Cost"

S2.9. The Net Eligible Costs must exclude and have deducted from the amount:

- any grant under the Industrial Development Act 1982 received or receivable by the Company or any Participant in respect of the Project;
- any other grant from any public authority (as defined in paragraph 42 of the offer letter) received or receivable in respect of the Project.

ELIGIBLE OVERHEADS AND DAY-RATES FOR OWN COSTS

S2.10. Allowable direct labour costs are an employee's annual salary plus the annual company pension and class 1 National Insurance contributions in respect of that employee. The direct labour day-rate is the annual direct labour cost for the employee amortized over 225 days in the year.

S2.11. The maximum annual salary allowable as a basis of eligible own labour costs is capped at £85,000. Any salary paid in excess of this amount shall be ineligible as a Project cost; the direct labour day-rate for those individuals shall be capped at £377.78

S2.12. The Participants are entitled to claim overheads through uplift to the direct labour day-rate as follows.

	Overhead as a proportion of direct staff costs	Overhead inclusive cost as a proportion of direct staff costs
Company A	xx%	100% + xx%
Company B		
Company C		

FORECAST CONSTRUCTION COSTS

(£)	Company A	Company B	Company C	Total Construction costs
Project management own labour inclusive of overheads				
Other own labour inclusive of Overheads				
Materials				
Capital Equipment				
Professional fees				
Sub-contracts				
Travel and Subsistence				
Other (specify)				
TOTAL CONSTRUCTION COST				

FORECAST NET ELIGIBLE COST AND MAXIMUM CAPITAL GRANT CLAIM

(£)	Forecast Total Construction Cost of the Eligible Facility	Forecast Total Net Eligible Cost	Capital Grant as percentage of Net Eligible Cost	Maximum Capital Grant
TOTAL			25%	

CAPITAL GRANT INSTALMENTS

S2.13. The Capital Grant shall be claimed in six instalments against the achievement of six milestones relating to construction of the Eligible Facility.

S2.14. The six milestones are

1. Design Optimisation
2. Physical site preparation
3. Generator Units Manufacture
4. Generator Units Installation
5. Grid Connection of Generator Units
6. Declared Commissioning

S2.15. Milestone descriptions are presented at the end of this Schedule.

S2.16. Each instalment shall be paid in respect of costs incurred against individual Generator Units. Partial costs will be ineligible, e.g. if two Generator Units have been manufactured and at the time of the 2nd Milestone claim, costs have been incurred toward the costs of a third Generator Unit that is incomplete, the 2nd Milestone claim can only be made in respect of the costs incurred in the manufacture of the two completed Generator Units.

S2.17. The forecast milestone costs and Capital Grant claim amounts are:

MILESTONE FORECAST (£)	Forecast Milestone Construction Cost	Milestone Comparative Cost	Forecast Milestone Eligible Cost	Capital Grant as percentage of Milestone Eligible Cost	Milestone Maximum Capital Grant
1. Design optimisation	£	£	£	25%	£
2. Physical site preparation				25%	
3. Generator Units manufacture				25%	
4. Generator Units installation				25%	
5. Generator Units grid connection				25%	
6. Declared commissioning				25%	
TOTAL				25%	

S2.18. The above "Milestone Forecast" table may be varied subject to the Project Monitoring Officer's approval and subject to notice of the desire to transfer being notified by the Company before costs are incurred; retrospective transfer between instalments will not be permitted. The transfer will come into force, if agreed, through an exchange of correspondence that updates the above table, and which is signed by both the Project Monitoring Officer and an authorised signatory of the Company.

S2.19. The Capital Grant paid shall be paid in respect of the actual milestone Construction Costs incurred and defrayed. The Milestone Eligible Cost shall be derived from the actual milestone Construction Costs in the following manner:

S2.20. The "Milestone Eligible Cost" shall be

"Milestone Eligible Cost" = "Milestone Construction Cost" - "Milestone Comparative Cost"

S2.21. Milestone 6 can be claimed on declaration by the Company that the Eligible Facility has been commissioned. The Company can claim Grant in respect of any partial Construction Costs not previous claimed for which work in respect of that Generator Unit has since been completed provided the necessary evidence is available to support the claim. E.g. if a 3rd Generator Unit had been manufactured after the 2nd Milestone had been claimed, the Construction Costs of that 3rd Generator Unit may be included in the 5th and final milestone claim.

S2.22. The grant shall be payable at 25% of the "Milestone Eligible Cost", or the "Milestone Maximum Capital Grant" specified in the "Milestone Forecast" table, whichever is the lesser.

DRAFT

FORMAT OF CAPITAL GRANT CLAIM

S2.23. Each claim shall comprise an invoice and the following supporting information:

- a supplementary claim form;
- the independent accountants report;
- the instalment report;
- evidence that each milestone has been met.

S2.24. Any omission or non-compliance shall invalidate that claim. If the independent accountant does not or cannot validate the Construction Costs reported in the claim, that claim shall be invalid.

DESCRIPTION OF MILESTONES:

Design Optimisation:
Design optimisation shall be deemed completed on submission by the Company of a full set of tender documents ready to issue to fabricators to begin manufacturing the devices.

Physical Site Preparation:
Foundations and other site work for the relevant Generator Unit are complete.

Device Manufacture:
The Generator Unit has been assembled and onshore testing has been completed and, when appropriate, there has been formal handover of the Generator Unit from the Manufacturer to the Company.

Device Installation:
The relevant Generator Unit has been installed and affixed to its foundations.

Grid Connection:
The relevant Generator Unit has an electrical connection of appropriate capacity to the Delivery Point, the necessary components of the Metering System are installed and are functional, and the Generator Unit is capable of generating and delivering Metered Energy to the Delivery Point.

Commissioning of the Eligible Facility:
The Eligible Facility shall be deemed commissioned on submission by the Company of:

- A written declaration that the Eligible Facility is commissioned; such declaration to specify the date of commissioning;
- Evidence that the Eligible Facility has delivered at least 1 kWh of electricity to the Distributor;
- A report on the cost of building the Eligible Facility in accordance with the reporting requirements set out in Schedule 4. If the Eligible Facility is declared to be commissioned before the final Generator Unit is capable of generating and delivering Metered Energy to the Delivery Point, the report shall be an interim report that declares the Construction Costs incurred to the date of Commissioning.

If the Company has provided an interim report at commissioning of the Eligible Facility it shall then provide an updated report within 2 months of the date the final Generator Unit has begun to export electrical energy that qualifies for Revenue Support.

DRAFT

Schedule 3 – PUBLICATION OF INFORMATION

Right to Publish

The Secretary of State shall be entitled to publish such financial information as is presented in this grant offer letter, the information in Schedule 1 of this offer letter, and such technical description as is submitted by the Company in its application to the Scheme.

The Secretary of State shall be entitled to use, publish or otherwise disseminate all data arising from the Project including timescales, Construction Costs, Metered Energy, Resource Data and the Capital Grant and Revenue Support paid to the Project. Furthermore the Secretary of State shall be entitled to publish in full the reports specified in Schedule 4 and any conclusions that ensue in respect of the availability, performance and economics of the Eligible Facility, and any results or conclusions arising from any independent analysis of the data or independent monitoring of the Eligible Facility that the Secretary of State might commission.

DRAFT

Schedule 4 – Reports

A: Capital Grant Instalment Reports

An Instalment Report shall accompany each claim for Capital Grant instalment.

The first five Instalment Reports shall be designated and marked as a DRAFT for APPROVAL and shall describe the work undertaken in achieving that milestone.

The report shall reproduce the "Summary for this Milestone" breakdown of Construction Costs as reported in the Supplementary Claim Form at Schedule 7 noting that cost is to be verified by the independent accountant through the auditors certificate at Schedule 6. The report shall explain any significant variance from the forecast milestone Construction Cost.

The format of the reports detailed above shall be determined by the Project Monitoring Officer and shall be in accordance with the Department's requirements.

B: Capital Grant Commissioning Report

The commissioning report shall report the forecast Construction Cost and the actual Construction Cost of building the Eligible Facility, broken down into the following categories:

1. Design optimisation
2. Physical site preparation
3. Generator Units manufacture
4. Generator Units installation
5. Generator Units grid connection
6. Declared commissioning.

Any partial costs in respect of partial work not reported in instalment reports 1-5, but for which the work has subsequently been completed and for which the costs have been included in the final milestone claim, are to be attributed to the appropriate category to which such costs relate.

The report shall explain any significant variance from the forecast milestone Construction Cost.

Each category is to clearly indicate the number of Generator Units to which the category costs relate, e.g. if the Eligible facility has been declared commissioned with only three of a total of four planned Generator Units installed, the report shall indicate that the costs reported against categories 1,2 and 3 relate to four Generator Units, and the costs reported against categories 4,5 and 6 relate to three Generator Units.

If the Eligible Facility is declared commissioned before all Generator Units have been connected, the report shall be an interim report. A revised commissioning report is then to be submitted within three months of the final Generator Unit in the Eligible Facility exporting Metered Energy. That revised report is to include the full Construction Costs of the Eligible Facility including any costs that do not qualify for Capital Grant as a consequence of being incurred after the Commissioning Date.

C: Revenue Support Report

A Revenue Support report shall be submitted no later than 12 months from the Commissioning Date and each 12 months thereafter until the End Date.

The revenue support report shall report the following information for the period in question:

1. An operating and maintenance log reporting dates and duration of:
    - Total number of hours in the period covered by the report;
    - For each device in the Eligible Facility, the total number of hours in the period covered by the report that it was generating power and exporting it to the grid.
    - For each device in the Eligible Facility, the total number of hours in the period covered by the report that the device was not operating because of planned maintenance.

2. Operating, maintenance and repair costs of the Eligible Facility:

3. For each device in the Eligible Facility, a half hourly record of the Metered Energy.

4. Full characterisation of the site in accordance with the reporting requirements specified in the Resource Monitoring Protocol.

DRAFT

Schedule 5 – Standardised Terms of Engagement

The following are the terms of engagement on which **The Department of Trade & Industry [The DTI and / or its agents, which are administering grants on behalf of the DTI]** agrees to engage accountants to perform a mixture of high and moderate - level of assurance engagement and report in connection with the (name of grant claim).

References to " The DTI" hereafter will mean "The DTI and / or its agents, which are administering grants on behalf of the DTI." References to "Accountant" hereafter will mean "Independent Accountant" and the grant recipient's reporting accountant.

An agreement between the grant recipient, its reporting Accountant and the DTI on these terms is formed and the Accountant signs and submits to the DTI a report as set out in **Schedule 6.**

The DTI will not need to sign anything. By publishing this document the DTI makes an offer to engage on these terms. Once the offer is accepted by the grant recipient and the Accountant then an agreement is formed. If the terms of the standardised engagement letter are to be revised, the DTI will need to confirm its acceptance of the new terms before agreement is formed.

[Should it become necessary in exceptional circumstances to tailor the standard terms of engagement to accommodate specific circumstances the contact point will be the DTI project officer or programme manager issuing the grant offer letter to the grantee]

1 Introduction

The [grant recipient] is required to submit to the DTI reports as set out in **Schedule 7.** To provide independent assurance the costs are to be confirmed by an accountant through a report as set out in Schedule 6. These terms of engagement set out the basis on which the Accountant will sign the report.

2 The [grant recipient]'s responsibilities

2.1 The [grant recipient] is responsible for producing all information, maintaining proper records, complying with the terms of any legislation or regulatory requirements and the DTI's terms and conditions of grant ("the grant conditions") and providing relevant information to the DTI on a basis in accordance with the requirements of the grant conditions. The [grant recipient] is responsible for ensuring that the non-financial records can be reconciled to the financial records.

2.2 The management (directors of limited companies, partners in partnership firms and the owner in a sole tradership) of the [grant recipient] will make available to the Accountant all records, correspondence, information and explanations that the Accountant considers necessary to enable the accountant to perform the Accountant's work.

2.3 The [grant recipient] and the DTI accept that the ability of the Accountant to perform his work effectively depends upon the grant recipient providing full and free access to the financial and other records and the [grant recipient] shall procure that any such records held by a third party are made available to the Accountant.

DRAFT

2.4 The Accountant accepts that, whether or not the [grant recipient] meets its obligations, the Accountant remains under an obligation to the DTI to perform his work with reasonable skill and care. The failure by the [grant recipient] to meet its obligations may cause the Accountant to qualify his report or be unable to provide a report.

3 Scope of the Accountant's work

3.1 The [grant recipient] will provide the Accountant with such information, explanations and documentation that the Accountant considers necessary to carry out his responsibilities. The Accountant will seek written representations from management in relation to matters for which independent corroboration is not available. The Accountant will also seek confirmation that any significant matters of which the Accountant should be aware have been brought to the Accountant's attention.

3.2 The Accountant will perform the following work in relation to reports required by the DTI:

3.2.1 The Accountant will carry out a mixture of high and moderate level of assurance assignment as set out in the terms and conditions of the grant by performing the following work in relation to reports required by the DTI:

3.2.2 Select a random sample of expenditure, both capital and revenue items, reported in the statement of claims relating to the project;

3.2.3 For each item of expenditure selected in the sample, trace the amounts recorded in the statement of claims to the original invoice and / or other supporting documents to check that the amount has been properly incurred and defrayed in accordance with the terms of the offer letter.

3.2.4 Test any overheads included in the expenditure to ensure that any amounts are in respect of the company's own labour, not calculated to include any profit, and not in excess of overhead rates applicable to similar work carried out by the company.

3.2.5 Obtain breakdown of grant revenue received / receivable accounts of the company and make enquires with the directors of the company into whether or not there *are* any other grants received or receivable in respect of the project and that they have been correctly treated in the claim.

3.2.6 Make enquires with the directors of the company into whether the amounts claimed include any addition for profit by the company and profit earned by any company in the company's group.

3.2.7 Check the arithmetical accuracy of the schedules relating to the claim and check whether the grant claimed by the company has been calculated in accordance with the terms and conditions of the offer letter.

3.3 The Accountant will not subject the information provided by the [grant recipient] to checking or verification except to the extent expressly stated. While the Accountant will perform his work with reasonable skill and care, his work will not be relied upon to disclose all misstatements, fraud or errors that might exist.

DRAFT

4 Basis and Form of the Accountant's reports

4.1 The Accountant's reports will be prepared on the following basis:

4.1.1 The Accountant's reports will be prepared for the confidential use of the [grant recipient] and the DTI and for the purpose of submission to the DTI in connection with the DTI's requirements in connection with [name of grant]. They may not be relied upon by the [grant recipient], or the DTI for any other purpose or provided to any other party except as provided in 4.1.2 below

4.1.2 The DTI may only disclose the reports to others who may have statutory rights of access to the report. There may be an actual or potential liability to [other bodies] that may arise out of the eligibility and / or use of monies by [the grant recipient], and [the others] who will be entitled to rely on the report;

4.1.3 Neither the [grant recipient], nor the DTI [nor others] may rely on any oral or draft reports the Accountant provides. The Accountant accepts responsibility to the [grant recipient] and the DTI for the Accountant's final signed reports only;

4.1.4 Subject to clause 4.1.5, the Accountant's reports must not be recited or referred to in whole or in part in any other document (including, without limitation, any publication issued by the DTI) without the prior written approval of the Accountant;

4.1.5 Subject to clause 4.1.2 and except to the extent required by court order, law or regulation or to assist in the resolution of any court proceedings the Accountant's reports must not be made available, copied or recited to any other person (including, without limitation, any person who may use or refer to any of the DTI's publications);

4.1.6 Except as provided by 4.1.1 herein, the firm of accountants, its partners and staff neither owe nor accept any duty to any other person (including, without limitation, any person who may use or refer to any of the DTI's publications) and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by their reliance on representations in the Accountant's reports.

4.1.7 Subject to the above provisions, the Accountant's report should be addressed both to the grant recipient and also the DTI and should be based on the model report schedule attached to this engagement letter.

5 Liability Provisions

5.1 The Accountant will perform the engagement with reasonable skill and care and acknowledges that he will be liable to the [grant recipient] and the DTI for losses, damages, costs or expenses ("losses") caused by his breach of contract, negligence or wilful default, subject to the following provisions:

5.1.1 The Accountant will not be so liable if such losses are due to the provision of false, misleading or incomplete information or documentation or due to the acts or omissions of any person other than the Accountant, except where, on the basis of the enquiries normally undertaken by accountants within the scope set out in these terms of engagement, it would have been reasonable for the Accountant to discover such defects;

DRAFT

5.1.2 The Accountant accepts liability without limit for the consequences of his own fraud and for any other liability, which he is not permitted by law to limit or exclude;

5.1.3 Subject to the previous paragraph (5.1.2), the total aggregate liability of the Accountant whether in contract, tort (including negligence) or otherwise, to the DTI and the [grant recipient], arising from or in connection with the work which is the subject of these terms (including any addition or variation to the work), shall not exceed the amount determined in accordance with the capping formula shown below

Amount of grant being reported on in this claim:	*Proportion of amount*	*Total cap*
Up to £1m	*100%*	*Amount of grant included in claim*
Between £1m and £5m	*100% of first £1m + 50% of remainder*	*£1m + 50% of amount in excess of £1m*
Between £5m and £15m	*100% of first £1m + 50% of amount between £1m and £5m + 20% of remainder*	*£3m + 20% of amount in excess of £5m*
Above £15M	*Negotiate*	*Negotiate*

The DTI will negotiate the comparatively rare claims above £15m on an individual basis and accountants should contact the named contact at the DTI shown in the preamble to this engagement letter in advance of agreeing their engagement letter with their client to discuss such cases.

The DTI and its agents should note that the ICAEW has not agreed this capping_formula on behalf of the profession. If firms are not happy with the proposals (as above) they will need to discuss their concerns either with the DTI or its agents directly.

5.2 The [grant recipient] and the DTI agree that they will not bring any claims or proceedings against individual partners, members, directors or employees of the Accountant. This clause is intended to benefit such partners, members, directors and employees who may enforce this clause pursuant to the Contracts (Rights of Third Parties) Act 1999 (the "Act"). Notwithstanding any benefits or rights conferred by this agreement on any third party by virtue of the Act, the parties to this agreement may agree to vary or rescind this agreement without any third party's consent. Other than as expressly provided in these terms, the provisions of the Act are excluded;

5.3 Any claims, whether in contract, negligence or otherwise, must be formally commenced within 3 years after the party bringing the claim becomes aware (or ought reasonably to have become aware) of the facts which give rise to the action and in any event no later than 6 years after any alleged breach of contract, negligence or other cause of action. This expressly overrides any statutory provision, which would otherwise apply;

5.4 This engagement is separate from, and unrelated to, the Accountant's audit work on the financial statements of the [grant recipient] for the purposes of the Companies Act 1985 (or its successor) or other legislation and nothing herein creates obligations or liabilities regarding the Accountant's statutory audit work, which would not otherwise exist.

6 Fees

The Accountant's fees, together with VAT and out of pocket expenses, will be agreed with and billed to the [grant recipient]. The DTI is not liable to pay the Accountant's fees.

7 Quality of Service

The Accountant will investigate all complaints. The DTI or the [grant recipient] have the right to take any complaint to the Institute of Chartered Accountants in England and Wales ("the ICAEW") or to any professional accountancy body as appropriate.

8 Providing Services to Other Parties

The Accountant will not be prevented or restricted by virtue of the Accountant's relationship with the [grant recipient] and the DTI, including anything in these terms of engagement, from providing services to other clients. The Accountant's standard internal procedures should be designed to ensure that confidential information communicated to the Accountant during the course of an assignment will be maintained confidentially.

9 Applicable law and jurisdiction

9.1 This agreement shall be governed by, and interpreted and construed in accordance with, English law.

9.2 The [grant recipient], the DTI and the Accountant irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the validity, effect, interpretation or performance of, or the legal relationship established by this agreement or otherwise arising in connection with this agreement.

10 Alteration to Terms

All additions, amendments and variations to these terms of engagement shall be binding only if in writing and signed by the duly authorised representatives of the parties. These terms supersede any previous agreements and representations between the parties in respect of the scope of the Accountant's work and the Accountant's report or the obligations of any of the parties relating thereto (whether oral or written) and represents the entire understanding between the parties.

DRAFT

Schedule 6 – Pro forma for preparation of the Auditor's Certificate

The words and terms defined in the offer letter shall have the same meaning in this certificate.

Option A – Collaborative

I/We have examined the enclosed claim and previous claims submitted by **(21)** ("the Company"), on behalf of the Participants.

I/We have also examined the records of the Participants as necessary and have obtained such explanations and carried out such tests as I/we consider necessary.

Option B - Single

I/We have examined the enclosed claim and previous claims submitted by **(21)** ("the Company").

I/We have also examined the records of the Company as necessary and have obtained such explanations and carried out such tests as I/we consider necessary.

All

I/We report that in my/our opinion subject to any reservations set out in my/our accompanying letter dated:

(i) the claim for payment is in accordance with the Department offer letter dated **(22)** including the Schedules thereto;

(ii) the Company/Participants has/have expended monies to cover the Construction Costs incurred and defrayed in the achievement of those milestones that comprise instalment claim number # (as defined in Schedule 2 to the offer letter) related to the Project described in the offer letter amounting to:-

(£)	Company A	Company B	Company C	Total Construction costs
Project Management Own Labour Inclusive of Overheads				
Other Own Labour inclusive of Overheads				
Materials				
Capital Equipment				
Professional fees				
Sub-contracts				
Travel and Subsistence				
Other (specify)				
TOTAL CONSTRUCTION COSTS				

*Please differentiate between capital equipment purchased specifically for the Project and capital items that the Participants/Company have/has already acquired or constructed.

(iii) none of the costs were incurred before the Acceptance Date**;**

(iv) the Eligible Facility has not yet been declared to be commissioned;

or

(iv) none of the costs were incurred after the Commissioning Date.

(v) overheads included in the expenditure are:-

(a) in respect of the Participant'/Company's own labour;

(b) not calculated to include any profit;

(c) appropriate to the Project;

(d) not in excess of overhead rates applicable to similar work carried out by the Participants/Company;

(vi) the amount claimed has been reduced by the amount of any Regional Development grant received or receivable on any goods or buildings the costs of which are included in the Net Eligible Costs;

(vii) the totals at (ii) above exclude any grant under the Industrial Development Act 1982 received or receivable by the Company or any Participant in respect of the Project;

(viii) the totals at (ii) above exclude input Value Added Tax and interest and service charges arising from hire purchase, leasing and credit arrangements;

(ix) the totals at (ii) above exclude any addition for profit by any Participant / the Company and profit earned by any company in any Participant's / the Company's group (as defined in Schedule 1) as a result of work relevant to the Project undertaken by a Participant/ the Company or sub-contracted to such company by a Participant / the Company.

(x) the Participants have/the Company has maintained adequate records to enable me/us to report on this claim for payment of Grant.

I/We certify that except for the grants mentioned above or specified in my/our accompanying letter dated no grants from any public authority as defined in paragraph 42 of the Offer Letter have been received or are receivable by any Participant/ the Company in respect of the Project.

Name for enquiries

DRAFT

Schedule 7 – Supplementary Claim Form

SUPPLEMENTARY CLAIM FORM
BREAKDOWN OF COSTS RELATING TO ATTACHED INVOICE

The breakdown should detail costs under the headings detailed in Schedule 1 to the Grant offer letter. Costs must have been incurred and defrayed. No claim can be accepted for liabilities, which have been incurred but have not yet been defrayed.

Grant Offer Reference Number. .....……

Project Title .....……...……..

Company name.....……...…….

Capital Grant Milestone number .....

Capital grant amount claimed:	**£**

SUMMARY FOR THIS MILESTONE

Heading	**Construction Cost**	**Net Eligible Cost**
Project Management (on behalf of consortium)		
Other Labour inclusive of eligible overheads		
Materials		
Capital Equipment		
Professional fees		
Sub-contracts		
Travel & Subsistence		
Other		
TOTALS		

CONSTRUCTION COSTS BREAKDOWN BY PARTICIPANT

Heading	**Company A Construction Costs**	**Company B Construction Costs**	**Company C Construction Costs**	**TOTALS**
Project Management (on behalf of consortium)				
Other Labour inclusive of eligible overheads				
Materials				
Capital Equipment				
Professional fees				
Sub-contracts				
Travel & Subsistence				
Other				
TOTALS				

DRAFT

Contact Name/Telephone No. for Queries **.....…….....**

……

Claim Declaration

We certify that this ….. claim for payment is in accordance with the Department of Trade and Industry offer letter dated …….. including the schedules thereto.

To the best of our knowledge and belief these costs have been reasonably and properly incurred and defrayed in accordance with the requirements and conditions of the grant offer and they are in agreement with our books, accounts, other documentation and records.

Signed _____ Date _____

Position _____ (ie Director or Company Secretary)

Company _____

Please send your completed form(s) and invoice to: DTI, c/o AEA Technology plc, Wave & Tidal Stream Scheme Finance Office, B156 Harwell, Didcot, Oxon OX11 0QJ. Please note your invoice addressee name should be Department of Trade and Industry c/o AEA Technology plc

DRAFT

Schedule 8 – Metering System

S8.1 The Metering System is to be capable of separately measuring and recording:

i) Exports of electrical energy from each Generator Unit in the Eligible Facility;
ii) Imports of electrical energy to the Eligible Facility;
iii) Electrical energy consumed by any loads connected to the Eligible Facility.

If the Eligible Facility and the Facility are not the same, the metering system is to be capable of separately measuring and recording

iv) Imports of electrical energy to the Facility;
v) Exports of electrical energy from the Facility;
vi) Electrical energy consumed by any loads connected to the Facility.

S8.2 In all cases the boundary of the Facility for import and expert purposes must be such that all parasitic loads are inside the boundary.

S8.3 Should a Host be present, the metering system is to be capable of disaggregating the electricity generated by the Eligible Facility from that of any other generating stations or Generator Units connected to the Host, sufficient to allow the electrical energy generated by the Eligible Facility and delivered to the Distributor to be determined each half-hour.

S8.4 The metering system should be of a level of precision and accuracy at least that of the metering arrangements from the Host to the Distributor. The records from the Metering System should be capable of reconciliation with the records of the Distributor.

DRAFT

Schedule 9 – Resource Monitoring Protocol

- To follow -

DRAFT

Schedule 10 – Evidence of Metered Energy delivered to the Distributor

The nature, source, format and frequency of evidence of Metered Energy delivered to the Distributor is to be acceptable to the Project Monitoring Officer and agreed by him/her prior to the Commissioning Date.

The preference is that evidence of Metered Energy delivered to the Distributor is submitted with every claim for Revenue Support. As a minimum evidence must be supplied with the first and last claims for Revenue Support, and at intervals of no more than 12 months.

The evidence must originate from a source that is independent of the Company/any Participant, or be verified by an organisation that is not a Connected Company or by an independent professional consultant who has no connection to the Company/any Participant.

The form of acceptable evidence will vary according to the specific particulars of the Eligible Facility, e.g.:

(i) The Eligible Facility comprises the entire Facility and is connected directly to the Distributor, not via a Host.

The Eligible Facility will wholly and unambiguously generate the electrical energy received and metered by the Distributor. An advice note or invoice or other such record from the Distributor that reports the electrical exports and imports into Distributors network would satisfy as evidence of the Metered Energy generated by the Eligible Facility.

(ii) The Eligible Facility comprises the entire Facility and is connected to the Distributor via a Host.

The Eligible Facility will wholly and unambiguously generate the electrical energy received and metered by the Host. An advice note or invoice or other such record from the Host that reports the electrical exports and imports to the Host and transmitted to the Distributors network would satisfy as evidence of the Metered Energy generated by the Eligible Facility.

(ii) The Eligible Facility comprises only a part of the entire Facility.

The electrical energy received and metered by the Distributor or the Host will comprise both eligible and ineligible electrical energy unless the Distributor or Host has made separate metering provision for the eligible and ineligible parts of the Facility. The data from the Metering System within the Facility will then provide the data that will allow the Metered Energy to be disaggregated from the electrical energy generated from the ineligible parts of the Facility. An independent organisation (such as the Host) or an independent consultant may be engaged to assess the data and to certify the amount of electrical energy generated by the Eligible Facility that has been delivered to the Host or the Distributor.

Any fees, together with VAT and out of pocket expenses will be agreed between the Company and any independent organisation or individual engaged to supply such evidence. The Secretary of State is not is not liable to pay such costs.

DRAFT