PCP Framework Agreement [1] **[Insert date of Agreement]**

PREAMBLE

This is a framework agreement ("Framework Agreement") between the following parties:

on the one part,

the "Lead Procurer", **WAVE ENERGY SCOTLAND LIMITED**, a company limited by guarantee incorporated under the Companies Acts (Registered Number SC493764) and having its registered office at An Lòchran, 10 Inverness Campus, Inverness, IV2 5NA,

acting in the name and on behalf of the other procurers in the buyers group (together with the Lead Procurer, the "Procurers"):

1. **ENTE VASCO DE LA ENERGIA**, with Tax ID number Q5150001E and registered address at C/ Alameda de Urquijo, nº 36, 1ª planta, 48011, Bilbao (Bizkaia), Spain.

and on the other hand,

the "Contractor", [insert details of the contractor],

[OPTION for joint tenders: acting in the name and on behalf of the other members of group of tenderers:

1. [insert the details of the members of the group of tenderers]
2. ...

The members of the group of tenderers are hereafter collectively referred to as the "Contractor" and will be jointly and severally liable vis-à-vis the Lead Procurer for the performance of this Framework Agreement and the Call-off Contracts. *]*

The Lead Procurer, other procurers of the buyers group and the Contractor shall be referred to together as "Parties", unless otherwise specified.

By signing this Framework Agreement the Parties agree to implement the pre-commercial procurement in accordance with the Framework Agreement (including the documents described in Parts 1 and 2 of the Schedule annexed to this Framework Agreement) and all the obligations it sets out.

The Framework Agreement is composed of:

Preamble

Terms and Conditions

The Schedule (in three parts) annexed to this Framework Agreement

Request for Tenders (as more particularly described in Part 1 of the Schedule and hereby incorporated by reference in this Framework Agreement)

Contractor's Tender (as more particularly described in Part 2 of the Schedule and hereby incorporated by reference in this Framework Agreement)

[1] The text of this Framework Agreement is adapted from the model agreement provided in "H2020 Guidance — PCP procurement documents: v2.1".

TERMS AND CONDITIONS

Interpretation

- Article headings shall not affect the interpretation of this Framework Agreement.
- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- This Framework Agreement shall be binding on, and enure to the benefit of, the parties to this Framework Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- Reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 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.

Article 1 — Subject of the agreement

This Framework Agreement defines the general terms and conditions for the implementation of the PCP procurement of R&D services set out in Article 3 and for the Call-off Contracts that will be awarded for each PCP phase.

Article 2 — Duration

This Framework Agreement shall commence on the date set out in the Preamble and shall continue in full force and effect until complete fulfilment of all obligations undertaken by the Parties under all Call-off Contracts (subject to the termination provisions set out in Article 15).

The period of execution of the obligations under the Call-off Contracts may be extended only with the express written agreement of the Parties before the expiration of the period for execution of the tasks.

Article 3 — R&D services to be provided

The Contractor shall provide the R&D services (tasks, deliverables and milestones) to develop solutions to tackle the challenge set out in the Request for Tenders and the Call-off Contracts.

Article 4 — Pricing, payment and accounting

4.1 The fixed price for the R&D services to be implemented for each PCP phase will be set out in the Call-off Contracts.

4.2 The fixed price for each phase shall be based on the binding unit prices stated in the Contractor's Tender and the following price conditions:

- Unit prices may be adjusted at the start of each phase using the labour cost index (LCI) published by Eurostat.
- Where new units/unit prices are added to phase 2 or 3 offers, these unit prices shall become binding for the remaining phases.

4.3 The total amount paid by the Lead Procurer shall not exceed the amount stated in the Call-off Contract.

4.4 Payments to third parties employed or hired by the Contractor remain the responsibility of the Contractor who shall ensure that such payments are made promptly.

4.5 The Procurers may request at any time such evidence as may reasonably be required that the Contractor has used the amounts paid in accordance with the provisions of the Framework Agreement and the Call-off Contracts.

4.6 If at any time an overpayment has been made to the Contractor for any reason whatsoever, the amount of such overpayment shall be taken into account in the assessment of any further payments, or shall be recoverable from the Contractor at the Lead Procurer's discretion.

Article 5 — Ownership of the Results (Foreground), Pre-existing Rights (Background) and Sideground (including Intellectual Property Rights and industrial property rights)

'Intellectual Property Rights' or 'IPRs' means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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.

'Results' or 'Foreground' means any tangible or intangible output, such as data, knowledge or information, that is generated in the PCP, whatever its form or nature, whether or not it can be protected, as well as any rights attached to it, including Intellectual Property Rights.

'Pre-existing Rights' or 'Background' means any data, know-how or information, whatever its form or nature (tangible or intangible), including any attached rights such as Intellectual Property Rights, that is held prior to the signing of the Framework Agreement, identified by the Parties involved in the PCP as Background and needed to implement the PCP or exploit the results of the PCP.

'Sideground' means any data, know-how or information, whatever its form or nature (tangible or intangible), including any attached rights such as Intellectual Property Rights, that is generated during the timespan of the PCP but not in the PCP and needed to implement the PCP or to exploit the results of the PCP.

'fair and reasonable conditions' means appropriate conditions, including financial terms or royalty-free conditions, taking into account the specific circumstances of the request for access *(for example, the actual or potential value of the Results or Background to which access is requested and/or the scope, duration or other characteristics of the exploitation envisaged).*

'Generated in the PCP' means generated in activities described in the PCP Framework Agreement or Call-off Contracts.

5.1 The Contractor will keep ownership of the Results and of the Intellectual Property Rights attached to the Results generated in the PCP implementation and will be responsible for the management and protection of its IPRs at its cost.

The ownership of the IPRs will be subject to the following:

(a) The Contractor hereby grants the Procurers irrevocable, royalty-free, non-exclusive, world-wide rights to access and use the Results for their own purposes (for IPRs: until their expiry date, if any), provided that for Results that are an implementation of design specifications into simulations, prototypes, demonstrators or first products / services, those access rights are limited to a duration of five (5) years from the end of the Framework Agreement and to the following purposes for fulfilling the R&D objectives of the PCP: to assess the system effectiveness of the wave energy converter technology (energy yield, availability, process efficiency), cost of ownership and commercial viability.

(b) Procurers have the right to require the Contractor to grant non-exclusive licences to third parties to exploit the Results under fair and reasonable conditions (without the right to sublicense);

(c) The Contractor may grant non-exclusive licences to third parties allowing them to exploit the Results (or otherwise give the right to exploit them) unless this impedes the access rights of the Procurers.

(d) Pursuant to Article 6, the Procurers have the right to require the Contractor to transfer, on a free of charge basis, ownership of the Results on the basis set out in Article 6.2.

The Contractor will monitor the management of the Results and its IPRs and bears the costs associated with this. The Procurers shall have the right to monitor the management of any IPRs associated with the Framework Agreement and any Call-off Contract. The Contractor must inform the Lead Procurer of Results that can be exploited, regardless of whether they can be protected or not, within thirty (30) days from when they are generated, notifying the Lead Procurer of the contents of the Results, the proposed approach for protecting the Results and the timing for doing so. If the Contractor does not seek protection for Results that should be protected, the Procurers has the right to request that the Results are transferred to them.

5.2 The ownership of Pre-existing Rights remains unchanged.

A list of Pre-existing Rights and Sideground is annexed to the Framework Agreement at Part 3 of the Schedule. The Parties must inform each other about the generation of/changes in Pre-existing Rights and Sideground within seven (7) days from the generation /change, and any such generation / change shall be noted in the list annexed to the Framework Agreement if agreed between the Parties. Any amendment to the Framework Agreement will be subject to Article 16.

In relation to the Pre-Existing Rights and Sideground, the Parties have the right to:

(a) access to each other's Background, on a royalty-free, non-exclusive basis, for carrying out the tasks assigned to them in the PCP;

(b) access to each other's Background, under fair and reasonable conditions and on a non-exclusive basis, for exploitation of Results generated in the PCP and for using the Results for their own purposes; and

(c) access to each other's Sideground, under fair and reasonable conditions and on a non-exclusive basis, for carrying out the tasks assigned to them in the PCP, for exploitation of Results generated in the PCP and for using the Results for their own purposes.

5.3 The Contractor may transfer ownership of its Results provided that (i) the Procurers shall have the first right of refusal of ownership of its Results, and (ii) it ensures that its obligations in respect of the Results apply to the new owner and that this new owner is obliged to pass them on in any subsequent transfer by including a requirement to do so in their arrangements with the new owner. Prior to any transfer, the Contractor must provide the Lead Procurer at least forty-five (45) days advance notice of its intention to transfer ownership of the Results. The notification must include sufficient information on the new owner to enable the Procurers to assess the capacity of the new owner to meet the Contractor's obligations in respect of the Results, including the obligation to commercially exploit and the effects on the Procurer's access rights to the Results. A Procurer can object within thirty (30) days of receiving notification if it can show that the transfer would adversely affect the obligations in respect of the Results, including the obligation to commercially exploit, or its access rights to the Results. Should an objection be raised, the transfer may not take place until agreement has been reached between the parties concerned.

The Contractor must notify the Lead Procurer of any claim or demand made or action brought against the Contractor for infringement or alleged infringement of Intellectual Property Rights which might affect the Contractor's ability to fulfil its obligations under the Framework Agreement.

Article 6 — Commercial exploitation of Results

6.1 The Contractor shall, for at least four (4) years after the termination or expiry of the Framework Agreement and the Call-off Contracts, take measures to ensure that its Results are exploited commercially (directly or indirectly, in particular through transfer or licensing).

6.2 If the Contractor fails to take measures to commercially exploit the Results within this period (or uses the Results to the detriment of the public interest, including security interests), the Procurers have the right to require that ownership of the Results (to avoid doubt, including any Intellectual Property Rights attached to the relevant Results) be transferred to the Procurers, or to a third-party appointed by the Procurers, on a free of charge basis.

6.3 During this period, the Contractor shall submit to the Procurers a report of the measures taken to commercially exploit the Results on an annual basis, or at such other time as the Procurers so request.

'**Take measures to commercially exploit'** means demonstrably continuing the development of the Results towards a commercial application (directly or indirectly, through transfer or licensing).

Article 7 — Confidentiality

7.1 The Parties shall keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed. This applies during the implementation of the Framework Agreement and Call-off Contracts and for a period of five (5) years after their end.

7.2 If information has been identified as confidential only orally, it shall be considered to be confidential only if this is confirmed in writing within fifteen (15) days of the oral disclosure.

7.3 The Parties may disclose confidential information to their staff or to third parties involved in the PCP implementation only if:

(a) they need to be aware of this information in order to implement the PCP activities under the Framework Agreement and Call-off Contracts; and

(b) they are bound by an obligation of confidentiality.

7.4 The Procurers may disclose confidential information to the EU if required under their Horizon 2020 Grant Agreement.

7.5 The confidentiality obligations cease to apply if:

(a) the disclosing party agrees to release the other party from the obligation;

(b) the information was already known by the recipient or is given to him without obligation of confidentiality by a third party that was not bound by any obligation of confidentiality;

(c) the recipient proves that the information was produced without the use of confidential information;

(d) the information becomes generally and publicly available, without breaching any confidentiality obligation; or

(e) the disclosure of the information is required by EU or national law.

This does not change the security obligations, which still apply. Stricter confidentiality obligations apply for information that is EU-classified or subject to a security recommendation.

Article 8 — Promotion, publicity and communication

8.1 The Contractor shall undertake communication activities to create publicity about its participation to the procurement, and to promote the objectives and the Results of the R&D carried out under the PCP (in particular to other potential customers with the objective to achieve commercial exploitation of the Results in accordance with Article 6).

All communication activities shall comply with the applicable confidentiality and security restrictions.

During the implementation of the Framework Agreement and Call-off Contracts and for a period of five (5) years after the termination or expiry of the Framework Agreement and final Call-off Contract, the Contractor shall inform the Lead Procurer twenty eight (28) days in advance of any (written or oral) publication or any other type of communication (in any media or form) relating to the services or Results. Information on communication activities expected to have a major media impact shall be provided sufficiently in advance to allow the Lead Procurer to inform the EU.

All communication activities *(including in electronic form and via social media)* and infrastructure, equipment and major Results financed by the PCP shall display the EU emblem and include the following text:

for communication activities: 'This is part of the EuropeWave project that has received funding from the European Union's Horizon 2020 Research and Innovation Programme under grant agreement No 883751';

for infrastructure, equipment and major Results: 'This *[infrastructure][equipment][insert type of Results]* is part of the EuropeWave project that has received funding from the European Union's Horizon 2020 Research and Innovation Programme under grant agreement No 883751'.

When displayed together with another logo, the EU emblem shall have appropriate prominence. The Contractor may use the EU emblem without first obtaining approval from the EU. This does not, however, give the Contractor the right to exclusive use. Moreover, the Contractor may not appropriate the EU emblem or any similar trademark or logo, either by registration or by any other means.

All communication activities shall indicate that they reflect only the author's views.

8.2 The Procurers may use, for the purposes of communication and publicity, all information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audio-visual material) from the Contractor (including in electronic form).

The Procurers may, in particular, publish the names of the participating Contractor and its project abstracts, the summaries of the main Results from the R&D and the lessons learnt during the PCP (e.g. relating to the feasibility of the different approaches to meeting the Procurers' requirements that were explored, and the lessons learnt for potential future use of the solutions proposed).

This does not change the confidentiality obligations under Article 7.

Moreover, before publishing this information, the Procurers shall consult the Contractor, in order to avoid harm to legitimate business interests (e.g. regarding aspects of the solutions that could be IPR-protected) or distortion of competition.

8.3 The EU may use, for the purposes of communication and publicity, information relating to the PCP, documents (notably summaries) and deliverables, and any other material (such as pictures or audio-visual material) from the Contractor (including in electronic form).

If the EU's use of these materials, documents or information would risk compromising legitimate interests, the Contractor may, however, ask the Lead Procurer to request the EU not to use it.

The right to use the Contractor's materials, documents and information includes:

(a) use for its own purposes (in particular, making them available to staff working for the EU (including for the European Commission, EU executive agencies, other EU institutions, bodies, offices or agencies) or for EU Member State institutions or bodies; and copying or reproducing them in whole or in part, in unlimited numbers);

(b) distribution to the public (in particular, publication as hard copies and in electronic or digital format, publication on the internet, as a downloadable or non-downloadable file, broadcasting by any channel, public display or presentation, communicating through press information services, or inclusion in widely accessible databases or indexes);

(c) editing or redrafting for the purposes of communication and publicity (including shortening, summarising, inserting other elements (such as meta-data, legends, other graphic, visual, audio or text elements), extracting parts (e.g. audio or video files), dividing into parts or using in a compilation);

(d) translation;

(e) giving access in response to individual requests made under EU Regulation No 1049/2001[2], without the right to reproduce or exploit;

(f) storage in paper, electronic or other form;

(g) archiving, in line with applicable rules on document management, and

(h) authorising third parties to act on its behalf or sub-licensing the modes of use set out in points (b), (c), (d) and (f) to third parties if needed for the purposes of communication and publicity.

If the right of use is subject to rights of a third party (including the Contractor's staff), the Contractor shall ensure that it obtains the necessary approval from the third parties concerned.

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

Article 9 — Conflicts of interest

9.1 The Contractor shall take all measures necessary to prevent a situation arising where the impartial and objective implementation of the Framework Agreement or a Call-off Contract is compromised for reasons involving economic interests, political or national affinity, family, personal life or any other shared interest.

The Contractor shall also take all measures necessary to prevent a situation in which its (previous or ongoing) professional activities affect the impartial and objective implementation of the Framework Agreement or a Call-off Contract.

9.2 The Contractor shall notify the Lead Procurer without delay of any situation constituting or likely to lead to a conflict of interest *(including changes of ownership)* and shall immediately take all steps necessary to rectify this situation.

The Lead Procurer may instruct the Contractor to take specific measures to remedy the situation.

Article 10 — Ethics and research integrity

10.1 The Contractor shall carry out the tasks assigned to it in the Framework Agreement and Call-off Contracts in compliance with:

(a) ethical principles (including the highest standards of research integrity) and

(b) applicable international, EU and national law.

The Contractor may not carry out activities in a country outside the EU, if they are prohibited in all EU Member States.

The Contractor may not carry out activities that do not focus exclusively on civil applications.

The Contractor shall respect the fundamental principle of research integrity — as set out in the European Code of Conduct for Research Integrity[3].

This implies compliance with the following essential principles:

reliability in ensuring the quality of research reflected in the design, the methodology, the analysis and the use of resources;

honesty in developing, undertaking, reviewing, reporting and communicating research in a transparent, fair and unbiased way;

respect for colleagues, research participants, society, ecosystems, cultural heritage and the environment;

accountability for the research from idea to publication, for its management and organisation, for training, supervision and mentoring, and for its wider impacts

and means that the Contractor must ensure that persons carrying out research tasks follow the good research practices and refrain from the research integrity violations described in this Code.

10.2 Before starting any activity that raises an ethical issue, the Contractor shall submit to the Lead Procurer a copy of:

(a) any ethics committee opinion required under national law and

[3] The European Code of Conduct for Research Integrity of ALLEA (All European Academies) and ESF (European Science Foundation). https://www.allea.org/wp-content/uploads/2017/05/ALLEA-European-Code-of-Conduct-for-Research-Integrity-2017.pdf

(b) any notification or authorisation for activities raising ethical issues required under national law.

Article 11 — Processing of personal data

11.1 The Contractor shall process personal data in compliance with the applicable EU and national law on data protection (including as relates to authorisations and notification requirements).

11.2 The Contractor may grant its staff access to data only in so far as is strictly necessary for implementing, managing and monitoring the Framework Agreement and Call-off Contracts.

11.3 The Contractor must inform the staff whose personal data are collected and processed by the Procurers and/or the EU. For this purpose, the Contractor must provide them with the privacy statements of the Procurers and the EU, before transmitting their data. If explicit prior consent from the data subjects is needed, the Contractor must obtain such consent.

Article 12 — Obligation to provide information and keep records

12.1 The Contractor must, at any time during the implementation of the Framework Agreement and Call-off Contracts or afterwards, provide any information requested by the Procurers in relation to the Framework Agreement or Call-off Contracts.

12.2 The Contractor must keep, for a period of six (6) years after the termination or expiry of the Framework Agreement and Call-off Contracts or until 31 October 2031 (whichever is later), records and other supporting documentation relating to their implementation. This obligation includes records and other supporting documentation on scientific and technical implementation (in line with the accepted standards in the field) and on the price charged and the costs incurred by the Contractor.

12.3 The Contractor must keep the original documents. Digital and digitalised documents are considered originals if they are authorised under national law.

12.4 Should there be ongoing checks, reviews, audits, investigations, litigation or other pursuits of claims (including claims by a third party against the Procurers), the Contractor must keep all records and other supporting documentation until the end of these procedures.

Article 13 — EU checks, reviews, audits and investigations

Should the EU (including the European Court of Auditors or the European Anti-Fraud Office (OLAF)) decide to carry out a check, review, audit or investigation, the Contractor must make available all information, records and other supporting documents relating to the implementation of the Framework Agreement and Call-off Contracts.

Should there be an on-the-spot visit, the Contractor must allow access to its premises and must ensure that the information requested is readily available.

Article 14 — EU impact evaluation

Should the EU carry out an impact evaluation of its grant to the Procurers, the Contractor must make available all information, records and other supporting documents relating to the implementation of the Framework Agreement and Call-off Contracts.

Article 15 — Breach of contract

15.1 The Contractor must compensate the Procurers if the Procurers are held liable by the EU for damage sustained as a result of the implementation of the Framework Agreement or a Call-off Contract (or because it was not implemented properly).

15.2 The EU cannot be held liable for any damage caused to the Contractor or caused by the Contractor in connection with the implementation of the Framework Agreement or a Call-off Contract.

15.3 The Contractor shall indemnify and keep indemnified the Procurers, their officers, employees and agents fully against any liability, loss, costs (including, without limitation, all legal and other professional fees or expense), damages, claim or proceedings whatsoever arising under any statute or at common law in respect of:

(a) any damage to property, real or personal caused by the negligence of the Contractor, the Contractor's staff, or those of its subcontractors, in performance of the R&D services provide under the Framework Agreement and Call-off Contracts;

(b) any injury to persons, including injury resulting in death, arising in the course of or in connection with the R&D services provide under the Framework Agreement and Call-off Contracts except in so far as such injury shall be due to any act or omission of the Procurers;

(c) which may be incurred by, or established against the Procurers (both throughout the duration of this Framework Agreement and after its termination) arising from any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) of any Pre-existing Rights owned by any third party or the Contractor, and any IPRs arising from the Results; and

(d) which may be incurred or established against the Procurers arising as a result of any breach by the Contractor of the obligations contained in Article 7 (Confidentiality).

15.4 The Lead Procurer may at any time by notice in writing terminate this Framework Agreement and/or any Call-off Contract without liability for any loss, costs (including, without limitation, any legal and other professional fees or expense), damages or expenses arising for the Contractor as a result of or in connection with such termination if:

(a) any approvals consent or licences required under this Framework Agreement or any Call-off Contract are not given unconditionally in a timely fashion;

(b) the Contractor is subject to an insolvency event;

(c) the Contractor is in breach of this Framework Agreement or any Call-off Contract and if:

  (i) the breach is capable of remedy and the Contractor has failed to remedy the breach within thirty (30) days of written notice being sent to the Contractor; or

  (ii) the breach is not capable of remedy.

15.5 The aggregate liability for the Procurers under or in connection with this Framework Agreement (including any Call-off Contract), howsoever arising including but not limited to liability in contract, delict (including negligence), misrepresentation, restitution or otherwise shall in no event exceed the total payments made under the Call-off Contracts in the previous twelve (12) months, noting that nothing in this Framework Agreement will exclude or limit the liability of either party for death or personal injury caused by that party's negligence or fraud or for any other liability which cannot be excluded or limited.

15.6 The aggregate liability of the Contractor under each Call-off Contract will be as set out in the relevant Call-off Contract. Notwithstanding anything to the contrary in this Framework Agreement or

any Call-off Contract, nothing will exclude or limit the liability of the Contractor under Article 15.3 or for breaches of Article 7 (Confidentiality).

Article 16 — Amendments

No variation of this Framework Agreement or any Call-off Contract shall be effective unless it is in writing and signed by the Parties. No such variation shall have the purpose or the effect of making changes to the Framework Agreement which might call into question the decision awarding the contracts or result in unequal treatment of tenderers.

Article 17 — Interpretation

If there is any conflict or ambiguity between the terms of the documents listed below, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list:

- The Terms and Conditions of the Framework Agreement
- Call-off Contracts (with later Call-off Contracts taking precedence over earlier Call-off Contracts)
- Request for Tenders (a description of which is set out in Part 1 of the Schedule)
- Contractor's Tender (a description of which is set out in Part 2 of the Schedule)

In each Call-off Contract, the terms and conditions of the Call-off Contract will take precedence in the case of any conflict or ambiguity between the terms of the Call-off Contract and the Schedule to that Call-off Contract.

Article 18 — Insurance

18.1 The Contractor shall maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Framework Agreement and Call-off Contracts. For the purposes of this Article, adequate cover will be either (i) insurance cover of the types and for the amounts specified in the Call-off Contract; or (ii) if no types of insurance or amounts of cover are specified in the Call-off Contract, such types and amounts as a prudent contractor would have in relation to the provision of services and risks associated with this Framework Agreement and Call-off Contracts, and as required by law.

18.2 The Contractor shall provide, on request, copies of all insurance policies or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

18.3 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Framework Agreement.

Article 19 — Assignation and subcontracting

19.1 The Contractor shall not subcontract, transfer or assign the whole or any part of the R&D services (Article 3) without the prior written consent of the Lead Procurer whose consent may be subject to such terms and conditions as the Lead Procurer may see fit to impose.

19.2 The Contractor remains fully liable for the performance of the R&D services and must ensure that its subcontractors comply with the minimum requirements and exclusion, selection, compliance and award criteria of the procurement that preceded this Framework Agreement.

19.3 The Contractor shall be responsible for the acts and omissions of its subcontractors as though those acts and omissions were its own.

19.4 The Contractor must ensure that it complies with its obligations under the Framework Agreement and Call-off Contracts if it uses subcontractors, it must obtain all necessary rights (transfer, licences or other) from subcontractors, as if they were generated by itself and should refrain from using subcontractors if obtaining those rights is impossible. The sub-contract must contain commitments from the sub-contractor to the satisfaction of the Procurers that the sub-contractor will comply with the terms of this Framework Agreement and the relevant Call-off Contract and has the appropriate skills and experience to carry out the relevant services.

19.5 The execution of the services subcontracted to a subcontractor shall not be the subject of further subcontracting.

19.6 The Contractor may replace a subcontractor, subject to Article 16 (Amendments).

Article 20 — Monitoring and reporting

20.1 The implementation of the Call-off Contracts will be reviewed periodically by the Procurers.

20.2 The Contractor's representative and the Procurer's representative shall meet at least once every month (which may be by telephone or other means of distance communication) or as otherwise agreed to review the progress and the performance of the Call-off Contracts. Meetings between the Contractor's representative and the Procurers' representative shall be convened on not less than five (5) working days' notice, except in an emergency in which case as much notice as is reasonably practicable shall be given.

20.3 The Contractor shall provide verbal or written reports as reasonably required by the Procurers on any aspect of the Call-off Contracts.

20.4 The Contractor will allow its facilities, procedures and documentation to be submitted for scrutiny by the Procurers or their auditors in order to ascertain compliance with applicable laws and the terms of this Framework Agreement and Call-off Contracts.

20.5 Should the Procurers carry out an impact evaluation, the Contractor must make available all information, records and other supporting documents relating to the implementation of the Framework Agreement and Call-off Contracts.

Article 21 — Severability

21.1 If any provision of this Framework Agreement or any Call-off Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Framework Agreement or any Call-off Contract had been executed with the invalid provisions eliminated.

21.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Framework Agreement or any Call-off Contract, the Parties shall immediately commence good faith negotiations to remedy such invalidity.

Article 22 — Waiver

The waiver by the Lead Procurer of any right or remedy in respect of any breach of any term or condition or requirement of this Framework Agreement or any Call-off Contract shall not prevent the subsequent

enforcement thereof and shall not be deemed to be a waiver of any right or remedy in respect of any subsequent breach.

Article 23 — Applicable law and dispute settlement

23.1 This Framework Agreement and any Call-off Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the laws of Scotland.

23.2 Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Framework Agreement, any Call-off Contract or their subject matter or formation.

23.3 Any dispute between the Parties arising out of or in connection with this Framework Agreement or any Call-off Contracts shall in the first instance be referred to the Contractor's nominated representative and the Procurers' nominated representative for resolution, escalated to more senior representatives as required. Where a dispute has not been resolved within thirty (30) days of the initial referral, the dispute may be referred to mediation by a mediator to be agreed between the Parties. The fee for the appointed mediator shall be shared equally between the Parties. If a dispute has not been resolved by mediation to the satisfaction of both Parties, either Party may commence an action for a legal remedy in the courts of Scotland.

23.4 In all other circumstances the Parties agree to work together in good faith to reach an agreed settlement of any dispute.

SIGNATURES

IN WITNESS WHEREOF these presents consisting of this and the preceding [●] pages together with the Schedule annexed hereto are executed as follows:

SUBSCRIBED for and on behalf of the said WAVE ENERGY SCOTLAND LIMITED [Lead Procurer]

at

on

by

Print Full name	Authorised Signatory
before this witness:	
Print Full Name	Witness
Address:	

SUBSCRIBED for and on behalf of the said [Contractor]

at

on

by

Print Full name	Authorised Signatory
before this witness:	
Print Full Name	Witness
Address:	

This is the Schedule referred to in the foregoing Framework Agreement between the Lead Procurer and the Contractor dated [ ].

Part 1: Request for Tenders

[insert document description] (the "**Request for Tenders**").

The Request for Tenders is incorporated by reference and forms part of this Framework Agreement.

Part 2: Contractor's Tender

[insert document description] (the "**Contractor's Tender**").

The Contractor's Tender is incorporated by reference and forms part of this Framework Agreement.

Part 3: Pre-existing Rights (Background) and Sideground

[insert list]