

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 8, 2014

OCEAN POWER TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction
of incorporation)

001-33417

(Commission File Number)

22-2535818

(IRS Employer Identification No.)

1590 Reed Road
Pennington, NJ

(Address of principal executive offices)

08534

(Zip Code)

Registrant's telephone number, including area code: **(609) 730-0400**
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.02. Termination of a Material Definitive Agreement.

On July 8, 2014, Victorian Wave Partners Pty Ltd (“VWP”), an indirect consolidated subsidiary of Ocean Power Technologies, Inc. (the “Company”), tendered a notice (the “Termination Notice”) to the Australian Renewable Energy Agency (“ARENA”) of VWP’s intent to terminate the Renewable Energy Demonstration Program Funding Deed, dated as of September 9, 2010, entered into between VWP and the Commonwealth of Australia, as amended by a Deed of Variation dated January 9, 2014 (“the Funding Deed”). Unless agreed otherwise, pursuant to the terms of the Funding Deed, it will terminate on October 8, 2014.

VWP’s Board of Directors concluded in July 2014 that the wave power demonstration project contemplated by the Funding Deed was no longer commercially viable. Exercising its termination rights under the Funding Deed, VWP delivered the Termination Notice, which informed ARENA that VWP (i) was stopping all work on the Project, (ii) would not proceed with the Project, and (iii) would not claim further funding under the Funding Deed. Furthermore, VWP advised ARENA of its intent to repay to ARENA the funding given to VWP to date (as described further below), including interest, within 30 days after the date of the Termination Notice. The parties are currently discussing how the repayment will be made. VWP will also observe other applicable termination provisions in the Funding Deed.

Under the Funding Deed, a A\$66.5 million grant was awarded to VWP by the Commonwealth of Australia in 2010; however, receipt of funds under the grant was subject to certain terms, including achievement of future significant external funding milestones. The grant was expected to be used towards the A\$232 million proposed cost of building and deploying a wave power station off the coast of Australia (the “Project”). In January 2014, the Company announced that VWP had signed a Deed of Variation with ARENA that amended the Funding Deed. Among the changes included in the Deed of Variation was the incorporation of stage gates for each of the three stages of the project, requiring certain conditions be met to progress to the proceeding stage. The Deed of Variation also shifted the funding profile across the three stages to better support project cash flow requirements. The Deed of Variation also recognized the role of Lockheed Martin as the lead for systems integration of the PowerBuoy technology and overall program management. During the three months ended April 30, 2014 and pursuant to the Deed of Variation, ARENA funded the initial portion of the grant to VWP in the amount of approximately A\$5.6 million (approximately US\$5.2 million) for the achievement of a number of project milestones, which funding included an amount required to be remitted to the Australian taxing authorities as goods and services tax (the “Initial Funding”). The Initial Funding was subject to claw-back provisions if certain contractual requirements, including performance criteria, were not satisfied. In light of the claw-back provisions, the Company classified the Initial Funding as an advance payment, holds the funds as restricted cash and deferred recognition of the funds as revenue.

VWP does not expect to incur any early termination penalties as a result of the Termination Notice and does not expect that additional costs to close out the Project will be material. There are no material relationships between ARENA and VWP or the Company other than in respect of the Funding Deed.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

<u>Exhibit No.</u>	<u>Description</u>
10.1	Renewable Energy Demonstration Program Funding Deed, dated as of September 9, 2010, by and between Victorian Wave Partners Pty Ltd. and the Commonwealth of Australia represented by the Department of Resources, Energy and Tourism+
10.2	Deed of Variation to Funding Deed (and Notice of Waiver), dated as of January 9, 2014, by and between Victorian Wave Partners Pty Ltd. and Australian Renewable Energy Agency+

+ Indicates that confidential treatment has been requested for portions of this exhibit.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

OCEAN POWER TECHNOLOGIES, INC.

Date: July 14, 2014

By: /s/ MARK A. FEATHERSTONE

Mark A. Featherstone
Chief Financial Officer

EXHIBIT INDEX

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Exhibit 10.1

Commonwealth of Australia represented by the Department of Resources, Energy and Tourism

Victorian Wave Partners Pty Ltd

Renewable Energy Demonstration Program Funding Deed

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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Date

9th of September, 2010

Parties

Commonwealth of Australia represented by the Department of Resources, Energy and Tourism ABN 46 252 861 927 of 10 Binara Street Canberra ACT 2601 (**Commonwealth**)

Victorian Wave Partners Pty Ltd ACN 136 578 044 of Tower 1, Level 8, 495 Victoria Avenue, Chatswood NSW 2067 (**Recipient**)

Background

This deed is made in the following context:

- A The objective of the Renewable Energy Demonstration Program ('**Program**') is to accelerate the commercialisation and deployment of new renewable energy technologies for power generation in Australia by assisting the demonstration of these technologies on a commercial scale, as described in the Renewable Energy Demonstration Program Information Guide.
 - B The Recipient is committed to helping achieve the *Program Objectives and Outcomes* through the conduct of the *project*.
 - C The Commonwealth has agreed to provide the *grant funds* to the Recipient for the purposes of its *project*, subject to the terms and conditions of this deed.
 - D The Commonwealth is required by *law* and Australian Government policy to ensure accountability for the *grant funds* and, accordingly, the Recipient is required to be accountable for all *grant funds*.
 - E The Recipient accepts the *grant funds* for the purposes of the *project*, subject to the terms and conditions set out in this deed.
-

Agreed terms

1 Interpretation

1.1 Definitions

All italicised words appearing in this deed have the meaning given in clause 31.1 (**Definitions**).

1.2 Interpretation

The rules to be applied in interpreting this deed are set out in clause 31.2 (**Construction**).

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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1.3 Reasonableness

Where a provision of this deed allows or requires a party to take an action, make a decision or form a belief, that party will act reasonably in taking that action, making that decision or forming that belief.

2 Term

2.1 Commencement

(a) The following provisions of this deed commence on the *execution date*:

- (i) clause 1 (Interpretation);
- (ii) this clause 2 (Term);
- (iii) clause 4 (Warranties and representations);
- (iv) clause 6.8 (National Code of Practice for the Construction Industry);
- (v) clause 6.9 (Australian Government Building and Construction OH&S Accreditation Scheme);
- (vi) clause 8.3 (Project budget);
- (vii) clause 8.4 (Other government assistance);
- (viii) clause 11 (Group structure, assignment and change in control);
- (ix) clause 13.1 (Records);
- (x) clause 19 (Indemnity and Insurance);
- (xi) clause 27 (Notices);
- (xii) clause 28 (Entire agreement, variation and severance);
- (xiii) clause 30 (General);
- (xiv) clause 31 (Interpretation); and
- (xv) any provision in a schedule which is relevant for the purposes of the above provisions.

(b) All provisions of this deed other than those referred to in clause 2.1(a) (**remaining provisions**) do not commence unless the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth) on or before the date specified in clause 2.1(e).

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- (c) If the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth) on or before the date specified in clause 2.1(e), the remaining provisions commence on the *commencement date*.
- (d) If the condition precedent in clause 2.1(e) is not satisfied (or waived by the Commonwealth) on or before the date specified in clause 2.1(e):
 - (i) the remaining provisions do not take effect; and
 - (ii) this deed terminates with effect from the day after the date specified in clause 2.1(e).
- (e) The condition precedent is:
[***]
- (f) The condition precedent in clause 2.1(e) may be waived only by the Commonwealth.
- (g) The Recipient must use its best endeavours to satisfy the condition precedent in clause 2.1(e) on or before the date specified in clause 2.1(e).
- (h) The Recipient must liaise with the Commonwealth in relation to the progress of satisfaction of the condition precedent in clause 2.1(e).
- (i) The Recipient must provide documentary evidence to the satisfaction of the Commonwealth that the condition precedent in clause 2.1(e) has been satisfied on or before the date specified in clause 2.1(e).

2.2 Term

This deed will expire five years after *project completion*, unless terminated earlier in accordance with this deed.

3 Conditions precedent

3.1 Conditions precedent to payment of monies

- (a) The obligation of the Commonwealth under this deed to pay any *grant funds* or other monies to the Recipient will not commence until the Recipient provides documentary evidence to the satisfaction of the Commonwealth that each and every one of the conditions precedent (if any) specified in item 1 of schedule 1 has been fulfilled (or has been waived by the Commonwealth).
- (b) The Recipient must liaise with the Commonwealth throughout the period specified in item 1 of schedule 1 in relation to the progress of satisfaction of conditions precedent.
- (c) A condition precedent may be waived only by the Commonwealth.

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3.2 **Third party contracts**

If any condition precedent described in item 1 of schedule 1 involves the Recipient entering into a contract with one or more third parties then the Recipient must:

- (a) liaise with the Commonwealth throughout the period specified in item 1 of schedule 1 in relation to the progress of negotiations and finalisation of that contract;
- (b) ensure that the contract contains only terms and conditions that are consistent with the Recipient's performance of this deed and the *Program Objectives and Outcomes*; and
- (c) if required at item 1 of schedule 1 or at the Commonwealth's request, include as part of the documentary evidence required under clause 3.1(a), a certified copy of the executed version of the contract.

3.3 **Failure to meet conditions precedent**

- (a) If a condition precedent has not been satisfied or waived by midnight on the date specified in item 1 of schedule 1 (or such later date as the Commonwealth may determine in its absolute discretion), the Commonwealth may immediately terminate this deed by notice in writing to the Recipient.
- (b) If this deed is terminated under clause 3.3(a), the Commonwealth is not obliged to pay the *grant funds* to the Recipient and the Recipient must repay to the Commonwealth an amount equivalent to any payments of the *grant funds* it may have received prior to termination, within 7 days of receipt of the termination notice (which shall include a repayment notice).

4 **Warranties and representations**

4.1 **Warranties**

The Recipient warrants and represents to the Commonwealth that, as at the *execution date*:

- (a) it is incorporated under the Corporations Act 2001 (Cth), and has the power and authority to carry on its business as it is now being conducted;
- (b) it has the legal right and power to enter into this deed, to perform or cause to be performed its obligations and exercise its rights under this deed;
- (c) the execution, delivery and performance of this deed by it has been duly and validly authorised by all necessary action on its part;

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- (d) subject to changes notified to and approved by the Commonwealth after the date of the *application* and before the *execution date*, all information provided by the Recipient in the *application* is true and correct and not misleading;
- (e) it has or will have available to it sufficient *matching funding* to pay for *eligible expenditure* not covered by the *grant funds*, as and when all amounts of *eligible expenditure* are due to be paid;
- (f) it has or will have available to it sufficient financial resources to pay for all other *project costs* and expenses, as and when all such amounts are due to be paid; and
- (g) all information provided by the Recipient and included in this deed is true and correct and not misleading.

4.2 Continuation of representations and warranties

- (a) The Recipient warrants that any information given to the Commonwealth by the Recipient from time to time under this deed (including information contained in any report) is true and correct, save where the information is provided to the Recipient by a third party in which case the Recipient warrants and represents to the Commonwealth that it has made all endeavours to verify the accuracy of the information.
- (b) The Recipient agrees to notify the Commonwealth:
 - (i) immediately on becoming aware that any representation or warranty made under this clause 4 was incorrect or misleading when made;
 - (ii) on each date it submits a *payment claim* - of anything that has happened which means it cannot truthfully repeat all the representations and warranties in this clause 4 on that date by reference to the then current circumstances; and
 - (iii) immediately of any *insolvency event* in relation to it.
- (c) In the event that the Recipient gives notice to the Commonwealth under clause 4.2(b), it may request an extension of time under clause 6.2 to correct or address the matter raised in the notice.

4.3 Commonwealth reliance

The Recipient acknowledges that the Commonwealth has entered into this deed, and makes payment of any *progress payment*, in reliance on the representations and warranties in this clause 4, subject to any changes notified to and agreed by the Commonwealth.

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5 Payment of funding

5.1 Payment of grant funds

- (a) The Commonwealth agrees to pay the *grant funds* to the Recipient on the terms and conditions of this deed.
- (b) Subject to this deed and clauses 3.1(a) and 5.2(a) in particular, the *grant funds* will be paid progressively in the amounts set out in schedule 5 ('**progress payments**'), within 30 days of the Commonwealth's approval of a *payment claim* under clause 9.2, by direct credit to the bank account identified by the Recipient under clause 8.1.

5.2 Conditions precedent to payment

- (a) Notwithstanding any other clause of this deed, the Commonwealth is not obliged to pay the whole or any part of a *progress payment* if at the due date for that payment:
 - (i) sufficient *Program funding* is not available to the Commonwealth to cover all or any part of that *progress payment*;
 - (ii) the Recipient has failed to provide or maintain any security in accordance with clause 18 (**Securities**);
 - (iii) the Commonwealth has terminated, or has notified the Recipient that it is entitled to terminate, the deed under clause 22 (**Termination for default**), in which case the Commonwealth will only be liable for *progress payments* that were due for payment by the Commonwealth before the effective date of termination;
 - (iv) the Commonwealth is not satisfied that all representations and warranties contained in clause 4 can be restated by the Recipient as true and correct and not misleading at that date by reference to the then current circumstances; or
 - (v) the Recipient has not satisfied any specified or relevant condition precedent under clause 3.1(a) unless any such condition precedent to payment has been waived by the Commonwealth.
- (b) The payment of any *progress payment* under this deed is not to be taken as evidence of the Recipient having, or a representation by the Commonwealth that the Recipient has, complied with its obligations under this deed.

5.3 Commonwealth maximum grant obligation

The maximum Commonwealth funding obligation to the Recipient under this deed is limited to the amount of the *grant funds*.

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5.4 Eligible Expenditure

- (a) If the Recipient fails to substantiate to the Commonwealth's satisfaction any amount claimed as *eligible expenditure* under this deed, the Commonwealth may deem that amount not to qualify as *eligible expenditure*.
- (b) The Commonwealth's determination as to whether expenditure on the *project* is *eligible expenditure* for the purposes of this deed must be made reasonably and in accordance with the *Eligible Expenditure Guidelines* and item 3 of schedule 3 but shall be final and binding on the Recipient.

6 Project obligations

6.1 Performance of the project

It is a material obligation under this deed that the Recipient must carry out the *project*:

- (a) in accordance with the *project description* and, in particular, in a manner sufficient to achieve each *payment milestone* by the relevant due date specified in schedule 5;
- (b) having regard to and with the aim of achieving the *Program Objectives and Outcomes*;
- (c) in accordance with the terms and conditions of this deed;
- (d) in accordance with all relevant Australian Standards, best practice and guidelines, or where none apply, relevant international industry standards, best practice and guidelines; and
- (e) diligently, effectively and to a high professional standard including, in accordance with this deed, competent management of the funding provided under this deed.

6.2 Requests for extension of time

- (a) Where the Recipient is required to do any activity under this deed by a specified time, it may apply to the Commonwealth for an extension of time to do that activity. Such application must be made before the expiry of the time specified to do the activity, be in writing and include:
 - (i) the reason for the request;
 - (ii) the time by which the activity will be done if the extension is granted; and
 - (iii) a statement that, apart from the occurrence of a *force majeure event*, the activity will be done by the time given under clause 6.2(a)(ii).
- (b) If an application is made under clause 6.2(a) the Commonwealth in its sole discretion (but subject to clause 1.3) may:

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- (i) agree to the request;
 - (ii) agree to the request on conditions (which may include a requirement for compensation for the Commonwealth's direct costs (including legal costs) in considering the request);
 - (iii) agree to the request by way of requiring a variation to this deed or a schedule; or
 - (iv) reject the request.
- (c) The Commonwealth agrees to give consideration to any reasonable extension request made in accordance with clause 6.2(a). In evaluating the request, the Commonwealth will give primary consideration as to whether granting the extension of time will assist in meeting the *Program Objectives and Outcomes*.
- (d) If the Commonwealth rejects the request under clause 6.2(b)(iv) it is not obliged to give any reasons for doing so.
- (e) This clause 6.2 does not apply to requests for extension of time under clause 9.3.

6.3 Key Personnel

- (a) The Recipient must ensure that the key personnel specified in item 1 of schedule 4 ('**key personnel**') perform the work or duties required of their nominated positions. The Recipient must notify the Commonwealth as soon as practicable if key personnel leave or are proposed to be replaced.
- (b) If it is necessary to replace any of the key personnel (whether as a result of illness or otherwise), the Recipient must arrange for a replacement by a substitute person with the necessary qualifications, skills, expertise and experience to perform the work or duties required of the replaced person's nominated position.

6.4 Project delay

- (a) The Recipient must notify the Commonwealth as soon as practicable, and in any event in its next *progress report* due under this deed, if any *payment milestone* has not been achieved, or is unlikely to be achieved, by the due date for achievement of that milestone set out in schedule 5.
- (b) When notifying the Commonwealth under clause 6.4(a), the Recipient must specify:
 - (i) the reason for the delay;
 - (ii) the action the Recipient proposes to address the delay;

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- (iii) the anticipated new date for achievement of the relevant *payment milestone*;
- (iv) the expected effect (if any) the delay will (or may) have on the then current *budget*, the manner and timing of delivery of the *project*, or the *project's* achievement of the *Program Objectives and Outcomes*; and
- (v) whether the Recipient has made or will be making a claim under clause 26 (**Force majeure**) or seeking an extension of time under clause 6.2 or 9.3.

6.5 Authorisations

- (a) The Recipient must obtain (or satisfy), maintain and, to the satisfaction of the relevant administering *authority*, comply with all *authorisations* required for the *project* including those referred to in item 4 of schedule 3.
- (b) The Recipient must do all things necessary to ensure that any *authorisation* required for the *project* is obtained (or satisfied) in advance of the date by which it is required to meet the *payment milestones*. If any *authorisation* is unlikely to be obtained (or satisfied) in time, the Recipient must promptly notify the Commonwealth.
- (c) The Recipient must provide to the Commonwealth documentary evidence and any other supporting information the Commonwealth may require for the purpose of demonstrating the Recipient's compliance with this clause 6.5, within 30 days of the Commonwealth's request.

6.6 Compliance with law

- (a) The Recipient must perform all work and do all things necessary to ensure that the *project* complies with all applicable *law*.
- (b) The Recipient must comply, and procure that all subcontractors comply, with all applicable *law* in performing its obligations under this deed.

6.7 Change in law

- (a) The Recipient acknowledges that it is not entitled to any increase in funding under this deed as a result of any change in *law*.
- (b) The parties agree that if a change in *law* will result in a delay in the *project*, the Recipient may request an extension of time which the Commonwealth will not unreasonably refuse.

6.8 National Code of Practice for the Construction Industry

- (a) In this clause 6.8:

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- (i) 'the Code' means the National Code of Practice for the Construction Industry. A copy of the Code appears on the Internet at www.workplace.gov.au/building;
 - (ii) 'the Guidelines' means the Australian Government Implementation Guidelines for National Code of Practice for the Construction Industry, Revised September 2005, Reissued June 2006, published by the Department of Education, Employment and Workplace Relations. A copy of the Guidelines appears on the Internet at www.workplace.gov.au/building; and
 - (iii) 'the Project Parties' means all contractors, subcontractors, suppliers, consultants and employees who perform work in relation to the *project*.
- (b) Where *grant funds* specifically relate to building and construction activity, subject to the thresholds specified in the Guidelines, the Recipient must comply and ensure that the Project Parties comply with the Code and Guidelines.
- (c) The Guidelines require the Recipient to ensure that:
- (i) all requests for tender, expressions of interest, submissions and invitations to join common use arrangements in relation to the *project* made by it or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the model tender documents; and
 - (ii) all contracts entered into in relation to the *project* by it or any of the Project Parties contain the commitment to apply the Code and Guidelines as set out in the model contract clauses.
- (d) The Recipient must maintain adequate records of compliance by it and each of the Project Parties with the Code and the Guidelines. The Recipient must permit the Commonwealth and those authorised by the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, full access to the premises and records of the Recipient and the Project Parties to:
- (i) inspect any work, material, machinery, appliance, article or facility;
 - (ii) inspect and copy any record relevant to the *project* and works governed by this deed; and
 - (iii) interview any person,
- as is necessary to monitor compliance with the Code and Guidelines.
- (e) Additionally, the Recipient must agree, and must ensure that each of the Project Parties agrees, to a request from the Commonwealth, including a person occupying a position in the Office of the Australian Building and Construction Commissioner, to produce a specified document within a specified period, in person, by fax or by post.

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- (f) The Commonwealth and those authorised by it may publish or otherwise disclose information in relation to compliance by the Recipient and the Project Parties with the Code and the Guidelines. The Recipient must obtain the consent of the Project Parties to the publication or disclosure of information under this clause 6.8.
- (g) The Recipient must not appoint a subcontractor, consultant or material supplier in relation to the *project* where the appointment would breach a sanction imposed by the Minister for Employment and Workplace Relations.

6.9 Australian Government Building and Construction OH&S Accreditation Scheme

Subject to the exclusions specified in the Building and Construction Industry Improvement (Accreditation Scheme) Regulations 2005, construction projects that utilise *grant funds* provided under this deed are bound by the application of the Australian Government Building and Construction OHS Accreditation Scheme ('**Scheme**') and the following conditions:

- (a) all head contracts for *building work* under the *project* that are valued at \$3 million or more must:
 - (i) be notified to the Office of the Federal Safety Commissioner at the earliest possible opportunity (that is, when approaching the market);
 - (ii) contain a requirement that the builder:
 - (A) is accredited under the Scheme;
 - (B) maintains Scheme accreditation for the life of the contract; and
 - (C) must comply with all conditions of the Scheme accreditation; and
- (b) if the Recipient is the builder referred to in clause 6.9(a), the Recipient must maintain accreditation and otherwise comply with the requirements of clause 6.9(a).

6.10 Risk management

During the *project period*, the Recipient must develop, implement and update a *risk management plan* for the *project* which includes the following features:

- (a) clear identification and documentation of all key *project* risks and categorisation of those risks covering both likelihood of occurrence and potential consequence;

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- (b) the proposed mitigation strategies and associated action plans that the Recipient determines necessary to eliminate the risks, or if this is not possible, minimise the likelihood and consequences of those risks occurring; and
- (c) a process for regularly monitoring and updating the *risk management plan* and reporting to the Recipient's internal management and board and *project participants* (if applicable),

and is consistent with relevant industry standards and best practice for this type of project and the types of risks it has.

6.11 Community consultation

- (a) During the *project period*, the Recipient must develop, implement and update a *community consultation plan* for the *project* which includes the following features:
 - (i) identification of all key stakeholder groups, including local communities that are potentially affected by the *project*,
 - (ii) an outline of the proposed community consultation processes to be undertaken that includes the following:
 - (A) public notification of meetings;
 - (B) itinerary of meetings to be conducted, groups involved and agenda for meetings;
 - (C) provision of information at meetings and local information sites;
 - (D) documentation of attendees, questions and answers and follow-up issues required arising from meetings; and
 - (E) an outline for stakeholders on how to access the latest information in respect of community consultation matters;
 - (iii) an outline of how community consultation activities align with *payment milestones*;
 - (iv) a process for maintaining an up-to-date record of complaints and questions arising from community consultations and the responses provided to these complaints and questions; and
 - (v) a process for regularly:
 - (A) monitoring and updating the *community consultation plan* and the community consultations undertaken; and

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- (B) reporting to the Recipient's management, *project participants* (if applicable) and other key groups (whether government or non-government), as required by the Commonwealth to ensure the ongoing improvement of community engagement,

and is consistent with relevant industry standards and best practice for this type of project and the types of community consultation to be undertaken.

- (b) The Recipient must make the *community consultation plan* available to any person on request. The Recipient may make the *community consultation plan* available by publishing it on its website.

6.12 Notification

Without limiting any obligation to notify any *authority*, the Recipient must notify the Commonwealth as soon as practicable of:

- (a) any incident or possible incident in connection with any *project* activities that constitutes or may constitute a threat to the health, safety and wellbeing of any person or community, or otherwise threatens the environment or any property; and
- (b) any significant concerns of local community groups of which the Recipient becomes aware.

7 Subcontractors

7.1 Engagement of subcontractors

- (a) The Recipient must ensure that the subcontractors specified in item 2 of schedule 4 are engaged by the Recipient in connection with the *project* for the purposes and within the timeframes described in that item and, where required, comply with the requirements referred to in clause 6.9 of this deed.
- (b) The Recipient must notify and liaise with the Commonwealth as soon as practicable if it intends to subcontract, or allow any subcontractor to assign or enter into a further subcontract for, any *major subcontract work*.
- (c) The Recipient must ensure that any subcontract for *major subcontract work* is let with or assigned to a subcontractor with the necessary resources, expertise and experience to undertake the *major subcontract work*.
- (d) The Recipient must ensure that the terms and conditions of any subcontract are consistent with the Recipient's performance of this deed and the *Program Objectives and Outcomes*.

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7.2 Recipient's liability

Notwithstanding the Recipient having entered into a subcontract for the purposes of this deed, the Recipient:

- (a) remains fully responsible for the performance of all of its obligations under this deed, and is not relieved from any liability whether arising under this deed or otherwise at law; and
- (b) will be liable to the Commonwealth for the acts, defaults or omissions of its subcontractors (and their employees, agents and subcontractors) in the course of their activities for the purposes of the *project*, as if they were the acts, defaults or omissions of the Recipient.

8 Financial matters

8.1 Bank account and accounting system

- (a) The Recipient must nominate an account, in its own name and which it solely controls, with an *approved financial institution* for the receipt of *grant funds* for the purposes of the *project* ('**account**'). The Recipient must provide to the Commonwealth sufficient details to enable the Commonwealth to identify the account at least 14 days before any payment of *grant funds* or other monies due to the Recipient under this deed are payable by the Commonwealth.
- (b) The Recipient must have in place an accounting system which enables all receipts of *grant funds* and all expenditure on the *project* to be traced and verified by the Commonwealth. The system must enable the separate accurate identification of *eligible expenditure* and ineligible *project* expenditure and provide a clear audit trail.
- (c) Within 7 days of the Commonwealth's request to do so, the Recipient agrees to provide the Commonwealth and the relevant *approved financial institution* with an authority enabling the Commonwealth to obtain any details relating to the account.

8.2 Use of grant funds

The Recipient must ensure (and demonstrate to the Commonwealth's satisfaction) that all *progress payments* paid under clause 5.1 are (and have been) used by the Recipient for purposes directly related to the *project*.

8.3 Project budget

- (a) The parties acknowledge and agree that the budget of total planned expenditure for the *project* (by *financial year*) ('**budget**') current at the *execution date* is set out in item 3 of schedule 3.

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- (b) The Recipient must give the Commonwealth:
 - (i) by 31 January, 30 April, 31 July and 31 October of each year; and
 - (ii) at any other time the Recipient forecasts a change of 10% or greater in the *project's* planned *eligible expenditure* for a *financial year*;

a revised *budget* in the approved form (including the planned cost to complete the *project*), giving detailed reasons for any proposed changes from the immediately previous *budget* provided under this clause 8.3(b).

8.4 Other government assistance

- (a) The Recipient warrants that on or before the *execution date*, the Recipient has provided to the Commonwealth details of any other grant assistance applied for by or on behalf of the Recipient, obtained for or provided to the *project* from another Commonwealth, State or Territory program or source, including from any department, agency, *authority*, organisation or other government controlled entity.
- (b) The Recipient must give the Commonwealth details of any other grant assistance of the kind referred to in clause 8.4(a) that is obtained for or provided to the *project* after the *execution date* (whether by the Recipient or a third party), within 14 days of the Recipient (or third party) receiving notice of that assistance.
- (c) If at any time during the period from the *execution date* to the end of the *project period* there is a change in an amount of grant assistance referred to in clause 8.4(a) or the terms and conditions applying to the provision of that assistance, the Recipient must give the Commonwealth details of that change within 14 days.
- (d) If at any time during the period from the *execution date* to the end of the *project period* the *project* receives other grant assistance of a kind referred to in clause 8.4(a) or 8.4(b) or there is a change of the type referred to in clause 8.4(c), the Commonwealth may reduce the Recipient's total *eligible expenditure* by the amount of that other assistance. Any reduced amount of *eligible expenditure* determined under this clause 8.4 will be used by the Commonwealth to calculate the 'total value of *eligible expenditure incurred* by the Recipient' under clause 16.1.
- (e) To avoid doubt, if at any time before the end of the *project period* the *project* receives assistance under the Victorian Government's Energy Technology Innovation Strategy program, the Commonwealth may reduce the Recipient's total *eligible expenditure* by the amount of that assistance. Any reduced amount of *eligible expenditure* determined under this clause 8.4 will be used by the Commonwealth to calculate the 'total value of *eligible expenditure incurred* by the Recipient' under clause 16.1.

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9 Claims for payment

9.1 Payment claim

- (a) On each of the due dates specified in schedule 5, the Recipient must submit to the Commonwealth a claim for payment of the relevant *progress payment* (**'payment claim'**) in accordance with this clause 9.
- (b) A *payment claim* submitted under clause 9.1(a) must:
 - (i) be in the form approved by the Commonwealth from time to time;
 - (ii) include a certificate signed and dated by the Recipient's Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution, verifying that each of the *payment milestones* and other payment criteria specified in schedule 5 for the relevant *progress payment* have been completed or achieved by that date; and
 - (iii) be accompanied by any supporting documentation and other evidence specified in schedule 5 for that payment.

9.2 Assessment of payment claim

- (a) Within 30 days of receiving a *payment claim*, the Commonwealth will:
 - (i) approve the claim - if the Commonwealth considers that the Recipient has completed or achieved all applicable *payment milestones*, and the *payment claim* otherwise conforms with clause 9.1;
 - (ii) reject the claim - if the Commonwealth considers that the Recipient has not satisfactorily completed or achieved all applicable *payment milestones*, or the *payment claim* does not conform with clause 9.1; or
 - (iii) seek further supporting evidence or information from the Recipient so that the Commonwealth may either approve or reject the claim under paragraph 9.2(a)(i) or 9.2(a)(ii).
- (b) If the Commonwealth seeks further evidence or information under clause 9.2(a)(iii), the Recipient must provide the additional evidence or information within 14 days of the Commonwealth's request. On receipt of the evidence or information, the Commonwealth will continue to assess the *payment claim* in accordance with this clause 9.2 as if the claim had first been submitted to the Commonwealth on the date the Commonwealth received the further evidence or information.

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- (c) If the Commonwealth approves a *payment claim* under clause 9.2(a)(i), the relevant *progress payment* will become payable by the Commonwealth in accordance with clause 5 (**Payment of funding**).
- (d) If the Commonwealth rejects a claim under clause 9.2(a)(ii), the parties will seek to negotiate in good faith a new date for the Recipient to re-submit the *payment claim*. If the parties fail to reach agreement within 30 days of the claim being rejected (or such further period as the Commonwealth allows), the Recipient may not re-submit the claim and the Commonwealth may reduce the *grant funds* by the amount of the relevant *progress payment* forgone.

9.3 **Extension of time for submission of payment claim**

- (a) Prior to the due date for submission of a *payment claim*, the Recipient may seek an extension of time for the submission of that claim. An extension request under this clause 9.3(a) must be in writing, contain detailed reasons in support of the request, and nominate a new date for submission of that *payment claim*.
- (b) The Commonwealth agrees to give consideration to any reasonable extension request made in accordance with clause 9.3(a).

10 **GST**

10.1 **Construction**

In this clause 10 words and expressions which are not defined in this deed but which have a defined meaning in the *GST Law* have the same meaning as in the *GST Law*.

10.2 **Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

10.3 **Payment of GST**

If GST is payable by a supplier on any supply made under this deed, the recipient of the supply will pay to the supplier an amount equal to the GST payable on the supply, in addition to and at the same time that the consideration for the supply is to be provided under this deed.

10.4 **Tax invoice**

- (a) Except where clause 10.4(b) applies:
 - (i) the supplier must deliver a tax invoice or an adjustment note to the recipient of the supply before the supplier is entitled to payment of an amount under clause 10.3; and

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(ii) the recipient of the supply can withhold payment of the amount payable under clause 10.3 until the supplier provides a tax invoice or an adjustment note as appropriate.

(b) If GST is imposed on any supply made by the Recipient to the Commonwealth under this deed in return for all or any part of the *grant funds*, the Commonwealth may issue a 'recipient created tax invoice' to the Recipient for the supply in question (and an adjustment note for any adjustment event in respect of that supply) and the Recipient must not issue a tax invoice (or adjustment note) for or in respect of the supply. Each party warrants that it is GST registered and agrees that it will promptly notify the other party if it ceases to be GST registered.

10.5 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this deed the amount payable by the recipient of the supply under clause 10.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient of the supply to the supplier or by the supplier to the recipient of the supply as the case requires.

10.6 Reimbursements

No party may claim from the other an amount for which the first party can obtain an input tax credit.

11 Group structure, assignment and change in control

11.1 Group structure

(a) The Recipient warrants and represents to the Commonwealth that the legal and beneficial ownership of the Recipient and of each *project participant*, and the group structure of the Recipient and of each *project participant*, at the *execution date* are set out in schedule 2.

(b) At all times during the period from the *execution date* to the end of the *project period* the Recipient must ensure that:

(i) the composition of the *project group* does not change; and

(ii) the terms of any joint venture, joint participation or consortium agreement binding the *project group* are not varied, supplemented or deleted in any material respect;

without the Commonwealth's prior written consent which will not be unreasonably withheld or delayed.

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11.2 Assignment

- (a) The Recipient must not assign, novate, mortgage, charge or otherwise encumber or declare itself trustee or purport to so assign, novate, mortgage, charge or otherwise encumber or declare itself trustee of or in relation to any of its rights or obligations (as applicable) under this deed, without the prior written consent of the Commonwealth, which must not be unreasonably withheld or delayed.
- (b) The Commonwealth may impose conditions (a breach of which is a breach of this deed) in giving its consent under clause 11.2(a), including by requiring the Recipient and any other person concerned in a transaction referred to in clause 11.2(a) to execute documentation as specified by the Commonwealth.

11.3 Change in control

If a change in *control* of the Recipient, or a *project participant* occurs the Recipient must:

- (a) as soon as possible but within 30 days of the Recipient becoming aware of the occurrence of the change of *control*, notify the Commonwealth of the event and advise whether it believes the change of *control* will have any material adverse effect on the conduct or continuation of the *project*, and
- (b) as soon as possible but within 90 days of the Recipient becoming aware of the change of *control*, provide a written undertaking that the Recipient will continue with the *project*.

11.4 Consequence of Assignment and Change in control

- (a) If the Commonwealth considers:
 - (i) an assignment, novation, mortgage, charge, encumbrance or declaration of trust referred to in clause 11.2; or
 - (ii) a change in *control* under clause 11.3;will result in the Recipient not continuing with the *project* or if no undertaking is given in accordance with clause 11.3(b), the Commonwealth may by written notice terminate this deed.
- (b) If the Commonwealth terminates this deed under clause 11.4(a), it may by notice to the Recipient require the repayment to the Commonwealth of all amounts paid to the Recipient under this deed in accordance with clause 16.3.

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12 Intellectual Property

12.1 Project Intellectual Property

- (a) Other than as expressly provided in this deed, the Commonwealth does not assert ownership of, or any rights in relation to, *background IP* or *foreground IP*.
- (b) The Recipient warrants and represents that:
 - (i) it owns or is licensed to use (at all times during the period from the *execution date* to the end of the *project period*) all *background IP*, unless otherwise agreed in writing with the Commonwealth; and
 - (ii) it is entitled to grant the rights in relation to, or otherwise deal with, *background IP* in the manner required by this deed and that any such dealings in *background IP* will not infringe the *intellectual property* rights of any person.
- (c) The Recipient grants to the Commonwealth, its representatives or persons authorised by the Commonwealth, permanent, irrevocable and royalty free access to read, review, consider or test (but no rights to otherwise use, reproduce, publish, electronically transmit, electronically distribute, adapt, modify, commercially exploit or deal with), for any purpose related to this deed, the *project* or the *Program* or for the Commonwealth's reporting and accountability obligations, all *intellectual property* related to or developed for the *project* and owned by or licensed to the Recipient or an *associated entity*.
- (d) The Commonwealth may provide all relevant *intellectual property* related to or developed for the *project* and owned by or licensed to the Recipient or an *associated entity* to an expert appointed under clause 14.1 for the purpose only of the conduct of the activities for which the expert is appointed.
- (e) The Recipient undertakes to procure from each *project participant* in favour of the Commonwealth the same rights that it grants in clause 12.1(c) and 12.1(d).

12.2 Deed Material

- (a) The Recipient grants to the Commonwealth a permanent, irrevocable, royalty free, worldwide, non-exclusive licence to use, reproduce, publish, electronically transmit, electronically distribute, adapt, modify or otherwise deal with any *deed material* for any purpose related to this deed, the *project* or the *Program* or for the Commonwealth's reporting and accountability obligations but not to commercially exploit any *deed material*.
- (b) The Commonwealth may provide all relevant *deed material* to an expert appointed under clause 14.1 for the purpose only of the conduct of the activities for which the expert is appointed.

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12.3 **Warranty**

The Recipient warrants that it has the authority to grant the rights to the Commonwealth under clause 12.2 and that neither the provision to, nor the use by the Commonwealth or anyone authorised by the Commonwealth of any *deed material*, or any rights in respect of the *deed material*, in accordance with this deed will infringe the *intellectual property rights* or other rights of any person or give rise to any obligation of, or on behalf of, the Commonwealth to pay compensation, damages, or a royalty to any person.

12.4 **Recipient's consent**

- (a) Subject to clause 12.2(b), the Commonwealth must not disclose any *intellectual property* or *technical data* of the Recipient or a third party in the *deed material* without the prior written consent of the Recipient which must not be unreasonably withheld or delayed.
- (b) A withholding of consent by the Recipient under clause 12.4(a) is not unreasonable if it is withheld because the Recipient believes that the disclosure of the material would compromise the rights of the Recipient or a third party in such *intellectual property* or *technical data*.

12.5 **Documentation**

The Recipient agrees to bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 12 and to procure the same from each *project participant*.

13 **Records, reporting, and Commonwealth access**

13.1 **Records**

- (a) The Recipient must keep and maintain in accordance with this deed and all generally applicable Australian accounting standards and principles:
 - (i) all records (including original receipts, invoices and bank statements) necessary to provide (at any given point in time) a complete, detailed, up-to-date and accurate record and explanation of:
 - (A) all *project* expenditure (and which separately identifies *eligible expenditure* from other *project* costs);
 - (B) *matching funding* (including the source, amount and timing of such funds);
 - (C) *project* activities and progress of the *project*; and
 - (D) any amounts of GST paid by the Recipient in respect of any supply made under or in connection with this deed;

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- (ii) any other records relating to the *project* or this deed that the Commonwealth may require from time to time.
- (b) The Recipient must ensure that:
 - (i) all records required to be kept under this clause 13.1 are kept for at least the *term* of this deed, or seven years from the date of their creation, whichever is the greater period; and
 - (ii) for so long as any records are required to be kept under this clause 13.1, these records are kept at a location reasonably accessible to the Commonwealth.

13.2 Access

- (a) Subject to safety and operational requirements and limitations, at all reasonable times and on reasonable notice, the Recipient must allow the Commonwealth, and any person authorised in writing by the Commonwealth (**'authorised representative'**), access to its premises, work sites and records in order to monitor, review or verify (**'review'**):
 - (i) performance of, or expenditure on, the *project*;
 - (ii) the Recipient's compliance with this deed; or
 - (iii) any details included in, or attached to, a *payment claim* or report submitted under clause 13.3.
- (b) The Recipient must give or procure for the Commonwealth or its authorised representative all necessary facilities and assistance for the purposes of any review under clause 13.2(a). In the case of any document or record stored on a medium other than in writing, the Recipient must make available on request facilities to enable a legible reproduction to be created.
- (c) In conducting a review under clause 13.2(a) the Commonwealth or its authorised representative may take copies of any records or reproductions thereof created under clause 13.2(b) that the Commonwealth or its representative considers relevant to the review.
- (d) Without in any way affecting the statutory powers of the Auditor-General under the Auditor-General Act 1997 and subject to the provisions of that Act, the Auditor-General is an authorised representative for the purposes of clause 13.2(a) to 13.2(c) inclusive, even if not authorised in writing by the Commonwealth.

13.3 Reporting requirements

- (a) The Recipient must give the Commonwealth reports under schedule 6 in the form required by the Commonwealth from time to time, by each of the dates and containing at least the details specified in schedule 6, or as otherwise notified by the Commonwealth.

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- (b) The Recipient must arrange for those reports identified in schedule 6 as being the subject of a financial audit to be financially audited prior to their submission to the Commonwealth under clause 13.3(a).
- (c) Where the Commonwealth requires a report to be financially audited, the report must be audited by a member of the Institute of Chartered Accountants in Australia, a member of CPA Australia or a Public Practice Certified Member of the National Institute of Accountants and accompanied by a signed statement from the auditor substantially in the form of the audit report notified by the Commonwealth from time to time verifying the truth, accuracy and reliability of the report.
- (d) Any auditor appointed to carry out an audit under clause 13.3(c) must not be an employee, shareholder, director, other officeholder or *related entity* of the Recipient, a *project participant*, or any other person having (or having had) a significant involvement in the *project*, the *application*, or any other report submitted under this deed.
- (e) If in the Commonwealth's opinion either the form or the content of a report (including any audit report) does not meet the requirements of this deed or is not adequate for the Commonwealth's purposes, the Commonwealth may require the Recipient to submit a revised report satisfactory to the Commonwealth within 30 days of the Commonwealth's request.
- (f) Without the authority or agreement of the Commonwealth, the Recipient will not provide any person with a copy of any report to the Commonwealth given or required under this deed. This clause 13.3(f) does not apply to copies of reports given for good reason to:
 - (i) a *project participant*;
 - (ii) an *associated entity* of the Recipient or of a *project participant*; or
 - (iii) the Recipient's auditors, financiers or legal advisers.

13.4 Further information

- (a) The Commonwealth may at any time by notice to the Recipient request that the Recipient provide any additional information (including any independent or other expert report) required by the Commonwealth which relates to the reports provided under clause 13.3 and the Recipient's compliance with, or performance of, obligations under this deed, the *project* (including the involvement or role of any *project participant*), the Recipient's participation in the *Program* or the *project's* achievement (or anticipated achievement) or otherwise of the *Program Objectives and Outcomes*. Any information requested under this clause 13.4(a) must be provided to the Commonwealth at the times and in the form specified in the notice.

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- (b) Clause 13.4(a) extends to information of an *associated entity* or *related entity* of the Recipient but does not extend to reports or other documents prepared solely for the Recipient's Board.
- (c) Where any necessary consent of a third party (including an *associated entity* or *related entity* of the Recipient) is required for the provision of information under clause 13.4(a), the Recipient will make all efforts to obtain such consent. Despite clause 13.4(a), the Recipient is not required to provide any information if the consent of the relevant third party (not being an *associated entity* or *related entity* of the Recipient) cannot be obtained.

13.5 Other participants

The Recipient must ensure that any *project participant* or subcontractor specified in item 2 of schedule 4 and engaged for the purposes of the *project*:

- (a) keeps like records to those required under clause 13.1; and
- (b) gives the Commonwealth (and any of its authorised representatives) access to its premises, records and work sites in accordance with clause 13.2.

14 Independent verification

14.1 Engagement of expert

- (a) Without limiting any of its other rights under this deed, the Commonwealth may at any time engage an expert to:
 - (i) verify, review or monitor the Recipient's compliance with this deed, performance of the *project*, or the details of any *payment claim* or report submitted under clause 13.3;
 - (ii) verify, review or monitor performance of the *project* against the *Program Objectives and Outcomes*; or
 - (iii) assist with the administration or management of this deed or the *Program* generally.
- (b) The Commonwealth and the Recipient may at any time jointly engage an independent expert to verify, review or monitor the performance of the *project* against the *Program Objectives and Outcomes* (including whether the technologies or processes to which the *project* relates are or will be capable of being substantively proved or successfully implemented). The precise terms of reference upon which the independent expert is to report will be agreed between the parties prior to each reference to an independent expert under this clause 14.1(b). A party must not refuse to jointly engage an independent expert in accordance with this clause 14.1(b).

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- (c) The Recipient must provide any expert engaged under this clause 14 with access to its premises, work sites and records, and with any facilities or assistance requested by the Commonwealth or the expert, for the purpose of the expert performing the terms of their engagement. The timing of such access will be subject to safety and operational requirements and limitations.
- (d) The Recipient must:
 - (i) ensure that any *project participant* or subcontractor specified in item 2 of schedule 4; and
 - (ii) use its best endeavours to ensure that any other subcontractor engaged for the purposes of the *project*;
gives any expert engaged under this clause 14 access to its premises, work sites and records, and any facilities and assistance, equivalent to that required under clause 14.1(c). The timing of such access will be subject to safety and operational requirements and limitations.
- (e) Any expert appointed under this deed must act independently, honestly and impartially.

14.2 Expert reports

- (a) The Commonwealth may use information contained in a report of an expert engaged under clause 14.1(a) for any purpose related to this deed it sees fit.
- (b) Subject to clause 14.2(c), all costs associated with engaging an expert under this clause 14 will be met by the party, or in equal shares by the parties, engaging the expert.
- (c) Without limiting the Commonwealth's other rights under this deed, if the Commonwealth considers that a report provided by an expert under clause 14.1(a) identifies a *material adverse event*, the Commonwealth may:
 - (i) terminate this deed by notice in writing to the Recipient if the Recipient does not remedy that *material adverse event* within 30 days of being notified in writing by the Commonwealth of that *material adverse event* or within such further time as the Commonwealth agrees; and
 - (ii) require that the Recipient meet all (or part) of the costs of that verification or review.

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- (d) At the Recipient's request, the Commonwealth will provide the Recipient with a copy of any report provided by an expert under clause 14.1(a) that identifies a *material adverse event*.
- (e) If the parties agree that an independent expert jointly engaged under clause 14.1(b) has reasonably reported negatively in respect of one or more of the matters included in the expert's terms of reference agreed between the parties under clause 14.1(b) and that the *project* should not continue, they may terminate this deed by agreement.

15 Confidential information

15.1 Non disclosure obligation

Subject to clause 15.2, a party must not disclose any *confidential information* of the other party without the prior written consent of that other party.

15.2 Exceptions

The obligation of a party under clause 15.1 will not be taken to have been breached to the extent that *confidential information*:

- (a) is disclosed by a party to its professional advisers or employees or employees of an *associated entity* solely in order to comply with its obligations or exercise rights under this deed;
- (b) is disclosed to a party's internal management personnel for the purpose of enabling effective management or auditing of activities related to this deed;
- (c) subject to clause 13.3(f), is disclosed by a party to a State Government for purposes directly related to this deed or an agreement covering assistance of the kind referred to in clause 8.4;
- (d) is disclosed by the Commonwealth to a responsible Minister or the Auditor-General, or a delegate or authorised nominee of either of them;
- (e) is disclosed by the Commonwealth in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
- (f) is disclosed within the *Department*, or to another Commonwealth department, agency, *authority* or body, where this serves the Commonwealth's legitimate interests;
- (g) is disclosed by the Commonwealth for a purpose directly related to the enforcement or investigation of a possible breach of any *law*;
- (h) is disclosed to the Australian Stock Exchange pursuant to a Listing Rule or other requirement to do so; or

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- (i) is required by law or authorised by this deed to be disclosed.

16 Repayment obligations

16.1 Payment in excess of funding percentage

[***]

16.2 Misspent progress payments

If the Commonwealth considers that the whole or any part of a *progress payment* has been spent by the Recipient other than in accordance with clause 8.2, the Commonwealth may by notice to the Recipient require the Recipient to pay to the Commonwealth an amount equal to the value of the misspent funds. For the avoidance of doubt, this clause 16.2 applies to any funds spent as a result of either fraud or misleading or deceptive conduct on the part of the Recipient or any *project participant* in the use of the *grant funds* or the performance of the *project* or any part of it.

16.3 Repayment terms

If the Commonwealth gives the Recipient a repayment notice under clause 3.3(b), 11.4(b), 16.1, 16.2, 21(d) or 22.4, the Recipient must pay to the Commonwealth within 30 days of receipt of that notice (7 days in the case of clause 3.3(b)) the principal amount and any interest component (calculated in accordance with clause 17.2) that is specified in the notice. For the avoidance of doubt, the Recipient is not liable to repay the *grant funds* or any *progress payment* other than under clauses 3.3(b), 11.4(b), 16.1, 16.2, 21(d) or 22.4.

16.4 Timing of notice

For the avoidance of doubt, a repayment notice given by the Commonwealth:

- (a) under clause 3.3(b) - must be sent with the termination notice;
- (b) under clause 11.4(b), or 22.4 - must be sent within a reasonable time of termination of this deed;
- (c) under clause 16.1 - must be sent on or within a reasonable time of *project completion*, termination of this deed or the end of the *financial year* (as applicable);
- (d) under clause 16.2 - must be sent within a reasonable time of the Commonwealth becoming aware of any *progress payment* (or part thereof) having been misspent; or
- (e) under clause 21(d) - must be sent within a reasonable time after the date the notice of intention to terminate is given by the Recipient under clause 21(a).

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17 **Right of Commonwealth to recover money**

17.1 **Debt due to the Commonwealth**

An amount notified to the Recipient as repayable or owing to the Commonwealth under this deed is a debt due to the Commonwealth and is recoverable by the Commonwealth without further proof of the debt being necessary.

17.2 **Interest**

If the Commonwealth requires interest to be paid by the Recipient in connection with any amount notified as repayable or owing to the Commonwealth under this deed, the amount of interest will be calculated:

- (a) at the rate set out in item 5 of schedule 1;
- (b) on a daily compounding basis upon the principal amount specified in the notice as repayable or owing to the Commonwealth; and
- (c) from and including the date (or dates) of payment of the amount to the Recipient, up to but excluding the day on which the Recipient repays or pays the total amount specified in the notice as repayable or owing to the Commonwealth, without any set off, counter-claim, condition, abatement, deduction or withholding.

17.3 **Set off**

The Commonwealth may set-off or deduct from any *progress payment* or other money due to the Recipient any debt or other amount due from the Recipient to the Commonwealth under this deed.

18 **Securities**

18.1 **Guarantee**

- (a) The Recipient must, within 14 days of the *commencement date* and before any *grant funds* are paid to the Recipient, provide to the Commonwealth a properly executed deed of guarantee of the Recipient's obligations under this deed (**'the guarantee'**) in the form set out in attachment B.
- (b) The guarantor(s) making the guarantee must be:
 - (i) a shareholder in the Recipient;
 - (ii) an *associated entity* of the Recipient; or
 - (iii) another party;acceptable to the Commonwealth.

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- (c) The Commonwealth may rely on the guarantee:
 - (i) to obtain amounts due to the Commonwealth in the event that the Recipient fails to perform its obligations under this deed, including upon termination under clause 22 (**Termination for default**);
 - (ii) to recover any debts due to the Commonwealth under or in relation to this deed; and/or
 - (iii) otherwise as provided in the guarantee.

19 Indemnity and Insurance

19.1 Indemnity

- (a) The Recipient agrees to indemnify (and keep indemnified) the Commonwealth, its officers, employees and agents (referred to in this clause as '**those indemnified**') from and against any loss, liability and expense incurred by those indemnified and arising out of or as a consequence of:
 - (i) a negligent, reckless, wilful or unlawful act or omission of the Recipient, its employees, agents or other persons acting on its behalf or under its direction in the conduct of the *project*;
 - (ii) the exercise of any *intellectual property* or other rights licensed or granted in accordance with this deed;
 - (iii) the breach of any material obligation under this deed;
 - (iv) the breach of any representation or warranty given by the Recipient under this deed; or
 - (v) the breach or infringement of the *moral rights* of any person in *intellectual property, deed material* or *technical data*.
- (b) The Recipient's liability to indemnify those indemnified under this clause 19.1 will be reduced proportionally to the extent that any negligent, reckless, wilful or unlawful act or omission on the part of those indemnified contributed to the relevant loss, liability or expense.
- (c) The right of those indemnified to be indemnified under this clause is in addition to, and not exclusive of, any other right, power or remedy provided by *law*, but those indemnified are not entitled to be compensated in excess of the amount of the relevant liability, damage, loss, or expense.
- (d) In the event of a claim against those indemnified of the type referred to in clause 19.1(a), those indemnified must:

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- (i) promptly notify the Recipient;
 - (ii) take all reasonable measures to mitigate any relevant loss; and
 - (iii) take all reasonable measures (including court action if necessary) to reduce their exposure to the claim or the quantum of the claim.
- (e) Subject to clause 19.1(f), the liability of the Recipient to indemnify the Commonwealth under this clause 19.1 is capped at an amount equal to the *grant funds* together with interest thereon calculated from the date of each *progress payment*.
- (f) The cap in clause 19.1(e) does not apply in relation to claims brought against the Commonwealth by, or a liability of the Commonwealth to or in respect of, a person other than the Recipient.

19.2 Consequential loss

Without prejudice to the Commonwealth's right to recover *progress payments* under this deed, neither party is liable to the other party under this deed at *law* or otherwise for any kind of indirect or consequential loss or damage nor for any loss of profit, loss of revenue, loss of use, loss of production, business interruption or any other kind of financial or economic loss.

19.3 Insurance

- (a) Without in any way limiting or affecting the Recipient's obligations or liabilities under this deed, before commencing any work on the *project* the Recipient must effect the following insurances, providing cover in amounts acceptable to the Commonwealth and maintain such insurances until all work to which they relate is completed:
- (i) public liability insurance as set out in item 5 of schedule 3;
 - (ii) insurance over any asset acquired pursuant to this deed (Contract Works Insurance) as set out in item 5 of schedule 3;
 - (iii) professional indemnity insurance as set out in item 5 of schedule 3;
 - (iv) statutory workers' compensation insurance and employers' liability insurance covering employers' liability at common law (if not covered under statute) as set out in item 5 of schedule 3;
 - (v) any other insurances required by *law*; and
 - (vi) any other insurances required by the Commonwealth from time to time including those set out in item 5 of schedule 3.

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- (b) The Recipient must provide to the Commonwealth evidence of the currency of the insurances referred to in clause 19.3(a), including a copy of the policy wording if required, within 14 days of the Commonwealth's request.
- (c) At no cost to the Commonwealth, the insurances referred to in clause 19.3(a) must nominate the Commonwealth and all *project participants* as insureds.
- (d) The Recipient must notify the Commonwealth immediately if there is a change of insurer or of other details set out in item 5 of schedule 3 or if required insurance cover is lost, withdrawn, reduced, not renewed, not proposed to be renewed or if renewal is not invited.

20 Termination with compensation

- (a) In addition to any other rights it has under this deed or at *law*, the Commonwealth may terminate this deed by providing the Recipient with at least 3 months notice in writing of its intention to terminate under this clause 20.
- (b) If the Commonwealth provides a notice under clause 20(a), the Recipient must:
 - (i) stop work on the *project* in accordance with the notice (unless the Recipient advises the Commonwealth in writing that it wishes to proceed with the *project* without further funding from the Commonwealth under this deed and that it will not claim such funding);
 - (ii) comply with any directions given to the Recipient by the Commonwealth to the extent that compliance with such directions does not restrict the Recipient from proceeding with the *project* if it has given advice to the Commonwealth as provided in clause 20(b)(i); and
 - (iii) do everything possible to mitigate all losses, costs and expenses arising from the termination.
- (c) If the deed is terminated under this clause 20, the Commonwealth will be liable only for:
 - (i) *progress payments* that were due for payment by the Commonwealth before the effective date of termination; and
 - (ii) subject to clause 20(e), any reasonable costs *incurred* by the Recipient that are directly attributable to the termination of this deed.
- (d) Any *project* expenditure incurred by the Recipient after the "stop work" date specified in the termination notice given under clause 20(a), will be deemed not to qualify as *eligible expenditure*.
- (e) The Commonwealth's liability to pay any compensation or other amount under this clause 20:

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- (i) is subject to the Recipient's strict compliance with the requirements of this clause 20 and substantiation of any amount claimed under clause 20(c)(ii) to the Commonwealth's satisfaction; and
- (ii) is limited to the amount calculated by multiplying the *funding percentage* by the Recipient's total *eligible expenditure*, less all *progress payments* paid to the Recipient under this deed.

21 Termination by Recipient

- (a) The Recipient may terminate this deed by giving the Commonwealth with at least 3 months notice in writing of its intention to terminate under this clause 21.
- (b) If the Recipient gives notice of termination under clause 21(a) the Recipient must:
 - (i) not later than at the expiration of the period of notice given under clause 21(a), stop work on the *project* (unless the Recipient advises the Commonwealth in writing that it wishes to proceed with the *project* without further funding from the Commonwealth under this deed and that it will not claim such funding);
 - (ii) comply with any directions given by the Commonwealth to the Recipient to the extent that compliance with such directions does not restrict the Recipient from proceeding with the *project* if it has given advice to the Commonwealth as provided in clause 21(b)(i);
 - (iii) deliver copies of any *deed material* requested by the Commonwealth at the times, to the locations and in the form requested by the Commonwealth;
 - (iv) prepare and submit to the Commonwealth within 30 days of the expiration of the period of notice given under clause 21(a) a final *project* report in the approved form and with content satisfactory to the Commonwealth; and
 - (v) do everything possible to mitigate all losses, costs and expenses to the Commonwealth arising from the termination.
- (c) Any *project* expenditure incurred by the Recipient after the date notice of intention to terminate is given under clause 21(a) will be deemed not to qualify as *eligible expenditure*.
- (d) If the Recipient terminates this deed under clause 21(a), the Commonwealth may by notice to the Recipient require the repayment by the Recipient of all amounts paid to the Recipient under this deed, in accordance with clause 16.3.
- (e) The Commonwealth must not require repayment under clause 21(d) if the Recipient satisfies the Commonwealth that it acted on reasonable technical grounds in deciding to terminate this deed and the *project*. 'Technical grounds' includes where the technology being demonstrated through the *project* is not commercially viable (for example, because a new technology is more efficient).

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- (f) Termination of this deed by the Recipient under this clause 21 does not of itself mean the *project* has been *abandoned* by the Recipient.

22 Termination for default

22.1 Immediate termination

The Commonwealth may immediately terminate this deed by notice in writing to the Recipient if the Commonwealth considers or finds:

- (a) a representation or warranty made by the Recipient under this deed is incorrect or misleading when made;
- (b) the Recipient has committed any breach or has done any act in respect of which this deed (other than this clause 22) provides that a notice of termination may be given;
- (c) the Recipient has
 - (i) *abandoned* the *project*;
 - (ii) notified the Commonwealth of an intention to *abandon* the *project*; or
 - (iii) stated an intention to *abandon* the *project*;
- (d) the Recipient has ceased to carry on business or any material part of its business;
- (e) the Recipient has assigned its rights other than in accordance with this deed;
- (f) there is a persistent breach in accordance with clause 22.2;
- (g) an *insolvency event* has occurred in relation to the Recipient or any *project participant*;
- (h) there is fraud, misleading or deceptive conduct on the part of the Recipient or any *project participant* in the performance of the *project* or any part of it; or
- (i) the Recipient is otherwise in breach of a material obligation under this deed and the breach is not capable of being remedied.

22.2 Persistent breach

- (a) If the Recipient commits [***] material breaches of the same type or class (whether or not any or all of those breaches have been remedied), the Commonwealth may issue a warning notice to the Recipient:

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- (i) setting out details of the various past breaches; and
 - (ii) stating that if any of those breaches continues unremedied for more than [***] after the date of the notice, or any further new breach of the same class or type occurs within [***] of the date of the notice, this may result in termination of the deed.
- (b) If following the Recipient's receipt of a warning notice under clause 22.2(a), any of the matters or events referred to in clause 22.2(a)(ii) occurs or exists, the Commonwealth may issue a final notice to the Recipient:
- (i) making reference to the prior warning notice and setting out details of the continuing breach or any new breach that may have occurred (as applicable); and
 - (ii) stating that if any breach identified in the earlier warning notice or this final notice continues unremedied for more than [***] after the date of the final notice, or any new breach of the same class or type occurs at any time within the period of [***] from the date of the final notice, the Recipient will be deemed to have committed a 'persistent breach' and the Commonwealth may terminate this deed under clause 22.1(f).
- (c) The Commonwealth's determination as to whether any [***] breaches are of the same type or class for the purposes of this clause 22.2 is final and binding on the Recipient.

22.3 Termination following default notice

- (a) For the purposes of this clause 22.3, a 'default' exists if the Commonwealth considers that the Recipient has:
- (i) failed to commence work under this deed within three months after the *commencement date* (unless otherwise agreed in writing by the Commonwealth);
 - (ii) failed to complete any *payment milestone* by the relevant milestone due date specified in schedule 5 (except where the failure is due to a *force majeure event* in relation to which the Recipient has complied with clause 26, in which case a 'default' exists if the Commonwealth considers that the Recipient has failed to complete the *payment milestone* as soon as reasonably practicable after the period of the *force majeure event* is taken to have ended under clause 26.5);
 - (iii) failed to comply with clause 6.10, 6.11 or 6.12;
 - (iv) failed to comply with clause 14.1(c) or 14.1(d); or

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- (v) failed to comply with any other material obligation to be performed or observed under this deed that the Commonwealth considers is capable of being remedied.
- (b) On the happening of a default, the Commonwealth may notify the Recipient in writing of that default and require the Recipient to remedy the default within [***] (or any longer period specified in the notice or agreed by the parties) of the date of the notice.
- (c) If the Commonwealth is satisfied that the Recipient has failed to remedy the default within the period specified in the notice (or any longer period agreed by the parties), the Commonwealth may immediately terminate this deed by issuing a second notice to the Recipient.

22.4 Consequences of termination for default

If the Commonwealth terminates this deed under clause 22.1(a), 22.1(c), 22.1(e), 22.1(f) or 22.1(h) it may by notice to the Recipient require the repayment by the Recipient of all amounts paid to the Recipient under this deed, in accordance with clause 16.3.

23 Consequences of termination

23.1 Recipient's obligations after termination notice

- (a) On receipt of a termination notice under clause 14.2(c), 22.1, 22.3(c), 26.4 or upon the parties agreeing to terminate this deed under clause 14.2(e), the Recipient must:
 - (i) immediately stop work on the *project* (unless the Recipient advises the Commonwealth in writing that it wishes to proceed with the *project* without further funding from the Commonwealth under this deed and that it will not claim such funding);
 - (ii) comply with any directions given by the Commonwealth to the Recipient, including by delivering copies of any *deed material* requested by the Commonwealth at the times, to the locations and in the form requested by the Commonwealth; and
 - (iii) prepare and submit to the Commonwealth within the timeframes specified in the notice (or as otherwise notified to the Recipient), a final *project* report in the approved form and with content satisfactory to the Commonwealth.
- (b) Any *project* expenditure incurred by the Recipient after the date the Recipient receives a notice from the Commonwealth under clause 14.2(c), 22.1, 22.3(c), 26.4 or the parties agree to terminate this deed under clause 14.2(e) will be deemed not to qualify as *eligible expenditure*.

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23.2 Preservation of rights

- (a) Termination of this deed will not extinguish or affect:
 - (i) any rights of either party against the other which accrued prior to the date of termination or otherwise relate to, or may arise at any future time from, any breach or non-observance of obligations under this deed which arose prior to the date of termination; or
 - (ii) the provisions of this deed which by their nature survive termination.
- (b) Without limiting clause 23.2(a)(ii), clauses, 10, 12, 13, 14, 15, 16, 17, 19, 24, 25 and 29 survive termination of this deed.

24 Program evaluation

- (a) The Recipient agrees to co-operate with the Commonwealth (or any third party engaged by the Commonwealth) for the purpose of the Commonwealth (or third party) undertaking evaluations or reviews of the *Program*.
- (b) As part of the conduct of an evaluation or review, the Recipient may be asked to complete survey forms or provide any other information or assistance the Commonwealth (or third party) may require for this purpose.
- (c) Completed survey forms, information and other assistance requested under clause 24(b) must be provided to the Commonwealth (or any third party on behalf of the Commonwealth), within 30 days of the Commonwealth's or third party's request.
- (d) The Recipient will use its best endeavours to procure all *project participants* to comply with the provisions of this clause 24(a), 24(b) and 24(c).

25 Demonstration, dissemination and public statements

25.1 Acknowledgement and assistance

- (a) The Recipient must:
 - (i) except in the case of communications:
 - (A) required by *law*;
 - (B) required by the Australian Stock Exchange pursuant to a Listing Rule or other requirement; or
 - (C) necessitated by an operational or safety emergency;

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have any public statements or announcements proposed to be made by it or any *project participant* and specifically relating to the *project* approved by the Commonwealth before release, which approval will not be unreasonably withheld or delayed; and

(ii) ensure that Commonwealth grant assistance provided under the *Program* and all *progress payments* received from the Commonwealth under this deed are acknowledged in any public statements or announcements about the *project* (whether made by the Recipient or any *project participant*).

(b) The parties will co-operate to establish promotional and related protocols highlighting Commonwealth assistance provided under the *Program* on the occasion of Ministerial visits to sites under the control of the Recipient, a *project participant* or a subcontractor at which activities in relation to the *project* or the *Program* are conducted.

25.2 **Publicity and disclosure**

(a) The Commonwealth may publicise the awarding of the *grant funds* for the *project* at any time after it is awarded.

(b) The Commonwealth may include in Ministerial statements or announcements, press releases, general announcements about the *Program* or matters relating to this deed and in any annual report of a Commonwealth department or agency having involvement with the *Program*, the following information:

(i) the name of the Recipient and any *project participants*;

(ii) details of the *grant funds*; and

(iii) details of the *project*, including *payment milestones*, other key *project* activities and timeframes and anticipated outcomes.

25.3 **Demonstration and dissemination**

(a) In consultation with the Commonwealth and subject to clause 25.3(b), the Recipient will prepare reports for dissemination to the press and public generally providing detailed information as to the performance of, developments in relation to and outcomes of, the *project* (including details of technological or other advances or failures and commercial viability):

(i) in the event of a development of significance or of community or scientific interest;

(ii) upon reaching or completing a significant *payment milestone*; or

(iii) at the request of the Commonwealth and in the form agreed between the parties.

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- (b) The Recipient will deliver any report prepared for the purpose of clause 25.3(a) to the Commonwealth by the time requested by the Commonwealth and will not publicly release any such report without the consent of the Commonwealth, which consent will not be unreasonably withheld or delayed.

25.4 On site demonstrations

- (a) Subject to safety and operational requirements and limitations, prior to and for a period of two years after *project completion*, the Recipient will:
 - (i) allow escorted visits by interested parties approved by the Commonwealth or the Recipient ('visitors') to sites under the Recipient's control at which activities in relation to the *project* or the *Program* are conducted;
 - (ii) use its best endeavours to obtain permission for escorted visits by visitors to sites not under the Recipient's control at which activities in relation to the *project* or the *Program* are conducted; and
 - (iii) demonstrate to visitors the *project* outcomes and relevant technology and provide a detailed explanation of the *project*, its performance and the technology and how it was developed including answering visitors' questions.
- (b) The Recipient will notify the person nominated by the Commonwealth in item 6 of schedule 1 of any proposed escorted visits by visitors.
- (c) The Commonwealth may have a representative accompany visitors during an escorted visit under this clause 25.4.

26 Force majeure

26.1 Force majeure event

For the purposes of this clause 26, a '**force majeure event**' means any event or combination of events which is beyond the reasonable control of the Recipient and any *project participants* and which causes a default or delay in the performance by the Recipient of its obligations under this deed and where such event could not have been prevented or overcome by the Recipient or any *project participant* exercising a standard of care and diligence consistent with that of a prudent and competent person operating within the relevant industry, and which may include:

- (a) fire, lightning, explosion, flood, earthquake, storm or any other act of God or force of nature;
- (b) civil commotion, sabotage, war, revolution, radioactive contamination, toxic or dangerous chemical contamination;

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- (c) strikes, lock-outs, industrial disputes, labour disputes, industrial difficulties, labour difficulties, work bans, blockades or picketing; or
- (d) a delay in obtaining an *authorisation*;

but does not include:

- (e) strikes and industrial disputes between the Recipient and its employees or subcontractors or their employees specifically employed in relation to the *project* where any such dispute is not part of a wider dispute involving employees of other employers (not being a *related entity* or *project participant*);
- (f) wet or inclement weather;
- (g) shortages of materials or other supplies required for the *project* where the Recipient (or a *project participant*) has failed to use its best endeavours to overcome such shortages;
- (h) the inability of the Recipient (or any *project participant*), for whatever reason, to pay money it is obliged to pay; or
- (i) any change in *law*.

26.2 Recipient must notify

If a *force majeure event* occurs the Recipient must promptly notify the Commonwealth of the event, providing details of the event, any obligations affected, the action being taken to mitigate the situation and the likely duration of the delay.

26.3 Suspension of obligations

- (a) Subject to clauses 26.3(b) and 26.4, the obligations of the Recipient affected by the *force majeure event* are suspended while the *force majeure event* persists.
- (b) The Recipient must use its best endeavours to remedy the effects of the *force majeure event*, but only in a manner consistent with the *project* achieving the *Program Objectives and Outcomes*.
- (c) The Commonwealth is not obliged to pay the Recipient any *progress payment* for so long as a *force majeure event* continues. Any expenditure *incurred* by the Recipient on the *project* during the period of a *force majeure event* will not qualify as *eligible expenditure* unless the Commonwealth in its sole discretion (but subject to clause 1.3) deems otherwise.
- (d) Notwithstanding clause 26.3(c), if, in the course of a *force majeure event*, the Recipient conducts any operations unaffected by the *force majeure event* and continues to achieve relevant *payment milestones* in relation to such operations, the Commonwealth will pay the Recipient amounts appropriate to achievement of those milestones.

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26.4 Termination

If a *force majeure event* continues for greater than 180 days in aggregate, the Commonwealth may immediately terminate this deed by notice in writing to the Recipient.

26.5 Cessation of force majeure event

Subject to the Commonwealth exercising its rights under clause 26.4, the period of any *force majeure event* will end on the date on which the Recipient notifies the Commonwealth that it is able to recommence work on the *project*.

27 Notices

- (a) Any notice, request, approval, consent or other communication to be given or served under this deed must be in writing and addressed and signed as the case may be, as specified in item 6 of schedule 1.
- (b) A notice, request, approval, consent or other communication must be delivered by hand, sent by prepaid post, transmitted electronically or transmitted by facsimile.
- (c) A notice, request, approval, consent or other communication between the parties will be deemed to be received:
 - (i) if delivered by hand, on delivery;
 - (ii) if sent by pre-paid ordinary post within Australia, on the expiration of five days from the date on which it was posted, and if sent by air mail from one country to another, on the expiration of 14 days from the date on which it was posted;
 - (iii) if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the communication has been properly transmitted to the recipient. Production of the acknowledgement is required before a party is entitled to rely on this provision.

28 Entire agreement, variation and severance

28.1 Entire understanding

- (a) This deed contains the entire understanding between the parties as to the subject matter of this deed.

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- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this deed and are of no effect.
- (c) A party is not liable to the other party in respect of the matters set out in clause 28.1(b).
- (d) No oral explanation or information provided by or on behalf of any party to another:
 - (i) affects the meaning or interpretation of this deed; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

28.2 **Variation**

No variation of this deed is binding unless it is agreed in writing and signed by the Recipient and the Commonwealth.

28.3 **Severance**

Any reading down or severance of a particular provision does not affect the other provisions of this deed.

29 **Resolution of Disputes**

29.1 **Notice of dispute**

The provisions of this clause 29 apply if a dispute arises between the parties in connection with this deed or the *project*. If a dispute arises a party must give written notice of the dispute to the other party.

29.2 **Resolution of dispute**

- (a) The parties must seek to settle a dispute in good faith in accordance with this clause 29.
- (b) If a notice of a dispute has been given under clause 29.1, a party must not commence court proceedings or arbitration relating to the dispute except where a party seeks urgent interlocutory relief or in accordance with this clause 29. Where a party fails to comply with this clause 29 the other party is not required to undertake dispute resolution in accordance with its terms.
- (c) If the parties are unable to settle a dispute within 7 days of one party giving notice of the dispute to the other, each party must appoint a representative with authority to settle the dispute.

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- (d) The appointed representatives must meet within a further 7 days to attempt to settle the dispute. If the representatives are unable to resolve the dispute within 14 days of first meeting, the dispute must be referred:
- (i) in the case of the Recipient - to its chief executive officer; and
 - (ii) in the case of the Commonwealth - to the Secretary of the *Department*;
- within 7 days of the end of that 14 day period. The Recipient's chief executive officer and the *Department's* Secretary must meet with each other to seek to resolve the dispute within 14 days of the last date by which the dispute must be referred to them under this clause 29.2(d).
- (e) If the dispute is not resolved within a further period of 14 days of the Recipient's chief executive officer and the *Department's* Secretary first meeting, the parties may agree on a process for resolving the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation or independent expert determination.

29.3 Ongoing performance

Unless otherwise directed by the Commonwealth, the Recipient must at all times during a dispute proceed to fulfil its obligations under this deed.

29.4 Exclusions

This clause 29 does not apply to disputes arising under or in relation to clauses 3.1, 3.3, 5.2, 5.4, 8.4 and 22.

30 General

30.1 Effect of notice

Any notice provided by the Recipient to the Commonwealth under this deed (including under clause 6.4(a) and 21(a)) does not limit or affect the Commonwealth's rights (if any) under clause 22 (**Termination for default**), any other provision of this deed or at *law*.

30.2 Legal costs

Except as otherwise expressly stated in this deed, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this deed.

30.3 Consents and approvals

- (a) Subject to clause 1.3, any Commonwealth consent or approval referred to in or required under this deed may be given or withheld by the Commonwealth, or may be given subject to any conditions as the Commonwealth (in its sole discretion) thinks fit, unless this deed expressly provides otherwise.

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- (b) The giving, making or exercise (as applicable) of any consent, approval, direction or other matter or thing of any nature under this deed by the Commonwealth will not relieve the Recipient from any obligation or liability arising under this deed, unless otherwise expressly stated in this deed.

30.4 **Certification**

For the purposes of this deed, a copy of a document will be regarded as duly certified by the Recipient if it is certified as a true copy by a director, secretary or chief executive officer of the Recipient.

30.5 **Waiver and exercise of rights**

- (a) A provision of, or a right created under, this deed may not be waived except in writing signed by the party granting the waiver.
- (b) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (c) A party is not liable for any loss, cost or expense of the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

30.6 **Rights cumulative**

Except as expressly stated otherwise in this deed, the rights of a party under this deed are cumulative and are in addition to any other rights of that party.

30.7 **Indemnities**

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives the rescission, termination or expiration of this deed.
- (b) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

30.8 **Further steps**

Each party must promptly do whatever any other party requires of it to give effect to this deed and to perform its obligations under it.

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30.9 Governing law and jurisdiction

- (a) This deed is governed by and is to be construed in accordance with the law in force in the Australian Capital Territory.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- (c) Any proceedings under or in any way relating to matters the subject of this deed must be brought in an Australian court of competent jurisdiction.

30.10 Counterparts

This deed may consist of a number of counterparts and, if so, the counterparts taken together constitute one document. Facsimile copies of executed counterparts will be deemed to be sufficient and valid execution.

30.11 Relationship of parties

- (a) The Recipient, its employees, partners and agents will not, by virtue of this deed be, or for any purpose be deemed to be, the Commonwealth's employees, partners or agents.
- (b) The Recipient must not, and must ensure that its employees, partners and agents do not, represent themselves as being employees, partners or agents of the Commonwealth.
- (c) Nothing in this deed requires the Commonwealth to pay all or any of the *grant funds* to any person other than the Recipient.

31 Interpretation

31.1 Definitions

In this deed, unless the context requires otherwise:

abandoned means not having carried on any work or activities on the *project* for 28 consecutive days, except where relieved of the obligation to do so under this deed.

application means the application submitted by the Recipient in respect of which the *grant funds* have been awarded for the *project*.

approved financial institution means a deposit taking institution authorised under the Banking Act 1959 (Cth) to carry on banking business in Australia.

associated entity has the meaning given to that term in section 50AAA of the Corporations Act 2001.

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authorisation means any authorisation, approval, licence, permit, consent, determination, certificate, notice, requirement or permission from any *authority* which must be obtained or satisfied (as the case may be) to perform work on the *project*.

authority means:

- (a) any Commonwealth, State, Territory or foreign government or semi- governmental authority, court, administrative or other judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) (other than in the definition of *law*) any other person having jurisdiction in connection with work required for the *project*.

background IP means any *intellectual property* that is owned by any person other than the Commonwealth and is required for the performance of, or otherwise connected with, the *project* which:

- (a) is in existence at the *execution date*;
- (b) is created after the *execution date* by a person other than the Recipient or a *project participant* under, or in connection with, the performance of the *project*;
- (c) is created after the *execution date* other than under, or in connection with, the performance of the *project*,

excluding any *intellectual property* subsisting in *deed material*.

budget has the meaning given in clause 8.3(a).

building work has the meaning given to that term in section 5 of the Building and Construction Industry Improvement Act 2005 (Cth).

commencement date means the date on which the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth).

community consultation plan means the community consultation plan referred to in clause 6.11(a).

confidential information means information that:

- (a) by its nature may be regarded as confidential; or
- (b) the parties agree is confidential;

but does not include information that:

- (c) is listed in clause 25.2(b) of this deed;

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- (d) is or becomes public knowledge other than by breach of this deed;
- (e) is in the possession of a party without restriction in relation to disclosure before the date of receipt from the party who is claiming the information to be confidential; or
- (f) has been independently developed or acquired from a third party without restriction in relation to disclosure.

control means, with respect to an entity, the actual ability or capacity of another entity (solely but not jointly with third entities) to determine the outcome of decisions about the first entity's financial and operating policies.

deed material means any reports, plans, documents, information, data (including *technical data*), or other material:

- (a) the Recipient develops under this deed;
- (b) provided or contained in any reports to the Commonwealth under this deed; or
- (c) derived at any time from the material referred to in paragraphs (a) and (b).

Department means the Department of Resources, Energy and Tourism or such other department of State of the Commonwealth as may administer this deed from time to time.

eligible expenditure means any expense (inclusive of GST but less related input tax credits):

- (a) *incurred* by the Recipient on *project* activities that occur during the period from the *execution date* to the end of the *project period*, and that qualifies as eligible expenditure under the *Eligible Expenditure Guidelines*; or
- (b) that the Commonwealth otherwise approves (in its absolute discretion) as eligible expenditure for the purposes of this deed.

Eligible Expenditure Guidelines means Attachment A to the Renewable Energy Demonstration Program Information Guide released in February 2009.

execution date means the date of execution of this deed on behalf of the Commonwealth.

financial year means the year beginning on 1 July in one calendar year and ending on 30 June in the following calendar year.

force majeure event means an event contemplated in clause 26.1 (not including clauses 26.1(e) to 26.1(i) inclusive).

foreground IP means any *intellectual property* created after the *execution date* under, or in connection with, the performance of the *project*, other than any *intellectual property* subsisting in *deed material*.

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funding percentage is the percentage figure set out in item 4 of schedule 1, which figure must not exceed 33.33 per cent.

grant funds means the amount set out in item 3 of schedule 1.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Law has the meaning given to that expression in the *GST Act*.

incurred means, in relation to an amount, to be subject to a presently existing liability to pay that amount to a third party on arm's length commercial terms.

insolvency event means, in relation to a person, any of the following:

- (a) the person is or states that the person is unable to pay all the person's debts as and when they become due and payable;
- (b) the person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (c) an application or order is made for the winding up or dissolution, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution, of the person;
- (d) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the *laws* of any relevant jurisdiction is appointed in respect of the person or any action is taken to appoint any such person;
- (e) a receiver or receiver and manager is appointed in respect of any property of the person;
- (f) the person is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to it;
- (g) a distress, attachment or execution is levied or becomes enforceable against any property of the person;
- (h) the person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or a deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of the person's creditors or a moratorium involving any of them;
- (i) the person is protected from creditors under any legislation; or
- (j) anything analogous to or of a similar effect to anything described above under the *law* of any relevant jurisdiction occurs in respect of the person.

intellectual property (or **IP**) means industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist in works or other subject matter, rights in relation to inventions (including patents and patent applications), rights in relation to designs (whether registrable or not registrable), rights in relation to registered and unregistered trade marks, and rights in relation to circuit layout designs, but excludes *moral rights* and similar non-assignable personal rights of performers.

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law means any statute, regulation, ordinance, code or other law, whether Territory, State or Commonwealth, and any lawfully binding determination, decree, edict, declaration, ruling, order or other similar pronouncement validly issued by any Australian *authority*. In clauses 6.6, 6.7(a), 7.2(a), 15.2(g), 19.1(c), 19.2, 19.3, 20(a), 26.1(i), 30.1 and the definition of *insolvency event*, law also includes any statute, regulation, ordinance, code or other law (howsoever called) of any jurisdiction other than in Australia or its territories, including any lawfully binding determination, decree, edict, declaration, ruling, order or other similar pronouncement (howsoever called) issued by any *authority* in such jurisdiction.

major subcontract work means any work undertaken for the purpose of the *project* and performed by a subcontractor or a subcontractor to a subcontractor:

- (a) which has a total contract sum in excess of \$10,000,000; or
- (b) which has, or may potentially have, a material impact on the progress or performance of work on the *project* or the *project's* achievement of the *Program Objectives and Outcomes*.

matching funding means any funds made available to or by the Recipient for use on the *project* other than:

- (a) *progress payments*;
- (b) funding obtained for the *project* from any other Commonwealth, State or Territory government program or source;
- (c) funding of a kind that any *Program* policy or guidance issued by the Commonwealth states is not to be regarded as matching funding; and
- (d) non-financial (in-kind) assistance of any kind.

material adverse event means something which materially adversely affects:

- (a) the Recipient's ability to achieve any *payment milestone* by the date specified in that schedule (or a later date if so determined by the Commonwealth at its discretion) or otherwise in accordance with this deed; or
- (b) the *project's* ability to achieve the *Program Objectives and Outcomes*.

moral rights means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the Copyright Act 1968 (Cth).

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payment claim has the meaning given in clause 9.1(a).

payment milestone means a *project* milestone specified in schedule 5, as updated or varied in accordance with this deed.

Program means the Renewable Energy Demonstration Program referred to in the recitals (Background) of this deed.

Program funding means the funding made available by the Parliament of the Commonwealth of Australia in any given financial year for the purposes of the *Program*, being the funding specified in the Portfolio Budget Statement (as varied by any Portfolio Additional Estimates Statement) for that *financial year*.

Program Objectives and Outcomes are the objectives of the *Program* described in the Renewable Energy Demonstration Program Information Guide released in February 2009.

progress payment has the meaning given in clause 5.1(b).

progress report means a report on the progress of the *project* provided pursuant to clause 13.3(a).

project means the project outlined in item 1 of schedule 3 and more fully described in the *project description*.

project completion means the later of:

- (a) the date of approval of the final *progress payment* under clause 9.2; and
- (b) the date the Payment Milestone Report (see schedule 6) for the final *payment milestone* is given to the Commonwealth.

project description means the project description contained in attachment A, as updated or varied in accordance with this deed.

project group means the group of entities comprising the *project participants* and the Recipient.

project participant means an entity named in item 2 of schedule 2.

project period means the period beginning on the *commencement date* and ending on *project completion*.

related entity means a related entity within the meaning of section 9 of the Corporations Act 2001.

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risk management plan means the risk management plan referred to in clause 6.10.

technical data means all technical know how and information reduced to material form that is produced or acquired by the Recipient or any *project participant* or subcontractor engaged under clause 7 for the purposes of the *project* or this deed, not including *intellectual property*.

term means the period from the *execution date* until the end of the deed in accordance with clause 2.2.

31.2 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes”, “including”, “for example” and “in particular” do not limit the words which precede them or to which they refer;
- (d) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (e) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (f) a reference to:
 - (i) a person includes:
 - (A) an individual person, a firm, partnership, joint venture, unincorporated association, corporation and a government or statutory body or *authority*;
 - (B) the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (ii) a schedule or an attachment is a reference to a schedule or attachment (as applicable) to this deed;
 - (iii) monetary units is to Australian dollars;
 - (iv) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and

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- (v) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) if the last day of any period for the doing of an action falls on a day that is not a business day in the place that action is required to be done, the action must be done no later than the end of the next business day in that place; and
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

31.3 **Precedence**

If there is any inconsistency between:

- (a) these agreed terms and conditions and the schedules and attachments, the agreed terms and conditions will prevail to the extent of any inconsistency;
- (b) schedule 1 and the remaining schedules, schedule 1 will prevail to the extent of any inconsistency; and
- (c) the schedules and the attachments, the schedules will prevail to the extent of any inconsistency.

31.4 **Headings**

Headings are inserted for convenience only and do not affect the interpretation of this deed.

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Executed as a deed.

The Commonwealth of Australia

Signed sealed and delivered for and)
on behalf of the **Commonwealth of**)
Australia by)

Sarah Clough
a delegate of the Minister for
Resources and Energy in the presence
of:

/s/ Ian Cleaver /s/ Sarah Clough
Witness Signature of delegate

Ian Cleaver
Name of Witness (print)

9 September 2010
Date

Recipient

Executed by)
Victorian Wave Partners Pty Ltd)
in accordance with Section 127 of the)
Corporations Act:

/s/ David Trevor Lovell /s/ P.J. Hicks
Company Secretary/Director Director

David Trevor Lovell P.J. Hicks
Name of Company Secretary/Director Name of Director (print)
(print)

30 August 2010
Date

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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SCHEDULE 1 - Deed Particulars

1 Conditions Precedent (clause 3)

	Description of condition precedent	Date for completion	Documentary evidence
1	Establishment of project vehicle	The date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)	Executed memorandum of understanding between Leighton Contractors Pty Limited (LCPL) and Ocean Power Technologies (Australasia) Pty Ltd (OPTA) Certificate of incorporation and extract from register of members of the Recipient showing 90% ownership by LCPL and 10% ownership by OPTA
2	Engagement of a National Electricity Market (NEM) participant or customer with an off take arrangement in place	The later of: (a)30 June 2011; and (b)the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)	Executed off take agreement(s)
3	Confirmation that equity partners including LCPL and OPTA are committed and project finance funding has been arranged	The later of: (a)30 June 2011; and (b)the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)	<u>Equity funding</u> Executed shareholders agreement and / or subscription agreements <u>Debt funding</u> Binding letter of offer or executed facility agreement

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	Description of condition precedent	Date for completion	Documentary evidence
4	<p>Confirmation that:</p> <p>(a) the Recipient has access to the <i>intellectual property</i> required for the <i>project</i>; and</p> <p>(b) the Recipient or the <i>project participants</i> have ongoing access to the <i>intellectual property</i> used for the <i>project</i>, for use in other projects in Australia.</p>	<p>The later of:</p> <p>(a) 30 June 2011; and</p> <p>(b) the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)</p>	<p>An <i>intellectual property</i> plan which refers to the relevant <i>intellectual property</i> / licence agreements and explains how the Recipient has access to the <i>intellectual property</i> and how the Recipient and the <i>project participants</i> propose to use the <i>intellectual property</i> for and after the <i>project</i></p>
5	<p>The Recipient must provide to the Commonwealth certification for the benefit of the Commonwealth from an independent, responsible and qualified person that the <i>risk management plan</i> has been developed, is appropriate and consistent with best practice for this type of project and the types of risks it has, and is being implemented.</p> <p>The person appointed to provide the certification must not be an employee, shareholder, director, other officeholder or <i>related entity</i> of the Recipient, a <i>project participant</i>, or any other person having (or having had) a significant involvement in the <i>project</i>, the <i>application</i>, or any report submitted under this deed.</p>	<p>The later of:</p> <p>(a) 30 June 2011; and</p> <p>(b) the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)</p>	<p>Certification</p>

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	Description of condition precedent	Date for completion	Documentary evidence
6	<p>The Recipient must provide to the Commonwealth certification for the benefit of the Commonwealth from an independent, responsible and qualified person that the <i>community consultation plan</i> is appropriate and consistent with best practice for this type of project and the types of community consultation to be undertaken, and that it is being implemented.</p> <p>The person appointed to provide the certification must not be an employee, shareholder, director, other officeholder or <i>related entity</i> of the Recipient, a <i>project participant</i>, or any other person having (or having had) a significant involvement in the <i>project</i>, the <i>application</i>, or any report submitted under this deed.</p>	<p>The later of:</p> <p>(a)30 June 2011; and</p> <p>(b)the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)</p>	<p>Certification</p>
7	<p>The Recipient must provide to the Commonwealth evidence that the Recipient has engaged in initial community consultation in relation to the <i>project</i> to the Commonwealth's satisfaction, including that the Recipient has:</p> <p>(a) conducted a public forum in the affected community;</p>	<p>The later of:</p> <p>(a)30 June 2011; and</p> <p>(b)the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)</p>	<p>Documentary evidence of community consultation</p> <p>Written notification of any adverse community reaction</p>

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	Description of condition precedent	Date for completion	Documentary evidence
	<p>(b) advertised the public forum (including in any prominent local newspaper) at least seven days in advance of the forum;</p> <p>(c) provided attendees with the opportunity to raise any issues concerning the <i>project</i>;</p> <p>(d) responded in writing to any submissions made to it; and</p> <p>(e) provided to the Commonwealth notification of any adverse community reaction to the <i>project</i> to date.</p>		
8	The Recipient must provide to the Commonwealth notification of responses by the Recipient to adverse community reaction to the <i>project</i> .	<p>The later of:</p> <p>(a) 30 June 2011; and</p> <p>(b) the date the condition precedent in clause 2.1(e) is satisfied (or is waived by the Commonwealth)</p>	Written notification of any responses to adverse community reaction

Period for liaison for the purpose of clauses 3.1(b) and 3.2(a): From the *commencement date* until the conditions precedent are satisfied.

2 Not Used

3 **Grant Funds**
\$66,465,000 (excluding GST)

4 **Funding Percentage**
[***]

5 **Interest Rate (clause 17.2)**
4.635% per annum

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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6 Notice Details (clause 27)

Notices must be addressed as follows:

- (a) If given to the Commonwealth, addressed and forwarded to:

Position/title: REDP Program Manager

Address: Industry House, 10 Binara Street
Canberra City ACT 2601
GPO Box 1564, Canberra ACT 2601

or

Email: [withheld]

or as otherwise notified in writing by the Commonwealth.

- (b) If given to the Recipient, addressed and forwarded to:

Name/position: Mr. David Lovell
Director
Victorian Wave Partners Pty Ltd

Address: Tower 1, Level 8
495 Victoria Avenue
Chatswood NSW 2067

or

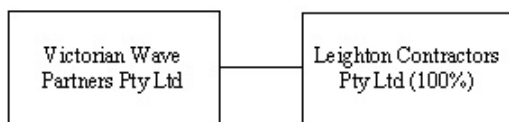
Email: [withheld]

or as otherwise notified in writing by the Recipient.

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SCHEDULE 2 - Recipient and consortium details (clause 11)

1 Recipient - ownership and group structure details



2 Project Participants

Name of project participant	Contribution/role of project participant
Leighton Contractors Pty Limited ABN 98 000 893 667	Equity investor Engineering, procurement and construction contractor
Ocean Power Technologies (Australasia) Pty Ltd ABN 19 076 639 211	Equity investor Technical provider

3 Project Participants - ownership and group structure details

Leighton Contractors Pty Limited ABN 98 000 893 667 (**LCPL**) is a subsidiary of Leighton Holdings Limited ABN 57 004 482 982 (**LHL**). LCPL is 100% owned by LHL.

Ocean Power Technologies (Australasia) Pty Ltd ABN 19 076 639 211 (**OPTA**) is a subsidiary of Ocean Power Technologies Inc. (**OPT**). OPTA is 88% owned by OPT.

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SCHEDULE 3 - Project Details

- 1 Title of Project**
19 MW Victorian Wave Power Demonstration Project
- 2 Not Used**

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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3 Initial Project Budget (clause 8.3)

[***] (Budget redacted – three pages)

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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4 Authorisations (clause 6.5)

Authorisation type/category	Final date for obtaining authorisation
1. Environment Protection and Biodiversity Conservation Act 1999	[***]
2. Navigational Aids	[***]
3. National Energy Regulations (Section 5.2) AEMC (over 5MW)	[***]
4. Compliance with the Open Access Regime and NEMCO requirements	[***]
5. Coastal Management Act Consents	[***]
6. Indigenous Land Use Act Agreement (ILUA)	[***]
7. Sea Bed Lease (DPI and DSE)	[***]
8. Environmental Effects Statement (Department of Planning and Community Development)	[***]
9. Shore Crossing Easement	[***]
10. Cable Easement	[***]
11. Interconnection Agreement with District Network Service Provider	[***]
12. Other authorisations as deemed appropriate by relevant local, state and federal authorities	[***]

Note: The dates listed above are based on reasonable estimates of the time usually required to obtain the relevant authorisations. Circumstances beyond the Recipient's control may result in one or more authorisations not being obtained by the date shown.

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5 Insurance requirements (clause 19.3)

Insurance type/category	Amount \$	Period of cover	Other requirements
Public liability	Limit of a minimum of \$100 million per claim, or occurrence giving rise to a claim where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.	For so long as any obligations remain in connection with this deed	Insurance must be effected and maintained with a reputable insurance provider.
Statutory workers' compensation insurance and employer's liability insurance covering employer's liability at common law (if not covered under statute)	In accordance with the applicable statutory requirements. Common law employers liability cover to a minimum of \$10 million per claim or occurrence giving rise to a claim where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.	For so long as any obligations remain in connection with this deed	Common law cover must be effected and maintained with a reputable insurance provider.
Insurance over any asset acquired pursuant to this deed – Contract Works Insurance	For its full replacement value.	For so long as any obligations remain in connection with this deed	Insurance must be effected and maintained with a reputable insurance provider.
Professional indemnity	Limit of a minimum of \$10 million per claim, or occurrence giving rise to a claim where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.	For seven years after the expiry or termination of this deed	Insurance must be effected and maintained with a reputable insurance provider.

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SCHEDULE 4 - Key Personnel and Approved Subcontractors

1 Key Personnel (clause 6.3)

Name of Key Personnel	Description of work/role/responsibilities	Other comments
Victorian Wave Partners Pty Ltd (VWP)		
[***]	[***]	
Ocean Power Technologies (Australasia) Pty Ltd (OPTA)		
[***]	[***]	
[***]	[***]	
[***]	[***]	
[***]	[***]	
Leighton Contractors Pty Limited (Leighton)		
[***]	[***]	
[***]	[***]	
[***]	[***]	

2 Approved Subcontractors (clause 7)

Name of Approved Subcontractor	Work to be subcontracted	Date for execution of subcontract	Other comments
Leighton Contractors Pty Limited	Engineering, Procurement and Construction (EPC)	18 December 2010	

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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SCHEDULE 5 - Payment Milestones and Schedule (clause 5.1 and 6.1)

[***] (Chart redacted – 15 pages)

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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SCHEDULE 6 - Reports (clause 13.3)

Title of report	Form and content requirements for report (Note: A separate reporting guide will contain further details of the form and content requirements of each report)	Subject to financial audit (clause 13.3(b))?	Date for submission of report
Payment Milestone Report	<p>The Recipient must provide Payment Milestone Reports following the completion of each <i>payment milestone</i>.</p> <p>Payment Milestone Reports must be in the format, and contain the details required by, the template report provided by the Commonwealth from time to time.</p> <p>Payment Milestone Reports must include information relating to the <i>payment milestone</i> and progress during the reporting period (such as proof of completed activities).</p>	No	on each due date in schedule 5
Annual Financial Audit Report	<p>The Recipient must provide Financial Audit Reports at the end of each <i>financial year</i> during the <i>project period</i>.</p> <p>Annual Financial Audit Reports must be in the format, and contain the details required by, the template report provided by the Commonwealth from time to time.</p> <p>Annual Financial Audit Reports are to be audited by a qualified accountant who satisfies the preconditions set out in clause 13.3.</p>	Yes	within 90 days of the end of each financial year during the <i>project period</i> , and also on <i>project completion</i>
Annual update to Payment Milestone Reports and current description of project	<p>The Recipient must provide an update of the Payment Milestone Reports and a current description of the <i>project</i> at the end of each <i>financial year</i> during the <i>project period</i>.</p> <p>Updates must be in the format, and contain the details required by, the template provided by the Commonwealth from time to time.</p>	No	within 90 days after the end of each <i>financial year</i> during the <i>project period</i>

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End of Project Report and Financial Audit Report	<p>The Recipient must provide the End of Project Report and Financial Audit Report at the completion of the <i>project</i>.</p> <p>The End of Project Report and Financial Audit Report must be in the format, and contain the details required by, the template reports provided by the Commonwealth from time to time.</p>	Yes	12 weeks after <i>project completion</i>
Post Project Reports	<p>The Recipient must provide Post Project Reports one, two and five years <i>after project completion</i>.</p> <p>These reports are designed to track how the initial commercialisation of the technology progresses following the completion of the <i>project</i>.</p> <p>Post Project Reports must be in the format, and contain the details required by, the template report provided by the Commonwealth from time to time.</p>	No	one, two and five years after <i>project completion</i>

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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ATTACHMENT A - Project Description
19MW Victorian Wave Power Demonstration Project

1. The Recipient plans a staged local construction and deployment of [***] of Ocean Power Technologies Inc.'s PowerBuoys® (**PBs**) in Portland, off the Victorian Coast totalling 19MW of installed capacity. The Recipient's intention is to [***], then approximately [***] in 2 stages ([***] and [***]), cumulatively amounting to 19MW.
2. The *project* will utilise existing fabrication and marine support infrastructure in Victoria to introduce a major new business opportunity. All fabrication, anchoring, deployment and maintenance will be sourced locally, if possible.
3. The Recipient considers the *project* will be of sufficient size to demonstrate a clear path to cost reduction based on volume production, technology advancement and supplier innovation.
4. The *project* comprises the following tasks:

Task 1 – Funding and power purchase agreement

- (a) Project funding and power purchase agreements negotiated and signed
- (b) Agreement finalised with Engineering, Procurement and Construction (**EPC**) contractor and technical provider

Task 2 – Licences and permits

- (a) Project application to City of Portland Council completed
- (b) Discussions with Indigenous owners
- (c) Ocean leasing discussions
- (d) Ocean leasing agreement completed
- (e) Environmental effects consultations completed
- (f) Federal Government Environment Protection and Biodiversity Conservation Act 1999 consultations completed
- (g) Federal Government Environment Protection and Biodiversity Conservation Act 1999 approvals received
- (h) Interconnection approvals received
- (i) Navigation approvals received
- (j) All government approvals received

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Task 3 – Site development

- (a) Preliminary site layout completed
- (b) Preliminary site wave analysis completed
- (c) Bathymetric survey of site completed
- (d) Deploy wave rider buoy
- (e) Analysis of wave rider data completed

Task 4 – Detailed infrastructure engineering and design

- (a) Detailed site layout completed
- (b) Wave facility undersea infrastructure layout / design completed
- (c) Anchor placement and sizing completed
- (d) Transmission cable routing completed
- (e) Submarine cable specification completed
- (f) Substation engineering and interconnection completed

Task 5 – Detailed PB150 engineering and design

- (a) Detailed PB150 engineering and design completed

Task 6 – Infrastructure build-out

- (a) Interconnection engineering completed
- (b) Order long lead items for terrestrial substation
- (c) Construction at terrestrial substation completed
- (d) Order Underwater Substation Pod (**USP**) long lead items
- (e) USP fabrication started
- (f) Order submarine cable long lead items
- (g) Submarine cable installation completed

Task 7 – Stage 1 – [*] deployment**

- (a) Order long lead PowerBuoy items

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- (b) PB150 fabrication
- (c) PB150 installation
- (d) USP installation completed and commissioning
- (e) Commissioning of power plant, [***] deployment (**Stage 1 Plant**)

Task 8 – Stage 2 – 5MW design and procurement

- (a) PB500 design modifications completed
- (b) Order long lead PowerBuoy items
- (c) Fabrication

Task 9 – Stage 2 – [*] deployment**

- (a) PB500 installation
- (b) Commissioning of power plant, additional [***] deployment (**Stage 2 Plant**)

Task 10 – Stage 3 – [*] design and procurement**

- (a) Order submarine cable completed
- (b) Order USP completed
- (c) Install submarine cable and USP
- (d) Order long lead PB500 items
- (e) Fabrication PB500 completed

Task 11 – Stage 3 – [*] deployment**

- (a) PB500 installation completed
- (b) Commissioning of power plant, additional [***] deployment (**Stage 3 Plant**)

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ATTACHMENT B - Deed of Guarantee

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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DEED OF GUARANTEE

This **Deed of Guarantee** is dated 2010.

PARTIES

The Deed of Guarantee is made by _____ ABN _____ of _____ (referred to in this Deed as **the Guarantor**) in favour of:

The Commonwealth of Australia represented by the Department of Resources, Energy and Tourism, ABN 46 252 861 927 of 10 Binara Street, Canberra, ACT, 2600 (the Commonwealth)

CONTEXT

- A **Victorian Wave Partners Pty Ltd** ACN 136 578 044 of Tower 1, Level 8, Victoria Avenue, Chatswood NSW 2067 (**Recipient**) has agreed to undertake a project in relation to the Renewable Energy Demonstration Program, as described in the funding deed dated _____ 2010 and known as the *Renewable Energy Demonstration Program Funding Deed* (**the Funding Deed**).
- B The Commonwealth has agreed to provide *grant funds* to the Recipient for the purposes of its project, subject to the terms and conditions of the Funding Deed and the Guarantor entering into this Deed.
- C The Guarantor agrees to provide the guarantees and indemnities stated below in respect of the Funding Deed.

OPERATIVE PROVISIONS

By this Deed the Guarantor unconditionally covenants as follows:

1 GUARANTOR'S OBLIGATIONS

Payment

- 1.1 The Guarantor guarantees to the Commonwealth the payment of all monies (including damages) which may at any time be payable, owing but not payable, or that otherwise remain unpaid by the Recipient to the Commonwealth under or in connection with the Funding Deed at any time, whether present or future, actual or contingent or incurred alone, jointly, severally or jointly and severally and without regard to the capacity in which the Recipient is liable (the **Guaranteed Monies**).
- 1.2 If the Recipient defaults in the due and punctual payment of any Guaranteed Monies the Guarantor must pay that money on demand to, or as directed by, the Commonwealth.

Performance

- 1.3 **Not used.**

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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Indemnity for Default

- 1.4 The Guarantor indemnifies the Commonwealth against and holds the Commonwealth harmless from direct losses, damages, interest, costs and expenses (including legal expenses on a solicitor and own client basis) incurred by the Commonwealth by reason of:
- 1.4.1 the Recipient's default under the Funding Deed; or
 - 1.4.2 the financial obligations of the Recipient under the Funding Deed being unenforceable or disclaimed by a liquidator or trustee in bankruptcy, in whole or in part;
- and will pay such amount of losses, damages, interest under clause 1.6 of this deed, costs and expenses directly to the Commonwealth or as directed by the Commonwealth.
- The liability of the Guarantor under clause 1.4.1 is limited to the extent, but only to the extent, that the Recipient's liability for its default under the Funding Deed is limited under clause 19.1 and 19.2 of the Funding Deed.
- 1.5 The indemnity in clause 1.4 applies whether or not the Commonwealth has advised the Guarantor of any actual or potential default of the Recipient.
- 1.6 The Guarantor agrees to pay interest to the Commonwealth on any amount payable by it to the Commonwealth under this Guarantee, such interest to be calculated:
- 1.6.1 at the rate set out in item 5 of schedule 1 of the Funding Deed;
 - 1.6.2 on a daily compounding basis upon the principal amount payable to the Commonwealth; and
 - 1.6.3 from and including the date (or dates) it becomes due for payment, up to but excluding the day on which the Guarantor pays the total amount payable to the Commonwealth, without any set off, counter-claim, condition, abatement, deduction or withholding.
- 1.7 The Guarantor indemnifies the Commonwealth against, and shall pay the Commonwealth on demand, the amount of all losses, liabilities, costs, expenses, stamp duty and goods and service taxes payable in connection with this Guarantee and in connection with preserving its rights under this Guarantee.

Variation

- 1.8 The Guarantor will not be discharged, released or excused from this Deed of Guarantee by an arrangement made between the Recipient and the Commonwealth, with or without the consent of the Guarantor, or by any other inference arising out of the conduct between the parties, in the absence of a formal variation or release in writing signed by all parties.

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Obligations not affected by dissolution of the Recipient

- 1.9 Where the Recipient has failed to perform its financial obligations under the Funding Deed and/or pay the Guaranteed Monies the obligations of the Guarantor under this deed will continue even though the Recipient has been dissolved or has been made subject to external administration procedures under Chapter 5 of the *Corporations Act 2001* (Cth) or any other law.

Novation

- 1.10 Where the Guarantor is required to perform any financial obligation under the Funding Deed in accordance with this Deed of Guarantee, the Guarantor agrees to the novation of the Funding Deed from the Recipient to the Guarantor if requested by the Commonwealth.

2 OBLIGATIONS OF THE RECIPIENT

- 2.1 The obligations of the Recipient will continue in force and effect until the completion of the undertakings of this Deed of Guarantee by the Guarantor.

3 LENGTH OF GUARANTEE

- 3.1 The rights and obligations under this Deed of Guarantee will continue until all financial obligations of the Recipient under the Funding Deed have been performed, observed and discharged.

4 APPLICABLE LAW

- 4.1 This Deed of Guarantee will be subject to and construed in accordance with the laws in force in the Australian Capital Territory.

5 NOTICE

How notice is to be given

- 5.1 Without prejudice to any other mode of notice or service, any notice given under this Deed of Guarantee will (without limitation) be effective if it is given by the Commonwealth's Representative (or any superior officer of the Commonwealth's Representative) and addressed to the Guarantor at the address specified below or as otherwise notified by the Guarantor.
- 5.2 A notice, request, approval, consent or other communication must be delivered by hand, sent by prepaid post, transmitted electronically or transmitted by facsimile.
- 5.3 A notice, request, approval, consent or other communication between the parties will be deemed to be received:
- 5.3.1 if delivered by hand, on delivery;

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- 5.3.2 if sent by pre-paid ordinary post within Australia, on the expiration of five days from the date on which it was posted, and if sent by air mail from one country to another, on the expiration of 14 days from the date on which it was posted; or
- 5.3.3 if transmitted electronically or by facsimile, on receipt by the sender of an electronic or facsimile acknowledgement that the communication has been properly transmitted to the recipient. Production of the acknowledgement is required before a party is entitled to rely on this provision.

The Commonwealth's Representative

5.4 The Commonwealth's representative for the purposes of this Deed of Guarantee is the person currently occupying or acting in the following post:

Title	^Complete table^
--------------	------------------

Addresses for Service of Notices

5.5 The Guarantor's address for service of notices is as follows:

Guarantor's representative:	^Complete table^
Physical address:	
Postal address:	
Fax number:	
E-mail address:	

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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EXECUTED AS A DEED:

Executed as a deed by _____, ABN
_____ in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature of director

Signature of director

Full name of director

Full name of director

Signed sealed and delivered for and)
on behalf of the **Commonwealth of**)
Australia by)

a delegate of the Minister for
Resources and Energy in the presence
of:

Witness

Signature of delegate

Name of Witness (print)

Renewable Energy Demonstration Program – Victorian Wave Partners Pty Ltd

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Exhibit 10.2

Maddocks

Lawyers
Level 1
40 Macquarie Street
Barton ACT 2600 Australia

Telephone 61 2 6230 1349
Facsimile 61 2 6230 1479

info@maddocks.com.au
www.maddocks.com.au

Date January 9, 2014

Deed of Variation to Funding Deed (and Notice of Waiver)

Australian Renewable Energy Agency
ABN 35 931 927 899

and

Victorian Wave Partners Pty Ltd
ACN 136 578 044
ABN 25 136 578 044

Interstate offices
Melbourne Sydney

Affiliated offices around the world through
the
Advoc network - www.advoc.com

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Deed of Variation to Funding Deed (and Notice of Waiver)

Dated January 9, 2014

Parties

Name	Australian Renewable Energy Agency ABN 35 931 927 899
Address	Level 1, NewActon Nishi, 2 Phillip Law Street Canberra 2601
Facsimile	61 2 6243 7037
Email	[withheld]
Contact	Portfolio Team Leader, Renewable Futures
Short name	ARENA

Name	Victorian Wave Partners Pty Ltd ACN 136 578 044
Address	Level 33, 360 Collins Street Melbourne 3000
Facsimile	--
Email	[withheld]
Contact	[withheld]
Short name	Recipient

Background

This Deed is made in the following context:

- A. The Renewable Energy Demonstration Program (*Program*) was a program designed and administered by DRET.
- B. The objective of the program was to accelerate the commercialisation and deployment of new renewable energy technologies for power generation in Australia by assisting the demonstration of these technologies on a commercial scale, as described in the Renewable Energy Demonstration Program Information Guide.

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- C. The Recipient was successful in obtaining funding from DRET under the *Program* for the *project* (the development of a 19 megawatt ocean energy demonstration power station in coastal waters near Portland, Victoria).
- D. DRET agreed to provide the *grant funds* to the Recipient for the purposes the *project*, subject to the terms and conditions of the Funding Deed, which commenced on 9 September 2010.
- E. Since the parties entered into the Funding Deed, there have been a number of administrative changes and other developments relevant to the status and progress of the *project*.

Conditions Precedent

- F. A number of conditions precedent are set out in clause 2.1(e) and Schedule 1 of the Funding Deed (*Conditions Precedent*). The Recipient is required to satisfy all *Conditions Precedent* under the Funding Deed before DRET is obliged to pay any grant funds or other monies.
- G. At the date of this Deed of Variation and Notice of Waiver (*Deed*):
 - G.1 the Recipient has not satisfied *Condition Precedent 2* nor *Condition Precedent 3* in Schedule 1.
 - G.2 the Recipient has satisfied the remaining *Conditions Precedent* in the Funding Deed.
 - G.3 the Recipient has not received any *grant funds* or other monies from DRET.

Transfer of Funding Deed and Program administration from DRET to ARENA

- H. On 1 July 2012, pursuant to the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011*, ARENA become responsible for the administration of committed projects and measures from initiatives formerly administered by DRET, including the project.

Change in Recipient's ownership structure

- I. The Recipient's ownership structure has changed since the commencement of the Funding Deed.
- J. In 2012, majority shareholder Leighton Infrastructure Investments Pty Ltd through its parent company Leighton Contractors Pty Ltd (*Leighton*), ceased its involvement with the Recipient and transferred its interest in the Recipient to Ocean Power Technologies (Australasia) Pty Ltd (*OPTA*) via a Share Sale agreement dated 30 March 2012 (such that, on and after that date, the Recipient became a wholly owned subsidiary of *OPTA*).

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- K. Following the Share Sale, DRET and *Leighton* executed a Deed of Termination and Release, under which *Leighton* was released from its obligations under, or relating to, the Deed of Guarantee that was entered into by the parties on 12 October 2010 and *Leighton* ceased to be a *project participant* under the Funding Deed.
- L. At the date of this Deed, the Recipient is currently 100% owned by *OPTA*, which, in turn, is owned by Ocean Power Technologies Inc (88% shareholding) and Woodside Energy Ltd (12% shareholding).

Entry of Lockheed Martin Mission Systems and Sensors into Project

- M. Since the commencement of the Funding Deed, *OPTA* has sought financial and technical assistance from Lockheed Martin Mission Systems and Sensors (*Lockheed Martin*) to perform and deliver aspects of the *project*.
- N. Ocean Power Technologies Inc and *Lockheed Martin* executed a Teaming Agreement in July 2012, to formalise the relationship between the parties and the involvement of *Lockheed Martin* in the *project*. Attachment 2 of the Teaming Agreement sets out the responsibilities of the parties in respect of the project elements involving *Lockheed Martin*. A copy of the Teaming Agreement is attached at Schedule 3.
- O. Following execution of the Teaming Agreement, *Lockheed Martin* is now, for the purposes of the Funding Deed, a *project participant* and a subcontractor.

Communications between parties

- P. On 3 December 2012, the Recipient wrote to ARENA to, amongst other things, request a variation to the Funding Deed to restructure certain aspects of the *project* (and project delivery) and to reflect change in its ownership structure.
- Q. On 2 April 2013, ARENA wrote to the Recipient to advise that it agreed to:
 - Q.1 restructure the *project* and to enter into a Deed of Variation; and
 - Q.2 amongst other things, waive the obligation on the Recipient to meet *Condition Precedent 2* and *Condition Precedent 3* in Schedule 1 of the Funding Deed.
- R. The purpose of this Deed is to vary the Funding Deed to reflect the changes proposed by the Recipient and approved by ARENA in the abovementioned communications in order to restructure the *project*.

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The Parties Agree

1. Definitions

In this Deed unless expressed or implied to the contrary:

DRET means the Commonwealth of Australia represented by the former Department of Resources, Energy and Tourism.

effective date means the date of execution of this Deed by ARENA.

Funding Deed means the agreement between the Commonwealth of Australia represented by the former Department of Resources, Energy and Tourism and Victorian Wave Partners dated 9 September 2010 in relation to the Renewable Energy Demonstration Program.

Teaming Agreement means the agreement between Ocean Power Technologies Inc and Lockheed Martin Mission Systems and Sensors dated 27 July 2012.

Terms used in this Deed that are not defined in this clause 1 have the same meaning as in the Funding Deed.

2. Effect of the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011*

The parties acknowledge that an effect of the *Australian Renewable Energy Agency (Consequential Amendments and Transitional Provisions) Act 2011* is that on and from the date of that Act:

- (a) **Commonwealth of Australia** represented by the Department of Resources, Energy and Tourism ABN 46 252 861 927 of 51 Allara Street Canberra ACT 2601 (**Commonwealth**)

is replaced by

Australian Renewable Energy Agency, ABN 35 931 927 899 of 2 Phillip Law Street Canberra ACT 2601 (**ARENA**)

as a party to the Funding Deed; and

- (b) all references to “the Commonwealth” in the Funding Deed, where the reference to the Commonwealth is a reference to it as a party to the Funding Deed, are replaced by references to “ARENA”.

3. Variation of Funding Deed

3.1.1 In accordance with clause 28.2 of the Funding Deed, the Funding Deed is varied in the manner described in Schedule 1.

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3.1.2 Unless otherwise stated, the terms and conditions of the Funding Deed remain unchanged and in full force and effect.

4. Notice of Waiver

4.1.1 In accordance with clause 30.5 of the Funding Deed, ARENA waives certain rights created under the Funding Deed, as described in Schedule 2.

4.1.2 ARENA agrees to execute and deliver to the Recipient the Notice of Waiver (in the form set out in Schedule 2) on or immediately following the effective date.

5. General

5.1 Amendment

No variation of this Deed is binding unless it is agreed in writing and signed by the Recipient and ARENA.

5.2 Entire understanding

This Deed contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Deed and have no effect.

5.3 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

5.4 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Deed and other documents referred to in it, unless expressly stated otherwise.

5.5 Waiver and exercise of rights

5.5.1 A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.

5.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

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5.6 **Rule of construction**

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared or put forward this Agreement or any part of it.

6. **Interpretation**

6.1 **Governing law and jurisdiction**

This Deed is governed by and is to be construed in accordance with the laws of Australian Capital Territory. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Australian Capital Territory and waives any right to object to proceedings being brought in those courts.

6.2 **Commencement of this Deed**

This Deed commences on the *effective date*.

6.3 **Persons**

In this Deed, a reference to:

- 6.3.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 6.3.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 6.3.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

6.4 **Joint and several**

If a party consists of more than one person, this Deed binds them jointly and each of them severally.

6.5 **Legislation**

In this Deed, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

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6.6 **This Deed, clauses and headings**

In this Deed:

- 6.6.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 6.6.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Deed all of which are deemed part of this Deed;
- 6.6.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 6.6.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed;
- 6.6.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- 6.6.6 Where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

6.7 **Severance**

- 6.7.1 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 6.7.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

6.8 **Counterparts**

This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

6.9 **Currency**

In this Deed, a reference to '\$' or 'dollars' is a reference to Australian dollars.

6.10 **Number and gender**

In this Deed, a reference to:

- 6.10.1 the singular includes the plural and vice versa; and
- 6.10.2 a gender includes the other genders.

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Signing Page

Executed by the parties

Signed for and on behalf of the **Australian Renewable Energy Agency (ARENA)** by its duly authorised delegate in the presence of

/s/ Fiona McKenna

Signature of witness

Fiona McKenna

Name of witness (print)

/s/ Ivor Frischknecht

Signature of delegate

Ivor Frischknecht

Name of delegate (print)

CEO

Position of delegate (print)

Executed by Victorian Wave Partners Pty Ltd ABN 25 136 578 044 in accordance with Section 127 of the Corporations Act 2001 in the presence of

/s/ George W. Taylor

Signature of director

George W. Taylor

Name of director (print)

/s/ Charles F. Dunleavy

Signature of director

Charles F. Dunleavy

Name of director (print)

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Schedule 1 Variation to Funding Deed

Variation to Funding Deed

The parties agree to vary the Funding Deed as set out below with effect from the *effective date*:

1. Payment of grant funds

1.1 Insert new clause 5.1(c):

- (c) Notwithstanding clause 5.1(b), ARENA will pay the *progress payments* specified in *payment milestone* numbers 1, 2, 3, 9, 10 and 11 in Schedule 5 upon execution of the Deed of Variation, by direct credit to the bank account identified by the Recipient under clause 8.1. The execution of the Deed of Variation will be deemed a valid form of payment claim for those *progress payments* for the purposes of clause 9.1(b)(i) provided that the Recipient also provides to ARENA on the execution date the information required under clause 9.1(b)(ii) and clause 9.1(b)(iii).

2. Stage-Gate Requirements

2.1 Insert new clause 6.1A:

6.1A Project Stage Gates

- (a) For the purposes of this clause 6.1A, project stage means a stage of the project as shown in schedule 5 - Payment Milestones and Schedule.
- (b) Subject to clause 6.1A(c) and unless otherwise approved by ARENA in writing (such approval to not be unreasonably withheld or delayed), the Recipient:
- (i) must not commence any work or activity associated with a *payment milestone* related to a future *project stage*; and
 - (ii) will not be entitled to submit a *payment claim* in respect of a *payment milestone* that is related to a future project stage (regardless of whether or not the relevant *payment milestone* was reached prior to the *Date of Variation*),

unless and until the Recipient has, to the satisfaction of ARENA:

- (iii) completed all relevant work or activity associated with all *payment milestones* required to be completed in the existing *project stage*;
- (iv) secured, and entered into, a *power purchase agreement* with a third party for the following *project stage*;

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- (v) complied with the reporting requirements in clause 13.3, including providing all relevant payment milestone reports for the existing *project stage*;
 - (vi) complied with, and obtained all relevant authorisations associated with the existing *project stage* required under, clause 6.5;
 - (vii) secured all necessary *matching funding* or other project finance required for the following *project stage*; and
 - (viii) complied with the requirements of clause 6.1 in carrying out the *project*.
(together the *stage gate requirements*).
- (c) The restriction in clause 6.1A(b)(i) will not apply to any work or activity directly relevant to or associated with the project which, by the nature of the work, relates to both project stage 1 and later project stages and is:
- (i) of such fundamental importance to the project (for example, the attaining and maintaining any and all permits required for the project) that it must be fully completed early in the time line for the *project*; and/or
 - (ii) in the case of the work that is required for later project stages, more efficiently carried out, both in terms of time and cost, contemporaneously with the work required (within that particular work activity) for project stage 1 (for example, the undertaking of any survey or study required to be undertaken for the purpose of the project, including (but not limited to) environmental effects studies and underwater ocean floor surveys of the project area).
- (d) Within 30 days of completing all *stage gate requirements* for the relevant *project stage*, the Recipient must:
- (i) notify ARENA, in writing, that it has completed the *stage gate requirements (stage completion notice)*; and
 - (ii) request approval from ARENA for it to commence work and activities associated with the next project stage (*stage gate approval*).
- (e) For the purposes of clause 6.1A(d) and obtaining *stage gate approval*, the Recipient must provide documentary evidence for each completed *stage gate requirement* and any other supporting information ARENA may request for the purpose of demonstrating the Recipient has completed all *stage gate requirements*.
- (f) ARENA must, within 30 days of receiving notice and supporting documentation from the Recipient in accordance with clauses 6.1A(d) and (e), either accept or reject the request for *stage gate approval* by written notice to the Recipient.

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- (g) Subject to clause 6.1A(h), if ARENA rejects the request for *stage gate approval*, the written notice to the Recipient must:
 - (i) identify any incomplete *stage gate* requirements;
 - (ii) include ARENA's reasons for rejecting the request for *stage gate approval*; and
 - (iii) include the date or dates by which the Recipient must:
 - (A) complete any incomplete *stage gate requirements* identified by ARENA in the notice;
 - (B) otherwise address the reasons that ARENA has given for rejecting the request for *stage gate approval*; and
 - (C) re-submit a *stage completion notice* and request for *stage gate approval* under clause 6.1A(d).
- (h) If the Recipient fails to obtain *stage gate approval* for any *project stage* more than twice, ARENA may (in addition to its other remedies) terminate the Funding Deed immediately under clause 22.1(j) by giving the Recipient notice in writing.

3. Repayment Obligations

3.1 Delete clause 16.1 and replace with the following:

16.1 Payment in excess of funding percentage

- (a) For the purposes of this clause 16.1, *project stage* means a stage of the *project* as shown in Schedule 5 - Payment Milestones and Schedule.
- (b) [***]

4. Insurance

4.1 Delete clause 19.3 and replace with the following:

19.3 Insurance

- (a) Without in any way limiting or affecting the Recipient's obligations or liabilities under this deed, the Recipient must effect and maintain insurance policies, or procure that insurance policies are effected and maintained that nominate it as an insured, of the type and for the amounts and time periods specified set out in item 5 of schedule 3.
- (b) Where, in respect of a type of insurance specified in item 5 of schedule 3 the amount of the policy cover to be effected and maintained by the Recipient is stated to be dependent on or determined by reference to the value of the asset or assets to be insured, the Recipient must, if requested or required by the Commonwealth to do so, obtain the prior approval of the Commonwealth to the value of the relevant asset, and the amount of the insurance cover to be effected, before it effects the required insurance policy.

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- (c) If requested in writing by the Commonwealth, the Recipient must provide to the Commonwealth such evidence of the currency of each of the insurances referred to item 5 of schedule 3, including by the provision of a copy of the certificate of currency of the relevant policy and a copy of the policy wording, within 14 days of the date of receipt of the request from the Commonwealth.
- (d) The Recipient must have the interest of the Commonwealth in the Project, through the provision of funding to the Recipient under this deed, noted and, at no cost to the Commonwealth, have the Commonwealth recorded as an insured on all insurances (other than the professional indemnity insurance) effected and maintained (as required under clause 19.3(a) and item 5 of schedule 3) under this deed.
- (e) The obligation imposed on the Recipient by clause 19.3(d) will apply in all cases including, without limitation, where the Recipient discharges its obligations under clause 19.3(a) by procuring a third party to effect and maintain the relevant insurances on behalf of the Recipient.
- (f) If for any reason it is not possible for the Recipient to have the interest of the Commonwealth in the Project noted and have the Commonwealth recorded as an insured on all insurances (other than the professional indemnity insurance) as required by clause 19.3(d) either at all or on terms that are commercially acceptable to the Recipient, the Recipient must:
 - (i) advise the Commonwealth in writing of its inability to obtain the insurance cover (either at all or on terms acceptable to the Recipient); and
 - (ii) provide to the Commonwealth all relevant information concerning its inability to obtain the relevant insurance cover.
- (g) On receipt of a notice from the Recipient under clause 19.3(f) ARENA may determine, in its absolute discretion, what alternative form of insurance (which is commercially available on terms that are reasonable) or other course of action that the Recipient must take to protect the interests of the Commonwealth in the Project.
- (h) The Recipient must notify the Commonwealth immediately of any change in or to its insurances (including but not limited to any change of insurer or of the persons insured or of other details set out in item 5 of schedule 3) or if any insurance cover required under clause 19.3(a) and/or item 5 of schedule 3 is voided, cancelled, withdrawn, not renewed, not maintained or is for any other reason otherwise not current and subsisting.

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5. Termination for default

5.1 Insert new clause 22.1(j):

- (i) the Recipient fails to obtain *stage gate approval* more than twice for any *project stage*.

6. Funding for project stage 1

6.1 Insert new clause 18A:

Prior to undertaking any work or activity associated with a *payment milestone* related to *project stage 1*, the Recipient must, warrant to ARENA that:

- (a) the Recipient has available to it, whether from its own resources or otherwise, the funding necessary for it to be able to pay all expenditure likely to be incurred in the completion of the *payment milestone* which is not covered by the *grant funds*; and
- (b) the funding will be available to the Recipient as and when required by it in order to pay all such expenditure related to the *payment milestone* when due and payable.

7. Immediate termination

7.1 At clause 22.1(a) include the words “and is of material effect” after the words “misleading when made” so that clause 22.1(a) provides:

a representation or warranty made by the Recipient under this deed is incorrect or misleading when made and the incorrect or misleading representation or warranty is of material effect;

8. Knowledge Sharing Plan

8.1 Insert new clause 25.5:

25.5 Knowledge Sharing Plan

In addition to clause 25.3, the Recipient must:

- (a) comply with the *Knowledge Sharing Plan*;
- (b) on each anniversary of the *Date of Variation*, provide ARENA with, and update the *Knowledge Sharing Plan* to include, a list of planned knowledge sharing activities over the forward 12 months;
- (c) provide ARENA with any report, paper, or other Material for dissemination, prepared for the purpose of the *Knowledge Sharing Plan* 15 days before public release (or by the time agreed to by ARENA); and

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- (d) not publicly release any such report, paper or Material without the consent of ARENA which consent will not be unreasonably withheld or delayed.

8.2 Insert definition of Knowledge Sharing Plan in clause 31.1:

Knowledge Sharing Plan means the plan the Recipient is required to provide to ARENA substantially in the form set out in Schedule 8 as updated on each anniversary of the Date of Variation or amended by agreement of the parties from time to time.

8.3 Insert new Schedule 8 (Knowledge Sharing Plan) set out at Annexure 8 to this Schedule.

9. Definition – Date of Variation

9.1 Insert definition of Date of Variation in clause 31.1:

Date of Variation means the date on which ARENA provides written notice to the Recipient approving the *Knowledge Sharing Plan* in accordance with clause 2.1.3 of the *Deed of Variation* or such other date notified by ARENA to the Recipient under clause 2.1.4(b) of the *Deed of Variation*.

10. Definition – Deed of Variation

10.1 Insert definition of Date of Variation in clause 31.1:

Deed of Variation means the deed entered into by the parties on or about 31 October 2013 that varies this deed.

11. Definition – Eligible Expenditure Guidelines

11.1 Delete definition of Eligible Expenditure Guidelines in clause 31.1 and replace with the following:

Eligible Expenditure Guidelines means the guidelines provided to the Recipient on or before the *execution date* (included at Schedule 7) as amended from time to time.

11.2 Insert guidelines attached at Annexure 1 to this Schedule in Schedule 7 of the Funding Deed.

12. Definition – funding percentage

12.1 Replace definition of funding percentage in clause 31.1 with:

funding percentage means the percentage figure set out in item 4 of Schedule 1, which figure must not exceed [***].

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13. Definition – power purchase agreement

13.1 Insert definition of power purchase agreement in clause 31.1

power purchase agreement means an agreement entered into by the Recipient (or a Related Body Corporate of the Recipient) with an electricity retailer or other user, distributor, reseller or consumer of electricity for the supply of electricity generated by or a result of the wave energy assets constructed in the course of the Project.

14. Definition – Program

14.1 Delete definition of Program in clause 31.1 and replace with the following:

Program means the portfolio of projects and measures for a number of renewable energy and technology types for which ARENA is currently providing financial assistance, that were previously administered by DRET.

15. Definition – Program funding

15.1 Delete definition of Program funding in clause 31.1 and replace with the following:

Program funding means the funding made available by the Parliament of the Commonwealth of Australia to ARENA in any given *financial year* which is allocated and administered by ARENA for the purposes of the Program.

16. Definition – Program Objectives and Outcomes

16.1 Delete definition of Program Objectives and Outcomes in clause 31.1 and replace with the following:

Program Objectives and Outcomes means the objective of accelerating the commercialisation and deployment of new renewable energy technologies for power generation in Australia by assisting the demonstration of these technologies on a commercial scale, and thereby to contribute to the achievement of the 20 per cent renewable energy target by 2020 and global efforts for climate change mitigation with the intention of achieving the following outcomes:

- demonstrating technical and economic viability of renewable energy technologies for power generation through large-scale installations;
- supporting the development of a range of renewable energy technologies for power generation in Australia;
- enhancing Australia’s international leadership in renewable energy technology for power generation development; and
- attracting private sector investment in renewable energy power generation.

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17. Schedules

- 17.1 Delete the reference to [***] in Item 4 of Schedule 1 and replace with [***].
- 17.2 Delete Schedule 2 and replace with Schedule 2 attached at Annexure 2 to this Schedule.
- 17.3 Delete item 3, item 4 and item 5 in Schedule 3 and replace with item 3, item 4 and item 5 of Schedule 3 attached at Annexure 3 to this Schedule.
- 17.4 Delete Schedule 4 and replace with Schedule 4 attached at Annexure 4 to this Schedule.
- 17.5 Delete Schedule 5 and replace with Schedule 5 attached at Annexure 5 to this Schedule.
- 17.6 Delete Schedule 6 and replace with Schedule 6 attached at Annexure 6 to this Schedule.
- 17.7 Delete Attachment A to Funding Deed and replace with Attachment A at Annexure 7 to this Schedule.

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Annexure 1 Eligible Expenditure Guidelines

These guidelines set out what kind of expenditure is eligible expenditure and what kind of expenditure is ineligible for the project.

These guidelines are to be followed in the regular milestone reporting and annual financial reporting required under the Funding Deed.

Where the Recipient is in any doubt as to the eligibility of elements of project expenditure, it is encouraged to discuss the matter with ARENA. If the Recipient wants particular expenditure that falls outside these guidelines to be considered as eligible, it should have provided supporting information in its application, or if at a later stage during the project, it should provide supporting information within a report.

General Principles

The following general principles apply in the consideration of eligible expenditure:

- Generally accepted accounting principles are to be followed, and it must be possible to track expenditure relating to the project through the Recipient's accounting system;
- Eligible expenditure is expenditure directly related to the undertaking of eligible project activities – eligible project activities are those activities necessary to conduct the project as set out in the project plan;
- Where resources are used both on the project and non-project activities elsewhere in the Recipient's company, the expenditure should be apportioned on a reasonable basis;
- Opportunity costs, that is expenditure related to foregone production and downtime arising from the allocation of resources to the project activities, are not eligible;
- Related party transactions must be treated on an at cost basis, without mark-up, unless it can be demonstrated that the transaction has been calculated on an arm's-length basis;
- Expenditure is not generally eligible if undertaken prior to the signing of the Funding Deed, or after the specified completion date (or such later date agreed by the parties); and
- Eligible expenditure is calculated net of GST and GST is then added to the grant payment due.

Specific Eligibility Provisions

Eligible expenditure includes:

- Contract expenditure in relation to contracts entered into for the purposes of undertaking the activities required for the conduct of the project (subject to the ineligible expenditure constraints below);
- Labour expenditure (salaries/wages) including reasonable on-costs for personnel directly employed on the project. Labour on-costs include worker's compensation insurance, employer contributions to superannuation, recreation and sick leave, long service leave accrual and payroll tax;
- Administrative expenses including communications, accommodation, computing , travel, recruitment, printing and stationery, where directly related to the project;

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- Plant expenditure for plant installed in the project is allowable at the full delivered cost of the plant to the site of the facility;
- Plant expenditure in respect of plant used for the construction of the facility is allowable on the basis of hire/lease costs, or depreciation charges if owned, and related running costs such as rent, light and power and repairs and maintenance;
- Expenditure related to Front End Engineering and Design (FEED) activities and the obtaining of approvals related to the project may be allowable (subject to the provisions related to pre-contract expenditure);
- Expenditure related to legal, audit and accounting costs related to the project are eligible;
- Where the Recipient needs to access specific technology in relation to the project, relevant licence fees or intellectual property purchase costs are eligible expenditure;
- Expenditure related to all insurances reasonably and prudently required for the project;
- Expenditure (including advisor fees) related to the procurement and execution of a power purchase agreement (or other agreement to a similar effect) (**PPA**) for the project and such other documentation ancillary to the PPA as may be required for the purpose of giving effect to the PPA.

Ineligible expenditure includes:

- Expenditure related to the general operations and administration of the Recipient's company;
- Expenditure directly related to the raising of funding for the project or to the implementation of joint ventures or other collaborative arrangements involving the Recipient and which related primarily to its financing of the project;
- Expenditure in relation to activities that are part of the project but are funded by any other Commonwealth government program, which would lead to the Australian Government funding the same activity more than once.
- Expenditure on activities that a local, State, Territory or Australian Government agency has the responsibility to undertake. [For clarity, it is not intended that this clause would result in expenditure incurred in obtaining permits or other approvals or the undertaking of other activities in respect of which a local, State, Territory or Australian Government agency is the responsible body) being ineligible expenditure];
- Expenditure related to obtaining regulations and standards compliance—such as certification and accreditation fees, and other direct payments to regulators including geothermal license retention fees, or to certification or accreditation bodies;
- Expenditure on achieving quality control accreditation;
- Interest expenditure on loans for new and pre-existing capital items utilised for the project;
- Undertaking commercialisation activities—such as sales promotion; and
- Expenditure that does not directly support the achievement of the planned outcomes of the project, or is contrary to the spirit or intention of the project and the intentions of the original Renewable Energy Demonstration program that was administered by the Department of Resources, Energy and Tourism.

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Comments on Expenditure Items

Labour

Eligible labour expenditure for the project is the gross amount paid or payable to an employee of the Recipient's company. An employee is a person who is paid a regular salary or wage, out of which regular tax installment deductions are made. Eligible salary includes any components of the employee's total remuneration package which are itemised on their *Pay As You Go (PAYG) Annual Payment Summaries* submitted to the Australian Taxation Office (ATO).

It is expected that, in a reporting context, the Recipient will be able to demonstrate, by reference to appropriate records such as timesheets, job cards or diaries, the amount of time spent on approved activities by each employee. Labour costs cannot be claimed based on an estimation of the employee's worth to the company, where no cash has changed hands.

Contract Expenditure

Eligible contract expenditure is the cost of any agreed project activities performed for the Recipient by another organisation. All project work to be performed must be the subject of a written contract (for example, a letter or purchase order) which specifies the nature of the work to be performed for the client and the applicable fees, charges and other costs payable. The written contract must be entered into prior to commencement of the work undertaken under the contract.

With respect to the project budget submitted at time of application, it is not a requirement for contracts to be in place. However, for major items of contract expenditure (for example, purchases of major items of hardware to be incorporated in the project), the Recipient will be expected to have some form of documentary evidence such as written quotes from suppliers, to substantiate the expenditure included in the project budget.

Where the contractor and the Recipient are not at arm's length', the amount assessed for work performed will be an amount considered to be a reasonable charge for that work and contain no unacceptable element of 'in group profit'. Organisations considered not at arm's length' include related companies and companies with common directors and/or shareholders.

Expenditure Prior to Deed

While expenditure is not generally eligible if undertaken prior to the signing of the Funding Deed, the Recipient may be able to claim expenditures incurred prior to execution of a Deed, such as those associated with Front End Engineering and Design (FEED). This expenditure and funding attached to it will be considered by ARENA on a case by case basis.

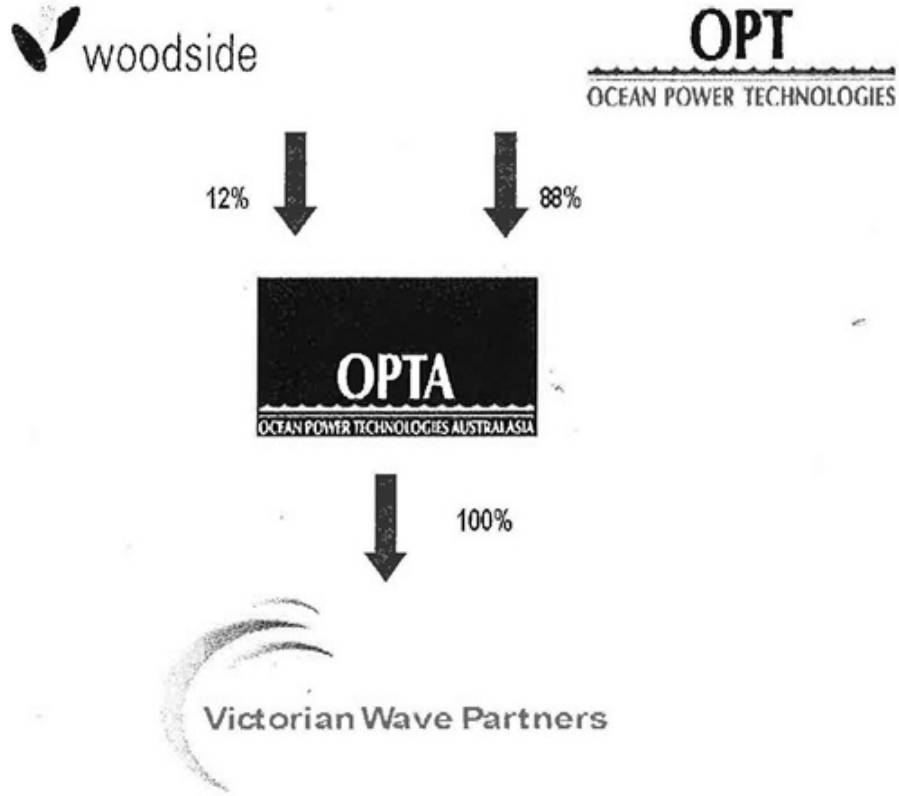
Accounting Systems

The Recipient is required to have in place suitable accounting systems to provide assurance that the system allows for the separate accurate identification of eligible and ineligible project expenditure and ensures that a clear audit trail is available.

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Annexure 2 Schedule 2 - Recipient and consortium details (clause 11)

1 Recipient – ownership and group structure details



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2 Project Participants

Name of project participant	Contribution/role of project participant
Ocean Power Technologies (Australasia) Pty Ltd ABN 19 076 639 211	100% equity investor in Victorian Wave Partners Pty Ltd Technology provider
Lockheed Martin Australia Pty Ltd ABN 30 008 425 509 Lockheed Mission Systems and Sensors Business Registered in the State of Maryland, USA IRS Employer Identification No: 52-1893632	Program management and system integration

3 Project Participants – Recipient ownership and group structure details

Ocean Power Technologies (Australasia) Pty Ltd (OPTA) - ABN 19 076 639 211

OPTA is a subsidiary of Ocean Power Technologies, Inc. (OPT).

OPTA is 88% owned by OPT and 12% by Woodside Energy.

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Annexure 3 Schedule 3, Items 3, 4 and 5

3 Project Budget

[***] (Budget redacted)

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4 Authorisations – Stage 1 (clause 6.5)

<i>Authorisation type/category</i>	<i>Final date for obtaining authorization</i>
Environment Protection and Biodiversity Conservation Act 1999	[***]
Navigational Aids	[***]
National Energy Regulations (Section 5.2) AEMC (over 5MW)	[***]
Compliance with the Open Access Regime and NEMCO requirements	[***]
Coastal Management Act Consents	[***]
Indigenous Land Use Act Agreement (ILUA)	[***]
Sea Bed Lease (DEPI)	[***]
Environmental Effects Statement (DPCD)	[***]
Shore Crossing Easement	[***]
Cable Easement	[***]
Interconnection Agreement with District Network Service Provider	[***]
Other authorisations as deemed appropriate by relevant local, state and federal authorities	[***]

Note:

- 1) The dates listed above are based on reasonable estimates of the time usually required to obtain the relevant authorisations. Circumstances beyond the Recipient’s control may result in one or more authorisations not being obtained by the date shown.
- 2) Final dates are predicated on the assumption that the environmental review approval process will not be subject to a public review.

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Authorisations – Stages 2 and 3 (clause 6.5)

<i>Authorisation type/category</i>	<i>Final date for obtaining authorisation</i>
Environment Protection and Biodiversity Conservation Act 1999	[***]
Navigational Aids	[***]
National Energy Regulations (Section 5.2) AEMC (over 5MW)	[***]
Compliance with the Open Access Regime and NEMCO requirements	[***]
Coastal Management Act Consents	[***]
Indigenous Land Use Act Agreement (ILUA)	[***]
Sea Bed Lease (DEPI)	[***]
Environmental Effects Statement (DPCD)	[***]
Shore Crossing Easement	[***]
Cable Easement	[***]
Interconnection Agreement with District Network Service Provider	[***]
Other authorisations as deemed appropriate by relevant local, state and federal authorities	[***]

Note:

- 1) The dates listed above are based on reasonable estimates of the time usually required to obtain the relevant authorisations. Circumstances beyond the Recipient's control may result in one or more authorisations not being obtained by the date shown.
- 2) Final dates are predicated on the assumption that the environmental review approval process will not be subject to a public review.

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5 Insurance Requirements (clause 19.3)

Insurance type/category	Coverage	When Procured	Amount	Other Requirements
Third Party / Public liability.	<p>Third party legal liability covering loss or liability arising out of occupation and use of any premises and / or infrastructure associated with the Project.</p> <p>The Policy must cover VWP, OPTA, OPT Inc and the Commonwealth (as the nominated insured persons).</p>	<p>VWP must procure or cause to be procured throughout the term of the Deed.</p>	<p>Limit of a minimum of \$50,000,000 per claim, or occurrence giving rise to a claim where occurrence means a single event or series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>
Construction – Material Damage	<p>Loss of or damage to the works under fabrication, construction, local transit (including loading and unloading and transit by barge to the final location of the buoys), installation and testing and commissioning.</p> <p>The Policy must extend to cover any loss or damage caused by contractors or subcontractors for their on-site activities and must extend to any loss or damage caused in the course of remedying any defects in the works in accordance with any maintenance / defects obligations under their contracts and for the length of the Defects Liability period (not exceeding 12 months).</p> <p>The Policy must cover VWP, OPTA, OPT Inc and the Commonwealth (as the nominated insured persons) and contractors and/or subcontractors for their on-site activities.</p>	<p>VWP must procure or cause to be procured coverage from the period beginning when site construction and/or fabrication works begin to when any phase or stage is completed and becomes operational (after appropriate testing and commissioning has been completed) or has reached practical completion and handover.</p> <p>Set out below are the project milestones which, once achieved, will signify the conclusion of that stage of the project (and the transition to operational insurance for the respective stage):</p> <p>For Stage 1 – Milestone 28. For Stage 2 – Milestone 40. For Stage 3 – Milestone 51.</p>	<p>At the insured’s option, but at all times to be for an amount in excess of the value of the Project assets at risk.</p> <p>The insurance will be based on an estimated Project value (determined by reference to the construction pricing, which value is then subject to declaration and adjustment at the end of the policy period</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>
Construction – Liability	<p>Legal liability occurring during the construction and fabrication of the project, including local transit, and storage activities and ancillary activities.</p> <p>The Policy must also extend to cover any liability for personal injury, loss or damage caused by contractors or subcontractors in the course of remedying any defects in the works in accordance with any maintenance / defects obligations under their contract and for the length of the Defects Liability period (not exceeding 12 months).</p> <p>The Policy must cover VWP, OPTA, OPT Inc and the Commonwealth (as the nominated insured persons).</p>	<p>VWP must procure or cause to be procured coverage from the period beginning when site construction and/or fabrication works begin to when any phase or stage is completed and becomes operational (after appropriate testing and commissioning has been completed) or has reached practical completion and handover.</p> <p>Set out below are the project milestones which, once achieved, will signify the conclusion of that stage of the project (and the transition to operational insurance for the respective stage):</p> <p>For Stage 1 – Milestone 28. For Stage 2 – Milestone 40. For Stage 3 – Milestone 51.</p>	<p>Limit of a minimum of \$50,000,000 per claim, or occurrence giving rise to a claim where occurrence means a single event or series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>

Operational Coverage (Material Damage)	<p>Loss of or damage to the physical project property / assets of VWP that are the subject of the Funding Deed once those assets are handed over from construction operations (including, but not limited to, the buoys and related infrastructure).</p> <p>The Policy must cover VWP, OPTA, OPT Inc and the Commonwealth (as the nominated insured persons).</p>	<p>VWP must procure or cause to be procured for each stage on practical completion and handover being reached in respect of the stage to the expiry of the Deed.</p> <p>The achievement of the following project milestones will signify the conclusion of that stage of the project (and the transition to operational insurance for the relevant stage):</p> <p>For Stage 1 – Milestone 28. For Stage 2 – Milestone 40. For Stage 3 – Milestone 51.</p>	<p>At the insured’s option, an amount representing replacement value (determined immediately after completion by the final project values plus a provision for inflation or by a separate valuation/ assessment by qualified persons of the cost of rebuild) or maximum foreseeable loss.</p> <p>The loss limit is set to the largest single loss / location or worst case scenario. Modelling by qualified engineers can be performed (if there is a cost benefit to it).</p>	Insurance must be effected and maintained with a reputable insurance provider.
Operational – Third party liability	<p>Legal liability arising out of the use, operation, or occupation of any site in relation to wave power generators, including associated infrastructure (the insured’s business activities).</p> <p>The policy must cover OPT, OPTA, VWP (as the principal insured parties) and the Commonwealth (to be covered only for their vicarious liability for negligent acts / omissions of VWP).</p>	<p>VWP will procure the policy or cause the policy to be procured for each stage on practical completion and handover being reached in respect of the stage to the expiry of the Deed.</p> <p>The achievement of the following project milestones will signify the conclusion of that stage of the project (and the transition to operational insurance for the relevant stage):</p> <p>For Stage 1 – Milestone 28. For Stage 2 – Milestone 40. For Stage 3 – Milestone 51.</p>	<p>At the insured’s option, with an initial minimum coverage for AUD \$50,000,000 per occurrence / in aggregate any one policy year for pollution / product liability / completed operations.</p> <p>For the remainder of the term of the Deed, the policy limit will be reviewed at least annually with the intention that the coverage will be adjusted to reflect the overall stage of the Project and obligations / risks faced by the insured parties in respect of the overall Project.</p>	Insurance must be effected and maintained with a reputable insurance provider.

Marine Cargo / Transit	<p>Loss of or damage to VWP cargo (or cargo for which VWP is responsible) during transit (unless otherwise covered by the supplier or under the transit section of the Construction – Material damage policy or unless the transits are low value items).</p>	<p>VWP must procure or cause to be procured as and when required (i.e. whenever any relevant cargo is being transported by sea or is in transit) throughout the term of the Deed.</p>	<p>At the insured’s option, replacement value of the cargo plus shipping charges. The cost of an item on the purchase invoice plus freight.</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>
	<p>The Policy must cover VWP, OPTA, OPT Inc and the Commonwealth (as the nominated insured persons).</p>			
<p>Workers Compensation (and employer’s liability insurance covering employer’s liability at common law (if not covered under statute).</p>	<p>Covering injury or death to employees (including the legal liability of their employer). The Policy must cover VWP and any other related entity of VWP that is an employer and therefore has an insurable interest. [Note: It is not possible under the applicable Victorian legislation to include cross liability clauses or name parties other the employer as an insured.]</p>	<p>VWP must procure or cause to be procured the appropriate workers compensation and employer’s liability insurances for itself and all of its other related entities that employ persons involved in the Project throughout the term of the Deed.</p>	<p>In accordance with the requirements of the applicable legislation.</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>

Professional Indemnity	<p>Liability to any third party arising as a result of any negligent act, error or omission in the provision of professional services by OPTA, OPT Inc. or VWP or its independent contractors in the conduct of the Project.</p> <p>The Policy must cover VWP, OPTA, OPT Inc and, if appropriate, its independent contractors.</p>	<p>Before VWP provides professional services in relation to the Project, VWP must put in place appropriate professional indemnity insurance for the term of the Deed and/or seven years after the expiry or termination of this Deed. VWP must require that independent contractors it engages have appropriate and available professional indemnity insurance, public risk and workers compensation (in accordance with law) insurance at the time they commence the provision of services in relation to the Project.</p>	<p>Limit of a minimum of \$10,000,000 per claim, or occurrence giving rise to a claim where occurrence means a single event or series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be.</p>	<p>Insurance must be effected and maintained with a reputable insurance provider.</p>
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Annexure 4 Schedule 4 - Key Personnel and Approved Subcontractors

1 Key Personnel

Name of Key Personnel	Description of work/role/responsibilities
<u>Victorian Wave Partners Pty Ltd (VWP)</u>	
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
<u>Ocean Power Technologies Inc. (OPT)</u>	
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
<u>Ocean Power Technologies (Australasia) Pty Ltd (OPTA)</u>	
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
<u>Lockheed Martin Corporation</u>	
[***]	[***]
[***]	[***]
[***]	[***]

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2 Approved Subcontractors

Name of Approved Subcontractor	Work to be subcontracted	Date for execution of subcontract
Lockheed Martin	Engineering Services	31 July 2013
Lockheed Martin	Component Fabrication	1 November 2013
OPTA	Technology provider	31 July 2013
OPTA	Component Fabrication	1 November 2013
Brookfield Financial	Financial Advisor	12 November 2012
Shane O'Kane	Financial Advisor	5 June 2013

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Annexure 5 Schedule 5 - Payment Milestones and Schedule

Stage #1 Payment Milestones and Schedule

<i>Payment milestone No.</i>	<i>Payment milestone (clause 31.1)</i>	<i>Payment milestone due date (clauses 6.1(a), 6.4 and 22.3(a) (ii))</i>	<i>Payment claim and payment milestone report due date (clause 9.1(a) and schedule 6)</i>	<i>Payment criteria (clause 9.1(b) (ii))</i>	<i>Supporting documentation and other evidence required (clause 9.1(b)(iii))</i>	<i>Budgeted Expenditure \$</i>	<i>Progress payment amount \$ (clause 5.1(b))</i>	<i>Funding %</i>
Stage #1 Project Development								
[***] (Chart data redacted – six pages)								
STAGE 1 – TOTAL EXPENDITURE AND PAYMENTS						42,637,012	21,318,506	

Notes:

- 1) EPC costs and risk contingencies are amortised over the payment milestones.
- 2) Payment milestones comprising of a number of sub-milestones have been aggregated for convenience, and hence in the event that one of the sub-milestones is not achieved on time, it will not prejudice payment of the other sub-milestones.

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Stage #2 Payment Milestones and Schedule

<i>Payment milestone No.</i>	<i>Payment milestone (clause 31.1)</i>	<i>Payment milestone due date (clauses 6.1(a), 6.4 and 22.3(a) (ii))</i>	<i>Payment claim and payment milestone report due date (clause 9.1(a) and schedule 6)</i>	<i>Payment criteria (clause 9.1(b) (ii))</i>	<i>Supporting documentation and other evidence required (clause 9.1(b)(iii))</i>	<i>Budgeted Expenditure \$</i>	<i>Progress payment amount \$ (clause 5.1(b))</i>	<i>Funding %</i>
Stage #2 Project Development								
[***] (Chart data redacted – three pages)								

Notes:

- 1) EPC costs and risk contingencies are amortised over the payment milestones.
- 2) Payment milestones comprising of a number of sub-milestones have been aggregated for convenience, and hence in the event that one of the sub-milestones is not achieved on time, it will not prejudice payment of the other sub-milestones.

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Stage #3 Payment Milestones and Schedule

<i>Payment milestone No.</i>	<i>Payment milestone (clause 31.1)</i>	<i>Payment milestone due date (clauses 6.1(a), 6.4 and 22.3(a)(ii))</i>	<i>Payment claim and payment milestone report due date (clause 9.1(a) and schedule 6)</i>	<i>Payment criteria (clause 9.1(b)(ii))</i>	<i>Supporting documentation and other evidence required (clause 9.1(b)(iii))</i>	<i>Budgeted Expenditure \$</i>	<i>Progress payment amount \$ (clause 5.1(b))</i>	<i>Funding %</i>
Stage #3 Project Development								
[***] (Chart data redacted – three pages)								

Notes:

- 1) EPC costs and risk contingencies are amortised over the payment milestones.
- 2) Payment milestones comprising of a number of sub-milestones have been aggregated for convenience, and hence in the event that one of the sub-milestones is not achieved on time, it will not prejudice payment of the other sub-milestones.

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Annexure 6 Schedule 6 – Reports (clause 13.3)

Title of report	Form and content requirements for report	Subject to financial audit (clause 13.3(b))?	Date for submission of report
Payment Milestone Report	<p>The Recipient must provide Payment Milestone Reports following the completion of each <i>payment milestone</i>.</p> <p>Payment Milestone Reports must be in the format, and contain the details required by, the template report provided by ARENA from time to time.</p> <p>Payment Milestone Reports must include information relating to the <i>payment milestone</i> and progress during the reporting period (such as proof of completed activities). This includes, but is not limited to:</p> <ul style="list-style-type: none"> - a description and analysis of the technical progress of the Project; - evidence (including, where possible, pictorial evidence) that the activities within the Payment Milestone have been achieved; - any major issues or developments which have arisen in the course of achieving the Milestone and the effect they will have on the Project; - any proposed changes to the Project; - a comprehensive summary of the knowledge sharing activities completed in accordance with the Knowledge Sharing Plan during the period; - an update of community consultations undertaken by the Recipient under the Community Consultation Plan, and any significant issues that have arisen during these consultations, in accordance with clause 6.11; and - evidence that the budgeted eligible expenditure for the Payment Milestone has been disbursed. 	No	on each due date in schedule 5
Annual Financial Audit Report	<p>The Recipient must provide Financial Audit Reports at the end of each <i>financial year</i> during the <i>project period</i>.</p> <p>Annual Financial Audit Reports must be in the format, and contain the details required by, the template report provided by ARENA from time to time.</p> <p>Annual Financial Audit Reports are to be audited by a qualified accountant who satisfies the preconditions set out in clause 13.3.</p>	Yes	within 90 days of the end of each <i>financial year</i> during the <i>project period</i> , and also on <i>project completion</i>
Annual update to Payment Milestone Reports and current description of <i>project</i>	<p>The Recipient must provide an update of the Payment Milestone Reports and a current description of the <i>project</i> at the end of each <i>financial year</i> during the <i>project period</i>.</p> <p>Updates must be in the format, and contain the details required by, the template provided by ARENA from time to time.</p>	No	within 90 days after the end of each <i>financial year</i> during the <i>project period</i>
End of Project Report and Financial Audit Report	<p>The Recipient must provide the End of Project Report and Financial Audit Report at the completion of the <i>project</i>.</p> <p>The End of Project Report and Financial Audit Report must be in the format, and contain the details required by, the template reports provided by ARENA from time to time.</p>	Yes	12 weeks after <i>project completion</i>
Post Project Reports	<p>The Recipient must provide Post Project Reports one, two and five years after <i>project completion</i>.</p> <p>These reports are designed to track how the initial commercialisation of the technology progresses following the completion of the <i>project</i>.</p> <p>Post Project Reports must be in the format, and contain the details required by, the template report provided by ARENA from time to</p>	No	one, two and five years after <i>project completion</i>

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Annexure 7 Attachment A – Project Description

19MW (62.5MW peak) Victorian Wave Power Demonstration Project

PROJECT OVERVIEW

The Recipient plans a staged construction and deployment of Ocean Power Technologies Inc.'s PowerBuoys® (PBs) in Portland, off the Victorian Coast totalling 19MW (average) 62.5MW (peak) of installed capacity.

The *project* plans to utilise existing fabrication and marine support infrastructure in Australia to bring a major new source of renewable energy to the country and business opportunity to the industrial base. The Recipient considers the *project* will be of sufficient size to demonstrate the efficient harvesting of clean energy from Australia's abundant wave resource and demonstrate a clear path to economically competitive green power based on volume production, technology advancement and supplier innovation.

1 Project Objectives

The main purpose of the project is to demonstrate that large scale, commercially viable wave power stations can be built, permitted, and operated in an environmentally responsible manner. This would include:

- Practicality and efficiency of wave energy production with an array of wave energy converters
- Benefits to the industrial base from establishing a wave power industry
- Wave power economics, including capital expenses and operations / maintenance expenses
- Clear path of cost reductions at each stage of the 3 development stages
- Usage of electricity generated from wave power by power off takers / utilities
- Potential of wave power to the industry (financiers, power producers, asset owners, suppliers and power users) at a scale to attract further interest

2 Project Details

Proposed location	Portland, Victoria, Australia
Total Generating Capacity	19 megawatts average (62.5MW peak generator power)
PowerBuoy Specification	PB Mark 3.3 (formerly PB150) and PB Mark 4 Series (formerly PB500)
Application	Grid connected
Deployment Stages	<ul style="list-style-type: none">• Stage 1 – 0.5MW (2.5MW peak generator power) generated from [***] PowerBuoys• Stage 2 – 5.0MW (17MW peak generator power) generated from [***] PowerBuoys• Stage 3 – 13.5MW (43MW peak generator power) generated from [***] PowerBuoys

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Major Components

- PowerBuoys Mark 3.3 (Stage 1)
- PowerBuoys Mark 4.1 and 4.2 (Stages 2 and 3)
- Undersea Substation Pods (USP)
- Submarine power cable from USP to surf zone
- Buried cable from surf zone to on shore substation
- Onshore substation
- Power line to end user substation

Manufacture and Assembly

Substantial employment will be generated in Australia through the fabrication of major items and the integration and final assembly of components.

Deployment

Deployment of the PowerBuoys, anchoring systems, USPs, etc., and upgrades to power line route infrastructure would be accomplished using Australian expertise.

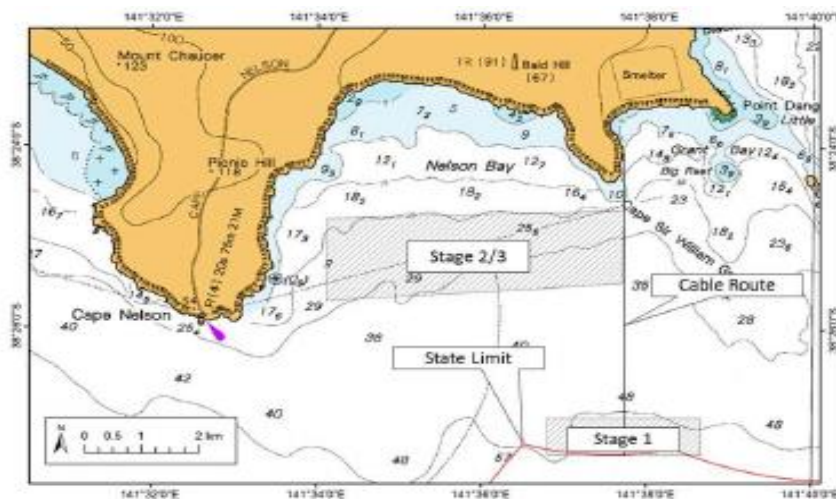
Operation

The grid connected power station would require local support to service and maintain the equipment over 25 year of operations.

3 Project Location

The proposed location of the project is off the coast of Victoria, near the city of Portland and encompasses:

- Offshore location and cable route to shore indicated by the areas shown in the following diagram with Stage 1 located in south east corner of Nelson Bay and Stages 2 and 3 located within Nelson Bay
- Operating areas located within the 3.0 nautical mile limit
- Cable route extending northwards running parallel to the eastern side of Cape Sir William Grant
- Onshore facilities on Cape Sir William Grant land in an area that is vested in the Port of Portland Authority
- Power line route from the onshore substation is yet to be determined and will be dependent upon which entity enters into a Power Purchase Agreement with VWP



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TECHNOLOGY OVERVIEW

OPT PowerBuoy System

OPT has over 68 US patents issued or pending related to wave energy conversion and the company's proprietary technology. OPT's standard PowerBuoy is a semi-submerged floating buoy, consisting of a spar, surrounded by a moving toroidal float, moored with a single or three-point anchor system.

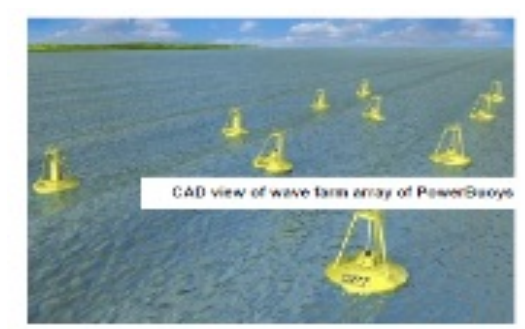
The rising and falling of the waves offshore causes the buoy to move freely up and down. The resultant mechanical stroking is converted via a sophisticated power take-off to drive an electrical generator. The generated wave power is transmitted ashore via an underwater power cable.

The power station has a very low surface profile and would be barely visible from shore. Sensors on the PowerBuoy continuously monitor the performance of the various subsystems and surrounding ocean environment. Data is transmitted to shore in real time.

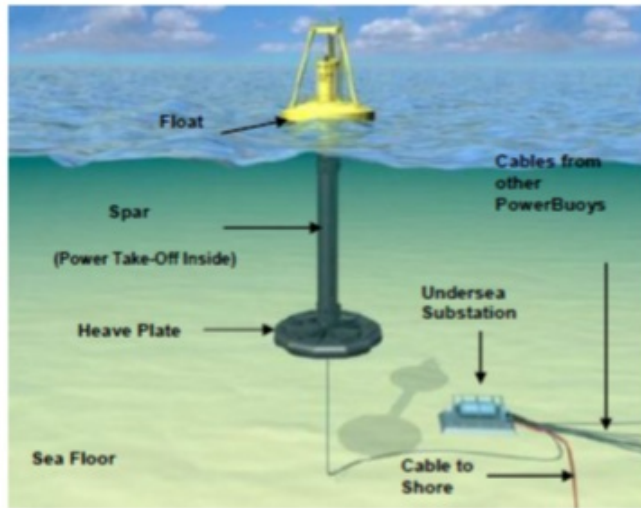
In the event of very large oncoming waves, the system automatically locks up and ceases power production. When the wave heights return to normal, the system unlocks and recommences energy conversion and transmission of the electrical power ashore.

Features of the PowerBuoy technology include:

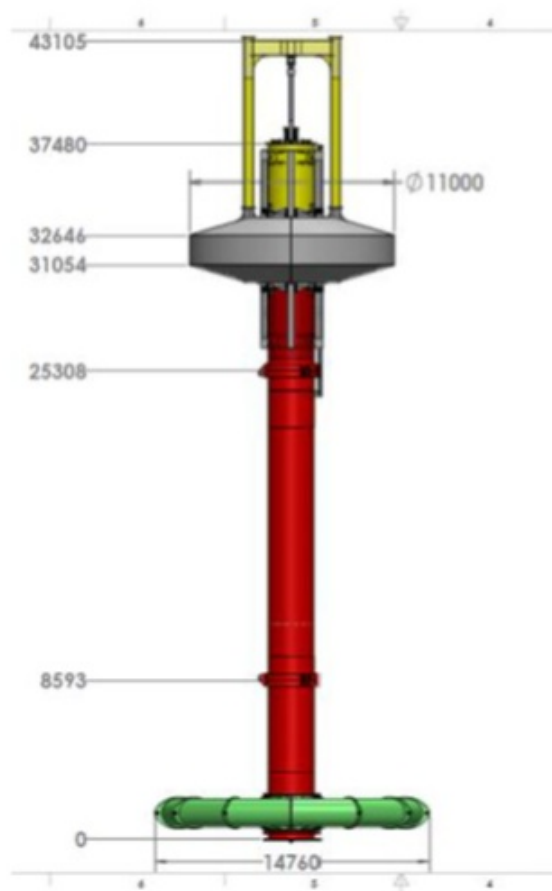
- PowerBuoy technology based on ocean-going buoys
- Capacity factor of 30-45% versus solar and wind capacity factors of 10%-35%
- Environmentally benign & non-polluting
- No exhaust gases, no noise, minimal visibility from shore, safe for sea life
- Scalable to high capacity power stations (100MW+)
- Extensive in-ocean experience, including successfully withstanding hurricanes, winter storms and tsunamis
- Generates power with wave heights between 1.5 and 7 metres
- Electronic "tuning" capability to optimize power output in changing wave conditions
- Typically configured in two to three row arrays



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Schematic of PowerBuoy system



Mark 3 (PB150) PowerBuoy® Dimensions (mm)

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PowerBuoy Ratings

The following table demonstrates the peak generator ratings and the projected power ratings for the Portland, Victoria wave climate.

OPT has also elected to change its PowerBuoy nomenclature to highlight enhancements made in OPT’s utility PowerBuoy product line, and to bring its characterisation in line with solar and wind systems.

Project Stage	Nomenclature		[***]	[***]	[***]
	Previous	New			
1	PB150	PB Mark 3.3	[***]	[***]	[***]
2	PB500	PB Mark 4.1	[***]	[***]	[***]
3	PB500	PB Mark 4.2	[***]	[***]	[***]
Total				[***]	[***]

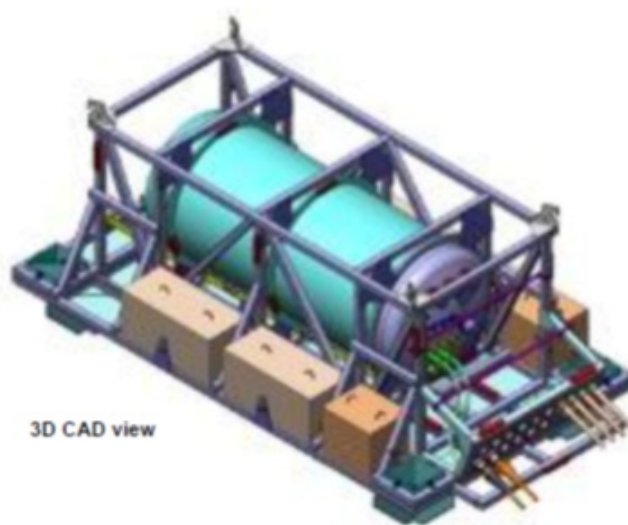
Third Party Validation

- OPT’s technology has received more testing & validation by independent parties than any other wave energy company
- Certification by Lloyd’s Register of PowerBuoy Mark 3 (PB150) structure and mooring system
- Independent Environmental Assessments in Hawaii under direction of US Navy, and by US Department of Energy (DoE) for Reedsport, Oregon, Project - both resulted in “Finding of No Significant Impact” (highest rating)
- Grid connection certified by Intertek (IEEE and UL standards)
- PowerBuoys insured by Lloyd’s syndicates for nearly 15 years for property loss and third party liability
- US DoE has assessed PowerBuoy Mark 3 (PB150) as highest-rated wave energy system for commercial readiness – Technology Readiness Level (TRL) of 7 to 8 (maximum = 9)

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Undersea Substation Pod

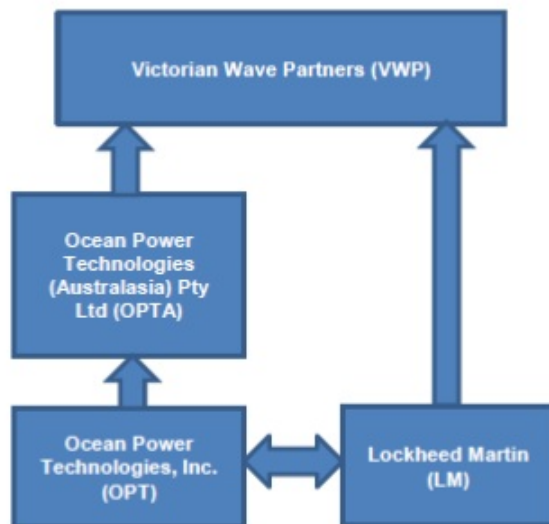
- Ocean Power Technologies has developed an innovative Undersea Substation Pod (USP) as a cost-effective, environmentally responsible means of networking and transmitting offshore power and data to onshore electric utility grids.
- The USP can aggregate up to ten offshore power generation devices into one common interconnection point (e.g. wave, tidal, and offshore wind) for economical undersea power transformation, and data communication. It is designed to step up low voltages generated by offshore devices to medium voltage (11 kV – 15 kV) compatible with onshore electrical distribution.
- In addition to step-up capabilities, the USP also provides full relay and fault protection, a full suite of Supervisory Control and Data Acquisition (SCADA) capabilities, and allows the operator to remotely control electrical safety equipment.
- Critical design features of the USP include the elimination, where possible, of any moving parts and implementation of redundancy in specific areas to ensure high reliability and low-cost maintenance.
- The USP can also be configured for step-down capabilities for providing shore-based power to other offshore electrical uses including oil and gas, offshore carbon storage, and marine aquaculture applications.



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MANAGEMENT OVERVIEW

Victorian Wave Partners (VWP) is an Australian special purpose entity created to develop the 19MW (62.5MW peak) Demonstration Wave Energy Project planned to be built in three stages off the coast of Victoria, near the city of Portland. The major participants in the project are Ocean Power Technologies and Lockheed Martin. An overview of the key parties with their project roles and responsibilities is described below.



Victorian Wave Partners

VWP is 100% owned by Ocean Power Technologies (Australasia) Pty Ltd (OPTA), which is the majority owned subsidiary of Ocean Power Technologies, Inc (OPT). Woodside Energy is a 12% shareholder in OPTA.

Ocean Power Technologies

OPT is a leading renewable energy company specializing in cost-effective, advanced, and environmentally sound wave power technology. OPT's PowerBuoy® system integrates patented technologies in hydrodynamics, electronics, energy conversion, and computer control systems to extract the natural energy in ocean waves. The result is a leading edge, ocean-tested, proprietary system that turns wave power into reliable, clean, and environmentally beneficial electricity.

Lockheed Martin

Headquartered in Bethesda, Maryland, Lockheed Martin is a global security and aerospace company that employs about 123,000 people worldwide and is principally engaged in the research, design, development, manufacture, integration and sustainment of advanced technology systems, products and services. Lockheed Martin maintains a robust business in Australia – Lockheed Martin Australia.

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Lockheed Martin and OPT have been working joint projects since 2004, first on the development of an Advanced Deployable System for the U.S. Navy and most recently on the design of utility-scale wave energy converters.

OPT and Lockheed Martin entered into a formal partnership agreement for the execution of the 19MW (62.5MW peak) Demonstration Wave Energy Project, which was announced in July 2012.

On the project, Lockheed Martin will assist with the design of OPT's PowerBuoy technology, lead the production and system integration of the wave-energy converters and support overall program management.

OPT Scope of Work

[***]

Lockheed Martin Scope of Work

[***]

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KEY PROJECT ACTIVITIES

The project comprises the following tasks:

STAGE #1	Planned Completion Date
Stage #1 Project Development	
Establish project vehicle	Completed
Marine Desktop Study of the general project area south of Cape Grant	Completed
Stage 1 PPA agreement executed to enable an entity to receive renewable “green” energy from the wave power station	[***]
Stage 1 marine and terrestrial surveys, studies, plans and approvals required to progress the project development including environmental, electrical grid interconnection, local planning, etc.	[***]
Community consultation is an ongoing process throughout the project development; however, the key activity involves addressing the concerns within the community, and from local stakeholders such as fishermen	[***]
VWP agreements with EPC contractor and Technical Provider executed to provide the support that underpins the project development for stages 1, 2 and 3	[***]
Project Management - encompasses various activities such as Initiating, Planning, Executing, Monitoring and Control of functional areas with the fundamental aim of achieving the project objectives. Functional areas include: <ul style="list-style-type: none"> • Integration • Scope • Time • Cost • Quality • Procurement • Human resources • Communication • Risk management 	[***]
Detailed PowerBuoy Engineering and Design	
PB Mark 3 detailed engineering, design, manufacture and assembly related to the successful deployment and testing off the coast of Scotland in 2011	[***]
Modular PTO engineering and design of the equipment	[***]
Modular PTO trial construction and testing of the equipment	[***]
Underwater Substation Pod (USP) prototype design development, build and testing	[***]

*** Indicates a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

Stage #1 Infrastructure Build Out	
Stage 1 award of the design and supply of a bespoke submarine cable to carry power and SCADA information from the wave power station to the substation on the shore	[***]
Stage 1 Award of the design and supply for the on-shore electric infrastructure materials required for the land based substation, where the power is stepped up from the incoming 11kV to line distribution voltage	[***]
Stage 1 Award of the design and supply of overhead transmission line materials to supply power to the nominated end used	[***]
Stage 1 award of the supply of the undersea substation pod (USP) contract	[***]
Stage 1 delivery of submarine cable	[***]
Stage 1 delivery of USP	[***]
Stage 1 delivery for on-shore electric infrastructure materials and equipment	[***]
Stage 1 delivery of overhead transmission line materials and equipment	[***]
Stage #1 PB Mark 3 - Manufacturing and Fabrication	
Award of manufacturing and fabrication of PowerBuoy components for 3 Mark 3 PowerBuoys – float, bridge, heave plate, spar, etc.	[***]
Award of Modular Power Take Off (MPTO) assemblies to OPT for the 3 Mark 3 PowerBuoys	[***]
Final Assembly Mark 3 - Article 1 PowerBuoy components on the dockside ready for deployment to the project site	[***]
Final Assembly Mark 3 - Article 2 PowerBuoy components on the dockside ready for deployment to the project site	[***]
Final Assembly Mark 3 - Article 3 PowerBuoy components on the dockside ready for deployment to the project site	[***]
Completion of MPTO assemblies for the 3 off Mark 3 PowerBuoys	[***]
Stage #1 Final Assembly, Deployment and Commissioning	
Stage 1 installation of submarine power / SCADA cable, which is buried approximately 1.0m beneath the seabed travelling from the wave power station site to the shore	[***]
Stage 1 installation of USP on the seabed at the wave power station site	[***]
Installation of on-shore and overhead transmission infrastructure for stage #1	[***]
Deployment completed of the PB Mark 3 - Articles 1 to 3 to the wave power station site	[***]
Stage # 1 grid connection	[***]
Stage #1 operational performance testing completed	[***]

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STAGE #2	Planned Completion Date
Stage #2 Project Development	
Stage 2 and 3 PPA agreement executed to enable an entity to receive renewable “green” energy from the wave power station	[***]
Stage 2 and 3 marine and terrestrial surveys, studies, plans and approvals required to progress the project development including environmental, electrical grid interconnection, local planning, etc.	[***]
Project Management - encompasses various activities such as Initiating, Planning, Executing, Monitoring and Control of functional areas with the fundamental aim of achieving the project objectives. Functional areas include: <ul style="list-style-type: none"> • Integration • Scope • Time • Cost • Quality • Procurement • Human resources • Communication • Risk management 	[***]
Stage #2 Infrastructure Build Out	
Stage 2 and 3 award of the design and supply of a bespoke submarine cable carrying power and SCADA information from the wave power station to the shore	[***]
Stage 2 and 3 delivery of submarine cable	[***]
Stage #2 PB Mark 4 Manufacturing and Fabrication	
Award of manufacturing and fabrication of PowerBuoy components for 7 off Mark 4 PowerBuoys – float, bridge, heave plate, spar, etc.	[***]
Fabrication and final assembly 7 off Mark 4 PowerBuoy components on the dockside ready for deployment to the project site	[***]
Stage #2 PB Mark 4 Deployment and Commissioning	
Deployment completed of PB Mark 4 - Articles 1 to 7 to the wave power station site	[***]
Stage 2 and 3 installation of submarine power / SCADA cable, which is buried approximately 1.0m beneath the seabed travelling from the wave power station site to the shore	[***]
Stage # 2 grid connection	[***]
Stage #2 operational performance testing completed	[***]

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STAGE #3	Planned Completion Date
Stage #3 Project Development	
Project Management - encompasses various activities such as Initiating, Planning, Executing, Monitoring and Control of functional areas with the fundamental aim of achieving the project objectives. Functional areas include: <ul style="list-style-type: none"> •Integration •Scope •Time •Cost •Quality •Procurement •Human resources •Communication •Risk management 	[***]
Stage #3 PB Mark 4 Manufacturing and Fabrication	
Award of manufacturing and fabrication of PowerBuoy components for 18 off Mark 4 PowerBuoys – float, bridge, heave plate, spar, etc.	[***]
Fabrication and final assembly 18 off Mark 4 PowerBuoy components on the dockside ready for deployment to the project site	[***]
Stage #3 Infrastructure Build out	
Power integration and aggregation	[***]
Stage #3 PB Mark 4 Deployment and Commissioning	
Deployment completed of PB Mark 4 - Articles 11 to 28 to the wave power station site	[***]
Stage # 3 grid connection	[***]
Stage #3 operational performance testing completed	[***]

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**Annexure
8**

Knowledge Sharing Plan

Public Information

Table 1 below details Project information that is agreed to be public information and which must be provided by the Recipient to be publicly released in order to assist with the knowledge sharing objective and outcomes.

Table 1: Public Information

Item	Description	Details
1.	ARENA publication of Agreement information	Recipient name: Victorian Wave Partners Value of grant (Total Funds): \$66,465,000 Term of grant (End Date): 31 July 2018 Approval date: Commencement Date Purpose of grant: Victorian Wave Power Project Location of Project: Portland, Victoria
2.	Description of Project for public release	<p>Project</p> <p>Victorian Wave Partners undertake the staged construction and deployment of Ocean Power Technologies Inc.'s PowerBuoys® (PBs) in Portland, off the Victorian Coast totalling 19MW (average) 62.5MW (peak) of installed capacity.</p> <p>This "Description of Project for public release" may be amended from time to time as agreed by ARENA and the Recipient.</p>
3.	Community consultation	Documentation relating to any community consultation that will be undertaken as specified in clause 6.11.
4.	Reports	<p>All Payment Milestone Reports are to be delivered in a format specified and agreed by ARENA, including, where requested, a version for public release.</p> <p>Each Report must include a comprehensive summary of the knowledge sharing activities completed during the period and incorporating any lessons learned relating to the Project.</p> <p>The Final Report must detail:</p> <ol style="list-style-type: none"> 1. an analysis of the effectiveness of each of the knowledge sharing activities so completed; and 2. an assessment by the Recipient of its success in achieving the Knowledge Sharing objective and outcomes.
5.	Failure report	In the event of Project failure, the Recipient must provide a report for public release explaining the reasons for the failure within 12 weeks of the agreed Project failure date.
6.	Case studies	Case studies or similar documents relating to the Project or Measure may be developed by ARENA with the agreement of the Recipient.
7.	Ad Hoc Knowledge Sharing Reports and Activities	The Recipient must provide any ad-hoc knowledge sharing reports or documentation and undertake activities as reasonably requested by ARENA provided that arrangements are in place which are effective to ensure the continued preservation of confidentiality in respect of any Recipient Confidential Information.

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Confidentiality

Table 2 below (and any revision thereof which may be made from time to time by notice by the Recipient to ARENA) details Project information that is agreed to be commercially sensitive information and which must be provided by the Recipient in order to assist with the knowledge sharing objective and outcomes.

It is the Recipient’s responsibility to ensure that Payment Milestone Reports prepared for public release do not contain any agreed Confidential Information listed at item 1 of Table 2 and agreed commercially sensitive information.

Project learnings and information that are or contain commercially sensitive information must be released by the Recipient to:

- ARENA;
- the Commonwealth; and
- any other party with whom the commercially sensitive information can be shared, on any terms agreed to by the Recipient, acting reasonably, which must be determined by the Recipient on a case by case basis.

Recipient Confidential Information and commercially sensitive information provided to ARENA, the Commonwealth or any other party may be incorporated into databases or other IT systems, and aggregated into documents or other media for public release provided that arrangements are in place which are effective to ensure the continued preservation of confidentiality in respect of any Recipient Confidential Information.

Table 2: Commercially sensitive information

Item	Description	Details (including period of confidentiality)
1.	Recipient Confidential Information	All Recipient Confidential Information listed here shall remain confidential: Nil
2.	Project and technology performance and cost information data	The Recipient must provide Project and technology performance and cost information as required by ARENA from time to time at the time and in a format specified and agreed by ARENA for the purpose of research, modelling and other activities to improve understanding of renewable energy technologies and their capability for energy supply. This includes, but is not limited to, data on the levelised cost of electricity.
3.	Renewable Energy Source data	The Recipient must provide renewable energy source data as required by ARENA from time to time at the time and in a format specified and agreed by ARENA for the purpose of modelling, research and other activities to assist renewable energy development in Australia.
4.	Program Key Performance Indicator (KPI) data	The Recipient must provide information required to measure Key Performance Indicators (KPIs) for the Program as required by ARENA from time to time at the time and in a format specified and agreed by ARENA.

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Acknowledgement and publicity

Requests by the Recipient to ARENA in connection with its agreement to announcements (clause 20.3) and public release of documents (clause 20.4) must be submitted in writing to the ARENA Address for Notices at item 21 of Schedule 1.

General provisions

The Recipient agrees to encourage and facilitate information sharing with key Program stakeholders, including other grant recipients, the energy generation industry and other relevant industries. This includes, but is not limited to, broad dissemination of the outcomes to the renewable energy industry and sharing information to support developing nationally consistent regulatory regimes for renewable energy.

The Recipient must, upon reasonable request by ARENA, deliver presentations on the progress of the Project to ARENA staff, the ARENA Board responsible for the Program (including its successors) and other relevant industry forums.

The Recipient must, upon reasonable request by ARENA, allow escorted on-site visits by Ministers, the ARENA Board, ARENA staff and other relevant parties for the purposes of explaining the Project and demonstration of the technology, subject to safety and operational requirements.

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Knowledge Sharing Category: (Financial / technical / logistical / regulatory)	Knowledge Sharing Activity	Knowledge Dissemination Plan / Timeframe	Knowledge Sharing Outcomes
Logistical			
Service provider capabilities	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website (within 3 months) with information following the award of contracts for local services	Knowledge of service providers being employed on the project and a brief overview of the scope of services
Transport Plan	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the plan as a pdf document download	Knowledge of transport logistics involved on the project
Deployment Plan	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the plan as a pdf document download	Knowledge of the deployment operations on the project
Technical			
Seabed survey desktop study	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the study report as a pdf document download	Knowledge of the seabed environment in the study area
Preliminary seabed survey of stage #1	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the study report as a pdf document download	Knowledge of the seabed environment in the surveyed area
Final seabed survey of stage #1	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the study report as a pdf document download	Knowledge of the seabed environment in the surveyed area
All other survey work undertaken for the project	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the study report as a pdf document download	Knowledge of the surveyed areas
Overall site plan	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the project site plan as a pdf document download	Knowledge of the project area in relation to the local environment
Project progress	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website on a regular basis with details of project activities	Knowledge of the project progress and development activities
Regulatory – Power			
Interconnection Agreement	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months with the interconnection agreement (with any commercial in confidence information removed) as a pdf document download	Knowledge of the requirements for interconnection with the network service provider.
Australian Energy Market Operator (AEMO)	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months with the AEMO agreement (with any commercial in confidence information removed) as a pdf document download	Knowledge of the requirements for interconnection with the network service provider.
Victorian Essential Services Commission (ESC)	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months with the ESC agreement (with any commercial in confidence information removed) as a pdf document download	Knowledge of the requirements of the ESC
Regulatory – Project Approvals			
Environmental Effects Statement (EES) Referral	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the outcomes from the EES referral	Knowledge of the outcomes from the EES referral of the project
Environmental Protection Biodiversity Conservation (EPBC)	Provide information / downloads on VWP website under a dedicated tab to “Knowledge Sharing”	Update website within 3 months of completion with the outcomes from the EPBC assessment	Knowledge of the outcomes from the EPBC assessment of the project

Knowledge Sharing Category: (Financial / technical / logistical / regulatory)	Knowledge Sharing Activity	Knowledge Dissemination Plan / Timeframe	Knowledge Sharing Outcomes
Indigenous Land Use Act (ILUA) Agreement	Provide information / downloads on VWP website under a dedicated tab to "Knowledge Sharing"	Update website within 3 months of completion with the ILUA as a pdf document download	Knowledge of the ILUA agreement for the EES referral of the project
Heritage Survey	Provide information / downloads on VWP website under a dedicated tab to "Knowledge Sharing"	Update website within 3 months of completion with the survey report as a pdf document download	Knowledge of the findings from the heritage survey of the project
Local Planning Approval	Provide information / downloads on VWP website under a dedicated tab to "Knowledge Sharing"	Update website within 3 months of completion with details of the local planning	Knowledge of the local planning approvals for the project

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Notes:

- 1) The primary medium for dissemination of information for the purpose of knowledge sharing would be via the VWP website www.victorianwavepartners.com.au.
- 2) Secondary mediums for the dissemination of information would be via:
 - VWP newsletters
 - Community presentations
 - Stakeholder presentations
 - Industry specific presentations
- 3) All public dissemination reports can also be shared by ARENA at its discretion.
- 4) The overarching test for information to be made available for public dissemination would be that the particular information does not, in any way, compromise VWP or its partners strategically, technologically, commercially and financially.
- 5) VWP consider that any financial information would be deemed to be commercial in confidence and hence not available for public release and subject to the confidentiality clauses within the deed.
- 6) The list above is not comprehensive and as information becomes available that is deemed to be acceptable for dissemination to the public, it will be posted on the VWP website.

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Schedule 2 Notice of Waiver

In accordance with clause 30.5 of the Funding Deed, and subject to the parties executing the Deed, ARENA notifies the Recipient that from 9 January 2014 (the *effective date*) it irrevocably and unconditionally waives:

(a) its right to require the Recipient to satisfy:

(i) Condition Precedent 2 in Schedule 1 of the Funding Deed; and

(ii) Condition Precedent 3 in Schedule 1 of the Funding Deed;

or comply with:

(iii) Clause 18 – Securities

(the *waived clauses*), and;

(b) its rights under the Funding Deed, from the *effective date*, to exercise or not exercise (as relevant) its rights and obligations under the Funding Deed in respect of the Recipient's non-satisfaction of, or non-compliance with, the *waived clauses*.

By this notice the Recipient is released and held harmless by ARENA from its obligations arising under, or relating to, the non-satisfaction or non-compliance of the waived clauses from the *effective date*.

Signed for and on behalf of the **Australian Renewable Energy Agency (ARENA)** by its duly authorised delegate in the presence of

/s/ Fiona McKenna

Signature of witness

Fiona McKenna

Name of witness (print)

/s/ Ivor Frischknecht

Signature of delegate

Ivor Frischknecht

Name of delegate (print)

CEO

Position of delegate (print)

Date: 9 January 2014

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Schedule
3

Teaming Agreement

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TEAMING AGREEMENT
BETWEEN
OCEAN POWER TECHNOLOGIES, INC.
AND
LOCKHEED MARTIN MISSION SYSTEMS AND SENSORS

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Proprietary Information of Lockheed Martin MS2 and Ocean Power Technologies Inc.

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TEAMING AGREEMENT

BETWEEN

OCEAN POWER TECHNOLOGIES, INC.

AND

LOCKHEED MARTIN MISSION SYSTEMS AND SENSORS

THIS TEAMING AGREEMENT (this "Agreement") is made by and between Ocean Power Technologies, Inc., a corporation organized and existing under the laws of the State of Delaware with offices at 1590 Reed Road, Pennington, New Jersey, 08534 ("OPT") and Lockheed Martin Corporation, a corporation organized and existing under the Laws of the State of Maryland, acting through its Mission Systems and Sensors business unit with offices at 199 Borton Landing Road, Moorestown, New Jersey, 08057 ("MS2"). Each of MS2 and OPT are a "Party" and collectively "the Parties." This Agreement shall bind only the business units identified and not any other business unit, company, division, affiliate, subsidiary, or other element of either Party. This Agreement shall become effective as of the date of signature by the later-to-sign Party (the "Effective Date").

BASIS FOR AGREEMENT

WHEREAS, OPT's subsidiary, Ocean Power Technologies (Australasia) Pty, Ltd, owns Victorian Wave Partners (VWP), which received a grant from the Commonwealth of Australia represented by the Department of Resources, Energy and Tourism (the "DRET") to construct, off the coast of Portland, Victoria, a wave power station referred to as the 19 MW Victorian Wave Power Demonstration Project (the "Project"); and

WHEREAS, OPT is experienced in the design and development of its PowerBuoy® technology, which uses buoy-like structures to capture wave energy and power take-off systems for converting the captured energy into useful forms of energy (e.g., electricity), and possesses related proprietary technical data and technical know-how that is valuable and unique to OPT; and

WHEREAS, MS2 is experienced in the design, production, procurement and global sustainment of maritime systems and possesses related proprietary technical data and technical know-how that is valuable and unique to MS2; and

WHEREAS, OPT anticipates contributing to the Project using its proprietary PowerBuoy® technology; and

WHEREAS, OPT and MS2 contemplate working together in the areas of project marketing, financing activities, project management, design, fabrication, procurement, engineering, manufacture, commissioning, deployment, operations, maintenance, assembly techniques, advanced materials and material structures related to the Project; and

WHEREAS, in the performance of the Project, MS2 has an ability to utilize the capabilities and expertise of its affiliate, Lockheed Martin Australia Electronic Systems Pty, Ltd and OPT has an ability to utilize the capabilities and expertise of its subsidiary, Ocean Power Technologies (Australasia) Pty, Ltd; and

WHEREAS, MS2 and OPT have unique and complementary backgrounds and capabilities that, together, will enhance the likelihood of successfully completing the Project.

NOW, THEREFORE, in consideration of the foregoing, and in express reliance upon the following mutual promises and covenants, the Parties agree as follows:

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ARTICLE 1: DEFINITIONS

Except as otherwise specified or as the context may otherwise require, the following terms, in alphabetical order, have the meanings indicated below for purposes of this Agreement, and the definitions of such terms are equally applicable both to the singular and the plural forms:

“Intellectual Property” (IP) means any invention, innovation, data, information, software, document, process, know-how, manufacturing method, production technique, business method, concept or idea, the ownership interest in which is protected (or is capable of being protected) by compliance with United States and Australian Federal, state and/or foreign laws regarding patents, trade secrets, copyrights, trademarks, service marks or mask works.

“Project” means all 3 stages of the 19 MW Victorian Wave Power Demonstration Project, which was awarded by a grant by the Commonwealth of Australia, represented by the Department of Resources, Energy and Tourism, under its Renewable Energy Demonstration Program.

“Technical Data” means recorded information, regardless of the form or method of the recording, of a scientific or technical nature relating to the Project

“Technical Know-How” means all recorded and unrecorded information and knowledge relating to the design, development or production related to the Project, including but not limited to the knowledge gained from experience in the design, development, or production of an article that is necessary or helpful in interpreting, applying or interrelating technical data and computer software relating to the Project.

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ARTICLE 2: FORMATION OF THE TEAM

OPT and MS2 hereby team on an exclusive basis for performance of the Project subject to the Parties' mutual consent to utilize the services of one or more third parties for any other aspect of the Project. During the term of this Agreement, OPT and MS2 shall work collaboratively for the specified scope of work as described in Attachment 2.

ARTICLE 3: RELATIONSHIP OF THE PARTIES

(a) OPT and MS2 shall act as independent contractors in the performance of this Agreement and neither Party shall act as agent for or partner of the other Party without the prior written consent of the other Party. Nothing in this Agreement shall be deemed to constitute, create, give effect to or otherwise recognize a joint venture, partnership, or formal business agency of any kind, and the rights and obligations of the Parties shall be limited to those expressly set forth in this Agreement. Nothing contained in this Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties.

(b) This Agreement has been entered into solely for the benefit of the Parties and is not intended to create any legal, equitable, or beneficial interest in any third party, including any Proprietary Information of Lockheed Martin ALS2 and Ocean Power Technologies Inc customer, or to vest in any third party any interest with respect to the enforcement of performance of this Agreement. The Parties agree no third party has any legal interest in any dispute and further agree that neither will assert in any action or proceeding to resolve such dispute that any third party is necessary or indispensable to such proceeding or to a determination of the relief to be granted.

(c) Unless otherwise agreed to in writing, each Party shall bear its own costs, expenses, risks, and liabilities incurred in connection with the pursuit of the Project, including but not limited to, pre-proposal or pre-bid activity, submission, and sustaining of proposals or bids, the selection and negotiation process.

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ARTICLE 4: PROPRIETARY INFORMATION DISCLOSURE; INTELLECTUAL PROPERTY

(a) Any exchange of Proprietary Information between the Parties and the respective rights and obligations of the Parties with respect to Intellectual Property of either Party utilized or referenced in any manner in connection with the Project shall be governed by the Parties' Proprietary Information Agreement of April 18, 2011, annexed hereto as Attachment 1, and the Parties' License Agreement of August 10, 2011, annexed hereto as Attachment 3.

(b) The terms and obligations of this Article shall survive any termination of this Agreement pursuant to Article 11, "Termination."

ARTICLE 5: RESPONSIBILITIES OF THE PARTIES

(a) The Parties shall carry out the obligations set forth in this Agreement in good faith;

(b) The scope of collaboration between the Parties as it relates to the Project is delineated in Attachment 2; and

(c) The Parties shall negotiate in good faith a contract for the MS2 services set forth in Attachment 2, subject to mutual agreement on commercially reasonable terms and conditions, including a statement of work for the performance of the contractual effort. The provisions of such contract shall supersede all terms and conditions of this Agreement.

(d) The Parties shall negotiate in good faith a contract for the OPT services set forth in Attachment 2, subject to mutual agreement on commercially reasonable terms and conditions, including a statement of work for the performance of the contractual effort. The provisions of such contract shall supersede all terms and conditions of this Agreement.

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ARTICLE 6: INDUSTRIAL PARTICIPATION AND LICENSING

If foreign sales are proposed that require either an industrial participation or a licensed production commitment, or both, to a foreign customer, MS2 and OPT shall collaborate on any such commitments to the satisfaction of both Parties.

ARTICLE 7: BUSINESS ETHICS

(a) Each Party hereto represents that it will comply with the United States Foreign Corrupt Practices Act, as amended, and the United Kingdom Bribery Act and the Criminal Code Act 1999 (Cth) in connection with the performance of the activities contemplated by this Teaming Agreement.

(b) The Parties further agree that they will not directly or indirectly pay, offer or authorize payment of anything of value (either in the form of compensation, gift, contribution or otherwise) to any person, entity or organization contrary to United States and applicable Australian or foreign law, or which creates the appearance of impropriety.

(c) The Parties further agree that they will not directly or indirectly pay, offer or authorize payment of anything of value (either in the form of compensation, gift, contribution or otherwise) to any person, entity or organization contrary to United States and applicable Australian or foreign law, or take any similar action permitted under law if such action creates the appearance of impropriety.

(d) Specifically, each Party represents that it and its directors, officers, employees, agents, and anyone acting on its behalf, in connection with its activities under this Agreement, will not corruptly offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to a government official, to any political party or official thereof or any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, to any political party or official thereof, or to any candidate for political office, for the purpose of:

(i) influencing any act or decision or inaction of the Australian or foreign official, Australian or foreign political party, party official, or candidate for Australian or foreign political office or securing any improper advantage;

(ii) inducing such Australian or foreign official, party, party official, or candidate to use his, her, or its influence with a Australian or foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality; or

(iii) otherwise assisting in obtaining business with, retaining business for, or directing business to, any person.

(e) Each Party further represents that it and its directors, officers, employees, agents, and anyone acting on its behalf, in connection with its activities under this Agreement will not make any facilitating or "grease" payments and will not offer, promise, or pay, any bribe or kickback to any employee or other member of a commercial enterprise to induce or reward improper performance.

(f) Each party represents that it will instruct and adequately train its directors, officers, employees, agents, and anyone acting on its behalf to adhere to these requirements regarding illegal, improper, or facilitating payments in connection with its performance under this Agreement.

Proprietary Information of Lockheed Martin MS2 and Ocean Power Technologies Inc.

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ARTICLE 8: EXPORT CONTROLS

Technical data exchanged hereunder may be subject to U.S. export control laws and regulations. Accordingly, the Parties shall not transfer U.S. Export Controlled technical data received under this Agreement to any Australian or foreign person, country, Australian or foreign subsidiary or parent corporation, without specific authorization from the disclosing party and pursuant to an appropriate U.S. Government agency license.

ARTICLE 9: DISPUTE RESOLUTION

(a) The Parties shall attempt to resolve any dispute arising under or related to this Agreement or concerning an alleged breach of this Agreement within thirty (30) days of notice by one Party to the other that a dispute exists, or such other time period as they may mutually agree.

(b) In the event that a dispute is not resolved as provided for under paragraph (a), the dispute shall be referred for resolution to the next higher level of management within the respective Parties' organizations. Should such higher level of management be unable to resolve the dispute within thirty (30) days of referral or such other time as they may mutually agree, then the dispute shall be settled by binding arbitration in accordance with the arbitration provisions of this Article.

(c) Any dispute between the Parties that has not been resolved to the satisfaction of the Parties in accordance with the Disputes Resolution clause of this Agreement shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules and the Supplementary Procedures for Large, Complex Disputes, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

(d) Within fifteen (15) days after the commencement of arbitration, each Party shall select one person to act as arbitrator and the two selected shall select a third arbitrator within ten (10) days of their appointment. If the arbitrators selected by the Parties are unable to agree upon the third arbitrator, then the third arbitrator shall be appointed by the American Arbitration Association as provided in its Commercial Arbitration Rules. Prior to the commencement of hearings, each of the arbitrators appointed shall provide an oath or undertaking of impartiality.

(e) The award shall be in writing, shall be signed by a majority of the arbitrators, and shall include a statement regarding the reasons for the disposition of the dispute. The arbitrators shall state their award and the respective proportions in United States Dollars to both Parties.

(f) Within thirty (30) days of receipt of any award (which shall not be binding if an appeal is taken), either Party may notify the American Arbitration Association of an intention to appeal to a second arbitral tribunal, constituted in the same manner as the initial tribunal. The appeal tribunal shall be entitled to adopt the initial award as its own, modify the initial award or substitute its own award for the initial award. The appeal tribunal shall not modify or replace the initial award except for clear errors of law or because of clear and convincing factual errors. The award of the appeal tribunal shall be final and binding, and judgment may be entered in any court having jurisdiction hereof.

(g) Each Party shall bear its own costs and expenses and an equal share of the arbitrators' and administrative fees of arbitration, including, if any, appeal.

(h) The place of arbitration shall be New Jersey, United States of America. The substantive law of the State of New Jersey, without regard to its conflicts of law provisions, shall be applied to the interpretation of this Agreement. The language of the arbitration shall be English.

(i) Judgment upon the award rendered may include compensatory damages against any Party, but under no circumstances will special, consequential, punitive or multiple damages including, but not limited to, lost profits, be authorized, made or paid.

Proprietary Information of Lockheed Martin MS2 and Ocean Power Technologies Inc.

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ARTICLE 10: LIMITATION OF LIABILITY

In the event of any breach by either Party of its obligations under this Agreement, such Party shall be liable for the direct damages suffered by the other Party that are caused by such breach in accordance with applicable law. In no event shall either Party be liable for consequential, incidental, or special (including multiple or punitive) damages of any kind, including but not limited to lost orders, sales or profits.

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ARTICLE 11: TERMINATION

This Agreement shall terminate and have no further effect, except with respect to the provisions entitled "Proprietary Information Disclosure; Intellectual Property" which shall survive for the period specified in Attachment 1 and Attachment 3, respectively, upon the occurrence of any of the following events:

(a) Mutual written agreement signed by both Parties;

(b) Upon written notice by either Party in the event of a failure by either MS2 or OPT to negotiate a mutually agreeable contract in accordance with Article 5 within 9 months of the date of this Agreement; provided that (i) a Party that is in breach of its obligations to negotiate reasonably and in good faith under Article 5 shall not be permitted to terminate this Agreement pursuant to this clause (b), and (ii) neither Party is obligated to terminate this Agreement pursuant to this clause (b) if it determines that ongoing negotiations remain productive and warranted under the circumstances;

(c) If either Party files for bankruptcy, is debarred or suspended by competent authority, if such debarment or suspension precludes the participation by such Party in pursuing the Projects;

(d) Expiration of three (3) years from the Effective Date of this Agreement;

(e) The good faith determination by MS2 that an organizational conflict-of-interest will exclude it or its affiliates from participation in the Project, or that such a conflict-of-interest places participation of the team on the Project in jeopardy;

(f) A material change in the scope or structure of the Project, as understood by the Parties at the time of execution of this Agreement, and the Parties, despite good faith efforts, are unable to accommodate such change;

(g) A material breach of this Agreement by either Party that is not corrected within thirty (30) calendar days after receipt of written notice of such breach provided by the other Party, at the discretion of the nonbreaching Party;

(h) Immediately upon notice by the nonbreaching Party of any breach by the other Party of the representations set forth in Article 16 below; or

(i) Immediately upon the termination or cancellation of the Project for any reason by DRET.

If OPT is unable to secure Stage 1 funding of the Project within [***] of the Effective Date of this Agreement, MS2 will have the option to Terminate this Agreement; for purposes of clarification and not limitation, it shall not be a breach of this Agreement by OPT if OPT is unable to secure Stage 1 funding of the Project after using commercially reasonable efforts to do so.

Upon any such termination, all of the obligations of the Parties hereunder (other than those that expressly survive any such termination) shall be of no further force or effect, except that any Party who has breached any provision of this Agreement prior to any such termination shall remain liable to the other Party for damages arising from such breach to the extent damages are permitted in accordance with the terms of this Agreement.

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ARTICLE 12: INVENTIONS, PATENTS, AND INTELLECTUAL PROPERTY

This Agreement does not offer or grant to the recipient any rights in, or license under, any present or future drawings, data, plans, ideas, or methods disclosed pursuant to the Agreement. Any rights in, and licenses to, Intellectual Property related to the Project shall be governed by the Proprietary Information Agreement of April 18, 2011, annexed hereto as Attachment 1, and the Parties' License Agreement of August 10, 2011, annexed hereto as Attachment 3.

ARTICLE 13: RELEASE OF INFORMATION

Publications or releases to news media or to the general public, including advertising, relating to this Agreement or the pursuit of the Project, shall require the prior written consent of both Parties, except any such publications or releases required by statute, regulation, or stock exchange requirements.

ARTICLE 14: ASSIGNMENT

No Party shall assign its rights or duties under this Agreement in whole or in part without prior written approval of the other Party except in the event of (a) assignment by a Party to a wholly-owned subsidiary or its affiliate, provided the assigning party shall remain liable and responsible to the other Party for the performance of this Agreement; or (b) corporate reorganization.

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ARTICLE 15: NON-SOLICITATION OF EMPLOYEES

It is expressly agreed and understood by the Parties that neither shall solicit personnel of the other Party who are engaged in pursuit of this Project for the purpose of inducing them to join such other Party's employ during the course of this Agreement and any resulting contract hereunder. The foregoing shall not prohibit any Party from hiring any person as a result of the use of an independent employment agency (so long as the agency was not directed to solicit such person) or as the result of the use of a general solicitation (such as an advertisement) not specifically directed to employees of the Parties.

ARTICLE 16: REPRESENTATIONS

(a) Each Party represents to the best of its knowledge and belief that (i) neither it nor any of its employees, officers, sales representatives, consultants or agents is an official, employee, or active member of the armed services of any government, an official or employee of any government, an official of a political party, or a candidate for political office; an officer, director, employee, or an "affiliate" (as defined in regulations under the Securities Exchange Act of 1934) of a customer of the Party making the representation; and (ii) as of the date of execution of this Agreement and during the term of this Agreement, no government official, and no official of any government agency or instrumentality is or will become associated with, or will own or presently owns a material interest, whether direct or indirect, in the Party making the representation or has or will have any material legal or beneficial interest in this Agreement.

(b) Each Party represents that all information supplied by such Party is complete, truthful and accurate, and that such Party shall not obtain or provide to the other Party any information which is not legally available in any nation in which either Party seeks to operate or which is procurement sensitive, proprietary or classified where there is reason to believe that possession of such information is unauthorized, illegal or unethical.

(c) Each Party represents that in performing under this Agreement, it will comply with the laws, regulations and administrative requirements of the United States, Australia, and any other nation in which performance of the Project by that Party takes place (except to the extent inconsistent with, or penalized under, United States law), and shall take no action which knowingly would subject the other Party to penalties under laws, regulations, and administration requirements of the United States, Australia, or any nation in which performance of the Project by that Party takes place. In the event of a conflict or inconsistency between the laws of the United States, Australia, and the laws of any nation in which performance of the Project by that Party takes place, that Party shall immediately notify the other Party.

(d) Each Party represents that in connection with its activities under this Agreement, it has not and will not offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of anything of value to a Australian or foreign official (as defined in the Foreign Corrupt Practices Act (P.L. 95-213), as amended), to any Australian or foreign political party or official thereof or any candidate for Australian or foreign political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any Australian or foreign official, to any Australian or foreign political party or official thereof, or to any candidate for Australian or foreign political office, for the purposes of:

(i) influencing any act or decision or such Australian or foreign official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions;

(ii) inducing such Australian or foreign official political party, party official, or candidate to use his or its influence with the Australian or foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist OPT, MS2 or any related party of either in obtaining or retaining business for or with, or directing business to OPT, MS2 or any related party; or

(iii) securing any improper advantage.

Proprietary Information of Lockheed Martin MS2 and Ocean Power Technologies Inc.

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(e) Each Party represents to the other that it has not and will not pay or tender, directly or indirectly, any commission or finders or referral fee to any person or firm in connection with its activities in performance or furtherance of this Agreement in violation of any law.

(f) Each Party represents that it is familiar with, and will comply in all respects with U.S. laws, regulations, and administrative requirements applicable to its relationship with the other Party, including, but not limited to, the Foreign Corrupt Practices Act, as amended (FCPA); United Kingdom Bribery Act; Export Administration Act, as amended, Section 999 of the Internal Revenue Code, as amended (Antiboycott Regulations), the Criminal Code Act 1999 (Cth), and all applicable Securities laws.

(g) Each Party represents and certifies that neither it nor its directors, officers, or other principals has been convicted of or pleaded guilty to an offense involving fraud, corruption, or moral turpitude and none is now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.

(h) Each Party agrees to give prompt written notice to the other in the event that, at any time during the term of this Agreement, such Party has failed to comply with or has breached any of its representations hereunder. In the event a Party has not so complied or has breached any of its representations hereunder, this Agreement shall be null and void from the time of such noncompliance or breach. The foregoing representations shall survive the termination of this Agreement and shall continue in effect until all activities related to this Project have ceased.

(i) Each Party agrees that the representations set forth in this Article 16 by such Party shall remain true, complete and correct throughout the duration of this Agreement. In the event that any such representation fails to be true, complete, and accurate, the breaching Party agrees to notify the non-breaching Party promptly in writing, which notification shall not relieve the breaching Party from liability under this Agreement (including the right of the non-breaching Party to terminate) for such breach.

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ARTICLE 17: NOTICES

All notices under this Agreement shall be in writing and delivered pre-paid by courier or over-night delivery service or Facsimile, with a copy by email, as follows:

MS2: [withheld]
199 Borton Landing Road
M/S 770-3
Moorestown, New Jersey 08057 USA
Facsimile: [withheld]
Email: [withheld]

OPT: [withheld]
1590 Reed Road
Pennington, New Jersey 08534, USA
Facsimile: [withheld]
Email: [withheld]

With copy to:

Lockheed Martin Corporation
6801 Rockledge Drive
M/P 208
Bethesda, MD 20817
USA
Attn: [withheld]
Facsimile: [withheld]
Email: [withheld]

Either Party may change the address to which such notice is directed by seven (7) days prior written notice to the other Party. Notices will be effective upon receipt of the facsimile during regular business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. recipient's local time, or one (1) hour after the next regular business day begins if received on a non-business day.

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ARTICLE 18: GOVERNING LAW

Regardless of its place of negotiation, execution, or performance, this Agreement shall be governed by the laws of the State of New Jersey, United States of America, except as to its principles of conflicts of laws.

ARTICLE 19: AMENDMENTS

This Agreement may be modified by the mutual written consent of the Parties.

ARTICLE 20: ENTIRE AGREEMENT

This Agreement, including the referenced Attachments, constitutes the entire understanding and agreement of the Parties, superseding all prior oral and written statements, understanding and agreements with regard to the subject matter of this Agreement, with the exception of an instrument in writing of subsequent date duly executed by the authorized representatives of the Parties. The paragraph headings herein are for convenience only and shall not limit in any way the scope of this Agreement. If any term, provision, covenant, or condition of this Agreement is held invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid portion and the remaining provisions shall be interpreted to give force and effect to the intent of the Parties without the eliminated provision(s).

Ocean Power Technologies, Inc.

Lockheed Martin Mission Systems & Sensors

By: /s/ Charles F. Dunleavy

By: /s/ Maria Rivera

Charles F. Dunleavy
[Printed Name]

Maria Rivera
[Printed Name]

Title: C.E.O

Title: Senior Contracts Mgr

Date: July 10, 2012

Date: 6/27/12

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ATTACHMENT 1

PROPRIETARY INFORMATION AGREEMENT

Intentionally omitted.

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ATTACHMENT 2

DESCRIPTION OF WORKSHARE

***] (Description redacted – 3 pages)

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ATTACHMENT 3

LICENSE AGREEMENT

Intentionally omitted.

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