FINANCIAL ASSISTANCE AGREEMENT

ROYALTIES FOR REGIONS PROJECT

STATE OF WESTERN AUSTRALIA

AND

CARNEGIE CLEAN ENERGY LIMITED

ABN: 69 009 237 736

REGIONAL COMMUNITY SERVICES FUND

ALBANY WAVE ENERGY – TECHNOLOGY DEVELOPMENT PROJECT

Doc Ref: A6910990
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THIS Agreement is made on the_______day of _______2017.

BETWEEN:
The State of Western Australia (State)

AND

Carnegie Clean Energy Limited (Recipient), of 21 Barker Street, Belmont, WA 6104

RECITALS

(a) The Department administers Royalties for Regions.

(b) The Recipient has applied to the State for financial assistance to undertake the Project and the State has agreed to provide the Funding to the Recipient on the terms and conditions set out in this Agreement.
OPERATIVE PART

THE PARTIES AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless repugnant to the context:

**Act** means the *Royalties for Regions Act 2009* (WA).

**Additional/New Milestones** has the meaning given to it in clause 4.1(c).

**Agreement** means this Financial Assistance Agreement, including its recitals, schedules and annexures.

**ASX** means Australian Securities Exchange.

**Associates** mean any officer, employee, agent, consultant, contractor, nominee, licensee or adviser of the State, including any other Government Party.

**Auditor** means the Auditor General or a person who is independent of, and not related in any way to, the Recipient and is a member of CPA Australia, the Institute of Public Accountants in Australia or the Institute of Chartered Accountants in Australia.

**Auditor General** means the Auditor General for the State.

**Authorisation** means any consent, authorisation, registration, filing, agreement, notarisation, clearance, certificate, permission, licence, permit, waiver, approval, authority or exemption from, by or within a Government Agency required under any Laws, and includes any renewal of, or variation to, any of them.

**BCI Code** means the Western Australian Building and Construction Industry Code of Conduct 2016 which is applicable to all state funded building work.

**Best Industry Practice** means:

(a) the exercise of that degree of skill, diligence, prudence and foresight that would be reasonably expected from a reputable and prudent person in providing works and services similar to the Works and under conditions comparable with those applicable to the Works;

(b) compliance with applicable standards and codes, being the standards and codes specified in this Agreement or, if this Agreement does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied in the circumstances; and

(c) compliance with all applicable Laws.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in the State.

**Calendar Day** means all days in a month, including weekends and holidays. **Claim** means any claim, proceeding, cause of action, action, demand or suit (including by way of a claim for contribution or an indemnity).

**Commencement Date** means the execution date of this Agreement.

**Commonwealth** means the Commonwealth of Australia.

**Construct** means one or more of construct, build, erect, assemble, renovate, refurbish and any similar or incidental activity or thing.

**Construction** means one or more of construction, building, erection, assembling, renovation, refurbishment and any similar or incidental activity or thing.
Contact Officer has the meaning given in clause 6 of this Agreement.

Date for Project Completion means the date by which the Recipient must complete the Project set out in item 3.2 of Schedule 4.

Defect means:

a. any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works;

b. any aspect of the Works which is not in accordance with the requirements of this Agreement; or

c. any failure of the Works to perform at its expected range of capacity and operation in accordance with the relevant technical specifications for the Works and any other the requirements in this Agreement.

Defects Liability Period means, where the Recipient has obligations in this Agreement to Construct any Structure and therefore to perform Works, the defects liability period in relation to all or part of those Works contained in an agreement between the Recipient and any other party it engages to carry out all or part of those Works and, if the Recipient engages more than one party to carry out those Works, meaning a defects liability period is contained in more than one agreement, Defects Liability Period in this Agreement means the defects liability period in those agreements that finishes on the latest date.

Deliverables means the expected outputs and outcomes from the Project.

Department means the Department of Primary Industries and Regional Development which is a department of the State.

Evaluation or Audit means one or more of an audit, examination, investigation, inspection, review, evaluation, or a similar activity.

Event of Default has the meaning given in clause 11.1.

Final Report has the meaning given in Schedule 5 to this Agreement.

Funding means the amount specified in item 2 of Schedule 4.

Government Agency means any governrnent or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Government Party means any governmental, semi-governmental or local government authority, minister, department, statutory corporation, instrumentality or government owned corporation.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes all associated legislation and regulations.

Insolvency Event means the happening of any of these events:

a. an order is made, or an application is made to a court for an order, that a body corporate be wound up; or

b. except to reconstruct or amalgamate while solvent, a body corporate:

   (i) is wound up or dissolved; or

   (ii) resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to do so; or

   (iii) enters into, or resolves to enter into, any form of formal or informal arrangement for the benefit of all or any class of its creditors, including a scheme of arrangement,
deed of company arrangement, compromise or composition with, or assignment for the benefit of, all or any class of its creditors; or

c. a liquidator or provisional liquidator is appointed (whether or not under an order), or an application is made to a court for an order, or a meeting is convened or a resolution is passed, to make such an appointment, in respect of a body corporate; or

d. a receiver, manager, receiver and manager, trustee, administrator, controller (as defined in section 9 of the Corporations Act 2001 (Cth)) or similar officer is appointed, or an application is made to a court for an order, or a meeting is convened, or a resolution is passed, to make such an appointment, in respect of a body corporate; or

e. any step is taken to enforce security over, or a distress, attachment, execution or other similar process is levied, enforced or served out against, any asset or undertaking of a body corporate; or

f. the process of any court or authority is invoked against a body corporate, or any asset or undertaking of a body corporate, to enforce any judgment or order for the payment or money or the recovery of any property; or

g. a body corporate:

(i) takes any step to obtain protection, or is granted protection, from its creditors under any applicable legislation; or

(ii) stops or suspends payment of all, or a class of, its debts; or

(iii) is, or is taken by any applicable legislation to be, or states that it is, or makes a statement from which it may be reasonably deduced that it is:

(a) insolvent or unable to pay its debts when they fall due; or

(b) the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or

(iv) is taken to have failed to comply with a statutory demand as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth); or

(v) ceases, or threatens to cease, to carry on all or a material part of its business; or

h. a person becomes an insolvent under administration as defined in section 9 of the Corporations Act 2001 (Cth) or action is taken that could result in that event; or

i. anything analogous or having a similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Law means all applicable present and future laws including:

(a) all acts, ordinances, regulations by-laws, orders, awards and proclamations of the State of Western Australia or the Commonwealth;

(b) Authorisations;

(c) principles of law or equity;

(d) standards, codes, policies and guidelines; and

(e) the ASX listing rules.

Leveraged Funding has the meaning given to it in item 4.1 of Schedule 4.

Liability means any debt, obligation, Loss, compensation or charge of any kind, including those that are prospective or contingent and those the amount of which is not ascertained or ascertainable.
Loss means any loss, cost (including legal costs), expense, liability (whether arising in negligence or otherwise) or damage whether direct, indirect or consequential (including pure economic loss), present or future, ascertained, unascertained, actual, prospective or contingent or any fine or penalty.

Milestones means the milestones set out in item 3.2 of Schedule 4, with each milestone in relation to a Deliverable being the date by which that Deliverable must be completed, and includes the Date for Project Completion.

Notification means a notice by the State given in accordance with this Agreement that in the State’s opinion the Recipient has properly complied with and fulfilled all of its Obligations, including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.

Obligation means an obligation in this Agreement.

Party means each of the State or the Recipient as the context requires, and Parties means both of them.

Project means the initiative or activities described in item 3 of Schedule 4.

Project Budget means the budget set out in item 3.3 of Schedule 4.

Provision means any term, condition, undertaking, promise, obligation or warranty of, made or given under this Agreement.

RCTI means a recipient-created tax invoice, which term has the same meaning as in the GST Act.

Related Body Corporate has the meaning given to it in the Corporations Act 2001 (Cth).

Royalties for Regions means the State’s Royalties for Regions program under which monies standing to the credit of the Fund (as defined in section 3 of the Act) are expended for purposes permitted by the Act.

Schedule means any schedule to, and forming part of, this Agreement.

Senior Staff Member means a staff member of the Recipient who performs or holds any executive or managerial role including the role of chief executive officer, chief financial officer or an equivalent or similar role, or the role of head of a department or division, manager, senior project officer, or any other senior role.

Shortfall has the meaning given to it in item 4.1 of Schedule 4.

Site means the site where the Works will be carried out.

Special Conditions means the conditions in item 4 of Schedule 4.

Structure means any building, structure, construction, infrastructure, facility, form or mode of transport or similar or other thing.

Works has the meaning given in item 4.3 of Schedule 4.

Third Party Agreement has the meaning given to it in Clause 12.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

(a) words importing the singular include the plural and vice versa;

(b) words importing any gender include the other genders;

(c) references to a person include an individual, the estate of an individual and any type of entity or body of persons, including a corporation, an incorporated or unincorporated
association or parties in a joint venture, a partnership or a trust and the legal personal representatives, successors and assigns of that person;

(d) a reference to the State includes each and every agency department, instrumentality and emanation of the State;

(e) a reference to a statute, ordinance, code, or other law includes regulations, by-laws, rules and other statutory instruments under it for the time being in force and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);

(f) references to this Agreement or any other instrument include this Agreement or other instrument as varied or replaced, and notwithstanding any change in the identity of the Parties;

(g) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and include e-mail and facsimile transmission;

(h) an Obligation incurred in favour of two or more persons is enforceable by them jointly and severally;

(i) if a word or a phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(j) references to this Agreement include its recitals, schedules and annexures;

(k) headings are inserted for ease of reference only and are to be ignored in construing this Agreement;

(l) references to time are local time in Perth, Western Australia;

(m) where time is to be reckoned from a day or event, that day or the day of that event is to be included;

(n) references to currency are to Australian currency unless otherwise stated;

(o) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Agreement or any part thereof;

(p) a reference to any thing is a reference to the whole and each part of it, and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually but nothing herein means that part performance of an obligation equals full performance thereof;

(q) when the day or last day for doing an act is not a Business Day, then the day or last day for doing the act will be the directly preceding Business Day;

(r) if the word "including" or "includes" is used, the words "without limitation" are taken to immediately follow;

(s) the phrases "described in", "set out" and "specified in" shall all read as if the words "expressly or impliedly" appeared immediately before them; and

(t) reference to a contractor or sub-contractor means a contractor or sub-contractor at any tier.

2. **DEPARTMENT**

(a) The Department acts for and on behalf of the State and may at any time perform any of the State’s Obligations and exercise the State’s rights and powers in and under this Agreement, including taking any actions, making any requests and giving or withholding any consents or approvals which the State has the right or obligation to take, make, give or withhold under this Agreement or at Law.
(b) The Recipient agrees to treat any notices or other communications (including any requests) from the Department as being from and on behalf of the State.

(c) Where the Recipient has any Obligation to remit or pay monies to the State, the Recipient must make payment to the State in the manner requested by the State, including making payment into a bank account nominated by the State if so requested, which may be a bank account held in the name of the Department.

3. SCOPE OF THIS AGREEMENT

(a) The Recipient must:

(i) carry out all aspects of the Project and fulfil its Obligations in a competent, diligent, satisfactory and professional manner, and to a high standard;

(ii) comply with this Agreement; and

(iii) provide funding and other resources, including human resources, adequate to properly meet its Obligations.

(b) Subject to subitem 4.3.2(b) of Schedule 4 to this Agreement, the State must pay to the Recipient the Funding in the manner set out in Schedule 4 which must be used by the Recipient to carry out the Project and for no other purpose. For the avoidance of doubt, and without in any way limiting the State’s rights under subitem 4.3.2(b) of Schedule 4, the State has no obligation to pay any part of the Funding to the Recipient until the Recipient has complied with its obligations in item 4.3 of Schedule 4.

(c) The Recipient must:

(i) notify the Department of any actual, pending or threatened Claim, against one or more of the Recipient, a Related Body Corporate or a Senior Staff Member as soon as practicable after the Recipient first becomes aware of that Claim;

(ii) notify the Department immediately if the Recipient is in breach of any Law, receives an audit qualification, or breaches, fails to obtain or is under scrutiny through an inquiry or decree in respect to (as applicable) any consent, registration, approval, licence or permit or agreement, order or award binding on the Recipient or which the Recipient requires in order to carry out one or both of the Project or its business; and

(iii) notify the Department immediately if the Recipient becomes aware of any fraud or corruption in relation to the Project, the Funding, any interest which accrues on the Funding, or this Agreement.

(d) The Recipient must:

(i) keep and maintain accurate, complete, up-to-date and properly detailed written records of income, expenditure, work, activities, progress, setbacks, problems and business and commercial arrangements and dealings in relation to either or both of this Agreement and the Project, and promptly provide the Department with information or documentation (relating in any way to the Project or this Agreement) requested by the State. The Recipient must ensure that all such information or documentation (as the case may be) is accurate, complete, up-to-date, properly detailed and not in any way misleading or deceptive;

(ii) provide the Department within five (5) Business Days of any request with written evidence (to the satisfaction of the State in its absolute discretion) that the Recipient is solvent and financially viable and secure and has the expertise and operational capability and capacity to carry out the Project; and
(iii) establish a separate account or cost centre within its financial system solely for the Funding and any interest which accrues on the Funding.

4. OBLIGATIONS OF RECIPIENT

4.1 Use of Funding

(a) The Recipient must use the Funding (and any interest which accrues on the Funding) for the carrying out of the Project in accordance with this Agreement and the Project Budget. All of this expenditure must be effected in a commercially prudent, sensible and reasonable manner.

(b) In carrying out the Project, the Recipient must comply with and meet all Milestones including completing the Project by the Date for Project Completion.

(c) Without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law, if the Recipient fails to comply with or meet a Milestone, the State may at any time impose additional milestones in relation to any aspect of the Project or replace any Milestones with new milestones (Additional/New Milestones). The State has absolute discretion as to whether to impose additional milestones, or replace existing Milestones, and as to what those new or replacement milestones will be and what aspects of the Project or Agreement they will relate to. In carrying out the Project, the Recipient must comply with and meet all Additional/New Milestones. If the Recipient fails to comply with or meet an Additional/New Milestone or any further milestones set by the State, the State has the same rights as set out above to at any time impose new or replacement milestones in its absolute discretion without in any way limiting the State's rights under this Agreement, including under clause 11, or under Law.

4.2 No Changes

The Recipient must not make any changes to the Project or any agreed budget (including the Project Budget) without the prior written consent of the State, which consent may be withheld in the State's absolute discretion.

4.3 No Endorsement

The Recipient agrees that nothing in this Agreement constitutes an endorsement by the State of any goods or services provided by the Recipient.

4.4 Acknowledgement of the Department

(a) Any communications in relation to one or more of Royalties for Regions, the Project and this Agreement including presentations, publications, signage, articles, newsletters, or other literary works relating to the Project must:

(i) equally represent the Parties when Project logos are displayed, including containing the Department's and Recipient's logos and names in an equally prominent position; and

(ii) be consistent with the Department's Marketing, Communications and Acknowledgements Policy.

(b) The respective roles of the State, Department and the Recipient must be acknowledged at relevant fora, conferences, and project launches where the Project is promoted.

(c) The Parties shall:

(i) work cooperatively at the senior management and officer levels;
(ii) maintain open communication, both formal and informal, to progress the objectives of this Agreement;

(iii) share information and knowledge as practicable; and

(iv) advise any stakeholders in the Project about arrangements between the Parties.

(d) The Parties must coordinate joint communications when dealing with the media and stakeholders in the Project in relation to the Project on issues of significance or mutual concern, including circulating draft media statements, advertising proposals and advertisements between the Parties for comment prior to publication.

(e) The Recipient must liaise with the Department prior to releasing, and gain the prior written approval of the State to the release of, any media statement, advertising proposal or advertisement by the Recipient in relation to the Project.

4.5 Accounts and Reporting

(a) The Recipient must provide the Department with annual and financial reports containing the information and within the timeframes set out in Schedules 2, 3 and 5 of this Agreement.

(b) The Recipient must provide the Department with a Final Report within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement.

(c) This clause 4.5 survives termination of this Agreement.

4.6 General Undertakings of the Recipient

The Recipient must:

(a) at all times duly perform and observe its Obligations and must promptly inform the Department of any occurrence that might adversely affect its ability to do so in a material way;

(b) undertake its Obligations with integrity, good faith and probity in accordance with good corporate governance practices;

(c) not, nor attempt to, sell, transfer, assign, mortgage, charge or otherwise dispose of or deal with any of its rights, entitlements and powers or Obligations under this Agreement;

(d) comply with all Laws; and

(e) cooperate fully with the Department in the administration of this Agreement.

4.7 Negation of Employment, Partnership and Agency

(a) The Recipient must not represent itself, and must ensure that its employees, contractors, sub-contractors or agents do not represent themselves, as being an employee, partner or agent of the State or the Department or as otherwise able to bind or represent the State or Department.

(b) The Recipient will not, by virtue of this Agreement, be or for any purpose be deemed to be, an employee, partner, or agent of the State or the Department, or have any power or authority to bind or represent the State or the Department.

4.8 Notification

(a) The State intends to provide the Recipient with the Notification once it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that...
the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory.

(b) The Recipient acknowledges and agrees that:

(i) for the purposes of deciding if and when to provide a Notification the State has absolute discretion in:

(A) determining whether and when it considers that the Recipient has properly complied with and fulfilled all of its Obligations including that the Final Report provided by the Recipient in accordance with Schedule 5 is satisfactory; and

(B) determining whether and when to provide the Notification to the Recipient; and

(ii) receipt of the Notification does not in any way preclude, or operate as a waiver of, the exercise or enforcement of any right power or remedy of the State under this Agreement or under any Law in relation to any Obligation of the Recipient which the State subsequently discovers has not been properly complied with by the Recipient.

5. EVALUATION OR AUDIT RIGHTS

At any time until Five (5) years after receipt of the Notification by the Recipient or any earlier termination of this Agreement, the State may arrange for an Evaluation or Audit to be carried out in relation to either or both of the Project and this Agreement by either the Department, an Auditor or any other person that the State in its absolute discretion wishes to carry out the Evaluation or Audit. If the State arranges for an Evaluation or Audit:

(a) the State must notify the Recipient that the State has arranged for an Evaluation or Audit to be carried out; and

(b) the Recipient must allow all persons appointed by the State to carry out the Evaluation or Audit to:

(i) have full access to all documents, records and premises in the control or possession of the Recipient for the purpose of carrying out the Evaluation or Audit; and

(ii) make and take copies of any and all documents and records in the control or possession of the Recipient relating in any way to either or both of the Project and this Agreement.

This clause 5 survives the termination of this Agreement.

6. CONTACT OFFICERS

(a) Each Party must appoint a staff member to be a contact officer in relation to the Project and this Agreement (this staff member and any replacement staff member performing the same role are referred to in this Agreement as the Contact Officer). The Contact Officer for each Party is authorised to act for that Party in relation to this Agreement and is the first point of contact for the other Party in relation to any disputes arising under this Agreement.

(b) The details of each Party's Contact Officer as at the Commencement Date are set out in Schedule 1.

(c) If a Party changes its Contact Officer that Party must notify the other Party in writing of the details (being the same categories of information set out in Schedule 1 for each Contact Officer) of the new Contact Officer within five (5) Business Days after the change.
7. REPAYMENT AND RETENTION OF THE FUNDING

Within twenty (20) Business Days from receipt by the Recipient of any written request from the State to provide a Final Report or any earlier termination of this Agreement, the Recipient must remit to the State any Funding that the State has paid to the Recipient and that has not been spent or committed in accordance with this Agreement and any interest which accrues on that Funding. This clause 7 does not limit clause 11.3 in any way.

8. LIMITATION OF LIABILITY

(a) Subject to clause 8(b):

(i) the State is not responsible or liable in any way for the success or otherwise of the Project or for any Losses suffered or incurred by the Recipient in undertaking the Project;

(ii) the Recipient releases the State from all Liability suffered or incurred by the Recipient in relation to one or more of the Project, this Agreement and any related matter and agrees that neither it nor any Related Body Corporate will make a Claim against the State or any of the State’s Associates arising directly or indirectly in relation to one or more of the Project, this Agreement and any related matter; and

(iii) this clause 8 may be pleaded by the State or its Associates as a bar to any proceedings commenced by the Recipient against the State or its Associates in relation to one or more of the Project, this Agreement and any related matter.

(b) Clause 8(a) does not relieve the State from its obligations to perform this Agreement in good faith. In that regard, each Party must at all times act in good faith.

(c) If the Funding (and any interest which accrues on the Funding) is insufficient for the Recipient to properly fulfil all of its Obligations, then the Recipient must still fulfil its Obligations at its own cost.

(d) The Recipient must indemnify the State and must keep it indemnified and hold it and its officers, employees and agents harmless from and against all Claims or Liability (which for the purposes of this clause 8(d) excludes indirect or consequential loss), suffered or incurred by or brought against the State or any of its respective officers, employees and agents caused by, arising out of or relating directly or indirectly to any:

(i) breach of any Provision by the Recipient;

(ii) act or omission of the Recipient or its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter; or

(iii) breach of a Law by the Recipient or any of its employees, contractors, officers or agents which relates directly or indirectly to one or more of the Project, this Agreement and any related matter,

provided that the Recipient’s liability to indemnify those indemnified under this clause 8(d) will be reduced proportionally to the extent that any negligent act or omission of those indemnified contributed to the Claim or Liability.

(e) The Recipient must comply with the insurance requirements set out in item 4.3 of Schedule 4.

(f) Despite anything else in this Agreement:

(i) neither Party will be liable for any indirect or consequential loss of any kind, including loss of actual or anticipated profits, income, revenue, production,
use, contract, business, opportunity or savings, whether arising out of, under or in connection with this Agreement; and

(ii) the liability of the Recipient under or in connection with this Agreement is limited to the value of the Funding.

(g) This clause 8 survives the termination of this Agreement.


(a) This Agreement and information regarding it is subject to the Freedom of Information Act 1992. The State may publicly disclose information in relation to this Agreement, including its terms and the details of the Recipient.

(b) Despite any express or implied provision of this Agreement to the contrary, nothing in this Agreement in any way alters, limits or affects the operation of the Auditor General Act 2006, the Financial Management Act 2006 or the Recipient's obligations (if any) in relation to these Acts. To the extent permitted by law, the Recipient must allow the Auditor General, or an authorised representative, to have access to and audit (or otherwise review, examine or evaluate) the Recipient's records and information concerning either or both of this Agreement and the Project.

10. NOTICES

In order for any notice or other communication (including any request, approval or the like) that may or must be given under this Agreement to be effective, that notice or other communication:

(a) must be in writing;

(b) must be given by the Contact Officer of the Party giving notice or by another authorised officer of that Party (who must be a Senior Staff Member) if the Contact Officer is unable to give a notice or communication in a particular instance;

(c) must be:

(i) hand-delivered or sent by prepaid post to the address of the Party receiving that notice or other communication set out in item 1 of Schedule 1;

(ii) sent by facsimile to the facsimile number of the Party receiving the notice set out in item 1 of Schedule 1; or

(iii) where this Agreement provides that the Recipient must notify the Department of, or provide it with, any occurrence or thing, hand-delivered or sent by prepaid post to the address of the Department set out in item 1 of Schedule 1 or sent by facsimile to the facsimile number of the Department set out in item 1 of Schedule 1;

(d) subject to paragraph (e) of this clause 10, is taken to be received:

(i) in the case of hand delivery, on the date of delivery;

(ii) in the case of post, on the seventh Business Day after posting; and

(iii) in the case of facsimile, on the date of transmission; and

(e) if received after 5.00 pm or on a day other than a Business Day, is taken to be received on the next Business Day.

11. DEFAULT AND TERMINATION

11.1. Event of Default by the Recipient

An Event of Default occurs if:
(a) the Recipient breaches any Provision, which (if remediable) continues without remedy for five (5) Business Days after notice in writing has been served on the Recipient by the State. This subclause does not limit any other part of this clause 11.1 in any way; or

(b) the Recipient breaches any Provision of this Agreement and such breach cannot be remedied. This subclause does not limit any other part of this clause 11.1 in any way; or

(c) the Recipient fails to comply with or meet a Milestone, an Additional/New Milestone or any other milestone set by the Department in accordance with this Agreement and does not cure such non-compliance within such reasonable time as is notified in writing by the State; or

(d) the Recipient suffers, or is or becomes subject to, an Insolvency Event; or

(e) the State believes, on reasonable grounds, that the Recipient is unwilling or unable to comply with any one or more of the Provisions; or

(f) the Recipient repudiates the Agreement; or

(g) a material warranty given by or representation made by the Recipient under or in connection with this Agreement or the Project (including the Proposal) is or becomes untrue; or

(h) the Recipient makes a notification to the Department of the type set out in clause 3(c); or

(i) the Recipient fails to comply with item 4.3 of Schedule 4; or

(j) any aspect of this Agreement is or is held to be void, unenforceable, or invalid for whatever reason; or

(k) the Recipient persistently, regularly, consistently or continually breaches the Provisions. This subclause does not limit any other part of this clause 11.1 in any way; or

(l) where this Agreement provides for or contemplates the Parties reaching further agreement in relation to anything the subject of, or related to, either or both of this Agreement and the Project, this further agreement is not reached and recorded in writing within a reasonable time.

11.2. Effect of Event of Default

(a) If an Event of Default occurs, the State may terminate the Agreement by providing notice in writing to the Recipient and the Agreement is then terminated from the date specified in that notice.

(b) Without limiting the State's rights under clause 11.2(a), if the Recipient is in breach of this Agreement, the State may suspend the performance of its Obligations until such time as it is satisfied in its absolute discretion that the Recipient has remedied that breach.

(c) The State may terminate the Agreement by providing notice in writing to the Recipient if, in the opinion of the State exercisable in its absolute discretion, the Project is no longer necessary for any reason and the Agreement is then terminated from the date specified in that notice, although in this instance only, clause 11.3(c) of this Agreement does not apply.

(d) If the State terminates this Agreement in accordance with this clause 11.2 or otherwise, this Agreement otherwise comes to an end:
(i) clauses 2, 3(c), 4.4, 4.5, 4.7, 5, 7, 8, 9, 10, 11.3, 12 and 14 will survive termination of this Agreement; and

(ii) in respect of item 4.3 of Schedule 4:

(A) where the Recipient has an obligation in subitem 4.3.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 4.3.1 for a period referable to "the date the Recipient receives the Notification", that policy of insurance must now be effected, maintained and kept in force as if the words "the date the Recipient receives the Notification" are replaced with the words "the date the Recipient receives notice in writing from the State that the State is terminating this Agreement, or the date this Agreement otherwise comes to an end";

(B) where the Recipient has an obligation in subitem 4.3.1 of Schedule 4 to effect, maintain and keep in force any policy of insurance set out in subitem 4.3.1 until the end of any Defects Liability Period, it must continue to effect, maintain and keep in force that policy of insurance until the end of any Defects Liability Period; and

(C) subitems 4.3.2, 4.3.3, 4.3.4, 4.3.5 and 4.3.6 of Schedule 4 survive until the Recipient no longer has any Obligation to effect, maintain and keep in force any policy of insurance set out in subitem 4.3.1 of Schedule 4.

For the avoidance of doubt, this sub-clause 11.2(d) does not set out an exhaustive list of clauses, rights and obligations that will survive termination and any other clauses, rights and obligations that survive at common law are also intended by the parties to, and do, survive the termination of this Agreement.

11.3. No Further Funding and Recovery of Funding

If the Agreement is terminated under clause 11.2, or terminated unlawfully by the Recipient:

(a) the State has no further obligation to pay the Recipient any part of the Funding which has not yet been paid to the Recipient, provided that if the Agreement is terminated under clause 11.2(c), the State will pay the Recipient such of the Funding as is necessary to reimburse the Recipient in respect of:

(i) Funding which has reasonably been spent, or legally committed for expenditure by the Recipient in accordance with this Agreement; and

(ii) reasonable costs actually incurred by the Recipient and directly attributable to the termination;

(b) the Recipient must remit to the State within twenty (20) Business Days from the termination date specified by the State all Funding paid to the Recipient under the Agreement that has not been spent or committed in accordance with this Agreement by the termination date specified by the State and any interest which has accrued on that Funding; and

(c) subject to clause 11.2(c), if requested by the State in writing, the Recipient must remit to the State within twenty (20) Business Days from the date of the State's request all Funding paid to the Recipient under the Agreement that has been spent or committed and any interest which has accrued on that Funding, provided that the State will not request such remittance if the Recipient satisfies the State that the event of default giving rise to the termination resulted from technical or financial limitations on the Project which could not be overcome by the Recipient despite using all reasonable endeavours. If the State only requires the Recipient to remit part of those monies, then
the Recipient must remit that part of those monies within twenty (20) Business Days from the date of the State's request.

12. AGREEMENT BETWEEN THE RECIPIENT AND A THIRD PARTY

If the Recipient enters into an agreement with any other party relating in any way to either or both of this Agreement and the Funding (Third Party Agreement), including a Third Party Agreement with a party to deliver or fulfill any of the Recipient's Obligations or to provide services to the Recipient to assist or enable it to fulfil its Obligations, the Recipient must ensure that the other party:

(a) has obligations in the Third Party Agreement which, if properly fulfilled, will ensure that the Recipient properly fulfils its corresponding Obligations and to the extent necessary to ensure that the other party has these obligations, the Recipient must ensure that the Third Party Agreement mirrors the terms of this Agreement; and

(b) agrees to the Recipient providing the State with any documents that the other party provides to the Recipient and to the State attending any meetings it has with the Recipient if the State wishes to obtain copies of such documents or attend such meetings.

13. GOODS AND SERVICES TAX (GST)

(a) For the purposes of this Agreement, including this clause 13, the terms “GST”, “recipient-created tax invoice”, “registered”, “supply”, “tax invoice”, and “taxable supply” have the same meanings as in the GST Act.

(b) Subject to clause 13(c) below, if GST is or becomes payable by a party (Supplier) in relation to any supply that it makes under, in connection with, or resulting from, this Agreement, then (unless the consideration for that supply is expressly stated to include GST) in addition to any consideration provided by a party (Supplied Party) for that supply, the Supplied Party must pay to the Supplier the amount of any GST for which the Supplier is liable in relation to that supply (Additional Amount) at the same time as the relevant consideration or any part of it is provided.

(c) Subject to clause 13(e) below, the obligation in clause 13(b) above to pay the Additional Amount only arises once the Supplier has issued a tax invoice to the Supplied Party in respect of the Additional Amount.

(d) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the Funding is exclusive of GST.

(e) If the Funding is consideration for the supply of anything under, in connection with, or resulting from, this Agreement which is a taxable supply under the GST Act, the State may choose (in its absolute discretion) by notice to the Recipient to have the Department issue a RCTI in respect of the Additional Amount and if the State so chooses:

(i) the Department will issue a RCTI in respect of the Additional Amount and the Recipient will not issue a tax invoice in respect of that Additional Amount;

(ii) the Recipient warrants that it is registered for GST and will notify the Department as soon as practicable of any change to the Recipient's registration;

(iii) the State warrants that the Department is registered for GST and will notify the Recipient as soon as practicable of any change to the Department's registration; and
(iv) the State will indemnify and keep indemnified the Recipient for any liability for GST and any related penalty or interest charge that may arise from a statement of GST payable on the supply for which the Department issues a RCTI under this Agreement.

14. WAIVER
(a) No right under this Agreement shall be deemed to be waived except by notice in writing signed by both Parties.

(b) A waiver by either Party will not prejudice that Party's rights in relation to any further breach of this Agreement by the other Party.

(c) Any failure to enforce any part of this Agreement, or any forbearance, delay or indulgence granted by one Party to the other Party, will not be construed as a waiver of any rights under this Agreement or under any Law.

15. ENTIRE AGREEMENT
This Agreement constitutes the entire, full and complete understanding and agreement between the Parties in relation to its subject matter and supersedes all prior communications, negotiations, arrangements and agreements between the Parties (or between the State and any party negotiating on behalf of the Recipient) with respect to the subject matter of this Agreement.

16. ASSIGNMENT
(a) This Agreement is personal to the Recipient and may not be assigned by the Recipient without the State's consent, which may be withheld in the State's absolute discretion. The State may at any time, in its absolute discretion, assign or transfer its rights and Obligations under this Agreement as it sees fit.

(b) For the purposes of this clause 16, the Recipient shall be deemed to have assigned this Agreement if any act, matter or thing is done or occurs, the effect of which is, in the opinion of the State, to transfer, directly or indirectly, the management or control of the Recipient.

17. VARIATION
Any modification, amendment or other variation to this Agreement must be made in writing, and must, unless the State in its absolute discretion directs in writing otherwise, be duly executed by both Parties.

18. RIGHTS, POWERS AND REMEDIES
The rights, powers and remedies in this Agreement are in addition to, and not exclusive of, the rights, powers and remedies existing at law or in equity.

19. GOVERNING LAW
This Agreement is governed by the laws in force in the State. Each Party irrevocably submits unconditionally to the non-exclusive jurisdiction of the Courts of Western Australia and of all Courts competent to hear appeals therefrom in relation to any legal action, suit or proceeding arising out of or with respect to the Agreement.

20. ACCESS TO LAND
If the Project is being undertaken on land (whether freehold or Crown land) that is not owned, leased or managed by the Recipient, the Recipient must obtain before it enters or
occupies that land & keep in place whilst the Recipient is on or occupying that land the
written consent of the person owning or leasing that land to such entry or occupation by
the Recipient. A copy of this consent to be provided to the Department.

21. SCHEDULES
(a) Any express or implied provision of any Schedule to this Agreement is hereby deemed
to be a provision of this Agreement and therefore must be complied with (by the
relevant Party) in accordance with its terms.
(b) In clause 21(a), "provision" includes term, condition, warranty, stipulation, right,
Obligation, representation and the like.
(c) Without limiting the preceding provisions of this clause 21, the Recipient agrees to
comply with the Special Conditions, if any.
**SCHEDULE 1 – CONTACT OFFICERS**

1. **Notice Addresses**

1.1 **State and Department**

<table>
<thead>
<tr>
<th>Registered Mail</th>
<th>Facsimile</th>
</tr>
</thead>
<tbody>
<tr>
<td>PO Box 1143 WEST PERTH WA 6872</td>
<td>(08) 6552 1850</td>
</tr>
</tbody>
</table>

1.2 **Recipient**

<table>
<thead>
<tr>
<th>Registered Mail</th>
<th>Facsimile</th>
</tr>
</thead>
<tbody>
<tr>
<td>21 Barker Street, Belmont, WA, 6104</td>
<td></td>
</tr>
</tbody>
</table>

2. **Contact Officers**

2.1 **State**

<table>
<thead>
<tr>
<th>Name</th>
<th>Amy Tait</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job Title</td>
<td>Manager, Business Development</td>
</tr>
<tr>
<td>Phone</td>
<td>(08) 6552 2052</td>
</tr>
<tr>
<td>Facsimile</td>
<td>(08) 6552 1850</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:Amy.Tait@dpird.wa.gov.au">Amy.Tait@dpird.wa.gov.au</a></td>
</tr>
<tr>
<td>Postal Address</td>
<td>PO Box 1143 WEST PERTH WA 6872</td>
</tr>
<tr>
<td>Street Address</td>
<td>Gordon Stephenson House, 140 William Street, Perth WA 6000</td>
</tr>
<tr>
<td>Supervisor</td>
<td>Dean Newton, Director, Business Development Directorate</td>
</tr>
</tbody>
</table>

2.2 **Recipient**

<table>
<thead>
<tr>
<th>Name</th>
<th>Michael Ottaviano</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job Title</td>
<td>Managing Director</td>
</tr>
<tr>
<td>Phone</td>
<td>08 6188 8400</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:mottaviano@carnegie.com">mottaviano@carnegie.com</a></td>
</tr>
<tr>
<td>Postal Address</td>
<td>PO Box 60, Belmont, WA, 6984,</td>
</tr>
<tr>
<td>Street Address</td>
<td>21 Barker Street, Belmont WA 6104</td>
</tr>
<tr>
<td>Supervisor</td>
<td></td>
</tr>
</tbody>
</table>

2.3 **Recipient financial contact**

<table>
<thead>
<tr>
<th>Name</th>
<th>Aidan Flynn</th>
</tr>
</thead>
<tbody>
<tr>
<td>Job Title</td>
<td>Chief Financial Officer &amp; Company Secretary</td>
</tr>
<tr>
<td>Phone</td>
<td>08 6188 8400</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:aflynn@carnegie.com">aflynn@carnegie.com</a></td>
</tr>
</tbody>
</table>
SCHEDULE 2 – FINANCIAL REPORT

The State intends to provide relevant templates to assist the Recipient in completing its reporting Obligations.

The information listed below is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.

1. Total approved Royalties for Regions budget for the current financial year.
2. Balance brought forward from previous reporting period.
3. Funding received from the State to date.
4. Total monies committed in the current period from Funding and other funds received (if any), including Leveraged Funds.
5. Actual payments to date.
6. Initial estimated cost of the Project.
7. Amount of interest earned on the Funding and on any income generated by the Project.
8. Amount of Leveraged Funding from other sources.
9. Forecast cost to complete the Project.
10. Use of funds: Infrastructure/Services/Administration.
SCHEDULE 3 – PROJECT REPORT

The State will provide relevant templates to assist the Recipient in completing its reporting Obligations.

The information listed below, is indicative of the information requested by the State and may be varied by the State from time to time in its absolute discretion.

1. Fulfilment of Recipient’s Deliverables (outcomes and outputs).
2. To what degree has the Recipient achieved Royalties for Regions’ objectives in fulfilling its Obligations.
3. Project indicators.
5. Milestones/actual achievements for the reporting period.
6. Explanation of variances between target and actual achievements, including reasons why milestones were not achieved, impediments encountered, action taken to overcome these and potential future impediments if any.
7. Risks in relation to the Project, including in relation to completing the Recipient’s Obligations and solutions proposed by the Recipient in relation to these risks.
8. Funding allocation by project category.
9. What the Funding received has been spent on.
10. Provide copies of contracts entered into between the Recipient and any other party in relation to the Project, including Third Party Agreements.
SCHEDULE 4 – ROYALTIES FOR REGIONS PROJECT DETAILS

1. **Use of Funding by the Recipient**

Without limiting clause 8(b) or clause 11.3 in any way, the Recipient must use the Funding (and any interest which accrues on that Funding) to carry out the Project in accordance with this Agreement and for no other purpose.

2. **Funding Amount**

Funding of $15.75 million (excluding GST) will be provided by the State to the Recipient in the manner and within the timeframes outlined in item 3.2 of this Schedule 4 and in Schedule 6.

Disbursal of Funding will be subject to availability of funds through the State budget and mid-year review of the State budget each financial year.

3. **Detailed Description of Project**

3.1. **Project Description**

The objective of the Project is to develop technology whereby energy is captured from ocean waves and delivered in the form of electricity into the South West Interconnected System (SWIS).

The Project comprises the activities set out in the proposal submitted by the Recipient to the Department in respect of the Albany Wave Energy Project including the responses to clarification questions submitted by email to the Department, all of which are contained in Schedule 7 to this Agreement (Proposal).

As a broad overview, the scope of this Project (to be undertaken over a period of four years) will comprise:

- installation of a large scale wave energy converter device with a rated capacity of greater than 1MW;
- installation to take place in summer weather window of 2019-2020 off the southern coast, in close proximity to the Albany Wind Farm;
- the device will be operational for a period of approximately 12 months;
- operation of a large scale prototype that will produce electrical power into the SWIS electrical grid; and
- a legacy of common user infrastructure upon completion of the prototype testing.

The Recipient shall ensure that, upon completion of the Project or at the end of this Agreement (whichever first occurs), ownership of the common user infrastructure (described below) will be vested in the State. The State may partially or wholly waive this requirement. If, for whatever reason the State cannot or does not take ownership of the common user infrastructure, the Recipient will not be in breach of the obligation in this paragraph.

The common user infrastructure shall comprise but is not limited to:

- an electrical cable from a suitable substation to a point on the seabed in close proximity to the installation of the wave energy converter;
- subsea electrical connection point(s);
- the cable and associated facilities that are installed such that they can withstand 50 year storm events in that location (this may include cable stabilisation); and
- a dedicated connection and associated switches at a suitable substation.

Furthermore, the Recipient shall, upon completion of the Project or at the end of this Agreement (whichever first occurs), provide the State with all associated documentation including design drawings and calculations, procurement records, installation records, testing certificates, third
party verifications and commissioning records relating to the aforesaid common user infrastructure.

The Recipient shall ensure that, in respect of the aforesaid common user infrastructure, the State shall have access to, and any rights of and under, any and all warranties and guarantees given by any third party, including rights of remedies for all equipment associated with the common user infrastructure, from the time that ownership of the common user infrastructure is vested in the State hereunder; to that end, the Recipient hereby transfers and assigns to the State all such warranties and guarantees and rights thereunder.

The Recipient shall ensure that the aforesaid common user infrastructure is in good condition and fit for purpose at the time ownership of it is vested in the State hereunder.

3.2. Recipient’s Deliverables and Payment of Royalties for Regions Funding
<table>
<thead>
<tr>
<th>Deliverables</th>
<th>Performance Measures</th>
<th>Performance method Measure</th>
<th>Milestone</th>
<th>Payment details and timing</th>
<th>Payment Amount</th>
<th>$million</th>
</tr>
</thead>
<tbody>
<tr>
<td>a Industry Participation Plan (IPP)</td>
<td>Completion of IPP to be finalised</td>
<td>Receipt by the Department of completed IPP within 6 months of Agreement date</td>
<td>6 April 2018</td>
<td>Payment will be authorised within 20 business days upon acceptance that the deliverable has been met, provided this is no earlier than 1 July 2018.</td>
<td>N/A</td>
<td>-</td>
</tr>
<tr>
<td>1 Commenence of common user infrastructure &amp; commence site development activities</td>
<td>Procurement &amp; site development activities have commenced</td>
<td>Evidence submitted to confirm that procurement for common user infrastructure and site development activities have commenced.</td>
<td>1 July 2018</td>
<td>Payment will be authorised within 20 business days upon acceptance that the deliverable has been met, provided this is no earlier than 1 July 2018.</td>
<td>$5.25</td>
<td></td>
</tr>
<tr>
<td>2 Complete construction of export cable</td>
<td>Export cable construction has been completed</td>
<td>Evidence submitted to confirm construction of export cable has been completed</td>
<td>1 July 2019</td>
<td></td>
<td>$5.25</td>
<td></td>
</tr>
<tr>
<td>3 Produce electricity into the SWIS</td>
<td>Wave energy converter device has been installed, commissioned and is delivering electricity into the SWIS</td>
<td>Evidence has been submitted to the Department's satisfaction that the device has successfully exported electricity into the SWIS Evidence submitted to the Department's satisfaction to demonstrate that Carnegie is prepared to transfer ownership and/or any necessary licences, permissions, approvals or requirements otherwise necessary for the State (or a party chosen by the State) to own and facilitate the operation of the common user infrastructure after the completion of Carnegie's operational period.</td>
<td>1 July 2020</td>
<td>Payment will be authorised within 20 business days upon acceptance that the deliverable has been met, provided this is no earlier than 1 July 2020.</td>
<td>$4.75</td>
<td></td>
</tr>
</tbody>
</table>
4. Hand over functioning common user infrastructure

<table>
<thead>
<tr>
<th>Evidence submitted to the Department's satisfaction to demonstrate that the Recipient has done everything on its part reasonably necessary to hand over to the State</th>
<th>Operational testing of CETO-6 complete. CETO 6 removed. Common user infrastructure is functioning and available for use by other users. Common user infrastructure has been completed and the Recipient has done everything on its part reasonably necessary to hand over to the State</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 May 2021</td>
<td>Payment will be authorised within 20 business days upon acceptance that the deliverable has been met, provided this is no earlier than 1 July 2020.</td>
</tr>
<tr>
<td>$0.5</td>
<td></td>
</tr>
</tbody>
</table>

5. Knowledge sharing report

<table>
<thead>
<tr>
<th>Preparation of a report to disseminate learnings and information from the Project</th>
<th>Receipt by the Department of the Recipient's final knowledge sharing report at completion of the Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 months following the withdrawal of the wave energy converter device</td>
<td></td>
</tr>
</tbody>
</table>

Completion of the Project including all of the Recipient's Obligations

<table>
<thead>
<tr>
<th>30 June 2021</th>
<th>Total Payment Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>$15.75m</td>
<td></td>
</tr>
</tbody>
</table>

The Recipient agrees to commence the Project within six (6) months after execution of the Agreement.

3.3. Project Budget

The total Project budget is approximately $53.0 million. Of this, the following funding contributions will be made:

<table>
<thead>
<tr>
<th>Project Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Carnegie Cash on Hand, Equity and Debt</td>
</tr>
<tr>
<td>ARENA CETO 6 Grant</td>
</tr>
<tr>
<td>WA State Funding</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>
The proposed Project budget is as follows:

<table>
<thead>
<tr>
<th>Item of Project Expenditure</th>
<th>Budget ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design and Development</td>
<td>$13,432,222.25</td>
</tr>
<tr>
<td>CAPEX</td>
<td>$39,565,461.12</td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$52,997,683.37</strong></td>
</tr>
</tbody>
</table>

Ineligible Project expenses as outlined below will be met 100% by the Recipient.

<table>
<thead>
<tr>
<th>Item of Ineligible Expenditure</th>
<th>Forecast ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations, Maintenance and Decommissioning (ineligible)</td>
<td>$2,450,000.00</td>
</tr>
<tr>
<td>Payroll and Administrative (ineligible)</td>
<td>$10,000,000.00</td>
</tr>
<tr>
<td><strong>Total Budget</strong></td>
<td><strong>$12,450,000.00</strong></td>
</tr>
</tbody>
</table>

4. Special Conditions

4.1. Leveraged Funding

(a) The Recipient must obtain the funding from the sources set out in the table immediately below (Leveraged Funding), which the Recipient must use to carry out the Project in accordance with this Agreement and for no other purpose:

<table>
<thead>
<tr>
<th>Source of Leveraged Funding</th>
<th>Amount ($)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australian Renewable Energy Agency (ARENA)</td>
<td>$11.7m</td>
</tr>
</tbody>
</table>

(b) Despite anything express or implied to the contrary in this Agreement, before the Recipient is entitled to any payment under this Agreement, it has to provide evidence to the Department which proves to the satisfaction of the State, in its absolute discretion, that the Recipient has obtained the Leveraged Funding. If the Recipient does not obtain any part of the Leveraged Funding (that part being the Shortfall), the State may reduce the amount it is to pay the Recipient under this Agreement by the amount of the Shortfall.

4.2. Delivery of Electrical Power to the SWIS network

4.2.1 Connection to the SWIS

The Recipient is responsible for all work associated with accessing the SWIS network, including permissions to produce power into the grid.

The State has confirmed with Western Power that it is possible to connect to the network in the general area of the Albany Wind Farm. No applications or specific details have been discussed and all such work is for the Recipient to progress.

4.2.2 Power Purchase Agreement
The Recipient may put in place a power purchase agreement (PPA) for the sale of any electricity produced from the wave energy converter.

The State has had no discussions with any third party relating to a PPA and there are no obligations on Synergy or any such retailer to purchase the electricity.

4.3. Insurance

4.3.1. Policies of insurance

4.3.1.1. Effecting, maintaining and keeping in force policies of insurance

Subject to sub-item 4.3.1.2 below, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until it receives the Notification (or for a longer period where it is required to keep any insurance current for a longer period as set out in this subitem below) adequate insurance cover in its name for its rights and interests (and noting the interests of the State) in relation to the Project with a reputable and solvent insurer (with a Standard and Poor's rating of not less than A-minus) which carries on insurance business in Australia and is authorised in Australia to operate as an insurance company, including effecting, maintaining and keeping in force, or causing to be effected, maintained and kept in force, the following policies of insurance for the Project:

(a) a public liability policy for an amount of indemnity of not less than 20 MILLION DOLLARS ($20,000,000) (or any higher sum as is determined by the State from time to time (acting reasonably)) for any one occurrence and unlimited as to the number of occurrences which must:

(i) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;

(ii) must contain or be endorsed to contain an indemnity extension in favour of the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the negligent acts or omissions of the Recipient, its employees, contractors or agents in their performance or non-performance of the Project;

(iii) cover liability resulting from loss of or damage to property and the death or illness of, or injury to, any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) arising out of or in connection with the Project, this Agreement or both;

(iv) be endorsed to cover;

(A) the use of unregistered motor vehicles, plant and equipment; and

(B) sudden and accidental pollution.

(b) where the Recipient has obligations in this Agreement to Construct any Structure, a policy of insurance in relation to all work required for and incidental to the Construction of that Structure and rectifying Defects (Works) which must:

(i) be in the joint names of the State, Recipient and all agents and contractors employed from time to time in relation to the Works;

(ii) cover against any and all physical loss or damage to the Works including covering the:

(A) full replacement value of that Structure, including any extension of or addition to that Structure;
(B) the cost of removal of materials and debris from the Site;

(C) any loss or damage to any equipment used in relation to the Works;

(iii) covering the cost of making good resultant damage arising in connection with faulty design;

(iv) provide that any breach of the conditions of this policy of insurance by an insured under the policy will not in any way prejudice or diminish any rights which any other insured has under the policy;

(v) provide that the insurance provided under this policy is primary with respect to the interest of the State and any other insurance or self insurance arrangements maintained by the State is excess to and not contributory with this policy;

(vi) provide that a notice of claim given to the insurer by an insured under this policy must be accepted by the insurer as a notice of claim given by the State; and

(vii) be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;

(c) where the Recipient has obligations in this Agreement to Construct any Structure, a vehicle and equipment policy of insurance for the Recipient's vehicles, registered plant and equipment brought on to the Site or used in connection with the Project whether owned, hired or leased (Recipient's Vehicles) in addition to any compulsory motor vehicle third party insurance required to be taken out by the Recipient under any Law. This vehicle and equipment insurance policy must:

(i) cover third party liability for personal injury or death (other than compulsory third party motor vehicle insurance) and property loss or damage involving the Recipient's Vehicles;

(ii) be for not less than $10 million third party liability insurance for any one occurrence and unlimited as to the number of occurrences;

(iii) be endorsed to cover the State to the extent of its vicarious liability caused, contributed to, or arising directly or indirectly out of the use of the Recipient's vehicles; and

(iv) be effected, maintained and kept in force from the Commencement Date until the later of one year from the date the Recipient receives the Notification and the end of any Defects Liability Period;

(d) where the Recipient has obligations in this Agreement to Construct any Structure, in addition to the insurance cover set out in subitems 4.3.1.1(b) and 4.3.1.1(c) of this Schedule 4, it must take out, or cause to be taken out, any other policies of insurance consistent with Best Industry Practice for the engineering, design, procurement, supply, Construction, testing and commissioning of the Project, which must be effected, maintained and kept in force from the Commencement Date until the end of any Defects Liability Period, or if there is no Defects Liability Period, then until one year from the date the Recipient receives the Notification;

(e) a policy of insurance which:

(i) insures against liability under any applicable statute relating to workers or accident compensation for death of, or illness or injury to, natural persons employed or engaged by the Recipient which are required to be insured under the Workers' Compensation and Injury Management Act 1981 (WA) or equivalent legislation in other Australian jurisdictions in work under this Agreement including liability by statute and, where available, at common law;
(ii) must be extended to indemnify the State as principal ("principal" in this subitem having the same meaning as the term "principal" in section 175(1) of the Workers' Compensation and Injury Management Act 1981 (WA)) for liability under section 175 of the Workers' Compensation and Injury Management Act 1981 (WA); and

(iii) which must be effected, maintained and kept in force from the Commencement Date until the date the Recipient receives the Notification. Where common law claims are not fully covered under this policy of insurance, the Recipient must effect, maintain and keep in force, or cause to be effected, maintained and kept in force, from the Commencement Date until the date the Recipient receives the Notification a policy of insurance which insures against employer's liability at common law for not less than fifty million dollars ($50,000,000.00) for any one event.

4.3.1.2 State may extend time by which Recipient has to procure certain policies of insurance

The Recipient must comply in full with subitem 4.3.1.1 of this Schedule 4 except that, with respect to the policies of insurance required to be effected, maintained and kept in force (or caused to be effected, maintained and kept in force) set out in subitems 4.3.1.1(b), 4.3.1.1(c) and 4.3.1.1(d), if the State has provided written notice to the Recipient prior to the Commencement Date (which notice, notwithstanding that this Agreement had not been executed at the time the notice was given, must comply with clause 10 of this Agreement as if both parties were bound by clause 10 at the time the notice was given) which:

(a) provides that the Recipient may effect (or cause to be effected) one or more of those policies of insurance from a later date than the Commencement Date; and

(b) specifies the date from which the Recipient must effect, maintain and keep in force (or cause to be effected, maintained and kept in force) that policy of insurance or those policies of insurance (as the case may be),

then the Recipient may effect (or cause to be effected) that policy of insurance or those policies of insurance (as the case may be) from the date specified in that written notice. For the avoidance of doubt, if the State provides written notice of the type outlined in this subitem 4.3.1.2:

(c) the policy of insurance or policies of insurance (as the case may be) to be effected, maintained and kept in force by the Recipient (or which it causes to be effected maintained and kept in force) specified in that written notice must comply in all other respects with the relevant Provisions in subitem 4.3.1.1 and only the time by which the Recipient must effect that policy of insurance or those policies of insurance (as the case may be) is altered; and

(d) if that notice only alters the time by which one or some of the policies of insurance set out in subitems 4.3.1.1(b), 4.3.1.1(c) and 4.3.1.1(d) must be effected, the Recipient must still effect the other policy of insurance or policies of insurance (as the case may be) by the Commencement Date.

4.3.2 Proof of insurance

(a) Within ten (10) Business Days from:

(i) the Commencement Date;

(ii) the date the Recipient receives the Notification (except in relation to insurance cover which is only required under this Agreement to be maintained until receipt by the Recipient of the Notification);
(iii) the date any insurance policy is renewed or varied; and
(iv) any other request by the State,

the Recipient must provide the Department with the following information in relation to all
insurance cover for the Project (regardless of whether the Recipient or another party
affected the policies or whether one or more of the policies are in the joint names of the
Recipient and one or more other parties):

(v) certificates of currency from the insurer which provided the insurance. These
certificates of currency must be accurate as at the time of issue, must not contain a
general disclaimer to the effect that they cannot be relied upon and must contain
sufficient information to enable the Recipient to demonstrate to the satisfaction of the
State in its absolute discretion that the Recipient has complied with its Obligations
under item 4.3 of Schedule 4. Where, in the opinion of the State in its absolute
discretion, these certificates of currency do not provide this information, then the
Recipient must provide such further information as the State may require to
demonstrate compliance with the Recipient's Obligations under item 4.3 of Schedule
4. The Recipient is entitled to redact commercially sensitive information in any
insurance policies which relates to other projects; and

(vi) receipts for premiums paid for each policy of insurance.

(b) If, after being requested in writing by the State to do so, the Recipient fails to produce
evidence (to the satisfaction of the State in its absolute discretion) of compliance with its
Obligations under item 4.3 of Schedule 4, the State may do one or more of the following:

(i) effect and maintain the required insurance and pay the premiums. The amount paid
by the State in effecting and maintaining the required insurance is a debt due and
payable on demand from the Recipient to the State;

(ii) exercise its rights under clause 11 of this Agreement; or

(iii) suspend one or both of the performance of the Recipient's Obligations and the
provision of Funding to the Recipient until evidence that the Recipient has complied
with its Obligations under item 4.3 of Schedule 4 is provided to the Department and is
satisfactory to the State in its absolute discretion.

The rights given to the State by this subitem 4.3.2(b) of Schedule 4 are in addition to any
other rights the State may have.

4.3.3 Recipient's Obligations and Recipient's further obligations

(a) Unless the Recipient first obtains the State's prior written consent, which consent can be
given or withheld by the State in its absolute discretion, the Recipient must not:

(i) do, allow to be done by another person (except the State), or suffer the doing of,
anything which adversely affects any insurance cover taken out by, or on behalf of, the
Recipient or the State in relation to the Project or this Agreement or both, or which may
increase the premium on that insurance;

(ii) store or use inflammable, volatile or explosive substances on the site or premises on
which the Project is being carried out except those normally used in the Recipient's
business; or

(iii) settle or compromise, or allow any other person (except an insurer who is legally
entitled to, and does, take over conduct of the matter) to settle or compromise, any
claim under any policy of insurance relating to the Project or this Agreement, or both.

(b) The Recipient must give notice to the Department immediately if:
(i) an event occurs which may give rise to a claim under any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) and must keep the Department informed of subsequent developments concerning the claim. This requirement does not apply to those occurrences that may give rise to a motor vehicle or worker's compensation claim;

(ii) an event occurs which could adversely affect any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project); or

(iii) any of the policies of insurance in relation to the Project (including under any of the policies of insurance held by a sub-contractor or sub-grantee in relation to the Project) are cancelled.

(c) The Recipient must pay (or procure the payment of) all premiums and all deductibles applicable to the policies of insurance effected by it, or which it causes to be effected, in relation to the Project and promptly reinstate any of these policies which lapse or under which cover is exhausted.

(d) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project must:

(i) provide that where the number of persons (in each case, an "insured") who are either:

   (1) named on that policy of insurance; or

   (2) otherwise entitled to insurance cover under that policy of insurance,

   exceeds one person, that policy of insurance must include a cross liability clause in which the insurer agrees to waive all express and implied rights of subrogation against any insured under that policy and agrees that the term "insured" applies to each insured under that policy as if a separate policy of insurance has been issued to each of them in the same terms as that policy of insurance but not so as to increase the limit of liability or sum insured under that policy;

(ii) state that they are governed by the laws of Western Australia and that each insurer irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia; and

(iii) provide that the excess in any of these policies must not exceed 1% of the insurance amount.

(e) The Recipient must not do or omit to do, and must ensure that the Recipient's personnel (including its agents and contractors) not do or omit to do, any act or thing that would be grounds for an insurer to refuse to pay the whole of or any part of a claim made under any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project.

(f) The Recipient must give the Department prior notice of at least one (1) month of the cancellation, non-renewal, or a material alteration to the detriment of cover of any of the insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project or in accordance with the Insurance Contracts Act 1984 (Cth).

4.3.4 Insurance policies primary

(a) Each policy of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project is primary and not secondary to the indemnity given by the Recipient to the State in clause 8(c) of this Agreement. However, the State is not obliged to make a claim or institute proceedings against any insurer under any of these insurance policies before enforcing any of its rights or remedies under the indemnity given by the
Recipient to the State in clause 8(c) of this Agreement, or generally. In addition, the parties acknowledge that if a claim is made under any of these insurance policies by the State, it is their intention that the insurer cannot require the State to exhaust the indemnity given by the Recipient to the State in clause 8(c) of this Agreement before the insurer considers or meets the relevant claim.

(b) The Recipient acknowledges that regardless of whether any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project respond or not, and regardless of the reason why any of these insurance policies respond or fail to respond, the Recipient is not released (in whole or in part), from any of its obligations under the indemnity given by the Recipient to the State in clause 8(c) of this Agreement, or any of its Obligations generally.

4.3.5 Settlement of claims

Upon settlement of a claim under any of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project, to the extent that the work to be reinstated or services to be repeated have been the subject of a payment of Funding by the State to the Recipient, the State may determine in its absolute discretion whether the Recipient must repay that Funding (and any interest accrued on that Funding) to the State out of the proceeds of insurance or use the proceeds of insurance to reinstate the work or repeat the services for which the Funding was provided. If the State requests that the Recipient repay that Funding (and any interest accrued on that Funding), or any part of that Funding (and any interest accrued on that Funding), to the State, the Recipient must do so:

(a) within ten (10) Business Days of the date of the State’s request (if the Recipient has already received the proceeds of insurance); and

(b) within ten (10) Business Days of receipt of the proceeds of insurance (if the Recipient has not received the proceeds of insurance by the date of the State’s request).

In order to ensure that the Recipient can fulfil its obligations under this subitem 4.3.5, the Recipient must ensure that any other party (except the State) named as an insured or otherwise noted or covered under any of the policies of insurance effected by the Recipient in relation to the Project, or which the Recipient causes to be effected in relation to the Project, has a contractual obligation to the Recipient to, if it receives proceeds of insurance under any of those policies, pay on request:

(a) the Recipient; or

(b) the State if directed by the Recipient to do so,

within a sufficient timeframe a sufficient part of those proceeds of insurance, to enable the Recipient to fulfil its obligation to the State in this subitem 4.3.5.

4.3.6 Insurance review

(a) The State may, from time to time, review the adequacy and appropriateness of the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project. As part of this review, the State may ascertain whether, in the State’s reasonable opinion, any additional insurance policies are required, or whether any insurance policies effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project and maintained at the time of the review are still required or require amendment.

(b) To allow the State to perform this function, it may make a request for the documents set out in subitem 4.3.2 of this Schedule 4 which the Recipient must comply with.

(c) The Recipient must commence negotiations to obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project within ten (10) Business Days of receiving notice from the State to do so, and
must, as soon as practicable thereafter at the Recipient's own cost, obtain insurances or amend the policies of insurance effected by the Recipient, or which the Recipient causes to be effected, in relation to the Project to reflect the recommendations made by the State following its review.

(d) The Recipient must promptly notify the Department if it is unable to, or it becomes apparent that it will be unable to, comply with the recommendations arising in connection with the State's review. The parties must determine what action, if any, is to be taken following receipt of this notice.

4.4. Local Products and Services

The Recipient agrees to comply with the State's Buy Local Policy and Building Local Industry Policy when purchasing goods or services or works for the Project.

The Recipient agrees to work together with the Department of Jobs, Tourism, Science and Innovation to complete the Industry Participation Plan (IPP) submitted as part of the Proposal. A finalised IPP must be submitted to the Department no later than six months following the date of this Agreement, receipt of which is to be confirmed in writing by the Department.

The IPP must reflect the Recipient's commitment in the Proposal to the establishment of a local office in Albany, separate to the Research Centre.

4.5. Aboriginal Participation

In carrying out the Project, the Recipient must comply with any applicable State policies in relation to creating employment opportunities and engaging and developing relationships with Indigenous peoples.


For all construction projects, the Recipient must comply with the Western Australian Building and Construction Industry Code of Conduct 2016

The Recipient and any Third Party engaged by the Recipient is subject to the Code, and must comply with each of the obligations described in the Code, for the term of this Agreement.

4.7. Data Sharing

The Recipient shall make available and facilitate the sharing of all data relating to the Project with the Albany Wave Energy Research Centre, save for that specified in section 10.2 of the Proposal or as otherwise agreed in writing with the Department.
SCHEDULE 5 – ACCOUNTS AND REPORTING

(a) The Recipient is to provide to the Department financial reports on a quarterly basis (as at 30 September, 31 December, 31 March and 30 June), or as determined from time to time by the State, until receipt by the Recipient of the Notification. The financial report is to contain information with respect to the Project, which must include the information set out in Schedule 2 and must be certified by the Director General, Chief Financial Officer or other accountable officer of the Recipient. Note – quarterly reports are to be submitted within 15 calendar days after the end of each quarter.

For the avoidance of doubt the State may:

(i) request progress reports at more regular intervals than one progress report every quarter but must not request progress reports at more regular intervals than every week; and

(ii) determine in its absolute discretion what information the Recipient is required to include in a progress report and requiring less information in a progress report than that prescribed in item (a) of this Schedule 5 in any one instance does not constitute a waiver of the State's right to receive the information prescribed in item (a) of this Schedule 5 in every other progress report.

(b) The Recipient is to provide to the Department an annual report on the Project based on a financial year ending 30 June until receipt by the Recipient of the Notification. These annual reports must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:

(i) a financial report containing information with respect to the Project which must include the information set out in Schedule 2; and

(ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Deliverables were performed and the Milestones met.

Note – the annual report on the Project is to be submitted within three (3) months after the end of the financial year to which the annual report relates.

(c) The Recipient must provide the Department with a report (Final Report) within three (3) months after receipt by the Recipient of any written request from the State to do so or of any earlier termination of this Agreement, which must be certified by the Chief Financial Officer or other accountable officer of the Recipient and audited by an Auditor, and include:

(i) a financial report) certifying that the Funding (and any interest accrued on the Funding) was used for the Project, confirming the amount of Funding spent and which must include the information set out in Schedule 2; and

(ii) a project report which must include the information set out in Schedule 3, showing how and to what extent the Funding (and any interest accrued on the Funding) was spent and the extent to which the Recipient's Deliverables were performed and the Milestones met.
SCHEDULE 6 – PAYMENT OF THE FUNDING

Funding will be made available subject to, in the manner outlined in, and for the purpose outlined in, this Agreement.

The payment of the Funding or each tranche of the Funding (if applicable) will be processed by the State and by the time required by this Agreement, transferred into the following bank account of the Recipient by electronic funds transfer:

<table>
<thead>
<tr>
<th>Account name:</th>
<th>Carnegie Clean Energy Ltd.</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSB:</td>
<td>066-107</td>
</tr>
<tr>
<td>Account number:</td>
<td>10665064</td>
</tr>
</tbody>
</table>
EXECUTION OF THIS AGREEMENT

EXECUTED by the Parties as an Agreement.

SIGNED for and on behalf of the STATE OF WESTERN AUSTRALIA by Ralph Addis of the DEPARTMENT OF PRIMARY INDUSTRIES AND REGIONAL DEVELOPMENT in the presence of:

Signature of Department witness

ELLIE COPPINS, BUSINESS DEVELOPMENT OFFICER, DPIRD

Full name and position of Department witness

SIGNED for and on behalf of CARNEGIE CLEAN ENERGY LIMITED by Michael Ottaviano in the presence of:

Signature of witness

WHITE MANNING

CEO, GREAT SOUTHERN DEVELOPMENT COMMISSION

Full name and position/address of witness

160 SELLAL BAY RD

AUBURN 6330


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