

Capacity Investment Scheme Agreement

Generation

[Project name]

Dated:

Between:

The **COMMONWEALTH OF AUSTRALIA** represented by the
**DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE
ENVIRONMENT AND WATER** (“Commonwealth”)

and

[insert] (“Project Operator”)

[Note regarding Projects that require access rights: this publication draft does not provide for Projects that require access rights. If a Project requires an access right, then this agreement will be amended such that:

- 1. allocation of that access right by a specified sunset date will be a Milestone to this agreement;***
- 2. the Maximum Capacity will be reduced if an access right below the Maximum Capacity is awarded or otherwise granted; and***
- 3. termination of the underlying access right will cross-terminate this agreement]***

[Notes regarding hybrid projects:

- 1. (Assessed Hybrid Projects) A Proponent may elect to have the value of the Proponent’s bid assessed on the basis that the Proponent will deliver a Hybrid Project, i.e. including an “Associated Project” (e.g. a BESS) that is co-located with the generation system. If the Proponent makes this election, then the Proponent must commit under this agreement to deliver the***

whole Hybrid Project (i.e. both the generation “Project” and the co-located “Associated Project”) by adopting, among other changes, the changes to Milestones outlined in this agreement.

2. (Non-Assessed Hybrid Projects) If the Proponent intends to build a known Associated Project but does not wish to commit to deliver the Associated Project, then:
 - a. the Associated Project will not be included in the assessment of the Proponent’s bid except in accordance with clause 4.22 of the Tender Guidelines; and
 - b. if the Proponent intends to alter a Non-Assessed Hybrid Project to an Assessed Hybrid Project after the Signing Date, any alteration will be subject to the Material Alteration regime.

~~Drafting will be required in this agreement to accommodate the specified Associated Project.~~

3. This publication draft identifies a number of bracketed changes that will be adopted for all Hybrid Project bids. This draft assumes that a ‘hybrid project’ involves a single identifiable generation project and another single, separately identifiable Associated Project. More complex hybrid structures (for example, where multiple BESS are distributed throughout the generation project) will require specific assessment to determine whether additional changes are required. Further changes may be required to this agreement to accommodate the specifics of the hybrid project configuration put forward by the Proponent.
4. In addition to the changes noted in the clauses, references in clauses 4.1, 6, 32.5, 9, 12.1, 19.2, 23.1, 25.3, 31.2 and 35 to “the Project” will be updated to also refer to the Associated Project and/or the Hybrid Project, as applicable.]

[Important Notice

This is a copy of the proforma Capacity Investment Scheme Agreement (CISA) provided in connection with the Capacity Investment Scheme tender process being conducted by the Commonwealth pursuant to the [insert] issued by the Commonwealth on [insert] (Tender Guidelines). Capitalised terms in this Important Notice have the meaning in the Tender Guidelines.

The draft Project Documents are not an offer by the Commonwealth or AEMO to enter into those documents with any entity which receives a copy of those documents and does not impose any legal commitment on the Commonwealth or AEMO.

The provision of the draft Project Documents to Proponents is not intended to create legal rights for any party or to form a legally binding relationship, obligation or commitment by or involving the Commonwealth or AEMO. Recipients of the draft Project Documents should not rely on them or their contents as the sole basis for making any financial, investment or business decisions. The Commonwealth reserves the right to withdraw or amend the draft Project Documents at any time.]

Capacity Investment Scheme Agreement

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Capacity Investment Scheme Agreement

Details

Parties	Commonwealth and Project Operator	
Commonwealth	Name	The Commonwealth of Australia represented by the Department of Climate Change, Energy, the Environment and Water
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Project Operator	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Recitals	A	Following a competitive tender process, Project Operator has been awarded this long-term revenue support agreement in respect of the Project [which is intended to comprise part of the Hybrid Project, involving the Project and the Associated Project]. [Note: Hybrid Project wording is to be included for all Hybrid Projects.]
	B	Project Operator will develop, construct, own and operate the Project in accordance with the requirements set out in this agreement.
	C	If Project Operator is entitled to receive revenue support under this agreement, then the parties will make the payments in accordance with this agreement, unless Project Operator exercises an Option to not receive Support for an Opt-Out Period.

Reference Details

	Item	Details
Project details		
1.	Project	<p>The '<i>[insert project name]</i>', which will be a <i>[insert resource type e.g. wind farm]</i> located at <i>[insert location]</i> with an export capacity that is within the Accepted Capacity Tolerance and:</p> <p>(a) <i>[includes the balance of plant and related connection infrastructure.]</i></p> <p><i>[Note: non-Hybrid Projects will use paragraph (a) only.]</i></p> <p>(b) <i>[includes the Shared Infrastructure; and</i></p> <p>(c) <i>excludes the Associated Project.]</i></p> <p><i>[Note: all Hybrid Projects will use paragraphs (b) and (c), but not paragraph (a).]</i></p>
2.	Maximum Capacity	<i>[insert]</i> MW (being the export capacity of the Project as measured at the Connection Point in AC)
3.	Accepted Capacity Tolerance	<p>An export capacity that is equal to or exceeding 95%, but not exceeding 100%, of the Maximum Capacity.</p> <p><i>[Note: a 5% tolerance is allowed for generation projects, e.g. for wind projects, to account for a loss of some turbines through the planning stages. This tolerance is not applicable to storage projects.]</i></p>
4.	Contract Representative	<p>Name: <i>[insert]</i></p> <p>Email: <i>[insert]</i></p> <p>Telephone: <i>[insert]</i></p>
[Associated Project details]		
<i>[Note: details of Associated Projects is to be included for all Hybrid Projects. However, Project Operator will only be required to build the Associated Project if it is part of an Assessed Hybrid Project.]</i>		
5.	[Associated Project]	<p>The '<i>[insert project name]</i>', which will be a <i>[insert project type e.g. battery energy storage system project]</i> that is co-located with the Project and with:</p> <p>(a) an import capacity that is between 95% and 105% of the Import Capacity;</p> <p>(b) an export capacity that is between 95% and 105% of the Export Capacity; and</p>

	Item	Details															
		(c) an energy storage capacity that is between 95% and 105% of the Storage Capacity, but, for the purposes of this agreement, excludes the Project and the Shared Infrastructure.															
6.	[Import Capacity]	[insert] MW (being the import capacity of the Associated Project as measured at the Connection Point in AC).															
7.	[Export Capacity]	[insert] MW (being the export capacity of the Associated Project as measured at the Connection Point in AC).															
8.	[Storage Capacity]	[insert] MWh (being the energy storage capacity of the Associated Project as measured at the Connection Point in AC).															
Term																	
9.	Final Support Commencement Date	[insert]. [Note: the date that is bid by the proponent as the COD Sunset Date will be included as the Final Support Commencement Date. The Final Support Commencement Date is the last date by which Support must commence under this agreement and cannot be extended under this agreement.]															
10.	Final Support End Date	The date that is [insert] years after the Support Start Date. [Note: the permitted value for this bid variable is up to a maximum of 15 years.]															
Delivery dates																	
11.	Milestones and Milestone Dates	<table border="1"> <thead> <tr> <th></th> <th>Milestone</th> <th>Milestone Date</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td>Project Operator securing all Tenure required for the Project.</td> <td>[insert]</td> </tr> <tr> <td>(b)</td> <td>Project Operator obtaining all Tier 1 Planning Approvals for the Project which are required to commence works.</td> <td>[insert]</td> </tr> <tr> <td>(c)</td> <td>Project Operator obtaining notifications from AEMO under clauses 5.3.4A or 5.3.4B of the NER in respect of the Project.</td> <td>[insert]</td> </tr> <tr> <td>(d)</td> <td>Project Operator obtaining an offer to connect (on terms acceptable to Project Operator) under clause 5.3.6 of the NER from the relevant Network Service Provider in respect of the Project.</td> <td>[insert]</td> </tr> </tbody> </table>		Milestone	Milestone Date	(a)	Project Operator securing all Tenure required for the Project.	[insert]	(b)	Project Operator obtaining all Tier 1 Planning Approvals for the Project which are required to commence works.	[insert]	(c)	Project Operator obtaining notifications from AEMO under clauses 5.3.4A or 5.3.4B of the NER in respect of the Project.	[insert]	(d)	Project Operator obtaining an offer to connect (on terms acceptable to Project Operator) under clause 5.3.6 of the NER from the relevant Network Service Provider in respect of the Project.	[insert]
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		<table border="1" data-bbox="715 219 1442 342"> <tr> <td data-bbox="715 219 836 342">(e)</td> <td data-bbox="836 219 1273 342">Project Operator achieving Financial Close in respect of the Project.</td> <td data-bbox="1273 219 1442 342">[insert]</td> </tr> </table> <p data-bbox="715 376 1458 499">A Milestone Date may be extended under clauses <u>5.25-32</u> (“Extension for Force Majeure Events prior to Financial Close”) and <u>5.35-43</u> (“Milestone Cure Plan other than Force Majeure Event”).</p> <p data-bbox="715 533 804 566">[Notes:</p> <ol data-bbox="715 577 1458 857" style="list-style-type: none"> <li data-bbox="715 577 1458 734">1. Milestone Dates (as may be extended) are the dates by which the corresponding Milestone must be achieved, failing which the Commonwealth is entitled to terminate this agreement. The initial Milestone Dates are bid variables. <li data-bbox="715 757 1458 857">2. For Assessed Hybrid Projects only, the references in the table above to “the Project” are to be updated to refer to “the Hybrid Project”. 	(e)	Project Operator achieving Financial Close in respect of the Project.	[insert]
(e)	Project Operator achieving Financial Close in respect of the Project.	[insert]			
12.	FC Sunset Date	<p data-bbox="715 902 1469 1025">The Milestone Date set out in item 11(e) of the Reference Details, as may be extended under clauses <u>5.25-32</u> (“Extension for Force Majeure Events prior to Financial Close”) and <u>5.35-43</u> (“Milestone Cure Plan other than Force Majeure Event”).</p> <p data-bbox="715 1059 1469 1395">[Note: the FC Sunset Date is the Milestone Date for Financial Close. If Project Operator fails to achieve Financial Close by the FC Sunset Date (as may be extended), then, in addition to the general consequences under clause 5.5 that arise as a result of failing to achieve a Milestone by the Milestone Date, the specific automatic termination regime in clause 5.5(c) is enlivened such that if Financial Close is not achieved within 40 Business Days after the FC Sunset Date, this agreement automatically terminates unless the Commonwealth extends that 40 Business Day period.]</p>			
13.	COD Target Date	<p data-bbox="715 1424 1417 1547">[insert date], as may be extended under clauses 7.4 (“COD Cure Plan other than Force Majeure Event”) and 7.3 (“Extension for Force Majeure Event prior to commercial operations”).</p> <p data-bbox="715 1581 1465 1704">[Note: the COD Target Date is the target date (as may be extended) for Project Operator to achieve commercial operations for the Project. The initial COD Target Date is a bid variable.]</p>			
14.	COD Sunset Date	<p data-bbox="715 1738 1417 1861">[insert date], as may be extended under clauses 7.4 (“COD Cure Plan other than Force Majeure Event”) and 7.3 (“Extension for Force Majeure Event prior to commercial operations”).</p> <p data-bbox="715 1895 1453 2040">[Note: the COD Sunset Date is the last date (as may be extended) by which Project Operator must achieve commercial operations for the Project or agree to a cure plan at the discretion of the Commonwealth, failing which the Commonwealth may be entitled to terminate this</p>			

	Item	Details												
		agreement. This will be the date that is 18 months after the initial COD Target Date in item 13.]												
Support terms														
15.	Annual Floor	<p>[Option 1: for bids where the Annual Floor is a fixed nominal price for the support term.]</p> <p>\$(insert)/MWh</p> <p>[End option 1.]</p> <p>[Option 2: for bids where the Annual Floor is a fixed nominal amount each year. This amount may vary from year-to-year over the support term.]</p> <p>The amounts set out in the table below for each Financial Year.</p> <table border="1" data-bbox="715 788 1471 1079"> <thead> <tr> <th>Financial Year</th> <th>Annual Floor (\$/MWh)</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table> <p>[End option 2.]</p>	Financial Year	Annual Floor (\$/MWh)	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
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[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
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[insert]	[insert]													
16.	Annual Ceiling	<p>[Option 1: for bids where the Annual Ceiling is a fixed nominal amount for the support term.]</p> <p>\$(insert)/MWh</p> <p>[End option 1.]</p> <p>[Option 2: for bids where the Annual Ceiling is a fixed nominal amount each year. This amount may vary from year-to-year over the support term.]</p> <p>The amounts set out in the table below for each Financial Year.</p> <table border="1" data-bbox="715 1550 1471 1841"> <thead> <tr> <th>Financial Year</th> <th>Annual Ceiling (\$/MWh)</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table> <p>[End option 2.]</p>	Financial Year	Annual Ceiling (\$/MWh)	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
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[insert]	[insert]													
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[insert]	[insert]													

	Item	Details												
17.	Minimum Generation	<p>[Note: bidders will be expected to bid a Minimum Generation that reflects at least 75% of forecast P90 for the whole Project.]</p> <p>[Option 1: project without a degradation profile.]</p> <p>[insert] MWh, adjusted in accordance with clause <u>1.64-56</u> (“Adjustment for partial periods”).</p> <p>[End option 1.]</p> <p>[Option 2: project with a degradation profile.]</p> <p>The amounts set out in the table below for each Financial Year, adjusted in accordance with clause <u>1.64-56</u> (“Adjustment for partial periods”).</p> <p>[Note: the table below is intended to account for degradation of the Project and is expected to be reducing year-by-year.]</p> <table border="1" data-bbox="715 896 1465 1182"> <thead> <tr> <th>Financial Year</th> <th>Minimum Generation (MWh)</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table> <p>[End option 2.]</p>	Financial Year	Minimum Generation (MWh)	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
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[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
18.	Annual Payment Cap	<p>[Option 1: for bids where the Annual Payment Cap is a fixed nominal price for the support term.]</p> <p>\$(insert), adjusted in accordance with clause <u>1.64-56</u> (“Adjustment for partial periods”).</p> <p>[End option 1.]</p> <p>[Option 2: for bids where the Annual Payment Cap is a fixed nominal amount each year. This amount may vary from year-to-year over the support term.]</p> <p>The amounts set out in the table below for each Financial Year, adjusted in accordance with clause <u>1.64-56</u> (“Adjustment for partial periods”).</p> <table border="1" data-bbox="715 1747 1465 2029"> <thead> <tr> <th>Financial Year</th> <th>Annual Payment Cap (\$)</th> </tr> </thead> <tbody> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> <tr> <td>[insert]</td> <td>[insert]</td> </tr> </tbody> </table>	Financial Year	Annual Payment Cap (\$)	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
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[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													
[insert]	[insert]													

	Item	Details
		<p>[End option 2.]</p> <p>[Note: there is a dollar cap on annual payments by the Commonwealth to Project Operator, and by Project Operator to the Commonwealth, for each Financial Year. The Annual Payment Cap is a bid variable.]</p>
Other terms		
19.	Performance Security Amount	<p>\$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000.</p> <p>[Note: the Performance Security Amount is the amount of the security that Project Operator must provide in accordance with this agreement.]</p>
20.	Cost Change Threshold	<p>\$2,000,000, adjusted in accordance with clause 1.51.45 ("Adjustment for indexation").</p>

Capacity Investment Scheme Agreement

General terms

1 Definitions and interpretation

1.1 Defined terms

Capitalised terms in this agreement have the meaning set out below and in the Reference Details, unless the contrary intention appears:

Acceptable Credit Rating means a credit rating of at least A- by Standard & Poor's or A3 by Moody's or, if both of those agencies cease to operate or to give ratings of the kind referred to above, an equivalent rating from another reputable ratings agency acceptable to the Commonwealth (acting reasonably).

Adjustment Date means each 1 July following [the closing date of the financial bid stage of the Tender process]. [**Note: for clarity, this closing date will be hardcoded into the execution version of the agreement.**]

AEMO means the Australian Energy Market Operator Limited (ACN 072 010 327) or such other entity that may at any time and from time to time operate and administer the NEM in accordance with the NER.

Annual Adjustment Amount has the meaning given in item 4.2 of Schedule 1 ("Support terms").

Annual Maintenance Program has the meaning given in clause 8.4(a) ("Annual Maintenance Program").

Annual Net Operational Revenue has the meaning given in item 4.3 of Schedule 1 ("Support terms").

Annual Revenue Ceiling has the meaning given in item 4.5 of Schedule 1 ("Support terms").

Annual Revenue Floor has the meaning given in item 4.4 of Schedule 1 ("Support terms").

Apportionment Principles means, in respect of apportioning a cost, benefit, Green Product or Capacity Product (each an "**Apportioned Item**") between two or more projects, the following principles:

- (a) if an Apportioned Item is directly attributable to a particular project (for example, by reference to the DUID or electricity volumes), then the Apportioned Item will be apportioned to that project;
- (b) if an Apportioned Item does not fall within paragraph (a), but there is an identifiable value driver that directly causes the cost or benefit or the creation of the Green Product or Capacity Product (as applicable), then the Apportioned Item will be apportioned to the relevant project by reference to that driver; and
- (c) otherwise, the Apportioned Item will be apportioned to each project by reference to the relative Maximum Capacity of each project in the relevant period.

Approved Cure Plan has the meaning given in item 5.2(c)(i) of Schedule 1 (“Support terms”).

Approved Milestone Cure Plan has the meaning given in clause ~~5.3(e)~~~~5.43(e)~~ (“Milestone Cure Plan other than Force Majeure Event”).

Approved SLC Cure Plan means a cure plan approved by the Commonwealth under clause 11.4 (“Cure”).

Approved Reinstatement Plan has the meaning given in clause 20.2(c)(i) (“Reinstatement plan”).

[Associated Project Commencement Date means the date on which the Associated Project becomes physically capable of exporting energy to the Network, regardless of the level of output of the Associated Project and whether or not the Associated Project is capable of exporting energy at 100% of the Export Capacity.] **[Note: definition to be included for Non-Assessed Hybrid Projects only.]**

ASX means the Australian Stock Exchange operated by ASX Limited (ACN 008 624 691).

Authorisation means any consent, licence, approval, permit, registration, accreditation or other authorisation that is required to be granted by any Government Authority, regulatory body, instrumentality, minister, agency or other authority for the purposes of allowing a party to perform its obligations under this agreement and, in relation to Project Operator, to operate and maintain the Project.

Background Intellectual Property means any Intellectual Property developed independently of the Project and used by or on behalf of Project Operator for the purpose of undertaking the Project.

Business Day means a day on which banks are open for business in the Relevant Jurisdiction, other than:

- (a) a Saturday, Sunday or public holiday; or
- (b) the period between 25 December and 1 January (inclusive).

Capacity Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which becomes available to the owner or operator of a generating facility that is attributable to the capacity or availability of the Project, but not including any Green Products.

Capacity Product Scheme means any scheme, Law, policy or arrangement established or regulated by a Government Authority that provides for the creation and transfer of Capacity Products.

Change in Control occurs in relation to a party when:

- (a) a person that does not Control the party acquires such Control; or
- (b) a person that Controls that party ceases to have such Control,

but does not include a change in Control which occurs as a result of:

- (c) Project Operator or any of its Related Bodies Corporate becoming listed on the ASX or other recognised securities exchange;

- (d) a transfer of or other dealing in shares in Project Operator or any of its Related Bodies Corporate that are listed on the ASX or other recognised securities exchange; or
- (e) an internal restructure or reorganisation of Project Operator, provided that the restructuring or reorganisation does not result in a change to the Ultimate Holding Company of the party.

Change in Law means the imposition of, change in, change in the application or official interpretation of, or repeal of, a Law (other than a Law relating to an Ineligible Tax), but excludes any:

- (a) change in planning or environmental requirements associated with the development, construction, operation or decommissioning of the Project (including any native title or cultural heritage Law); and
- (b) change in the NER which, as at the Tender Date, is the subject of a final determination of the Australian Energy Market Commission or the Energy Security Board.

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

COD Conditions has the meaning given in clause 7.1 (“COD Conditions”).

COD Cure Period has the meaning given in clause 7.4 (“COD Cure Plan other than Force Majeure Event”).

COD Cure Plan means a cure plan approved by the Commonwealth under clause 7.4 (“COD Cure Plan other than Force Majeure Event”).

Commercial Operations Date means the date on which the COD Conditions for the Project are satisfied or waived by the Commonwealth in accordance with clause 7 (“COD Conditions”).

Commonwealth Entity has the meaning given in section 10 of the *Public Governance, Performance and Accountability Act 2013* (Cth).

Concurrent Delay has the meaning given in clause 19.4 (“Suspension of obligations”).

Connection Force Majeure Event has the meaning given in clause 19.2 (“Definition of Connection Force Majeure Event”).

Connection Point means the “connection point” (as defined in the NER) for the Project.

Contract Representative means the person appointed by Project Operator as Contract Representative in accordance with clause 35 (“Contract Representative”), which at the Signing Date is the person specified in the Reference Details.

Control has the meaning given in section 50AA of the Corporations Act, except that:

- (a) the application of section 50AA(4) will be disregarded;
- (b) in the case of a body corporate, it includes the direct or indirect right to exercise more than 50% of the votes exercisable at a general meeting of

that body corporate and the direct or indirect right to appoint more than 50% of its directors;

- (c) in the case of a trust, it includes the direct or indirect right to exercise more than 50% of the votes exercisable by the beneficiaries of that trust in their capacity as beneficiaries and the ability to appoint or remove the trustee(s) of the trust;
- (d) in the case of any other person, it includes the direct or indirect right to exercise more than 50% of the voting rights in the person; and
- (e) in the case of any person (including those listed in paragraphs (b) to (d)), it includes the direct or indirect capacity to determine the outcome of decisions about the person's financial and operating policies,

and **Controlled** has a corresponding meaning.

Corporations Act means the *Corporations Act 2001* (Cth).

Cost Change Principles has the meaning given in clause ~~21.624-56~~ ("Cost Change Principles").

Default Interest Rate means the rate which is 2% above the Reserve Bank of Australia Cash Rate Target.

Details means the section of this agreement headed "Details".

Discount Factor has the meaning given in item 3.9 of Schedule 1 ("Support terms").] [**Note: this definition is to be included for all Hybrid Projects.**]

Dispute has the meaning given in clause ~~27.127-4~~ ("Dispute mechanism").

Dispute Notice has the meaning given in clause ~~27.327-3~~ ("Disputes").

Disputed Amount has the meaning given in clause 16.3 ("Disputed Invoice").

Draft COD Cure Plan has the meaning given in clause 7.4 ("COD Cure Plan other than Force Majeure Event").

Draft Milestone Cure Plan has the meaning given in clause ~~5.35-43~~ ("Milestone Cure Plan other than Force Majeure Event").

Draft SLC Cure Plan has the meaning given in clause 11.4 ("Cure").

DUID has the meaning given to the term "dispatchable unit identifier" under the NER.

Early Termination Amount means the amount calculated as set out in Schedule 5 ("~~Fixed Termination Amount and Early Termination Amount~~~~Fixed Termination Amount and Early Termination Amount~~").

Election to Reinstate has the meaning given in clause 20.1 ("Major Casualty Event").

Eligible Wholesale Contract has the meaning given in clause 15.1 ("Eligibility requirements").

Eligible Wholesale Contract Revenue has the meaning given in item 3.6 of Schedule 1 ("Support terms").

FC Cure Period has the meaning given in clause 5.45-54 (“Failure to achieve a Milestone”).

Financial Close occurs when:

- (a) Project Operator or its Related Body Corporate has secured the equity and/or external debt financing that is required to fund the construction and commissioning of the Project;
- (b) any conditions precedent to first draw down under the financing referred to in paragraph (a) have been satisfied or waived;
- (c) the first draw down referred to in paragraph (b) is made available to Project Operator; and
- (d) Project Operator issues an unconditional notice to proceed for the full scope of work under the engineering, procurement and construction contract (or equivalent) for the Project.

First Financial Year means the Financial Year in which the Support Start Date occurs.

[Note: the First Financial Year and Final Financial Year are likely to be “stub” years depending on whether or not the Support Start Date aligns with the start of a Financial Year.]

Financial Year means the period from 1 July to 30 June.

Fixed Termination Amount means the amount calculated as set out in Schedule 5 (“Fixed Termination Amount and Early Termination Amount~~Fixed Termination Amount and Early Termination Amount~~”).

Floating Price means, for a Trading Interval, the Spot Price (in \$/MWh) set by AEMO for that Trading Interval at the Regional Reference Node.

Force Majeure Event means a Project Force Majeure Event or a Connection Force Majeure Event.

Good Industry Practice means the practices, procedures, methods specifications and standards which:

- (a) are used by prudent, competent, experienced and reputable developers, contractors and operators who develop and operate projects of a similar nature to the Project [and the Associated Project (as applicable)]; and
- (b) are consistent with all relevant standards, including “good electricity industry practice” (as defined in the NER) to the extent that that definition is relevant to the Project [and the Associated Project (as applicable)].

[Note: bracketed wording is to be included for all Hybrid Projects, except that the words “(as applicable)” are to be omitted for Assessed Hybrid Projects.]

Government Authority means a government or a governmental, semi-governmental, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in any part of the world, including AEMO but excluding the Commonwealth. It also includes a self-regulatory organisation established under statute, a securities exchange and, in respect of Green Products, an organisation that sets standards for Green Product creation.

Green Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which may be created by the owner or operator of a generating facility that is attributable to the electricity generated by the Project in respect of, or relate to, the regulation or reduction of greenhouse gas emissions or the regulation or generation of renewable energy.

Green Product Revenue has the meaning given in item 3.5 of Schedule 1 (“Support terms”).

Green Product Scheme means any scheme, Law, policy or arrangement established or regulated by a Government Authority, and that provides for the creation and transfer of Green Products.

GST Amount has the meaning given in clause 18.3 (“Payment of GST”).

GST Law has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

[Hybrid Project means the co-located generation and storage project being the Project, the Associated Project and the Shared Infrastructure.] **[Note: this definition is to be included for all Hybrid Projects.]**

Independent Expert has the meaning given in clause 27.6 (“Independent Expert”).

Ineligible Tax means any income, capital gains, stamp, payroll, land, council or transaction duty, tax or charge, or any taxes or charges analogous to such taxes or charges.

Insolvency Event means, in respect of a party:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a “controller” (as defined in the Corporations Act) appointed to all or substantially all of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium or compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 20 Business Days), resolution passed, proposal put forward or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c) or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);

- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that party under the law of any jurisdiction.

Intellectual Property means all intellectual property rights, including the following rights:

- (a) patents, copyright (including future copyright), rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), know how, domain names and trade names and any right to have information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

Invoice has the meaning given in clause 16.1 (“Billing”).

Invoiced Sum has the meaning given in clause 16.1 (“Billing”).

Key Subcontract means a contract between Project Operator and any Key Subcontractor and any direct or indirect Key Subcontractor which performs any part of Project Operator's obligations under any Project Document.

Key Subcontractor means a Subcontractor:

[Drafting note: the relevant values will be set as a percentage of total capital expenditure being 20% of Capex during the construction of the Project and 50% of annual Opex during the operations of the Project. The shortlisted Proponent will be required to provide that information as part of its Financial Value Bid in Stage B of the Tender Process.]

- (a) specified as such in Schedule 7;
- (b) under a Subcontract which has a contract value of more than \$[insert amount] (indexed) during the construction of the Project;
- (c) whose various Subcontracts have an aggregate value of more than \$[insert amount] (indexed) during the construction of the Project;
- (d) under a Subcontract which has a contract value of more than \$[insert amount] (indexed) during the operation of the Project; and
- (e) whose various Subcontracts have an aggregate value of more than \$[insert amount] (indexed) during the operation of the Project,

and any replacement of that Subcontractor in accordance with this agreement.

Knowledge Sharing Deliverables means the deliverables set out in the Knowledge Sharing Plan.

Knowledge Sharing Plan means the plan set out in Schedule 4 (“Knowledge sharing plan”).

Law means common law, principles of equity, and laws made by parliament including State, Territory and Commonwealth laws and regulations and other instruments under them, and considerations of any of them and includes the NER and the rules of any recognised securities exchange.

LGC means a large-scale generation certificate created under Division 4 of Part 2 of the RE Act, excluding wood-waste LGCs.

Loss means all damage, loss, cost or expense. In relation to a Claim, Loss includes amounts payable in respect of the Claim and reasonable legal costs and expenses on a full indemnity basis.

Lost Generation has the meaning given in item 5.3 of Schedule 1 (“Support terms”).

Major Casualty Event means an event or circumstance that results in the loss, destruction or material damage to at least 50% of the Maximum Capacity (in MW).

Marginal Loss Factor means the “intra-regional loss factor” (as defined in the NER) applicable to the Connection Point.

[Note: for Hybrid Projects the definition of “Marginal Loss Factor” is to be replaced with the definition below in square brackets.]

[Marginal Loss Factor means:

- (a) in respect of the Project, the “intra-regional loss factor” (as defined in the NER) applicable to the DUID for the Project; and
- (b) in respect of the Associated Project, the “intra-regional loss factor” (as defined in the NER) applicable to the DUID for the Associated Project or, if more than one such factor is published for that DUID, the factor that is applied by AEMO to the exported energy of the Associated Project in the relevant time period.]

[Note: if the Project is connected to a distribution network, the definition for Marginal Loss Factor will also reflect distribution loss factors. For example, for non-hybrids the definition of “Marginal Loss Factor” would be “the product of the intra-regional loss factor (as defined in the NER) as published by AEMO and applicable to the Connection Point for the relevant period and the distribution loss factor (as defined in the NER) applicable to the Connection Point.”]

Material Alteration means:

- (a) an alteration to the Project’s generating system that affects the Project’s capacity, availability or generation profile, but not including a repair of the Project;
- (b) the installation of a new generating system, energy storage system or load [(other than the Associated Project)] behind the Connection Point; or
- (c) [a change to the metering arrangements of the Project or the Hybrid Project].

[Note: bracketed wording in paragraphs (b) and (c) is to be included for all Hybrid Projects.]

[Metering Diagram means the metering diagram set out in Schedule 3 (“Metering Diagram”).] **[Note: this definition is to be included for all Hybrid Projects.]**

Milestone means a milestone as described in item 11 of the Reference Details.

Milestone Cure Period has the meaning given in clause 5.35.43 (“Milestone Cure Plan other than Force Majeure Event”).

Milestone Date means, for a Milestone, the date specified for that Milestone in item 11 of the Reference Details.

MW means megawatt, a measure of electrical power.

MWh means megawatt hour, a measure of electrical energy.

National Electricity Law means the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA) as it applies in the Relevant Jurisdiction.

Negative Pricing Event means a Trading Interval in respect of which the Floating Price is less than \$0/MWh.

NEM means the National Electricity Market administered by AEMO in accordance with the NER.

NER means the National Electricity Rules made under the National Electricity Law, as it is applied in the Relevant Jurisdiction.

Network means the transmission or distribution network (as applicable) to which the Project is connected at its Connection Point.

Notional Quantity has the meaning given in item 3.9 of Schedule 1 (“Support terms”).

Opt-Out Period has the meaning given in clause 14.2 (“Option to not receive Support”).

Option has the meaning given in clause 14.2 (“Option to not receive Support”).

Other CISA means a capacity investment scheme agreement for generation infrastructure, other than this agreement.

Other CISA Counterparty means, in respect of an Other CISA, the Commonwealth’s counterparty under that Other CISA.

Other Dispute means a Dispute between the Commonwealth and an Other CISA Counterparty under an Other CISA.

Other Market Revenue means, in respect of a period, the revenue of Project Operator in that period (without double counting) arising from or in connection with:

- (a) payments by AEMO under the NER, including:
 - (i) for the provision of “ancillary services” and “system security services” (each as defined in the NER); and
 - (ii) any compensation under Chapter 3 of the NER, including arising from “market suspension”, the application of the “administered floor

price” or “administered price cap”, or a “direction” (each as defined in the NER);

- (b) the sale or other dealings in respect of Capacity Products, in which case, to the extent the market price for a Capacity Product needs to be determined, it will be determined in accordance with item 3.13 of Schedule 1 (“Support terms”); and
- (c) any Permitted Arrangement Revenue to the extent it is not Eligible Wholesale Contract Revenue,

but excluding:

- (d) any Spot Market Revenue and Uncontracted Spot Market Revenue;
- (e) any Green Product Revenue and Uncontracted Green Product Revenue;
- (f) any Eligible Wholesale Contract Revenue;
- (g) amounts which the Commonwealth is obliged to pay to Project Operator under this agreement;
- (h) damages to which Project Operator is entitled under a contract for the construction, operation and/or maintenance of the Project (except to the extent those damages compensate for loss of revenue and/or profit); and
- (i) amounts to which Project Operator is entitled under or in connection with an insurance policy (other than amounts which compensate for loss of revenue and/or profit).

Peak Period means the period from 1 December to 31 March, as may be adjusted in accordance with clause 8.6 (“Adjustment to Peak Periods”).

Performance Security means a letter of credit or bank guarantee that:

- (a) has a face value of not less than the Performance Security Amount;
- (b) is issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;
- (c) can be drawn in Sydney;
- (d) names the Commonwealth as the beneficiary; and
- (e) is otherwise in a form reasonably satisfactory to the Commonwealth (acting reasonably).

Permitted Arrangement has the meaning given in clause 8.3 (“Project Operator is a special purpose vehicle”).

Permitted Arrangement Revenue has the meaning given in clause 8.3 (“Project Operator is a special purpose vehicle”).

Permitted Intermediated Revenue has the meaning given in clause 8.3 (“Project Operator is a special purpose vehicle”).

Pooled Dispute has the meaning given in clause 28.1 (“Referral of Pooled Disputes”).

Pooled Dispute Panel means a panel constituted in accordance with clause 28.2 (“Resolution by Pooled Dispute Panel”).

Pooled Dispute Participant means, in respect of a Pooled Dispute:

- (a) the Commonwealth;
- (b) Project Operator; and
- (c) each Other CISA Counterparty that receives a Pooled Dispute Referral in respect of that Pooled Dispute from the Commonwealth,

but notwithstanding the foregoing does not include any person that ceases to be a Pooled Dispute Participant pursuant to clause 28.3 (“Bilateral resolution”).

Pooled Dispute Referral has the meaning given in clause 28.1 (“Referral of Pooled Disputes”).

Project Documents means:

- (a) this agreement; and
- (b) if applicable, the Tripartite Deed.

Project Force Majeure Event has the meaning given in clause 19.1 (“Definition of Project Force Majeure Event”).

PFME Generation has the meaning given in item 6 of Schedule 1 (“Support terms”).

Project Intellectual Property means all Intellectual Property developed by or on behalf of Project Operator in the course of undertaking the Project, including all Intellectual Property in all reports, plans, documents, information, data and other material written, created or prepared by or on behalf of Project Operator in relation to the Project.

Proposed Cure Plan has the meaning given in item 5.2 of Schedule 1 (“Support terms”).

Proposed Reinstatement Plan has the meaning given in clause 20.1(a) (“Major Casualty Event”).

Quarterly Net Operational Revenue has the meaning given in item 3.3 of Schedule 1 (“Support terms”).

Quarterly Payment Amount has the meaning given in item 3.2 of Schedule 1 (“Support terms”).

Quarterly Revenue Ceiling has the meaning given in item 3.8 of Schedule 1 (“Support terms”).

Quarterly Revenue Floor has the meaning given in item 3.7 of Schedule 1 (“Support terms”).

RBC Intermediary Contract has the meaning given in clause 8.3 (“Project Operator is a special purpose vehicle”).

RE Act means the *Renewable Energy (Electricity) Act 2000* (Cth).

Reference Details means the section of this agreement headed “Reference Details”.

Regional Reference Node means the “regional reference node” (as defined in the NER) for the Relevant Jurisdiction.

Related Body Corporate has the meaning given in the Corporations Act, but on the basis that:

- (a) 'subsidiary' has the meaning given in this agreement; and
- (b) a trust may be a 'related body corporate' (for the purposes of which a unit or other beneficial interest may be regarded as a 'share').

Relevant Cost Change means a net increase or decrease in Project Operator's direct costs of:

- (a) constructing and commissioning the Project; or
- (b) generating and exporting electricity from the Project,

that arises as a result of a Change in Law that occurs after the Tender Date, but excluding costs in relation to:

- (c) existing or new "Participant fees" (as defined in the NER);
- (d) existing or new "ancillary services" (as defined in the NER);
- (e) any other amounts payable by Project Operator under the NER; and
- (f) [any costs arising from the Associated Project]. [**Note: paragraph (f) is to be included for all Hybrid Projects.**]

Relevant Jurisdiction means the jurisdiction in which the Project is located.

Resolution Institute means Resolution Institute (ACN 008 651 232).

Revenue Contract means a contract or other arrangement which entitles Project Operator to receive amounts payable in respect of, or other economic value associated with, the Project, any electricity generated by the Project or any Green Products or Capacity Products created by reference to the Project.

Revised Statement means a "routine revised statement" or a "special revised statement" (each as defined in the NER).

Security Interest means:

- (a) any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA; or
- (b) any agreement to create any of the above or allow them to exist.

Sent Out Generation means the "sent out generation" (as defined in the NER) for the Project.

[Note: for Hybrid Projects, the definition of "Sent Out Generation" is to be replaced with the definition below in square brackets, to ensure that the Support is provided based on a sub-meter that measures energy generated by the Project, regardless of whether that energy is sent out to the external network via the Connection Point or sent to the Associated Project. To avoid doubt, this definition will not capture the subsequent discharge of such energy by the Associated Project.]

Further changes to this definition may be required after consideration of the metering diagram provided by the Proponent.]

[Sent Out Generation means:

- (a) [in respect of periods occurring prior to the Associated Project Commencement Date, the “sent out generation” (as defined in the NER) for the Project; and
- (b) in respect of periods occurring on or after the Associated Project Commencement Date,] the amount of electricity supplied to the Network, by the Project at the location of, and as measured by, the meter identified as [insert] in the Metering Diagram.] **[Note: the bracketed wording that splits this definition into pre/post Associated Project Commencement Date is to be included for Non-Assessed Hybrid Projects only.]**

[Note: the following definition of “Sent Out Generation (Discounted)” is to be included for all Hybrid Projects. This definition is to be used in respect of Minimum Generation to reflect the intention that volumes measured by the sub-meter are to be adjusted to reflect the volumes that are ultimately exported through the Connection Point.]

[Sent Out Generation (Discounted) means:

- (a) [in respect of periods occurring prior to the Associated Project Commencement Date, the “sent out generation” (as defined in the NER) for the Project; and
- (b) in respect of periods occurring on or after the Associated Project Commencement Date,] the Sent Out Generation multiplied by the applicable Discount Factor. Where more than one Discount Factor applies to a period, the volume weighted average of those Discount Factors will be used.] **[Note: the bracketed wording that splits this definition into pre/post Associated Project Commencement Date is to be included for Non-Assessed Hybrid Projects only.]**

Settlements Ready Data has the meaning given in the NER.

[Shared Infrastructure means plant, equipment and infrastructure which is located at the Hybrid Project site and used for both the Project and the Associated Project, including common balance of plant with the Associated Project.] **[Note: this definition is to be included for all Hybrid Projects.]**

Signing Date means the date on which the last of the parties signs this agreement.

SLC Abatement Notice means a notice issued under clause 11.6 (“Abatements for non-compliance”).

SLC Abatement Amount means the abatement amount payable to the Commonwealth under an SLC Abatement Notice, when one is issued under clause 11.6 (“Abatements for non-compliance”).

Social Licence Commitments means the commitments set out in Schedule 2 (“Social Licence Commitments”).

Specified Material means any reports, plans, documents, information, data or other material and associated Intellectual Property (whether developed by or on

behalf of Project Operator, its officers, employees, Subcontractors or agents which:

- (a) Project Operator (or its Related Bodies Corporate) provides or grants, or is required to provide or grant, to the Commonwealth under or in connection with this agreement or the Tender; or
- (b) is copied or derived at any time from the material referred to in paragraph (a).

Spot Market Revenue has the meaning given in item 3.4 of Schedule 1 ("Support terms").

Spot Price has the meaning given in the NER.

Subcontract means any subcontract relating to the performance of Project Operator's obligations under any Project Document (other than a contract with the Commonwealth) including with subcontractors whether hired directly by Project Operator or by a person hired by Project Operator and including each tier of subcontract, sub-subcontract and so forth.

Subcontractor means a subcontractor of Project Operator (other than the Commonwealth) and includes any subcontractor of such a subcontractor, whether hired directly by Project Operator or by a person hired by Project Operator and including each tier of subcontract, sub-subcontract and so forth and any replacement of that subcontractor in accordance with this agreement.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is part of the consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

Support means the revenue support mechanism on terms outlined in Schedule 1 ("Support terms").

Support Period means the period commencing on the Support Start Date and ending on the Final Support End Date.

Support Receipt Period means the Support Period excluding any Opt-Out Period in respect of which Project Operator validly exercises, or is deemed to exercise, an Option in accordance with clause 14.2 ("Option to not receive Support").

Support Start Date means the earlier of:

- (a) the Commercial Operations Date; and
- (b) the Final Support Commencement Date.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

Tender means the process and documents by which Project Operator (or an associated entity) submitted a bid to enter into this agreement as part of the Australian Government's Capacity Investment Scheme.

Tender Date means the date on which Project Operator (or an associated entity) submitted its "Financial Value Bid" as part of the Tender process.

Tenure means:

- (a) a freehold interest; and/or
- (b) an interest under a lease, sale and purchase agreement, transfer granting an easement agreement, easement or similar right including any valid option to enter into such an agreement or right,

which provides for access to and/or use of land for the purpose of developing, constructing, commissioning, operating, maintaining and decommissioning the Project (including any connection assets).

Term has the meaning given in clause 2 ("Term").

Termination Payment means a Fixed Termination Amount or an Early Termination Amount.

Tier 1 Planning Approvals means:

- (a) development consent under the *Environmental Planning and Assessment Act 1979* (NSW);
- (b) if required, an environmental protection licence under the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) if required, approval under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Trading Interval has the meaning given in the NER.

Tripartite Deed means the tripartite deed with financiers of Project Operator substantially in the form attached in Annexure A ("Form of Tripartite Deed").

[Trust means [insert details of relevant trust].

Trust Deed means the trust deed establishing the Trust.

Trust Property means all of the assets of the Trust.]

[Note: to be included if Project Operator is trustee of a trust.]

UIGF means unconstrained intermittent generation forecast (as that term is defined in the NER).

Ultimate Holding Company has the meaning given in the Corporations Act, but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and that 'body corporate' includes any entity and a trust.

Uncontracted Green Product Revenue has the meaning given in item 3.5 of Schedule 1 ("Support terms").

Uncontracted Spot Market Revenue has the meaning given in item 3.4 of Schedule 1 (“Support terms”).

Warranted Materials has the meaning given in clause 29.4 (“Warranties”).

Wholesale Contract means any contract or other arrangement (other than this agreement) that is directly related to the purchase or sale, or the price for the purchase or sale, of:

- (a) electricity to or from the NEM or the Project;
- (b) Green Products referable to electricity generated by the Project; or
- (c) a combination of the above.

WHS Act means the *Workplace Health and Safety Act 2011* (Cth).

WHS Laws means the WHS Act and any corresponding work health and safety law as defined in section 4 of the WHS Act.

Workplace Laws means all WHS Laws, all employment or industrial relations Laws, including:

- (a) the *Fair Work Act 2009* (Cth) and any corresponding regulations or other instruments;
- (b) workers’ compensation Laws;
- (c) labour hire Laws;
- (d) minimum wage Laws;
- (e) anti-discrimination and equal opportunity Laws including the *Sex Discrimination Act 1984* (Cth),

that are applicable to the Project, the Project site or Project Operator.

1.2 Interpretation provisions

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this agreement:

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to AUD, dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (n) if a party must do something under this agreement on or by a given day and it is done after 5.00pm on that day, then it is taken to be done on the next Business Day;
- (o) if the day on which a party must do something under this agreement is not a Business Day, then the party must do it on the next Business Day; and
- (p) the Details, Reference Details, schedules and annexures to this agreement form part of this agreement.

1.3 Legislation definition change

If:

- (a) a term used in this agreement (including as a result of a prior application of this clause [1.34.23](#)) has the meaning given to it in legislation (including the NER and the Corporations Act); and
- (b) the term in the relevant legislation is subsequently renamed or replaced with another term of similar effect,

then the new term will be used in place of the term which was renamed or replaced.

1.4 Appointment of agent

- (a) Project Operator acknowledges that the Commonwealth may, in its sole discretion and from time to time, appoint in writing one or more persons as the Commonwealth’s agent in respect of or in connection with some or all of the Commonwealth’s rights or obligations under this agreement.
- (b) In making such an appointment, the Commonwealth may advise Project Operator in writing of any limitations on that appointment and, if the Commonwealth does so, Project Operator must comply with any such limitations of which it has been advised.
- (c) Nothing in this clause [1.41.34](#) relieves the Commonwealth of its obligations, or reduces its rights, under this agreement.

1.5 Adjustment for indexation

On each Adjustment Date, each of:

- (a) the Cost Change Threshold;
- (b) the limitation of liability applying to the Commonwealth under clause 24.2(a)(i) and 24.2(a)(ii) ("Limitation of liability");
- (c) the limitation of liability applying to Project Operator under clause 24.2(b)(i) and 24.2(b)(ii); and
- (d) \$4 million referred to in section 1.3(c) of Schedule 6 ("Commonwealth Policy and Other Requirements"),

will be adjusted in accordance with the following formula:

$$P_n = P_b \times 1.025$$

where:

P_n = the relevant amount on and from the Adjustment Date; and

P_b = the relevant amount immediately before the Adjustment Date.

1.6 Adjustment for partial periods

In respect of the First Financial Year and Final Financial Year, each of:

- (a) the Annual Payment Cap; and
- (b) Minimum Generation,

will be adjusted in accordance with the following formula:

$$X = \frac{Y}{365} \times Z$$

where:

X = the adjusted Annual Payment Cap or Minimum Generation (as relevant);

Y = the number of (as relevant):

- (i) in respect of the First Financial Year, full days from the Commercial Operations Date until the end of the First Financial Year; and

- (ii) in respect of the Final Financial Year, full days from the start of the Final Financial Year until the Final Support Date; and

Z = the Annual Payment Cap or Minimum Generation (as relevant) for the First Financial Year or Final Financial Year (as relevant).

1.7 Commonwealth's rights, duties and functions

- (a) Unless otherwise expressly provided in a Project Document, nothing in any Project Document gives rise to any duty on the part of the Commonwealth to consider interests other than its own interests when

exercising any of its rights or carrying out any of its obligations under any Project Document.

- (b) Notwithstanding anything expressly provided or implied in any Project Document to the contrary:
 - (i) the Commonwealth is not obliged:
 - (A) to exercise any executive or statutory right, duty or function, or to influence, over-ride, interfere with or direct any part of the Commonwealth or any other Government Authority in the proper exercise and performance of any of its executive or statutory rights, duties or functions;
 - (B) to develop or implement any new Commonwealth policy or change any Commonwealth policy;
 - (C) to enact any new Law or implement a change in any existing Law, including making or revoking any regulation, statutory instrument or delegation; or
 - (D) to provide an interpretation of any Law or Commonwealth policy; and
 - (ii) nothing expressly provided or implied in any Project Document has the effect of constraining the Commonwealth in its exercise of, or of placing any fetter on the Commonwealth's discretion to exercise or not to exercise, any of its executive or statutory rights, duties or functions.

1.8 Reasonable endeavours of the Commonwealth

In any Project Document, a requirement for the Commonwealth to use "best endeavours", "reasonable endeavours", "act reasonably", to "not act unreasonably", to act "in good faith" or to take "reasonable" or "all reasonable" steps or action, does not require:

- (a) the exercise or non-exercise of any executive or statutory discretion, right or power;
- (b) the development or implementation of any new Commonwealth policy or change in Commonwealth policy;
- (c) the enactment of any new Law or making of a Change in Law, including the making or revocation of any regulation, statutory instrument or delegation; or
- (d) the Commonwealth to act in a way it regards as not in the public interest or contrary to Commonwealth policy.

1.9 No Commonwealth liability for review and approval

Except to the extent expressly provided otherwise in this agreement, no:

- (a) review of, comment upon, or acceptance, approval or certification of, any document, or other approval, consent, permission, comment or recommendation, in each case by the Commonwealth, its officers, employees, subcontractors or agents, or deemed approval or consent (or a failure to do so); or

- (b) failure by (or on behalf of) the Commonwealth, its officers, employees, subcontractors or agents, to detect any non-compliance by Project Operator with its obligations in accordance with the Project Documents or any Laws;

will:

- (c) relieve Project Operator from, or alter, affect or modify, its liabilities, obligations or responsibilities whether in accordance with the Project Documents or otherwise according to Law, or give rise to a right of Project Operator to make a Claim against the Commonwealth;
- (d) constitute a waiver of, or otherwise prejudice the Commonwealth's rights against, Project Operator, whether under the Project Documents or otherwise according to Law;
- (e) constitute an approval or acceptance by the Commonwealth of Project Operator's performance of its obligations in accordance with the Project Documents or acceptance of any item or material delivered;
- (f) entitle Project Operator to an adjustment of any date, payment or amount or any other obligation arising from or in connection with any Project Document, or to Claim from the Commonwealth any liability incurred by Project Operator; or
- (g) constitute an approval under any applicable Law.

1.10 Prior approval or consent

If Project Operator is required by a Project Document to obtain the Commonwealth's consent or approval to an action, document or thing, unless otherwise expressly provided in this agreement, then that consent or approval must be obtained as a condition precedent to the action, document or thing occurring or coming into effect.

1.11 Action without delay

Unless there is a provision in a Project Document which specifies a period of time in which something must be done by Project Operator, all things must be done by Project Operator without undue delay.

1.12 Provisions limiting or excluding liability, rights or obligations

- (a) A right or obligation of the Commonwealth or Project Operator under this agreement will not limit or exclude any other right or obligation of the Commonwealth or Project Operator under this agreement unless otherwise expressly provided.
- (b) Any provision of this agreement which seeks, either expressly or by implication, to limit or exclude any liability of a party is to be construed as doing so only to the extent permitted by Law.

1.13 Relationship of the parties

- (a) Nothing in any Project Document:
 - (i) creates a partnership, joint venture, fiduciary, employment or agency relationship with the Commonwealth; or

- (ii) imposes any duty of good faith on the Commonwealth,
unless otherwise expressly provided.
- (b) Project Operator acknowledges that the Commonwealth may enter into arrangements which are the same or similar to those set out in the Project Documents with other persons.

2 Term

2.1 Term

This agreement commences on the Signing Date and, unless terminated earlier, continues until the Final Support End Date (“**Term**”).

2.2 Legal Opinion

On the signing date, Project Operator will provide to the Commonwealth legal opinions given for the benefit of the Commonwealth in form and substance satisfactory to the Commonwealth (acting reasonably) from an independent legal adviser appointed by the relevant counterparties to the Project Documents (other than the Commonwealth) as to:

- (a) the legal capacity and corporate power of those relevant counterparties to enter into and perform bits relevant obligations under the Project Documents to which it is a party;
- (b) due execution by the relevant counterparty of the Project Documents to which it is a party; and

the enforceability against the relevant counterparty of the Project Documents to which it is a party.

3 Performance Security

3.1 Provision of Performance Security

- (a) Project Operator must provide the Performance Security to the Commonwealth within 20 Business Days after the Signing Date or as otherwise agreed in writing between the parties.
- (b) If Project Operator does not provide the Performance Security by the date required under paragraph (a), then the Commonwealth may terminate this agreement by written notice to Project Operator with immediate effect.

3.2 Replacement of Performance Security

Project Operator must provide a replacement Performance Security to the Commonwealth:

- (a) in the case of the issuer of the Performance Security ceasing to hold an Acceptable Credit Rating, within 20 Business Days after the issuer ceasing to hold an Acceptable Credit Rating; or
- (b) in the case of the Performance Security having an expiry date, no later than 20 Business Days prior to the expiry date.

3.3 Recourse to Performance Security

- (a) The Commonwealth may only draw on the Performance Security if Project Operator has failed to:
- (i) pay the Early Termination Amount in accordance with clause 22.5 (“Termination payments”);
 - (ii) provide a replacement Performance Security to the Commonwealth by the date required under clause ~~3.23-32~~ (“Replacement of Performance Security”); or
 - (iii) pay an amount to the Commonwealth in respect of an obligation of Project Operator arising under or in respect of this agreement prior to the Commercial Operations Date (“**Agreement Debt**”), provided that Project Operator has:
 - (A) failed, within 30 days of written demand from the Commonwealth, to either:
 - (aa) pay the Agreement Debt to the Commonwealth; or
 - (ab) raise a Dispute under this agreement in respect of the Agreement Debt; and
 - (B) continued to fail to pay the Agreement Debt within a further 30 days after the Commonwealth gives notice in writing that it is planning to draw on the Performance Security to recover the amount of the Agreement Debt.
- (b) If the Commonwealth draws on the Performance Security in accordance with subparagraph (a)(ii), then the Commonwealth will:
- (i) hold that amount on trust for Project Operator and the Commonwealth; and
 - (ii) promptly pay the amount held on trust to Project Operator (including any interest earned on those funds by the Commonwealth) if Project Operator then provides a replacement Performance Security that meets the requirements of this agreement.
- (c) If the Commonwealth is holding an amount on trust pursuant to paragraph (b) and is entitled to draw on the Performance Security in accordance with subparagraph (a)(i) or (a)(iii), or otherwise under this agreement, then the Commonwealth may retain those funds (including any interest earned by it on those funds) to which it is entitled for its own benefit.

3.4 Return of Performance Security

Subject to the exercise of its rights under clause ~~3.33-43~~ (“Recourse to Performance Security”), the Commonwealth must return the Performance Security, or any amount the Commonwealth is holding on trust pursuant to clause ~~3.3(b)3-43(b)~~, to Project Operator within 10 Business Days after the earlier of:

- (a) the Commercial Operations Date; and

- (b) the date on which Project Operator has paid the full amount of the Early Termination Amount to the Commonwealth pursuant to clause 22.5(a)(i), (iii) or (iv) (as applicable) (“Termination payments”).

4 Development of Project

4.1 Development

Project Operator must:

- (a) develop the Project in accordance with the Social Licence Commitments, Good Industry Practice and all applicable Laws and authorisations;
- (b) use its best endeavours to achieve each Milestone by the relevant Milestone Date;
- (c) use its best endeavours to achieve Financial Close by the FC Sunset Date; and
- (d) report on the development of the Project in accordance with clause 12.1 (“Development and construction reports”).

4.2 [Hybrid Project metering

[Prior to the Associated Project Commencement Date,] Project Operator must install and commission sub-meters or measuring apparatus for each of the Project and the Associated Project that:

- (a) are of sufficient accuracy to meet the metering accuracy requirements specified by AEMO for meters used for settlement of the NEM;
- (b) are in accordance with the requirements of the Clean Energy Regulator for the purposes of calculating or determining any entitlement to large-scale generation certificates;
- (c) meet AEMO’s requirements for satisfactory telemetry to support the issuing of dispatch instructions and the audit of responses as outlined in clause 2.2.2 of the NER;
- (d) meet any other applicable requirements under the NER; and
- (e) are consistent with the Metering Diagram.]

[Note: clause 4.24.32 is to be included for all Hybrid Projects, except that the Conditional wording (shown in square brackets) in the opening paragraph is to be omitted for Assessed Hybrid Projects.]

5 Financial Close

5.1 Notification of satisfaction of Milestones

- (a) Project Operator must notify the Commonwealth 20 Business Days prior to the date on which it reasonably expects to achieve a Milestone. If, after Project Operator provides that notice to the Commonwealth, the date on which Project Operator reasonably expects to achieve that Milestone changes, then Project Operator must notify the Commonwealth promptly of the revised date.

- (b) Project Operator must notify the Commonwealth within 10 Business Days after becoming aware that it has achieved a Milestone. The notice must include evidence demonstrating that the Milestone has been achieved, including a copy of any relevant approval, notification or other document.

5.2 Extension for Force Majeure Events prior to Financial Close

- (a) If Project Operator is, or reasonably expects that it will be, delayed in achieving a Milestone by the Milestone Date (including Financial Close by the FC Sunset Date) as a result of a Force Majeure Event, then Project Operator must:
 - (i) notify the Commonwealth of the occurrence of a Force Majeure Event as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Force Majeure Event) giving reasonable details of:
 - (A) the date on which the Force Majeure Event commenced;
 - (B) the Force Majeure Event, including its expected duration;
 - (C) any Milestones (including Financial Close) which are delayed or expected to be delayed by the Force Majeure Event, including the extent to which they can be achieved by the relevant Milestone Date (including FC Sunset Date) or are adversely affected; and
 - (D) subject to paragraph (c), any proposed extensions to a Milestone Date (including the FC Sunset Date) to reflect the impact of the Force Majeure Event on Project Operator's achievement of the Milestones;
 - (ii) keep the Commonwealth informed of any material changes or developments to the information provided to the Commonwealth in the notice under subparagraph (a)(i); and
 - (iii) use its best endeavours to overcome and mitigate the impact of the Force Majeure Event.
- (b) On receiving Project Operator's notice under subparagraph (a)(i), the Commonwealth:
 - (i) may request any further information from Project Operator that the Commonwealth reasonably requires in order to assess the impact of the Force Majeure Event on Project Operator's achievement of the Milestones (as relevant), and Project Operator must promptly provide that information to the Commonwealth; and
 - (ii) subject to paragraph (c), must confirm:
 - (A) whether the proposed extension to a Milestone Date (including the FC Sunset Date) requested by Project Operator under subparagraph (a)(i)(D) is granted; and
 - (B) if so, the new Milestone Date (including the FC Sunset Date),

by the later of:

- (C) 20 Business Days after receiving Project Operator's notice under subparagraph (a)(i); and
 - (D) 20 Business Days after receiving any further information that the Commonwealth has requested from Project Operator under subparagraph (b)(i).
- (c) If Project Operator is prevented or delayed in achieving a Milestone by the relevant Milestone Date (including Financial Close by the FC Sunset Date) due to a Force Majeure Event, then the relevant Milestone Date (including the FC Sunset Date) may be extended by one day for each day of delay caused exclusively by the Force Majeure Event (and, for clarity, not including any Concurrent Delays) in accordance with this clause ~~5.25-32~~, provided the Milestone Date (including the FC Sunset Date) may not be extended beyond the date that is 12 months after the Milestone Date (including the FC Sunset Date) set out in item 11 of the Reference Details (disregarding any extensions).

5.3 Milestone Cure Plan other than Force Majeure Event

- (a) Project Operator must notify the Commonwealth as soon as reasonably practicable after becoming aware that it will be, or is likely to be, delayed in achieving a Milestone by the relevant Milestone Date (including Financial Close by the FC Sunset Date) other than to the extent as a result of a Force Majeure Event.
- (b) If:
 - (i) Project Operator has notified the Commonwealth under paragraph (a); or
 - (ii) a Milestone has not been satisfied on or before the relevant Milestone Date (including Financial Close by the FC Sunset Date),

then the Commonwealth may at its discretion give Project Operator a notice requiring Project Operator to submit a cure plan which demonstrates that Project Operator is reasonably likely to achieve that Milestone ("**Draft Milestone Cure Plan**").

- (c) Within 30 Business Days after receiving notice from the Commonwealth under paragraph (b) or such other period agreed between the parties ("**Milestone Cure Period**"), Project Operator must submit a Draft Milestone Cure Plan to the Commonwealth that includes sufficient detail for the Commonwealth to determine (at its discretion) whether the Draft Milestone Cure Plan should be approved or rejected. The Commonwealth may request any further information from Project Operator that the Commonwealth reasonably requires in order to determine whether to approve or reject the Draft Milestone Cure Plan, and Project Operator must promptly provide that information to the Commonwealth.
- (d) Within 40 Business Days after the later of receiving the Draft Milestone Cure Plan and receiving any further information requested by the Commonwealth, the Commonwealth must use reasonable endeavours to either approve or reject the Draft Milestone Cure Plan.

- (e) If the Commonwealth approves (at its discretion) the Draft Milestone Cure Plan under paragraph (d) (“**Approved Milestone Cure Plan**”), then:
 - (i) Project Operator must comply with the Approved Milestone Cure Plan;
 - (ii) within 10 Business Days after the end of each month, Project Operator must provide to the Commonwealth a monthly report that sets out Project Operator’s progress in achieving the Approved Milestone Cure Plan; and
 - (iii) any references to the Milestone Dates (including the FC Sunset Date) will be read as being to the Milestone Dates (including the FC Sunset Date) as extended under the Approved Milestone Cure Plan.

5.4 Failure to achieve a Milestone

- (a) Subject to paragraph (b), the Commonwealth may terminate this agreement by written notice to Project Operator with immediate effect:
 - (i) if the Commonwealth does not require Project Operator to submit a Draft Milestone Cure Plan under clause ~~5.3(b)5.43(b)~~ (“Milestone Cure Plan other than Force Majeure Event”) and Project Operator does not satisfy a Milestone on or before the relevant Milestone Date (including Financial Close by the FC Sunset Date); or
 - (ii) if the Commonwealth does require Project Operator to submit a Draft Milestone Cure Plan under clause ~~5.3(b)5.43(b)~~ and Project Operator does not:
 - (A) submit a Draft Milestone Cure Plan in accordance with clause ~~5.3(c)5.43(c)~~ that is approved by the Commonwealth in accordance with clause ~~5.3(d)5.43(d)~~;
 - (B) satisfy the relevant Milestone by the relevant date set out in the Approved Milestone Cure Plan; or
 - (C) commence and comply with the Approved Milestone Cure Plan in all material respects, and does not remedy any failure to comply with the Approved Milestone Cure Plan (other than to satisfy the relevant Milestone by the relevant date, in which case subparagraph (D) applies) within 20 Business Days after notice from the Commonwealth.
- (b) The Commonwealth must not terminate this agreement pursuant to paragraph (a) if Project Operator has submitted a Draft Milestone Cure Plan to the Commonwealth under clause ~~5.3(b)5.43(b)~~ (“Milestone Cure Plan other than Force Majeure Event”) and the Commonwealth has not yet approved or rejected the Draft Milestone Cure Plan under clause ~~5.3(d)5.43(d)~~.
- (c) In addition to the Commonwealth’s right to, and notwithstanding whether the Commonwealth does not, terminate this agreement under paragraph (a), if Project Operator does not achieve Financial Close by 40 Business Days after the FC Sunset Date (“**FC Cure Period**”), then this agreement will automatically terminate with immediate effect unless:

- (i) Project Operator has submitted a Draft Milestone Cure Plan to the Commonwealth under clause ~~5.3(b)5.43(b)~~ (“Milestone Cure Plan other than Force Majeure Event”) and the Commonwealth has not yet approved or rejected the Draft Milestone Cure Plan under clause ~~5.3(d)5.43(d)~~, in which case:
 - (A) if the Commonwealth approves the Draft Milestone Cure Plan, then this agreement is not terminated pursuant to this paragraph (c) and clause ~~5.3(e)5.43(e)~~ applies, and this clause ~~5.45-54~~ will apply to any subsequent failure to achieve the relevant Milestone; or
 - (B) if the Commonwealth rejects the Draft Milestone Cure Plan, then this agreement will automatically terminate with immediate effect on the date of the rejection; or
- (ii) prior to the end of the FC Cure Period, the Commonwealth notifies (at its discretion) Project Operator that the FC Cure Period is extended by 20 Business Days, in which case this this paragraph (c) will apply at the expiry of the extended FC Cure Period.

6 Construction of Project

On and from Financial Close, Project Operator must:

- (a) construct the Project in accordance with the Social Licence Commitments, Good Industry Practice and all applicable Laws and authorisations;
- (b) use its best endeavours to satisfy the COD Conditions by the COD Target Date;
- (c) satisfy the COD Conditions by the COD Sunset Date; and
- (d) report on the construction of the Project as set out in clause 12.1 (“Development and construction reports”).

7 COD Conditions

7.1 COD Conditions

On or before the COD Sunset Date, Project Operator must ensure that:

[Notes:

- ***Paragraphs (b), (e) and (f)(ii) are to be included for Assessed Hybrid Projects only.***
- ***Paragraph(c) is to be included for all Hybrid Projects.]***

- (a) sufficient generation capacity of the Project is installed and commissioned so that the Project is capable of exporting electrical energy through the Connection Point at a level of output that is within the Accepted Capacity Tolerance, subject to energy resource availability;
- (b) [the Associated Project is installed and commissioned so that the Associated Project:

- (i) is capable of importing electrical energy through the Connection Point at a level of import that is between 95% and 105% of the Import Capacity;
- (ii) is capable of exporting electrical energy through the Connection Point at a level of import that is between 95% and 105% of the Export Capacity; and
- (iii) has an energy storage capacity that is at a level of import that is between 95% and 105% of the Storage Capacity;]

[Note: a +/- 5% tolerance on the import capacity, export capacity and storage capacity of the Associated Project is permitted.]

- (c) [[if the Associated Project Commencement Date has occurred or is expected to occur within 6 months of the satisfaction of the COD Conditions,] Project Operator has installed metering in accordance with clause 4.24.32 (“Hybrid Project metering”);]

[Note: the conditional wording (in square brackets) at the start of paragraph (c) is to be omitted for Assessed Hybrid Projects.]

- (d) the relevant network service provider has confirmed that the Project is unconditionally released from a hold point that allows the Project to export a level of output that is within the Accepted Capacity Tolerance;
- (e) [the relevant network service provider has confirmed that the Hybrid Project is unconditionally released from a hold point that allows the Hybrid Project to:
 - (i) export a level of output equal to or exceeding the Export Capacity; and
 - (ii) import a quantity of electricity equal to or exceeding the Import Capacity;]
- (f) Project Operator (or its intermediary) has been registered as [a “Market Generator” / an “Integrated Resource Provider”] (as defined in the NER) with AEMO in respect of the Project and:
 - (i) the Project is classified as a “scheduled generating unit” or “semi-scheduled generating unit” (as relevant, each as defined in the NER); and
 - (ii) [the Associated Project is classified as a “scheduled generating unit”, “semi-scheduled generating unit”, “scheduled load” and/or “scheduled bidirectional unit” (as relevant, each as defined in the NER);]
- (g) the Commonwealth has confirmed to Project Operator pursuant to clause 12.4 (“Social Licence Commitments Reporting”) that all Social Licence Commitments which are to be satisfied prior to the Commercial Operations Date have been satisfied; and
- (h) Project Operator has obtained registration as a “registered person” and accreditation of the Project as an “accredited power station” under the RE Act,

(each a “COD Condition”).

7.2 Notification of satisfaction

- (a) The COD Conditions are for the benefit of the Commonwealth and may only be waived by the Commonwealth in writing.
- (b) Project Operator must notify the Commonwealth 20 Business Days prior to the date on which it reasonably expects to achieve a COD Condition. If, after Project Operator provides that notice to the Commonwealth, the date on which Project Operator reasonably expects to achieve that COD Condition changes, then Project Operator must notify the Commonwealth promptly of the revised date.
- (c) Project Operator must notify the Commonwealth within 10 Business Days after becoming aware that it has satisfied a COD Condition. The notice must include evidence reasonably required to demonstrate that the COD Condition has been satisfied in accordance with this agreement.
- (d) Project Operator is taken to not achieve the COD Conditions unless and until Project Operator delivers to the Commonwealth:
 - (i) a report, which Project Operator has commissioned and received from an appropriately qualified independent engineering firm nominated by Project Operator and approved by the Commonwealth, and upon which the Commonwealth may rely (subject to standard and reasonable limitations of liability and qualifications which that firm imposes on such reliance in the ordinary course of its business), confirming that the COD Conditions set out in clauses 7.1(a) and 7.1(d) (“COD Conditions”) have been satisfied; and
 - (ii) certification by a director of Project Operator that the information contained in each notice from Project Operator to the Commonwealth under paragraph (c) is true and correct,

which may accompany Project Operator’s notice to the Commonwealth under paragraph (c).

7.3 Extension for Force Majeure Event prior to commercial operations

- (a) If Project Operator is, or reasonably expects that it will be, delayed in satisfying the COD Conditions by the COD Target Date or the COD Sunset Date as a result of a Force Majeure Event, then Project Operator must:
 - (i) notify the Commonwealth of the occurrence of a Force Majeure Event as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Force Majeure Event) giving reasonable details of:
 - (A) the date on which the Force Majeure Event commenced;
 - (B) the Force Majeure Event, including its expected duration;
 - (C) any COD Conditions which are delayed or expected to be delayed by the Force Majeure Event, including the extent to which they can be achieved by the COD Target Date or the COD Sunset Date (as relevant) or are adversely affected; and

- (D) subject to paragraph (c), any proposed extensions to the COD Target Date or the COD Sunset Date (as relevant) to reflect the impact of the Force Majeure Event on Project Operator's achievement of the COD Conditions;
 - (ii) keep the Commonwealth informed of any material changes or developments to the information provided to the Commonwealth in the notice under subparagraph (a)(i); and
 - (iii) use its best endeavours to overcome and mitigate the impact of the Force Majeure Event.
- (b) On receiving Project Operator's notice under subparagraph (a)(i), the Commonwealth:
- (i) may request any further information from Project Operator that the Commonwealth reasonably requires in order to assess the impact of the Force Majeure Event on Project Operator's achievement of the COD Conditions (as relevant), and Project Operator must promptly provide that information to the Commonwealth; and
 - (ii) subject to paragraph (c), must confirm:
 - (A) whether the proposed extension to the COD Target Date or the COD Sunset Date (as relevant) requested by Project Operator under subparagraph (a)(i)(D) is granted; and
 - (B) the new COD Target Date or the COD Sunset Date (as relevant),
 by the later of:
 - (C) 20 Business Days after receiving Project Operator's notice under subparagraph (a)(i); and
 - (D) 20 Business Days after receiving any further information that the Commonwealth has requested from Project Operator under subparagraph (b)(i).
- (c) If Project Operator is prevented or delayed in achieving the Commercial Operations Date by the COD Sunset Date due to a Force Majeure Event, then the COD Sunset Date may be extended by one day for each day of delay caused exclusively by the Force Majeure Event (and, for clarity, not including any Concurrent Delays) in accordance with this clause 7.3, provided the COD Sunset Date may not be extended:
- (i) in the case of a Project Force Majeure Event, beyond the date that is 18 months after the COD Sunset Date set out in item 12 of the Reference Details (disregarding any extensions); and
 - (ii) in the case of a Connection Force Majeure Event, by more than the length of delay caused by that Connection Force Majeure Event.

7.4 COD Cure Plan other than Force Majeure Event

- (a) Project Operator must notify the Commonwealth as soon as reasonably practicable after becoming aware that it will be, or is likely to be, delayed

in achieving the COD Conditions by the COD Sunset Date other than to the extent as a result of a Force Majeure Event.

- (b) If:
 - (i) Project Operator has notified the Commonwealth under paragraph (a); or
 - (ii) the COD Conditions have not been satisfied on or before the COD Sunset Date,

then the Commonwealth may at its discretion give Project Operator a notice requiring Project Operator to submit a cure plan which demonstrates that Project Operator is reasonably likely to achieve the COD Conditions (“**Draft COD Cure Plan**”).

- (c) Within 30 Business Days after receiving notice from the Commonwealth under paragraph (b) or such other period agreed between the parties (“**COD Cure Period**”), Project Operator must submit a Draft COD Cure Plan to the Commonwealth that includes sufficient detail for the Commonwealth to determine (at its discretion) whether the Draft COD Cure Plan should be approved or rejected. The Commonwealth may request any further information from Project Operator that the Commonwealth reasonably requires in order to determine whether to approve or reject the Draft COD Cure Plan, and Project Operator must promptly provide that information to the Commonwealth.
- (d) Within 40 Business Days after the later of receiving the Draft COD Cure Plan and receiving any further information requested by the Commonwealth, the Commonwealth must use reasonable endeavours to either approve or reject the Draft COD Cure Plan.
- (e) If the Commonwealth approves (at its discretion) the Draft COD Cure Plan under paragraph (d), then:
 - (i) Project Operator must comply with the COD Cure Plan;
 - (ii) within 10 Business Days after the end of each month, Project Operator must provide to the Commonwealth a monthly report that sets out Project Operator’s progress of achieving the COD Cure Plan; and
 - (iii) any references to the COD Sunset Date will be read as being to the COD Sunset Date as extended under the COD Cure Plan.

7.5 Failure to meet the COD Sunset Date

- (a) Subject to paragraph (b), the Commonwealth may terminate this agreement by written notice to Project Operator with immediate effect:
 - (i) if the Commonwealth does not require Project Operator to submit a Draft COD Cure Plan under clause 7.4(b) (“COD Cure Plan other than Force Majeure Event”) and Project Operator does not satisfy the COD Conditions on or before the COD Sunset Date; or
 - (ii) if the Commonwealth does require Project Operator to submit a Draft COD Cure Plan under clause 7.4(b) and Project Operator does not:

- (A) submit a Draft COD Cure Plan in accordance with clause 7.4(c) that is approved by the Commonwealth in accordance with clause 7.4(d);
 - (B) satisfy the COD Conditions by the relevant date set out in the COD Cure Plan; or
 - (C) commence and comply with the COD Cure Plan in all material respects, and does not remedy any failure to comply with the COD Cure Plan (other than to satisfy the COD Conditions by the relevant date, in which case subparagraph (B) applies) within 20 Business Days after notice from the Commonwealth.
- (b) The Commonwealth must not terminate this agreement pursuant to paragraph (a) if Project Operator has submitted a Draft COD Cure Plan to the Commonwealth under clause 7.4(c) (“COD Cure Plan other than Force Majeure Event”) and the Commonwealth has not yet approved or rejected the Draft COD Cure Plan under clause 7.4(d).

8 Operation and maintenance

8.1 Performance of obligations

[Note: bracketed wording is to be included for all Hybrid Projects, except for:

1. the words “(as applicable)” in paragraphs (a) and (b); and

2. paragraph (f),

which are to be omitted for Assessed Hybrid Projects.]

- (a) During the Term, Project Operator must operate and maintain the Project [and the Associated Project (as applicable)] in accordance with, and otherwise comply with:
 - (i) all applicable Laws, including laws relating to critical infrastructure, foreign investment, the environment and work health and safety; and
 - (ii) all applicable Authorisations.
- (b) During the Support Receipt Period, Project Operator must operate and maintain the Project [and the Associated Project (as applicable)]:
 - (i) as a reasonable and prudent operator; and
 - (ii) in accordance with Good Industry Practice.
- (c) Subject to paragraph (d), Project Operator must use its best endeavours (including incurring reasonable costs) to:
 - (i) during the Support Period, maximise Sent Out Generation in any Trading Interval where the Floating Price is greater than \$0/MWh;
 - (ii) during the Support Receipt Period, maximise the Quarterly Net Operational Revenue and Annual Net Operational Revenue; and

- (iii) during the Support Receipt Period, operate, contract, bid and dispatch the Project in accordance with market signals for a project of its nature as if it were a stand-alone project and not operated as part of a portfolio of assets.
- (d) [During the Term, Project Operator must:
 - (i) appoint a suitably qualified independent third-party (that is approved by the Commonwealth acting reasonably) to:
 - (A) review, analyse and assess all sub-metering data (including any other relevant data including the National Metering Identifier) including any relevant details of the sub-meters relating to their calibration and quality and provide calculations for the sub-metering and telemetry requirements at the relevant sub-metering points to accurately account for Sent Out Generation of the Project, including providing this data and calculations in a form, resolution and manner reasonably required by the Commonwealth; and
 - (B) ensure that the metering and measuring arrangement for the Project allows for the measurement or calculation of energy flows and the determination of the Sent Out Generation of the Project and the Notional Quantity for each Trading Interval;
 - (ii) ensure that the accuracy of any metering or monitoring approach for the Project satisfies the requirement of applicable Laws; and
 - (iii) ensure that the metering and monitoring approach for the Project is of sufficient accuracy to meet metering accuracy requirements specified by AEMO for meters used for settlement or dispatch of the NEM and the requirements specified by the Clean Energy Regulator for meters used to substantiate large-scale generation certificates.
- (e) If the Commonwealth is not satisfied that Project Operator has complied with paragraph (d), then the Commonwealth may refer the matter for determination by an Independent Expert under clause 27.6 ("Independent Expert").
- (f) Prior to the Associated Project Commencement Date:
 - (i) paragraphs (a) and (b) will apply to the Project only; and
 - (ii) paragraphs (d) and (e) will not apply.]

8.2 Registration

- (a) If:
 - (i) a new market is established in the NEM, or a market is established outside of the NEM, in which the Project is entitled to provide services; and
 - (ii) it is consistent with industry practice for projects which are similar to the Project to provide those services,

Project Operator must register or take such action as is required to entitle it to participate in that market unless there are reasonable technical, legal, commercial or financial reasons for not doing so.

- (b) If requested by the Commonwealth, Project Operator must provide details of the reason(s) why it has decided not to register or otherwise provide services in a particular market together with reasonable supporting evidence.
- (c) Project Operator will provide any documentation and other information requested by the Commonwealth in connection with applicable “know your customer” checks or similar identification procedures under all applicable Laws pursuant the Project, in circumstances in which necessary information is not already available to the Commonwealth.

8.3 Project Operator is a special purpose vehicle

[Note: this special purpose vehicle requirement applies to the Project as a whole.]

- (a) Subject to paragraph (b), Project Operator must:
 - (i) be a special purpose vehicle established for the sole purpose of carrying on the Project and the business and activities contemplated by this agreement;
 - (ii) not carry on, or have previously carried on prior to the Signing Date, any other business or activity other than the Project or the business and activities contemplated by or reasonably incidental to this agreement;
 - (iii) own, or otherwise hold in its name, the Project, including all assets, legal rights and Authorisations reasonably required to carry on the Project; and
 - (iv) receive all revenue generated by, and other economic value associated with, the Project, including being the counterparty to all revenue contracts and other revenue arrangements in respect of the Project;
 - (v) not hold, acquire or create any Subsidiary without the Commonwealth’s prior written consent; and
 - (vi) without limiting clause 23.4 (“Change in Control”), as soon as practicable after the occurrence of the change:
 - (A) notify the Commonwealth of changes in the ownership of Project Operator since the assessment of the Tender; and
 - (B) provide to the Commonwealth updated group structuring diagrams since the assessment of the Tender.
- (b) Despite paragraph (a), Project Operator may enter into a contract or other arrangement (including as part of a Wholesale Contract) with another person:
 - (i) for that person to be registered as “intermediary” (as defined in the NER) for Project Operator in respect of the Project (“**Permitted Intermediary Contract**”); or

- (ii) to enter into a “reallocation” (as defined in the NER) involving that other person in respect of the Project,

(“**Permitted Arrangement**”).

- (c) If there is a Permitted Arrangement, then:

- (i) in respect of a Permitted Intermediary Contract with a Related Body Corporate of Project Operator (“**RBC Intermediary Contract**”), any revenue that would have been Spot Market Revenue or Uncontracted Spot Market Revenue (as applicable) had Project Operator not entered into that Permitted Intermediary Contract and registered as a market participant (as defined in the NER) in respect of the Project (“**Permitted Intermediated Revenue**”), is deemed to be Spot Market Revenue or Uncontracted Spot Market Revenue (as applicable) and must be reported by Project Operator to the Commonwealth in accordance with clause 12.3 (“Revenue reporting”); and

- (ii) in respect of a Permitted Arrangement other than an RBC Intermediary Contract, any payments received from that other party to the Permitted Arrangement (“**Permitted Arrangement Revenue**”) is deemed to be:

- (A) if the Permitted Arrangement is part of an Eligible Wholesale Contract, then Eligible Wholesale Contract Revenue; or

- (B) in all other cases, Other Market Revenue.

[Note: Project Operator is permitted to enter into intermediary and reallocation arrangements. If the intermediary arrangement is with a Related Body Corporate, then the NEM revenues of the intermediary for the Project will be counted towards Project Operator’s revenues in determining the amount of Support under Schedule 1 (“~~Support terms~~Support terms”). In all other cases, any payments from the third party to Project Operator under the Permitted Arrangement (but not the NEM revenues) will count towards Project Operator’s revenues.]

Form

8.4 Annual Maintenance Program

- (a) At least 20 Business Days prior to the start of any Financial Year during the Support Receipt Period, Project Operator must provide to the Commonwealth with an annual maintenance program that complies with Project Operator’s obligations under clause 8.5(a) (“Maintenance”) (“**Annual Maintenance Program**”).

- (b) Within 20 Business Days after receipt of an Annual Maintenance Program, the Commonwealth may request any changes that it considers (acting reasonably) are in the best long-term financial interests of electricity customers in the Relevant Jurisdiction or otherwise required to meet the requirements of this agreement or any applicable Law (including compliance with the Social Licence Commitments and any applicable work health and safety and environmental obligations).

- (c) If the Commonwealth requests a change to an Annual Maintenance Program in accordance with paragraph (b), then Project Operator must:

- (i) consider (acting reasonably and in good faith) the requested changes; and

- (ii) resubmit or confirm (as applicable) the Annual Maintenance Program,

within 20 Business Days after the Commonwealth's request.

8.5 Maintenance

- (a) Unless otherwise consented to by the Commonwealth, during the Support Receipt Period, Project Operator must use its best endeavours to schedule and undertake at times outside of the Peak Period, any planned maintenance that is reasonably likely to affect the available capacity of the Project.
- (b) Nothing in this clause 8.5 prevents Project Operator from undertaking emergency maintenance or repairs in accordance with Good Industry Practice that are:
 - (i) necessary to prevent injury or damage to the environment or equipment; or
 - (ii) required to maintain manufacturer's warranties,and cannot reasonably be rescheduled or deferred.

8.6 Adjustment to Peak Periods

If the Commonwealth considers that an adjustment to the Peak Period is appropriate to reflect changes in electricity demand and peak Spot Prices applicable in the Relevant Jurisdiction, then the Commonwealth may, by giving at least 3 years' prior notice to Project Operator, make such adjustment, provided that the duration of the Peak Period cannot exceed 4 months in a year.

9 Insurance

- (a) Project Operator must, at its sole cost, take out and maintain (or cause to be taken out and maintained) at all times insurance policies in relation to the Project consistent with Good Industry Practice, including but not limited to (as applicable):
 - (i) in the period commencing on the Signing Date and ending on the Commercial Operations Date, contract works insurance for the replacement value of the Project, including coverage for material and equipment in transit and all common construction risks;
 - (ii) in the period commencing on the Commercial Operations Date and ending on the Final Support End Date, all risks insurance for the replacement value of the completed Project property;
 - (iii) throughout the Term, public and products (completed operations) liability insurance for at least \$20 million for each and every occurrence and in the annual aggregate regarding product liability and completion operations;
 - (iv) throughout the Term, workers' compensation insurance as required by Law; and

- (v) throughout the Term, motor vehicle liability insurance as required by Law,

(“**Insurance Policies**”). Each Insurance Policy must be taken out with an insurer that has an Acceptable Credit Rating.

- (b) Project Operator must maintain the Insurance Policies until the end of the relevant period specified in paragraph (a).
- (c) The Commonwealth may request certificates of currency issued by the relevant insurers or any other documentation evidencing that the insurance policies have been effected, that all premiums have been paid and that no unusual exclusions or special conditions apply. The Commonwealth may not exercise its right under this clause more than once in any 12 month period.
- (d) Within 10 Business Days after receiving the Commonwealth’s request under paragraph (a), Project Operator must provide such certificates or other documentation requested by the Commonwealth.

10 Alterations to the Project

10.1 Material Alterations

During the Term, Project Operator must not, and must procure that its Related Bodies Corporate do not, commence, agree to or permit any Material Alteration of the Project without the Commonwealth’s prior written consent.

10.2 Commonwealth consent to a Material Alteration

The Commonwealth must not unreasonably withhold or delay its consent to a Material Alteration if:

- (a) Project Operator has provided to the Commonwealth details of:
 - (i) the proposed Material Alteration;
 - (ii) any change to the capacity, availability or generation profile of the Project that would result from the Material Alteration;
 - (iii) any outages that would result from the Material Alteration;
 - (iv) any impact of the proposed Material Alteration on Project Operator’s ability to carry out its obligations under this agreement; and
 - (v) any further information reasonably required by the Commonwealth (which must be provided promptly by Project Operator following a request from the Commonwealth);
- (b) the Commonwealth determines (acting reasonably) that the Material Alteration will not materially and adversely impact:
 - (i) the Commonwealth’s rights and obligations in relation to this agreement, including the Commonwealth’s expected financial outcomes under this agreement and any agreement it has entered into with a third party in relation to this agreement; or

- (ii) Project Operator's performance of the Social Licence Commitments; and
- (c) if the Material Alteration involves the installation of a new energy storage system behind the Connection Point, then:
 - (i) Project Operator agrees to amend the Project Documents to the reasonable satisfaction of the Commonwealth to give effect to the following principles:
 - (A) the amendments to the Project Documents must substantially preserve the intended operation and effect of the Project Documents and the relevant risk and commercial positions of the parties under those Project Documents as at the date of the agreement;
 - (B) the Project Documents must account for:
 - (aa) losses associated with any infrastructure between the shared Connection Point and the point at which electricity volumes from the Project and the new energy storage system are measured; and
 - (ab) in respect of energy generated by the Project that is imported by the new energy storage system prior to export to the Network, any losses associated with the discharge efficiency of the new energy storage system (to reflect that these losses will occur before that energy is exported through the Connection Point);
 - (C) the Apportionment Principles must be adopted, to the extent that apportionment between the Project and the new energy storage system is required;
 - (D) Project Operator must provide such additional reporting as is reasonably required by the Commonwealth, including reporting on apportionment of Green Products and Capacity Products and the basis for apportionment; and
 - (E) any arrangements between the Project and the new system must be properly documented and entered into on arms' length terms; and
 - (ii) the metering arrangements for the Project and the new energy systems must be:
 - (A) to a standard, and located in a position, acceptable to the Commonwealth (acting reasonably) to allow for the measurement or calculation of energy flows for the Project and creation of applicable Green Products or Capacity Products; and
 - (B) of sufficient accuracy to meet the metering accuracy requirements specified by AEMO for meters used for settlement of the NEM.

11 Social Licence Commitments

11.1 Performance

- (a) During the Term, Project Operator must:
 - (i) perform the Social Licence Commitments;
 - (ii) report on its compliance with and achievement of the Social Licence Commitments in accordance with clause 12.4 (“Social Licence Commitments Reporting”); and
 - (iii) promptly notify the Commonwealth if it fails, or becomes likely to fail, to comply with or achieve any of the Social Licence Commitments.
- (b) Project Operator must publish its Social Licence Commitments within 20 Business Days after the Signing Date.
- (c) Project Operator agrees that the Commonwealth may, from time to time, publish a report on its website with details of:
 - (i) the Social Licence Commitments achieved by Project Operator; and
 - (ii) Project Operator’s progress against its Social Licence Commitments.

11.2 Audit

The Commonwealth may, at any time, request an audit of Project Operator’s compliance with and performance of the Social Licence Commitments, in accordance with clause 32.4 (“Right to access and audit”).

11.3 Notice of non-compliance

If, following:

- (a) the receipt of Project Operator’s report and any additional information requested by the Commonwealth under clause 12.4 (“Social Licence Commitments Reporting”);
- (b) the expiry of the 20 Business Day period in which Project Operator must provide any additional information requested by the Commonwealth under clause 12.4 (“Social Licence Commitments Reporting”), whether or not Project Operator has provided the additional information requested by the Commonwealth under clause 12.4; or
- (c) the completion of an audit of Project Operator’s performance or compliance with its Social Licence Commitments in accordance with clause 32.4 (“Right to access and audit”),

the Commonwealth determines (acting reasonably) that Project Operator is not complying with, or performing, the Social Licence Commitments, then the Commonwealth may give a notice to Project Operator which:

- (d) specifies each Social Licence Commitment with which Project Operator has failed to comply; and

- (e) may specify whether the Commonwealth considers Project Operator's non-compliance to be not remediable, in which case the Commonwealth will provide reasonable details of its reasons.

11.4 Cure

- (a) As soon as reasonably practicable, and in any case within 20 Business Days after receiving a notice under clause 11.3 ("Notice of non-compliance"), Project Operator must submit a cure plan to the Commonwealth in relation to the non-compliance identified by the Commonwealth ("**Draft SLC Cure Plan**").
- (b) A Draft SLC Cure Plan must set out:
 - (i) the progress made by Project Operator in satisfying the relevant Social Licence Commitment;
 - (ii) Project Operator's best estimate of when the non-compliance will be remedied (using its best endeavours), when that estimate is provided on the basis that Project Operator is required to remedy that non-compliance as soon as reasonably practicable (including a reasonable period for contingency); and
 - (iii) if Project Operator or the Commonwealth considers that a non-compliance cannot be remedied, an alternative proposal to the Social Licence Commitment. The alternative proposal may include an alternative to the relevant Social Licence Commitment which is of equivalent or greater merit for the Commonwealth than the Social Licence Commitment that has not been performed.
- (c) If the non-compliance that cannot be remedied relates only to a part of that Social Licence Commitment, then the Draft SLC Cure Plan may relate to that part of the relevant Social Licence Commitment.
- (d) The Commonwealth will determine (acting reasonably) whether any proposed alternative to the Social Licence Commitment is acceptable to the Commonwealth, having regard to the original Social Licence Commitment and taking into account the merit criteria applied by the Commonwealth to the assessment of the Tender.
- (e) Within 60 Business Days after the later of receiving the Draft SLC Cure Plan and receiving any further information requested by the Commonwealth, the Commonwealth must use reasonable endeavours to either approve or reject that Draft SLC Cure Plan. Without limitation, it will be unreasonable for the Commonwealth to reject the Draft SLC Cure Plan if it:
 - (i) is prepared in accordance with the requirements of this agreement;
 - (ii) identifies reasonable steps which, if implemented by Project Operator, will remedy Project Operator's failure to comply with its Social Licence Commitments;
 - (iii) identifies a date for the satisfaction of the relevant Social Licence Commitments, which is as soon as reasonably practicable (including a reasonable period for contingency) after Project Operator submits the Draft SLC Cure Plan to the Commonwealth;

- (iv) demonstrates that Project Operator will be able to satisfy the relevant Social Licence Commitments on or before the proposed revised dates or includes an alternative proposal which is of equivalent or greater merit than that Social Licence Commitment; and
 - (v) identifies the changes that need to be made to Schedule 2 (“Social Licence Commitments”) including changes to the values attributed to the affected Social Licence Commitments in Schedule 2.
- (f) If the Commonwealth rejects a Draft SLC Cure Plan, then:
- (i) the Commonwealth will provide reasonable details of its reasons and may suggest amendments to the Draft SLC Cure Plan, which may include an assessment of the merit of any alternative proposal made by Project Operator pursuant to subparagraph (b)(iii); and
 - (ii) as soon as reasonably practicable, and in any case within 20 Business Days after the Draft SLC Cure Plan is rejected, Project Operator must amend and resubmit the Draft SLC Cure Plan to the Commonwealth for approval.
- (g) When Project Operator submits an amended Draft SLC Cure Plan pursuant to subparagraph (f)(ii):
- (i) paragraphs (d) and (e), but not paragraph (f), will apply to the amended Draft SLC Cure Plan;
 - (ii) in determining whether to approve or reject that amended Draft SLC Cure Plan, the Commonwealth may only:
 - (A) review and provide comments on:
 - (aa) the new and/or amended information provided by or on behalf of Project Operator with that amended Draft SLC Cure Plan;
 - (ab) previous information supplied in relation to the relevant Draft SLC Cure Plan which is impacted by that new and/or amended information; and
 - (ac) any information in the Draft SLC Cure Plan which is impacted by any new circumstances which have arisen after the submission of the first version of the relevant Draft SLC Cure Plan; and
 - (B) approve or reject that amended Draft SLC Cure Plan based on that new and/or amended information, the previous information which has been impacted by that new and/or amended information and those new circumstances.
- (h) If the Commonwealth approves a Draft SLC Cure Plan under paragraph (e) or paragraph (g) (**Approved SLC Cure Plan**), then:
- (i) Project Operator must comply with the Approved SLC Cure Plan, including using its best endeavours to address the non-compliance with the identified Social Licence Commitments as

expeditiously as is reasonable and in any case within the period identified in the Approved SLC Cure Plan; and

- (ii) Schedule 2 (“Social Licence Commitments”) will be taken to be varied as set out in the Approved SLC Cure Plan.

11.5 Termination for failure to comply with Social Licence Commitments

- (a) Subject to paragraph (b), the Commonwealth may terminate this agreement by written notice to Project Operator with immediate effect if Project Operator does not:
 - (i) submit or resubmit a Draft SLC Cure Plan that is approved by the Commonwealth in accordance with clause 11.4 (“Cure”);
 - (ii) commence performing and then comply with the Approved SLC Cure Plan in all material respects, and does not remedy that failure to comply with the Approved SLC Cure Plan within 10 Business Days after receipt of notice from the Commonwealth;
 - (iii) pay an applicable SLC Abatement Amount in accordance with clause 11.6 (“Abatements for non-compliance”).
- (b) The Commonwealth must not terminate this agreement pursuant to paragraph (a) if Project Operator has submitted a Draft SLC Cure Plan to the Commonwealth under clause 11.4(a) (“Cure”) and the Commonwealth has not yet approved or rejected the Draft SLC Cure Plan under clause 11.4(e) (“Cure”).

11.6 Abatements for non-compliance

- (a) In the event that the Commonwealth determines:
 - (i) under clause 11.3(e) (“Notice of non-compliance”) that Project Operator’s non-compliance with the Social Licence Commitments”) is non-remediable;
 - (ii) under clause 11.4(e) (“Cure”) that Project Operator’s non-compliance with Social Licence Commitments will not be adequately remedied by a Draft SLC Cure Plan and either Project Operator:
 - (A) does not submit an amended Draft SLC Cure Plan within 20 Business Days after the Draft SLC Cure Plan is rejected by the Commonwealth; or
 - (B) does submit an amended Draft SLC Cure Plan within 20 Business Days after the Draft SLC Cure Plan is rejected by the Commonwealth, but that amended Draft SLC Cure Plan is rejected by the Commonwealth under clause 11.4(g),
 - (iii) under clause 11.4(e) (“Cure”) to approve a Draft SLC Cure Plan or under clause 11.4(g) to approve an amended Draft SLC Cure Plan, but Project Operator then fails to comply with the Approved SLC Cure Plan,

then SLC abatements may be assessed by the Commonwealth. The amount of any SLC Abatement Amount will be determined based on the value of the Social Licence Commitment(s) with which Project Operator

has not complied, as set out in Schedule 2 (“Social Licence Commitments”), in addition to a reasonable estimate of the potential or actual harm or loss to the Commonwealth and the community’s interest if that Social Licence Commitment is not achieved.

- (b) If there is partial non-compliance, because Project Operator has made substantial but incomplete progress towards fulfilling a Social Licence Commitment, then the Commonwealth may determine the SLC Abatement Amounts on a pro-rata basis.
- (c) The method for calculating SLC Abatement Amounts on a pro-rata basis will be based on the values specified in Schedule 2 (“Social Licence Commitments”) and the Commonwealth’s assessment (acting reasonably) of:
 - (i) the degree of achievement; and
 - (ii) the potential or actual harm or loss to the Commonwealth and the community’s interest associated with partial non-compliance.
- (d) If an SLC Abatement Amount is determined by the Commonwealth under this clause 11.6 (“11.5(b)”), the Commonwealth may issue an SLC Abatement Notice to Project Operator setting out the calculation of the SLC Abatement Amount, and that amount will be applied as an adjustment to the Invoice(s) in accordance with clause 16.1 (“Billing”), and if that amount has not been so applied by 90 days after the date on which the SLC Abatement Notice is issued by the Commonwealth, the relevant SLC Abatement Amount will be a debt due to the Commonwealth.

12 Reporting

12.1 Development and construction reports

- (a) Prior to the Commercial Operations Date, Project Operator must provide, within 20 Business Days after the end of each quarter, a quarterly report that sets out the following information with reasonable supporting details:
 - (i) the progress of achieving the Milestones as against the relevant Milestone Date, including any matter which could cause Project Operator to not achieve a Milestone by the relevant Milestone Date;
 - (ii) the progress of construction and information about events Project Operator considers may prevent the satisfaction of the COD Conditions by the COD Sunset Date;
 - (iii) the progress in obtaining Authorisations required for the construction and operation of the Project;
 - (iv) any proposed changes to the scope of the Project;
 - (v) any work health and safety incidents, near misses or risks to health and safety involving, or involving the potential for, death, serious injury or illness or a dangerous incident as defined by Part 3 of the WHS Act;
 - (vi) complaints received by Project Operator or made to any Authorities, or legal or regulatory proceedings, in relation to the Project;

- (vii) any matter which constitutes a material breach, or could constitute a material breach, of Project Operator's obligations under this agreement; and
 - (viii) any other matter reasonably requested in writing by the Commonwealth, which may include information that is reasonably necessary for the Commonwealth to discharge its rights and obligations under this agreement.
- (b) A quarterly report provided by Project Operator under paragraph (a) must be:
- (i) in a reporting format specified by the Commonwealth (acting reasonably) from time to time; and
 - (ii) certified by a director of Project Operator to be true and correct.
- (c) Project Operator must notify the Commonwealth:
- (i) within 1 day (if possible) and, in any case within no longer than 1 Business Day, of Project Operator becoming aware of the occurrence of a death or serious injury related to the Project;
 - (ii) within 2 Business Days, of Project Operator becoming aware of any breach of Project Operator's material obligations under this agreement; and
 - (iii) within 2 Business Days, of Project Operator becoming aware of the occurrence of:
 - (A) a dangerous incident (or any other incident notified or notifiable to an Authority under any applicable WHS Law); or
 - (B) a complaint made or incident reported to Project Operator or an Authority in relation to contamination, environmental harm or breach of any applicable environmental Law.

12.2 Operating reports

- (a) On and from the Commercial Operations Date, within 20 Business Days after the end of each Financial Year, Project Operator must provide to the Commonwealth a report, in the form prescribed by the Commonwealth, setting out:
- (i) the Sent Out Generation (in MWh) on a month-by-month basis during that Financial Year;
 - (ii) the loss factors that applied to the Project for that Financial Year;
 - (iii) the quantity of any Lost Generation (in MWh) or PFME Generation (in MWh) during that Financial Year; and
 - (iv) the number of Green Products and Capacity Products (if any) which were created, or referable to electricity generated or capacity available from the Project, during that Financial Year.

- (b) Project Operator must notify the Commonwealth:
 - (i) within 1 day (if possible) and, in any case within no longer than 1 Business Day, of Project Operator becoming aware of the occurrence of a death or serious injury related to the Project;
 - (ii) within 2 Business Days, of Project Operator becoming aware of any breach of Project Operator's material obligations under this agreement; and
 - (iii) within 2 Business Days, of Project Operator becoming aware of the occurrence of:
 - (A) a dangerous incident (or any other incident notified or notifiable to an Authority under any applicable work health and safety Law); or
 - (B) a complaint made or incident reported to Project Operator or an Authority in relation to contamination, environmental harm or breach of any applicable environmental Law.

12.3 Revenue reporting

- (a) On and from the Support Start Date, within 20 Business Days after the end of each quarter during the Support Receipt Period, Project Operator must provide to the Commonwealth a report, in the form prescribed by the Commonwealth, setting out:
 - (i) the Quarterly Net Operational Revenue for the quarter;
 - (ii) the Quarterly Revenue Floor and the Quarterly Revenue Ceiling for the quarter;
 - (iii) if one or more Eligible Wholesale Contracts applied to any Trading Interval in the quarter pursuant to clause 15.5 ("Application of Eligible Wholesale Contract"), then:
 - (A) reasonable details of the revenue that Project Operator was entitled to receive during that quarter under the Eligible Wholesale Contracts; and
 - (B) the quantity of Sent Out Generation for that quarter that was subject to the Eligible Wholesale Contracts; and
 - (iv) if there is a Permitted Arrangement, then reasonable details of the Permitted Intermediated Revenue or Permitted Arrangement Revenue (as relevant) for the quarter.
- (b) In respect of each quarter which is the final quarter in a Financial Year during the Support Receipt Period, in addition to the information described in paragraph (a), Project Operator's report under paragraph (a) must also set out:
 - (i) the Annual Net Operational Revenue for the Financial Year;
 - (ii) the Annual Revenue Floor and the Annual Revenue Ceiling for the Financial Year; and

- (iii) if one or more Eligible Wholesale Contracts applied to any Trading Interval in the Financial Year pursuant to clause 15.5 (“Application of Eligible Wholesale Contract”), then:
 - (A) reasonable details of the revenue that Project Operator was entitled to during that Financial Year under the Eligible Wholesale Contracts; and
 - (B) the quantity of Sent Out Generation for that Financial Year that was subject to the Eligible Wholesale Contracts; and
- (iv) if there is a Permitted Arrangement, then reasonable details of the Permitted Intermediated Revenue or Permitted Arrangement Revenue (as relevant) for the Financial Year.
- (c) A quarterly report provided under paragraph (a) must be:
 - (i) in a reporting format specified by the Commonwealth (acting reasonably) from time to time; and
 - (ii) certified by a director of Project Operator to be true and correct.

12.4 Social Licence Commitments Reporting

- (a) Within:
 - (i) 20 Business Days after Project Operator satisfies all Social Licence Commitments that are to be satisfied prior to the Commercial Operations Date, Project Operator must give the Commonwealth a report demonstrating Project Operator’s compliance with those Social Licence Commitments; and
 - (ii) 30 Business Days after the end of each Financial Year, Project Operator must give the Commonwealth a report demonstrating Project Operator’s compliance with its Social Licence Commitments,

together with reasonable supporting information.
- (b) A report provided under paragraph (a) must be:
 - (i) in a reporting format specified by the Commonwealth (acting reasonably) from time to time; and
 - (ii) certified by a director of Project Operator to be true and correct.
- (c) Within 20 Business Days after receiving Project Operator’s report under subparagraph (a)(i), the Commonwealth must:
 - (i) confirm that Project Operator has satisfied all Social Licence Commitments that are to be satisfied prior to the Commercial Operations Date;
 - (ii) request any further information from Project Operator that the Commonwealth reasonably requires in order to assess whether Project Operator has complied with those Social Licence Commitments; or
 - (iii) reject that report.

- (d) If the Commonwealth requests any further information from Project Operator under subparagraph (c)(ii), then:
 - (i) within 10 Business Days after the Commonwealth's request, Project Operator must provide the requested information; and
 - (ii) within 40 Business Days after receiving the requested information from Project Operator, the Commonwealth must use reasonable endeavours to either confirm or reject Project Operator's report under subparagraph (a)(i).
- (e) If Project Operator does not provide the requested information under paragraph (d) within the applicable period, then the Commonwealth is deemed to have rejected Project Operator's report.
- (f) If the Commonwealth rejects, or is deemed to reject, Project Operator's report, then:
 - (i) unless the Commonwealth is deemed to reject Project Operator's report under paragraph (e), the Commonwealth will provide reasonable details of its reasons; and
 - (ii) within 20 Business Days after Project Operator's report is rejected, Project Operator must amend and resubmit an updated report to the Commonwealth.
- (g) Paragraphs (c), (d), (e) and (f), will apply to the updated report submitted by Project Operator pursuant to paragraph (f).

12.5 Foreign Acquisitions and Takeovers Act reporting

- (a) If:
 - (i) Project Operator receives a notice from or on behalf of the Treasurer of the Commonwealth of Australia under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) stating that the relevant Government Authority has approved an application made by Project Operator in respect of the Project and that approval is subject to certain conditions that may apply to either Project Operator or the Project; or
 - (ii) there is a change to, or satisfaction of, the conditions referred to in subparagraph (a)(i),
 then Project Operator must notify the Commonwealth within 5 Business Days of receiving such notice under subparagraph (a)(i) or of such occurrence under subparagraph (a)(ii).
- (b) Project Operator must notify the Commonwealth within 5 Business Days of becoming aware of any breach of any conditions or changed conditions notified under paragraph (a).

13 Knowledge sharing

- (a) Project Operator must provide the Knowledge Sharing Deliverables to the Commonwealth in accordance with Schedule 4 ("Knowledge sharing plan").
- (b) If Project Operator receives funding for the Project from the Australian Renewable Energy Agency or another Commonwealth Entity, then the

Commonwealth will act reasonably in agreeing any amendments to the Knowledge Sharing Deliverables to align with any equivalent obligation on Project Operator to provide knowledge sharing deliverables to those Government Authorities.

- (c) Project Operator must, acting reasonably and in good faith, categorise the Knowledge Sharing Deliverables it provides to the Commonwealth pursuant to this clause 13 as follows:
 - (i) **public information:** information that may be shared freely within the Commonwealth, with industry participants and with the public in general; or
 - (ii) **confidential information:** information that may only be shared in accordance with paragraph (d) or clause 31 (“Confidentiality”).
- (d) The Commonwealth may disclose information received pursuant to this clause 13 that is marked by Project Operator as ‘confidential information’ to the public on an aggregated and anonymised basis.
- (e) Where Project Operator submits a Knowledge Sharing Deliverable to the Commonwealth, the Commonwealth (acting reasonably) will notify Project Operator within a reasonable period of receipt of the Knowledge Sharing Deliverable as to whether or not it approves the Knowledge Sharing Deliverable for the purposes of this agreement. Without limitation, it will be unreasonable for the Commonwealth to reject that Knowledge Sharing Deliverable where it complies with the Knowledge Sharing Plan and this agreement.
- (f) Where the Commonwealth notifies Project Operator under paragraph (e) that it does not approve the Knowledge Sharing Deliverable, the Commonwealth must, at the same time, notify Project Operator of such further information or updates to the deliverable that the Commonwealth reasonably considers are required in order for the deliverable to meet the requirements of this agreement and/or the Knowledge Sharing Plan and a reasonable timeframe within which Project Operator must resubmit that Knowledge Sharing Deliverable. Where Project Operator fails to resubmit that further information or updated Knowledge Sharing Deliverable within that timeframe or the updated Knowledge Sharing Deliverable is not approved for the purposes of this agreement, that failure will be deemed to be a failure to comply with clause 13 in a material respect and clause 22.3(b) (“Termination by the Commonwealth for default”) will apply to that failure.
- (g) Without limitation, it will be unreasonable for the Commonwealth to reject a Knowledge Sharing Deliverable, further information provided by Project Operator to the Commonwealth pursuant to this clause 13 and/or any updated Knowledge Sharing Deliverable where it complies with the Knowledge Sharing Plan and this agreement.

14 Option and Support terms

[Notes:

1. The Support Period will automatically commence on the earlier of the Commercial Operations Date and the Final Support Commencement Date, and will end on the Final Support End Date, unless Project Operator exercises, or is deemed to exercise, an Option to opt-out of receiving Support for a predefined period in accordance with this clause 14.

2. To the extent the Final Support End Date is not 15 years after the Support Start Date, the reference to the number of Options, “Financial Years” and “Opt-Out Periods” in this clause 14.2 will be amended accordingly. However, if the last “Opt-Out Period” before the Final Support End Date would be less than 4 full financial years, then that “Opt-Out Period” and associated Option will be omitted entirely.]

14.1 Definitions

For the purpose of this clause 14:

(a) **Commonwealth Deficit** means where, as at the relevant date:

- (i) the total of all Quarterly Payment Amounts and Annual Adjustment Amounts paid by the Commonwealth to Project Operator prior to the relevant date; *is greater than*
- (ii) the total of all Quarterly Payment Amounts and Annual Adjustments Amounts paid by Project Operator to the Commonwealth prior to the relevant date;

(b) **Deficit Amount** means an amount equal to, as at the relevant date:

- (i) the total of all Quarterly Payment Amounts and Annual Adjustment Amounts paid by the Commonwealth to Project Operator prior to the relevant date; *less*
- (ii) the total of all Quarterly Payment Amounts and Annual Adjustments Amounts paid by Project Operator to the Commonwealth prior to the relevant date,

provided that if the Deficit Payment is a negative amount, then it is deemed to be zero;

(c) **Opt-Out Date** means, as relevant:

- (i) [the **First Opt-Out Date**, being the date that is 6 months prior to the start of the First Opt-Out Period;
- (ii) the **Second Opt-Out Date**, being the date that is 6 months prior to the start of the Second Opt-Out Period; and
- (iii) the **Third Opt-Out Date**, being the date that is 6 months prior to the start of the Third Opt-Out Period;]

(d) **Opt-Out Period** means each of, as relevant:

[Note: Project Operator cannot opt-out of receiving Support for the First Financial Year.]

- (i) [the **First Opt-Out Period**, being the period:
 - (A) commencing at the start of the **Second Financial Year**, being the Financial Year immediately after the First Financial Year; and
 - (B) ending on the day before the start of the **Seventh Financial Year**, being the Financial Year commencing 5 years after the start of the Second Financial Year;

- (ii) the **Second Opt-Out Period**, being the period:
 - (A) commencing at the start of Seventh Financial Year; and
 - (B) ending on the day before the start of the **Twelfth Financial Year**, being the Financial Year commencing 5 years after the start of the Seventh Financial Year; and
- (iii) the **Third Opt-Out Period**, being the period:
 - (A) commencing at the start of the Twelfth Financial Year; and
 - (B) ending on the Final Support End Date.

14.2 Option to not receive Support

- (a) Subject to the remainder of this clause 14.2, the Commonwealth grants Project Operator [three] options, each of which gives Project Operator the right (but not the obligation) to elect to not receive Support for an Opt-Out Period (each an “**Option**”).
- (b) Subject to paragraphs (e) and clause 14.3, Project Operator may exercise an Option to not receive Support:
 - (i) if there is no Commonwealth Deficit as at the First Opt-Out Date, or there is a Commonwealth Deficit and Project Operator complies with paragraph (c), then in respect of the First Opt-Out Period by giving written notice to the Commonwealth on or before the First Opt-Out Date;
 - (ii) if there is no Commonwealth Deficit as at the Second Opt-Out Date, or there is a Commonwealth Deficit and Project Operator complies with paragraph (c), then in respect of the Second Opt-Out Period by giving written notice to the Commonwealth on or before the Second Opt-Out Date; and
 - (iii) if there is no Commonwealth Deficit as at the Third Opt-Out Date, or there is a Commonwealth Deficit and Project Operator complies with paragraph (c), then in respect of the Third Opt-Out Period by giving written notice to the Commonwealth on or before the Third Opt-Out Date.
- (c) If there is, or Project Operator expects that there will be, a Commonwealth Deficit as at an Opt-Out Date, then:
 - (i) prior to the relevant Opt-Out Date, Project Operator may notify the Commonwealth that it will pay the Deficit Amount; and
 - (ii) if Project Operator has given notice to the Commonwealth under subparagraph (i), then, within [40] Business Days after the relevant Opt-Out Date, Project Operator must:
 - (A) pay the Deficit Amount in accordance with clause 16.2 (“Payment”); and
 - (B) provide sufficient details of the calculation of the Deficit Amount.
- (d) Any purported exercise of an Option in contravention of paragraphs (b) or (c) is void and has no force and effect.

- (e) Project Operator is deemed to exercise an Option in accordance with paragraph (b) if:
 - (i) in respect of the First Opt-Out Period, at the First Opt-Out Date;
 - (ii) in respect of the Second Opt-Out Period, at the Second Opt-Out Date; or
 - (iii) in respect of the Third Opt-Out Period, at the Third Opt-Out Date,

any of the following apply:

- (iv) Project Operator is the subject of an Insolvency Event;
- (v) if a Major Casualty Event has occurred and Project Operator has not successfully completed the reinstatement of the Project in accordance with an Approved Reinstatement Plan; or
- (vi) Project Operator is in material breach of this agreement which has not been remedied after receiving notice from the Commonwealth of that breach,

and the Commonwealth does not waive (at its discretion) the occurrence of any such event.

14.3 Terms of Support

The terms contained in Schedule 1 ("Support terms") will apply to each Financial Year (or part thereof) during the Support Receipt Period.

14.4 Final Support Commencement Date

- (a) Project Operator acknowledges that the Final Support Commencement Date represents the last date on which the Support Period must commence regardless of whether or not Project Operator has achieved the Commercial Operations Date.
- (b) Despite anything else in this agreement (including clause 19 ("Force Majeure")), the Final Support Commencement Date may not be extended or otherwise adjusted under this agreement.
- (c) Except in circumstances where the Commonwealth elects to terminate this agreement, and subject to paragraphs (d) and (e), the sole consequence of Project Operator's failure to achieve the Commercial Operations Date by the Final Support Commencement Date is limited to the Support Period commencing on the Final Support Commencement Date in accordance with the definition of that term and the amount of any Quarterly Payment Amounts and Annual Adjustment Amounts not required to be paid by the Commonwealth in those circumstances between the Final Support Commencement Date and the Commercial Operations Date.
- (d) Project Operator acknowledges and agrees that paragraph (c) does not limit the Commonwealth's rights and Project Operator's liability in respect of an event giving rise to the delay in achieving the Commercial Operations Date or the consequences of such event, other than the delay itself.

- (e) This clause 14.4 is without prejudice to:
- (i) any rights or remedies the Commonwealth may have in relation to matters arising under or in connection with this agreement (other than those specifically referred to in this clause 14.4); and
 - (ii) clauses 5 (“Financial Close”) and 7 (“COD Conditions”).

15 Eligible Wholesale Contracts

15.1 Eligibility requirements

[Note: a Wholesale Contract will be an Eligible Wholesale Contract under this agreement if the eligibility requirements in paragraphs (a) and (b) are satisfied, or the Commonwealth (at its discretion) waives any of those eligibility requirements (e.g. ~~contract price not being less than the Annual Floor, contract with a Related Body Corporate~~).

- (a) Subject to paragraph (b) an “**Eligible Wholesale Contract**” is a Wholesale Contract which:

[Note: a Wholesale Contract can be a “black-only”, “bundled black and green” or “green-only” contract as per the definition of that term in this agreement. Some of the eligibility criteria apply only to specific permutations, which is signalled in the opening words of the relevant criterion.]

- (i) in respect of a contract that relates to electricity, has been entered into by Project Operator to manage its exposure to the volatility of the Floating Price in respect of the Project, such that the contract has:
 - (A) a fixed-for-floating price structure, under which Project Operator receives a fixed price in return for paying a floating price to a counterparty; and
 - (B) a generation-following profile;
- (ii) in respect of a contract that relates to both electricity and Green Products, may include a separate price for Green Products in addition to the price payable in respect of electricity;
- (iii) requires Project Operator to sell, and not buy or buy-back, any physical or notional quantity of electricity;
- ~~(iv) in respect of a contract that relates to electricity or both electricity and Green Products, entitles Project Operator to receive a contract price (in \$/MWh) that is not less than the Annual Floor;~~
- ~~(iv)~~ (iv) has a contract tenor of at least 12 months and must be for a duration that is a multiple of 12 months;
- ~~(v)~~ (v) is not an option contract or similar arrangement whereby any volume, price or the transaction(s) contemplated under that contract take effect at the exercise of an option by either party, provided that any contract resulting from the exercise of an option will be an Eligible Wholesale Contract which satisfies the requirements of this clause (a);

~~(vii)~~(vi) complies with clause 15.6 (“Bona fide and arm’s length arrangements”);

~~(viii)~~(vii) is not with a counterparty which is a Related Body Corporate of Project Operator; and

~~(ix)~~(viii) is not a retail electricity supply contract.

- (b) A contract will not be an Eligible Wholesale Contract if the Commonwealth considers (acting reasonably) that the contract:
 - (i) is not on reasonable commercial terms; or
 - (ii) does not have the net effect of reducing the exposure of Project Operator to the volatility of the Floating Price in respect of the Project.
- (c) The Commonwealth may waive any conditions set out in paragraph (a) or (b) at its discretion, including when Project Operator has made a request under clause 15.2(a)(“Notification of Revenue Contract”).
- (d) The Commonwealth may, from time to time, provide to Project Operator guidance in relation to what information is:
 - (i) relevant to the determination of an Eligible Wholesale Contract (including the definition of “reasonable commercial terms”); and
 - (ii) required to be provided to the Commonwealth pursuant to this clause 15.1,

and Project Operator must comply with that guidance, provided that the Commonwealth may only clarify or broaden, and not narrow, the definition of an “Eligible Wholesale Contract” under this agreement.

15.2 Notification of Revenue Contract

- (a) Within 10 Business Days after the execution of a Revenue Contract, Project Operator must provide to the Commonwealth a notice setting out:
 - (i) whether or not the contract qualifies as an Eligible Wholesale Contract (including sufficient supporting details and evidence for the Commonwealth to verify whether the contract qualifies as an Eligible Wholesale Contract);
 - (ii) the tenor of that contract;
 - (iii) Project Operator’s reasonable estimate of:
 - (A) the revenue that Project Operator will be entitled to receive during the tenor of that contract; and
 - (B) the quantity and proportion of Sent Out Generation that is subject to that contract,

in each case allocated on a Financial Year basis; and

- (iv) certification by a director of Project Operator that the information contained in the notice from Project Operator to the Commonwealth under this paragraph (a) is true and correct,

in a form reasonably requested by the Commonwealth. Project Operator may include in its notice a request to the Commonwealth that the Commonwealth waive any of the conditions set out in clause 15.1(a) ("Eligibility requirements") or (b).

(b) If:

- (i) a Related Body Corporate of Project Operator is party to an Eligible Wholesale Contract; and
- (ii) Project Operator enters into a Revenue Contract with that Related Body Corporate.

("RBC Revenue Contract"), then:

- (iii) within 10 Business Days after Project Operator executes that RBC Revenue Contract, Project Operator must notify the Commonwealth that it has entered into the RBC Revenue Contract; and
- (iv) Project Operator must provide to the Commonwealth reasonable details of the RBC Revenue Contract requested by the Commonwealth (acting reasonably), which must be certified by a director of Project Operator as being true and correct.

[Note: a contract with a Related Body Corporate will only be an Eligible Wholesale Contract if the Commonwealth has waived that eligibility requirement under clause 15.1(c).]

- (c) Project Operator must not receive, or agree to receive, any upfront or lump sum or ongoing payment from a counterparty to an Eligible Wholesale Contract for the purposes of, or that has the effect of, reducing the contract price that Project Operator is entitled to receive under that Eligible Wholesale Contract.

15.3 Amendment to Eligible Wholesale Contract

If Project Operator amends or agrees to amend an Eligible Wholesale Contract (including any transfer of an Eligible Wholesale Contract) after the date of Project Operator's notice under clause 15.2(a) ("Notification of Revenue Contract"), then:

- (a) within 10 Business Days after that amendment, Project Operator must provide to the Commonwealth a notice setting out:
 - (i) all relevant details of the amendment and the reason(s) for the amendment;
 - (ii) updates to the information initially provided to the Commonwealth under clause 15.2(a) ;
 - (iii) whether or not the contract continues to qualify as an Eligible Wholesale Contract (including sufficient supporting details and evidence for the Commonwealth to verify whether the contract continues to qualify as an Eligible Wholesale Contract); and

- (iv) certification by a director of Project Operator that the information contained in the notice from Project Operator to the Commonwealth under this paragraph (a) is true and correct,

in a form reasonably requested by the Commonwealth; and

- (b) within [30] Business Days after the later of receiving the information described in paragraph (a) and receiving any further information requested by the Commonwealth, the Commonwealth must notify Project Operator of whether:
 - (i) the terms (including the contract price and volume) of the Eligible Wholesale Contract as initially notified to the Commonwealth under clause 15.2(a) will continue to apply for the contract tenor despite the amendment;
 - (ii) the updated terms of the Eligible Wholesale Contract as notified to the Commonwealth under paragraph (a) will apply from the date of the amendment for the remaining contract tenor; or
 - (iii) the amended contract will be audited pursuant to clause 15.4 (“Verification of Eligible Wholesale Contracts”).

15.4 Verification of Eligible Wholesale Contracts

- (a) The Commonwealth may, at any time after receiving the information described in clause 15.2(a) (“Notification of Revenue Contract”) or 15.3(a) (“Amendment to Eligible Wholesale Contract”), and having regard to any guidance provided by it pursuant to clause 15.1(d) (“Eligibility requirements”), verify whether the contract as notified by Project Operator is an Eligible Wholesale Contract in accordance with clause 32.4 (“Right to access and audit”).
- (b) If the Commonwealth undertakes a verification and determines (acting reasonably) that a contract notified by Project Operator as an Eligible Wholesale Contract under clause 15.2(a) (“Notification of Revenue Contract”) is not an Eligible Wholesale Contract, then the contract is deemed to not be an Eligible Wholesale Contract from the later of:
 - (i) the date of Project Operator’s notice under clause 15.2(a) or 15.3(a) (“Amendment to Eligible Wholesale Contract”) (as applicable); and
 - (ii) the date that is 2 years prior to the Commonwealth determining that the contract is not an Eligible Wholesale Contract.

15.5 Application of Eligible Wholesale Contract

~~For~~ Subject to clause 15.6(c) and 15.6(d) (“Bona fide and arm’s length arrangements”), for the purposes of items 3.3 and 4.3 of Schedule 1 (“Support terms”), an Eligible Wholesale Contract applies to a Trading Interval occurring during the tenor of that contract if that Eligible Wholesale Contract was notified to the Commonwealth under clause 15.2(a) (“Notification of Revenue Contract”) at least 3 months prior to that Eligible Wholesale Contract coming into effect.

15.6 Bona fide and arm’s length arrangements

- (a) Project Operator must not enter into any Eligible Wholesale Contract:
 - (i) unless that contract or the arrangement is entered into on a bona fide basis and on arm’s length terms; and

- (ii) if that contract or the arrangement would require Project Operator to physically or notionally sell or deliver, or otherwise contract in respect of:
 - (A) (to the extent that contract or the arrangement relates to electricity) more than 100% of Sent Out Generation, when taken together with all other Eligible Wholesale Contracts that relate to electricity,; or
 - (B) (to the extent that contract or the arrangement relates to Green Products), more than the number of Green Products able to be created by reference to 100% of Sent Out Generation, when taken together with all other Eligible Wholesale Contracts that relate to Green Products,.

(b) Project Operator acknowledges that:

- (i) the purpose of this agreement is to provide revenue support during the Support Period to support the development of the Project, unless Project Operator exercises an option to not receive Support, and is not intended to distort the market signals that would otherwise apply to the Project; and
- (ii) this agreement including this clause 15 is to be interpreted and applied consistent with that purpose.

(c) If Project Operator enters into an Eligible Wholesale Contract in contravention of subparagraph (a)(ii) (“Over-Contracted Arrangement”), then the Commonwealth may (at its discretion) notify Project Operator that:

- (i) subject to the remainder of this clause 15, the Over-Contracted Arrangement may be an Eligible Wholesale Contract, in which case paragraph (d) applies; or
- (ii) the Over-Contracted Arrangement is not an Eligible Wholesale Contract.

This paragraph (c) is without prejudice to any rights or remedies the Commonwealth may have in relation to matters arising under or in connection with this agreement (including under this clause 15 and clause 22.3 (“Termination by the Commonwealth for default”).

(d) In its notice to Project Operator under subparagraph (c)(i), the Commonwealth must set out its proposed treatment of the Eligible Wholesale Contract Revenue for Trading Intervals to which the Over-Contracted Arrangement applies (“Over-Contracted Trading Intervals”), which may include that, for the purposes of determining the Eligible Wholesale Contract Revenue under item 3.6 of Schedule 1 (“Support terms”):

- (i) all or a specified part of the Notional Quantity which is subject to that Over-Contracted Arrangement is deemed not to be subject to an Eligible Wholesale Contract; and/or
- (ii) all or a specified part of the Notional Quantity which is subject to any other Eligible Wholesale Contract that applies during the Over-Contracted Trading Intervals is deemed not to be subject to an Eligible Wholesale Contract,

such that:

- (iii) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to electricity that apply in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity; and
- (iv) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to Green Products that apply in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity.

16 Billing and payment

16.1 Billing

- (a) Project Operator must issue to the Commonwealth an invoice (which must be a Tax Invoice if GST is payable) ("**Invoice**"):
 - (i) within 40 Business Days after the end of each quarter (other than the last quarter in a Financial Year) during the Support Receipt Period, setting out:
 - (A) the sum of the Notional Quantity for each Trading Interval in the quarter;
 - (B) the Quarterly Payment Amount (if any) payable by either the Commonwealth or Project Operator for the quarter;
 - (C) any adjustments to any previous Invoices under clause 16.4 ("Adjustments");
 - (D) any other amounts payable by either party under this agreement in respect of the quarter, including any SLC Abatement Amount payable by Project Operator to the Commonwealth;
 - (E) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
 - (F) the net amount of the above sums payable by either the Commonwealth or Project Operator; and
 - (ii) within 40 Business Days after the end of each Financial Year during the Support Receipt Period, setting out:
 - (A) the sum of the Notional Quantity for each Trading Interval in the Financial Year;
 - (B) the Annual Adjustment Amount (if any) payable by either the Commonwealth or Project Operator for the Financial Year;
 - (C) any adjustments to any previous Invoices under clause 16.4 ("Adjustments");
 - (D) any other amounts payable by either party under this agreement in respect of the Financial Year;

- (E) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
- (F) the net amount of the above sums payable by either the Commonwealth or Project Operator,

(each an “**Invoiced Sum**”).

(b) On request by the Commonwealth, Project Operator must provide:

- (i) each relevant “final statement” (as defined in the NER) and Revised Statement provided by AEMO in respect of the Project; and
- (ii) any other information or evidence reasonably required by the Commonwealth to verify an Invoice.

16.2 Payment

- (a) If an Invoiced Sum is payable by a party, then that party must pay the Invoiced Sum on the date which is 20 Business Days after the date of the Invoice.
- (b) Unless otherwise agreed, all payments to be made under this agreement must be paid by depositing clear and available funds to a nominated bank account (which must be with an ‘Authorised Deposit Taking Institution’ registered with the Australian Prudential Regulatory Authority) of the Commonwealth or Project Operator (as applicable).

16.3 Disputed Invoice

- (a) If a party that is required to pay an amount under an Invoice reasonably believes the Invoice or any component of the Invoice does not comply with the requirements of this agreement, then:
 - (i) it must notify the other party of the issues in dispute (including the “**Disputed Amount**”) and provide a statement of its reasons for disputing the Invoice; and
 - (ii) if a party is required to pay an Invoiced Sum, then that party must pay that part of the Invoiced Sum which is not in dispute.
- (b) If a party notifies the other party of any issue in dispute (including any Disputed Amount), then the parties must meet as soon as practicable, and in any event within 10 Business Days after receiving the notice, to discuss the issues in dispute (including any Disputed Amount).
- (c) If following the meeting described in paragraph (b) the parties have not agreed a resolution in respect of the issues in dispute (including any Disputed Amount), then either party may refer the matter for determination by an Independent Expert under clause 27.6 (“Independent Expert”).
- (d) A party must pay any Disputed Amounts within 10 Business Days after the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in respect of the Disputed Amount.

16.4 Adjustments

- (a) Subject to paragraph (c), Project Operator will adjust an Invoice to the extent required to reflect any changes to the inputs that were used to determine that Invoice, including any change under a Revised Statement.
- (b) Project Operator must include any adjustments in the next prepared Invoice.
- (c) Other than adjustments for Revised Statements, no adjustment will be made to an Invoice more than 3 years after the end of the quarter or Financial Year that is the subject of the Invoice.

16.5 Interest on late payments

- (a) Subject to paragraph (b), if an amount payable by a party under this agreement (including an amount determined to be payable as the result of a Dispute) was not paid by the due date, then interest will accrue (and, unless waived or less than \$100, will be payable) on the unpaid amount from day to day at the Default Interest Rate from (and including) the date the original payment was due and payable to:
 - (i) in the case of a Disputed Amount, the later of the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in respect of the Disputed Amount and the date on which that part of the Disputed Amount which the parties have agreed or the Independent Expert has determined is paid; or
 - (ii) otherwise, the date the unpaid amount is paid in full.
- (b) Notwithstanding anything to the contrary in this agreement, a Termination Payment will be deemed to be due and payable and interest will accrue on the unpaid amount of a Termination Payment from day to day at the Default Interest Rate from (and including) the date which is 60 Business Days after this agreement is terminated until that unpaid amount is paid.

16.6 Project Settlements Ready Data

- (a) Project Operator:
 - (i) agrees that the Commonwealth will require access to Settlements Ready Data relating to the Project [and the Associated Project (as applicable)] on a periodic basis; and ***[Note: bracketed wording to be included for all Hybrid Projects, except that the words "(as applicable)" are to be omitted for Assessed Hybrid Projects.]***
 - (ii) consents to the Commonwealth requesting that data from AEMO, and AEMO providing it to the Commonwealth.
- (b) Project Operator must take all reasonable steps required by the Commonwealth and AEMO to enable the Commonwealth to obtain access to the Settlements Ready Data relating to the Project from AEMO.

17 Taxes

Subject to clause 18 (“GST”), as between the Commonwealth and Project Operator, Project Operator will be solely liable for payment of all taxes, duties and levies (including corporate taxes, personal income tax, fringe benefits tax, payroll tax, stamp duty, withholding tax, PAYG, turnover tax and excise and import duties, and any Subcontractor’s taxes) which may be imposed on Project Operator in relation to any payments made to, or transactions entered into by, Project Operator under this agreement or in furtherance of the Project.

18 GST

18.1 Definitions and interpretation

For the purposes of this clause 18:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 18, unless the contrary intention appears; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Law applies is to be treated as if it were a separate supply.

18.2 GST exclusive

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

18.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made in connection with this agreement, then the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (“**GST Amount**”).
- (b) Subject to the prior receipt of a Tax Invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

18.4 Adjustment events

If an adjustment event arises for a supply made in connection with this agreement, then the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

18.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this agreement which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of

which the other party is a member) is entitled. If the reduced payment is consideration for a Taxable Supply, then clause 18.3 ("Payment of GST") applies to the reduced payment.

19 Force Majeure

19.1 Definition of Project Force Majeure Event

- (a) Subject to paragraph (b), a "**Project Force Majeure Event**" is an event or circumstance, or combination of events or circumstances, occurring after the Signing Date that:
- (i) is not within the reasonable control of Project Operator; and
 - (ii) Project Operator could not have avoided, mitigated, remedied or overcome through the exercise of reasonable care, compliance with its obligations under this agreement and Good Industry Practice,
- including:
- (iii) a Major Casualty Event; and
 - (iv) any curtailment or congestion affecting the availability of the Network,
- that satisfies the above criteria.
- (b) For the purposes of paragraph (a), the following do not constitute a Project Force Majeure Event:
- (i) lack of funds, financial hardship, failure or inability of any person to pay any sum due and payable, or the inability of Project Operator (or any of its Related Bodies Corporate) to obtain financing or insurance or to profit or achieve a satisfactory rate of return;
 - (ii) a shortage or delay in delivery of materials, consumables, equipment or utilities required by Project Operator or any failure by Project Operator to hold sufficient stock of spares, except to the extent it is itself caused by a Project Force Majeure Event;
 - (iii) a malfunction, temporary unavailability, breakdown or failure of Project Operator's equipment, property or assets caused by normal wear and tear;
 - (iv) any event or circumstance arising due to a failure by Project Operator, any of its Related Bodies Corporate or any of their respective employees, agents or Subcontractors to take reasonable measures to maintain, secure and protect any equipment, property or asset in accordance with Good Industry Practice, except to the extent it is itself caused by a Project Force Majeure Event;
 - (v) strikes, industrial disputes or other industrial actions or disruption that only affect Project Operator or any group of companies of which it is a part;
 - (vi) failure by any person (other than the other party to this agreement) to perform an obligation, except where such failure

is caused by any event or circumstance that, if such event or circumstance had happened to Project Operator, would have been a Project Force Majeure Event under this agreement;

- (vii) delay in obtaining any Authorisation required to be held by a party to perform its obligations under this agreement;
- (viii) any lack or excess of any natural resource at the site of the Project;
- (ix) wet or inclement weather (other than extreme storms, floods, hurricanes, cyclones, tornados, typhoons, tsunamis, ice and ice storms); or
- (x) a Connection Force Majeure Event.

19.2 Definition of Connection Force Majeure Event

A “**Connection Force Majeure Event**” occurs if the Project is ready to be energised and there is a delay in the commissioning of the Project in accordance with the NER to a level that would allow Project Operator to export a volume of electricity that is within the Accepted Capacity Tolerance, that:

[Note: see comment on clause 7.1(d) in respect of bracketed tolerance.]

- (a) is not within the reasonable control of Project Operator;
- (b) Project Operator could not have avoided through the exercise of reasonable care and compliance with its obligations under this agreement and Good Industry Practice; and
- (c) solely relates to the connection of the Project to the Network and/or the commissioning of the Project in accordance with the NER, and not to the construction of the Project.

19.3 Notification of Force Majeure Event

If the performance of the obligations of Project Operator or the operation of the Project are impacted or affected by a Project Force Majeure Event, then Project Operator must:

- (a) notify the Commonwealth of the occurrence of the Project Force Majeure Event as soon as reasonably practicable (and no later than 20 Business Days after the commencement of the Force Majeure Event) giving reasonable details of:
 - (i) the circumstances constituting the Force Majeure Event;
 - (ii) the impact of the Force Majeure Event;
 - (iii) if known, the likely duration of those circumstances and that impact; and
 - (iv) the actions being taken to mitigate the Force Majeure Event; and
- (b) provide an update to the Commonwealth every two weeks, or such other frequency as is requested by the Commonwealth, on the impact of, and the actions being taken to mitigate, the Project Force Majeure Event.

19.4 Suspension of obligations

If a Project Force Majeure Event occurs on or after the Commercial Operations Date and Project Operator notifies the Commonwealth of its occurrence in accordance with clause 19.3 (“Notification of Force Majeure Event”), then the rights and obligations of Project Operator under this agreement (other than rights and obligations to pay or receive any amounts of money accrued or due and payable or which will become due and payable under this agreement) will be suspended to the extent the ability of Project Operator to perform such obligations is exclusively affected by the Project Force Majeure Event (and, for clarity, not including any concurrent impediments to performance caused by any other events (“**Concurrent Delay**”) unless the Commonwealth determines and advises Project Operator that it will allow the suspension of the rights and obligations of Project Operator under this agreement, in whole or in part, despite the Concurrent Delay).

19.5 Accrued rights and obligations

Any suspension of obligations pursuant to clause 19.4 (“Suspension of obligations”) will not affect any rights or obligations which may have accrued prior to the suspension or, if the Project Force Majeure Event affects only some obligations, any other rights or obligations of Project Operator.

19.6 Extension of time

If a Project Force Majeure Event occurs on or after the Commercial Operations Date and Project Operator notifies the Commonwealth of its occurrence in accordance with clause 19.3 (“Notification of Force Majeure Event”), then without limiting clause 19.4 (“Suspension of obligations”), if this agreement requires an obligation to be performed or a thing to be achieved by a specified date, then the applicable date will be extended to the extent that the Project Force Majeure Event exclusively causes a critical path delay in that obligation being performed or thing being achieved (and, for clarity, not including any Concurrent Delay unless the Commonwealth determines and advises Project Operator that it will allow the extension of an applicable date, in whole or in part, despite the Concurrent Delay), provided that at the time of providing notice pursuant to clause 19.3 (“Notification of Force Majeure Event”), Project Operator has also provided details of any expected delays and its proposed corrective actions to overcome those delays.

19.7 Mitigation of Project Force Majeure Event

- (a) If the performance by Project Operator or its obligation under this agreement or the operation of the Project are impacted or affected by a Project Force Majeure Event on or after the Commercial Operations Date, then Project Operator must use its best endeavours (including by incurring reasonable costs) to mitigate the effect of that Project Force Majeure Event upon the Project and Project Operator’s performance of its obligations under this agreement as soon as is reasonably practicable.
- (b) If, during the Support Receipt Period, Sent Out Generation is reduced as a result of a Project Force Majeure Event, then Project Operator must use its best endeavours (including by incurring reasonable costs) to maximise Sent Out Generation (except during Negative Pricing Events).

20 Major Casualty Event

20.1 Major Casualty Event

If a Major Casualty Event occurs, then Project Operator must provide to the Commonwealth either:

- (a) a notice that Project Operator elects to reinstate the Project (“**Election to Reinstatement**”), including Project Operator’s proposed plan to reinstate the Project to the condition it was in immediately prior to the Major Casualty Event (applying Good Industry Practice) as soon as reasonably practicable (including a reasonable period for contingency) (“**Proposed Reinstatement Plan**”); or
- (b) a notice that Project Operator elects to not reinstate the Project,

provided that if Project Operator does not provide an Election to Reinstatement by the date that is 6 months after the occurrence of the Major Casualty Event (or any such longer period agreed by both parties, acting reasonably), then Project Operator will be taken to have elected to not reinstate the Project.

20.2 Reinstatement plan

- (a) If the Commonwealth receives an Election to Reinstatement, then:
 - (i) the Commonwealth must either:
 - (A) request any changes to the Proposed Reinstatement Plan that it considers (acting reasonably) are in the best long-term financial interests of electricity customers in the Relevant Jurisdiction; or
 - (B) approve the Proposed Reinstatement Plan,provided that if the Commonwealth does not request any changes to the Proposed Reinstatement Plan within 30 Business Days after receipt of the Election to Reinstatement, then the Commonwealth will be taken to have approved the Proposed Reinstatement Plan; and
 - (ii) if the Commonwealth requests any changes to the Proposed Reinstatement Plan in accordance with subparagraph (a)(i)(A), then:
 - (A) within 20 Business Days after the Commonwealth’s request, Project Operator must provide an amended Proposed Reinstatement Plan to the Commonwealth; and
 - (B) within 20 Business Days after receipt of Project Operator’s amended Proposed Reinstatement Plan, the Commonwealth must (acting reasonably) approve or reject the amended Proposed Reinstatement Plan.
- (b) Without limitation, it will be unreasonable for the Commonwealth to request changes to the Proposed Reinstatement Plan if it:
 - (i) is prepared in accordance with the requirements of this agreement;

- (ii) identifies an express date for the completion of the reinstatement, which is as soon as reasonably practicable after the Major Casualty Event occurred; and
 - (iii) demonstrates that Project Operator will be able to reinstate the Project to the condition it was in immediately prior to the Major Casualty Event (applying Good Industry Practice) by that date.
- (c) If the Commonwealth approves a Proposed Reinstatement Plan or amended Proposed Reinstatement Plan, or it is deemed to be approved, then:
- (i) that document will become an “**Approved Reinstatement Plan**”; and
 - (ii) Project Operator must, at its sole cost, comply with that Approved Reinstatement Plan in all material respects.

20.3 Consequences of failing to reinstate

If, following a Major Casualty Event:

- (a) Project Operator gives a notice under clause 20.1(b) or Project Operator is taken to have elected not to reinstate the Project under clause 20.1 (“Major Casualty Event”);
- (b) Project Operator does not provide an amended Proposed Reinstatement Plan in accordance with clause ~~(a)(ii)(A)20.2(a)(ii)(A)~~ (“Reinstatement plan”);
- (c) the Commonwealth rejects an amended Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(B) (“Reinstatement plan”); or
- (d) Project Operator:
 - (i) fails to comply with an Approved Reinstatement Plan in any material respect; and
 - (ii) does not cure that failure within 2 months after being notified of that failure by the Commonwealth,

then the Commonwealth may terminate this agreement in accordance with clause 22.3(l) (“Termination by the Commonwealth for default”).

21 Change in Law

21.1 Change in Law

- (a) If, at any time more than twelve (12) months after the Signing Date, a Change in Law occurs that prevents or materially interferes with the operation of this agreement or any of the transactions contemplated by this agreement, then:
 - (i) Project Operator will use their best endeavours to mitigate the effect of the Change in Law; and
 - (ii) the parties will consider and negotiate in good faith any specific amendment to this agreement (other than the Annual Floor, Annual Ceiling or Annual Payment Cap) requested by a party so

as to preserve the efficacy of the operation of this agreement in the manner originally intended at the Signing Date.

- (b) If the parties are unable to agree any changes to this agreement as contemplated under subparagraph (a)(ii) then this agreement will continue to operate in accordance with its terms.
- (c) This clause 21.1 may operate in conjunction with clause 21.2 (“Relevant Cost Change”), but is intended to address amendments to the agreement other than those relating to the Annual Floor or Annual Ceiling.

21.2 Relevant Cost Change

Subject to clause 17 (“Taxes”), if Project Operator incurs a Relevant Cost Change, then Project Operator must use its best endeavours to mitigate any additional costs to be incurred and to maximise the extent of any reduction in costs, arising from the Relevant Cost Change.

21.3 Notice

- (a) If the net impact of a Relevant Cost Change on Project Operator is likely to result in:
 - (i) a net increase in costs that exceeds the Cost Change Threshold, then Project Operator may give the Commonwealth a notice under this clause 21.3 in respect of that Relevant Cost Change; or
 - (ii) a net reduction in costs that exceeds the Cost Change Threshold, then Project Operator must give the Commonwealth a notice under this clause 21.3 in respect of that Relevant Cost Change.
- (b) The net impact of a Relevant Cost Change pursuant to this clause 21.3 is to be calculated on the basis that Project Operator complies with its obligations under clause 21.2 (“Relevant Cost Change”).
- (c) A notice given by Project Operator pursuant to this clause 21.3 must specify:
 - (i) reasonable details of the Relevant Cost Change and the circumstances that gave rise to it;
 - (ii) Project Operator’s best estimate of the amount of the Relevant Cost Change (together with reasonable supporting evidence);
 - (iii) reasonable evidence demonstrating Project Operator’s steps taken to use best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clause 21.2; and
 - (iv) the increase or decrease in the Annual Floor, Annual Ceiling, Annual Payment Cap which Project Operator considers is required to pass through 50% of the Relevant Cost Change to the Commonwealth in accordance with the Cost Change Principles.

21.4 Adjustment to amounts and payment cap

- (a) If Project Operator gives notice to the Commonwealth in accordance with clause 21.3 (“Notice”), then the parties will negotiate in good faith an adjustment to the Annual Floor, Annual Ceiling or Annual Payment Cap which the parties consider is required to pass through 50% of the Relevant Cost Change to the Commonwealth in accordance with the Cost Change Principles.
- (b) If the parties fail to agree the required adjustment under paragraph ~~(a)(ea)~~ by the later of the date that is:
- (i) 60 Business Days after receipt of the notice under clause 21.3 (“Notice”); and
 - (ii) 120 Business Days after the commencement of the relevant Change in Law,
- and a party wishes to progress the resolution of that adjustment, then that party must refer the Dispute to an Independent Expert for determination under clause 27.6 (“Independent Expert”).
- (c) If that Dispute regarding the adjustment is referred to an Independent Expert under clause 27.6 (“Independent Expert”), then that Independent Expert must base its determination on the Cost Change Principles.

21.5 Dispute resolution

- (a) If the parties fail to agree the required adjustment to the Annual Floor, Annual Ceiling or Annual Payment Cap under clause ~~21.4(d)21.4~~ (“Adjustment to amounts and payment cap”) by the later of the date that is:
- (i) 60 Business Days after receipt of the notice under clause 21.3 (“Notice”); and
 - (ii) 120 Business Days after the commencement of the relevant Change in Law,
- then either party may refer the Dispute to an Independent Expert for determination under clause 27.6 (“Independent Expert”).
- (b) If a Dispute is referred to an Independent Expert under this clause ~~21.521.45~~, then that Independent Expert must base its recommendation or decision on the Cost Change Principles.

21.6 Cost Change Principles

The “**Cost Change Principles**” to be applied in determining an adjustment to the Annual Floor, Annual Ceiling or Annual Payment Cap are as follows:

- (a) the cost or benefit passed through to the Commonwealth will not include the Cost Change Threshold amount;
- (b) any adjustment to the Annual Floor, Annual Ceiling or Annual Payment Cap will commence at the start of the next Financial Year;
- (c) the adjusted Annual Floor, Annual Ceiling or Annual Payment Cap may vary throughout the remaining Term, provided that any such variation(s) occurs at the start of the next Financial Year;

- (d) the adjustment will reflect the impact of the Change in Law on Project Operator had Project Operator used its best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clause 21.1(a)(i) (“Change in Law”);
- (e) any increase in Project Operator’s costs will be discounted for any related economic benefit to Project Operator in respect of the Project associated with the relevant Change in Law (including any tax benefits);
- (f) if the most efficient response to the Change in Law involves the incurring of capital expenditure by Project Operator, then the cost of that capital expenditure will be annualised and allocated on a proportional basis over the longer of the remaining part of the Term and the expected useful economic life of the relevant capital item; and
- (g) if a cost or benefit must be apportioned between the Project and another energy generation or storage project behind the Connection Point, the apportionment will be consistent with the Apportionment Principles.

21.7 No adjustment to amounts and payment cap

Notwithstanding any other provision of this agreement, no adjustment will be made to the Annual Floor, Annual Ceiling or Annual Payment Cap for or as a result of the commencement or cessation of any Capacity Product Scheme or Green Product Scheme.

22 Default and Termination

22.1 Automatic termination

If clause ~~5.4(c)5.54(e)~~ (“Failure to achieve a Milestone”) applies, then this agreement will automatically terminate with immediate effect in accordance with clause ~~5.4(c)5.54(e)~~.

22.2 Termination by Project Operator

Project Operator may terminate this agreement with immediate effect by notice in writing to the Commonwealth if any of the following occur:

- (a) **(transfer)** the Commonwealth assigns, novates, transfers or otherwise deals with the Commonwealth’s rights or obligations under, title to or interest in any Project Document other than in accordance with the requirements of this agreement and the Commonwealth fails to remedy situation within 60 Business Days after receiving notice from Project Operator to do so; and
- (b) **(payment default)** the Commonwealth fails to pay any amount due to Project Operator under this agreement (other than an amount which is the subject of a good faith dispute) by the due date for that payment and the Commonwealth does not pay that amount in full within 60 Business Days after receiving notice from Project Operator of that failure.

22.3 Termination by the Commonwealth for default

Subject to the Tripartite Deed (if applicable), the Commonwealth may terminate this agreement with immediate effect by notice in writing to Project Operator if any of the following occur:

- (a) **(payment default)** Project Operator fails to pay any amount due to the Commonwealth under this agreement (other than an amount which is the subject of a good faith dispute) by the due date for that payment and Project Operator does not pay that amount in full within 20 Business Days after receiving notice from the Commonwealth of that failure;
- (b) **(breach)** Project Operator fails to comply in a material respect with an obligation under this agreement (other than an obligation to pay an amount due) and:
 - (i) Project Operator does not commence remedying that failure within 20 Business Days after receiving notice from the Commonwealth of that failure ("**Breach Notice**"); or
 - (ii) if Project Operator has commenced remedying that failure within 20 Business Days after receiving the Breach Notice, Project Operator:
 - (A) does not pursue that remedy in a diligent manner; or
 - (B) does not remedy the relevant failure within 40 Business Days after receiving the Breach Notice (or by any later date agreed by the Commonwealth acting reasonably);
- (c) **(misrepresentation)**
 - (i) an express representation made by Project Operator under this agreement (other than under clause 25.4 ("Tender representations and warranties from Project Operator")) is incorrect or misleading in any material respect when made; and
 - (ii) Project Operator does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from the Commonwealth of that incorrect or misleading representation (including by Project Operator paying the Commonwealth compensation reasonably acceptable to the Commonwealth on account of loss suffered by it);
- (d) **(reporting misrepresentation)**
 - (i) Project Operator fraudulently, recklessly or knowingly provides a report or other information required under clause 12 ("Reporting") ("**Report**") that is incorrect or misleading in any material respect; and
 - (ii) within 60 Business Days after receiving notice from the Commonwealth of that incorrect or misleading representation, Project Operator does not:
 - (A) remedy that incorrect or misleading representation (including by Project Operator paying the Commonwealth compensation reasonably acceptable to the Commonwealth on account of loss suffered by it);

- (B) ensure that the persons involved in preparing and/or providing the reports and/or information which gave rise to the incorrect or misleading representation will have no future involvement in respect of the Project or this agreement;
 - (C) procure that an auditing firm approved by the Commonwealth conducts an audit of all previous Reports and provides the Commonwealth the results of such audit (in each case at the cost of Project Operator); and
 - (D) undertake to procure that an appropriately qualified independent auditing firm nominated by Project Operator and approved by the Commonwealth (acting reasonably) conducts an annual audit of all Reports provided to the Commonwealth in respect of each future year and provide the Commonwealth the results of such audits within 40 Business Days after the end of that year;
- (e) **(Tender misrepresentation)**
- (i) an express representation made by Project Operator under clause 25.4 (“Tender representations and warranties from Project Operator”) is incorrect or misleading in any material respect when made;
 - (ii) the Commonwealth reasonably forms the view that it would not have entered into this agreement with Project Operator but for the materials and information which caused or contributed to that representation being materially incorrect or misleading;
 - (iii) the Commonwealth notifies Project Operator of that incorrect or misleading representation in writing no later than 2 years after the Commercial Operations Date; and
 - (iv) Project Operator does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from the Commonwealth of that incorrect or misleading representation (including by Project Operator paying the Commonwealth compensation reasonably acceptable to the Commonwealth on account of loss suffered by it);
- (f) **(insolvency)** Project Operator is the subject of an Insolvency Event and Project Operator does not cure that Insolvency Event within 10 Business Days after receiving notice from the Commonwealth;
- (g) **(Performance Security)** the termination is in accordance with clause ~~3.1(b)3-21(b)~~ (“Provision of Performance Security”);
- (h) **(Milestone Date)** the termination is in accordance with clause ~~5.4(a)5-54(a)~~ (“Failure to achieve a Milestone”);
- (i) **(Commercial Operations Date)** the termination is in accordance with clause 7.5 (“Failure to meet the COD Sunset Date”);
- (j) **(Social Licence Commitments)** the termination is in accordance with clause 11.5 (“Termination for failure to comply with Social Licence Commitments”);

(k) **(Minimum Generation)**

[Note: for all Hybrid Projects, “Sent Out Generation (Discounted)” is to be used instead of “Sent Out Generation” when measuring performance against Minimum Generation.]

- (i) Sent Out Generation [(Discounted)] in a Financial Year during the Support Receipt Period (“**First Period**”) is less than the Minimum Generation for that First Period; and
- (ii) Sent Out Generation [(Discounted)] in a Financial Year during the Support Receipt Period that is immediately following the First Period (“**Second Period**”) is less than the Minimum Generation for that Second Period; and
- (iii) the Commonwealth has not approved a Proposed Cure Plan in accordance with item 5.2 of Schedule 1 (“Support terms”) within 60 Business Days after the end of that Second Period;

(l) **(Major Casualty Event)** a Major Casualty Event occurs and:

- (i) Project Operator gives a notice under clause 20.1(b);
- (ii) Project Operator does not provide an amended Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(A) (“Reinstatement plan”); or
- (iii) the Commonwealth rejects an amended Proposed Reinstatement Plan in accordance with clause ~~20.2(a)(ii)(B)~~ ~~20.2(a)(iii)(B)~~ (“Reinstatement plan”);

(m) **(failure to comply with approved plan)** Project Operator:

- (i) fails to comply with an Approved Cure Plan; or
- (ii) fails to comply with an Approved Reinstatement Plan in all material respects,

and does not remedy that failure within 2 months after receiving notice from the Commonwealth of that failure;

- (n) **(Project Force Majeure Event)** if a Project Force Majeure Event occurs and impacts at least 50% of the Maximum Capacity (in MW), for a continuous period of 18 months commencing from the first date of the Project Force Majeure Event;
- (o) **(Workplace Laws)** a breach, or potential breach, of a Workplace Law occurs giving rise to a right of termination, as set out in paragraph (d) of section 4 (“Workplace Laws”) of Schedule 6 (“Commonwealth Policy and Other Requirements”);
- (p) **(Significant Event)** a “Significant Event” occurs giving rise to a right of termination, as set out in paragraph 5.4(c) of section 5 (“Significant Events”) of Schedule 6 (“Commonwealth Policy and Other Requirements”);
- (q) **(Criminal Code)** a breach of the “Criminal Code” or other event occurs giving rise to a right of termination, as set out in paragraph (f) of section 9 (“Criminal Code”) of Schedule 6 (“Commonwealth Policy and Other Requirements”);

- (r) **(Prohibited dealings)** a prohibited dealing or other event occurs giving rise to a right of termination, as set out in paragraph (d) of section 10 (“Prohibited dealings”) of Schedule 6 (“Commonwealth Policy and Other Requirements”); or
- (s) **(Fraud)** a fraud event occurs giving rise to a right of termination, as set out in paragraph (d)(ii)(f) of section 13 (“Fraud”) of Schedule 6 (“Commonwealth Policy and Other Requirements”).

22.4 Termination for convenience by the Commonwealth

- (a) Subject to paragraph (b), the Commonwealth may at its absolute discretion at any time terminate this agreement by notice in writing to Project Operator.
- (b) A termination of this agreement under this clause 22.4 will take effect at the date specified by the Commonwealth in the notice given pursuant to paragraph (a), provided that such date is no less than 6 months after the date the notice is given.
- (c) Termination under this clause 22.4 will be without liability to either party, other than:
 - (i) in respect of any liability accrued as at the date of termination; and
 - (ii) the Commonwealth’s Liability to Project Operator as expressly set out in clause 22.5 (“Termination payments”).
- (d) If the Commonwealth purports to terminate this agreement pursuant to clause 22.3 (“Termination by the Commonwealth for default”) and is found not to have had the right to terminate on that basis, it will be deemed to be a termination for convenience under this clause 22.4.

22.5 Termination payments

- (a) If this agreement is terminated:
 - (i) automatically in accordance with clause 22.1 (“Automatic termination”), then Project Operator must pay the Early Termination Amount to the Commonwealth;
 - (ii) by Project Operator in accordance with clause 22.2 (“Termination by Project Operator”), then the Commonwealth must pay the Fixed Termination Amount to Project Operator;
 - (iii) by the Commonwealth in accordance with:
 - (A) clause 22.3(a) (“payment default”);
 - (B) clause 22.3(b) (“breach”);
 - (C) clause 22.3(c) (“misrepresentation”);
 - (D) clause 22.3(d) (“reporting misrepresentation”);
 - (E) clause 22.3(e) (“tender misrepresentation”);
 - (F) clause 22.3(f) (“insolvency”);
 - (G) clause 22.3(g) (“Performance Security”);

- (H) clause 22.3(h) (“Milestone Date”);
- (I) clause 22.3(i) (“Commercial Operations Date”);
- (J) clause 22.3(j) (“Social Licence Commitments”);
- (K) clause 22.3(k) (“Minimum Generation”);
- (L) clause 22.3(m) (“failure to comply with approved plan”);
- (M) clause 22.3(o) (“Workplace Laws”);
- (N) clause 22.3(p) (“Significant Event”);
- (O) clause 22.3(q) (“Criminal Code”);
- (P) clause 22.3(r) (“Prohibited dealings”); or
- (Q) clause 22.3(s) (“Fraud”),

then Project Operator must pay the Early Termination Amount to the Commonwealth;

- (iv) by the Commonwealth in accordance with clause 22.3(l) (“Major Casualty Event”), then:

- (A) subject to paragraph (B), no Termination Payment is payable under this agreement; or

- (B) if:

- (aa) the relevant Major Casualty Event was not a Project Force Majeure Event; or

- (ab) Project Operator or a Related Body Corporate of Project Operator subsequently reinstates the Project within 5 years after the Major Casualty Event occurred,

then Project Operator must pay the Early Termination Amount to the Commonwealth; or

- (v) by the Commonwealth in accordance with clause 22.4 (“Termination for convenience by the Commonwealth”), then the Commonwealth must pay the Fixed Termination Amount to Project Operator.

(b) Subject to paragraph (c), the parties acknowledge and agree that:

- (i) subject to clause 37.6 (“Remedies cumulative”), each party’s sole remedy arising out of or in connection with a termination under this clause 22 is that party’s entitlement to a Termination Payment (if applicable) in accordance with paragraph (a); and
- (ii) each Termination Payment is a genuine pre-estimate of that party’s anticipated losses arising from the termination of this agreement prior to the end of the Term.

- (c) If:
- (i) any Termination Payment becomes payable by a party under the terms of this agreement; and
 - (ii) that Termination Payment is found to be a penalty or that party's obligation to pay the Termination Payment pursuant to this clause 22.5 is found to be void or unenforceable for any reason (whether in whole or in part),

then that party indemnifies the other party against, and agrees to reimburse and compensate it for, any liability or Loss (including in respect of loss of bargain) suffered by that other party arising from or in connection with the termination of this agreement, provided that the first party's aggregate liability under this paragraph (c) will not exceed an amount equal to the relevant Termination Payment.

22.6 Invoice

- (a) The party entitled to be paid a Termination Payment must provide an invoice to the other party for the Termination Payment within 60 Business Days after termination of this agreement [provided however where the party which has the obligation to pay the Termination Payment is Project Operator], the Commonwealth will not be obliged to provide that invoice until the later of that 60 Business Day period and 40 Business Days after the date on which the Commonwealth has received information requested from Project Operator requested pursuant to [insert].
- (b) The party required to pay a Termination Payment must pay the amount of any such Termination Payment within 30 Business Days after receipt of an invoice provided under paragraph (a).

22.7 Preservation of rights

Termination or expiry of this agreement for any reason will not extinguish or otherwise affect any rights of either party against the other party that:

- (a) accrued before the time of such termination or expiry; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement that arose prior to the date of such termination or expiry.

Exclusion of rights

The parties agree that any common law termination rights are excluded.

22.9 Survival

Each of the following will survive the expiry or termination of this agreement:

- (a) this clause 22 and clauses 24 ("Liability"), 27 ("Dispute Resolution"), 29 ("Intellectual Property"), 31 ("Confidentiality") and 32 ("Access, records and reporting");
- (b) any clause that is required to enable a party to exercise rights accrued prior to the expiry or termination of the agreement; and

- (c) any clause which by its nature is intended to survive the expiry or termination of this agreement.

23 Assignment and Change in Control

23.1 Assignment by Project Operator

- (a) Project Operator must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project other than:
 - (i) in accordance with this clause 23.1; or
 - (ii) under a Permitted Arrangement.
- (b) Subject to paragraph (c), Project Operator may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with the Commonwealth's prior written consent, such consent not to be unreasonably withheld or delayed if:
 - (i) the assignee, novatee or transferee:
 - (A) has the legal, financial and technical capability to perform Project Operator's obligations under this agreement;
 - (B) does not have an interest which conflicts in a material way with the interests of the Commonwealth; and
 - (C) agrees to assume all obligations of Project Operator under or in connection with this agreement, including any obligation to pay an Early Termination Amount that reflects Quarterly Payment Amounts and Annual Adjustment Amounts paid by the Commonwealth to Project Operator prior to such assignment, novation or transfer;
 - (ii) in the case of a proposed assignment, novation or transfer that would occur prior to the Commercial Operations Date, the Commonwealth considers (at its discretion) that the assignee, novatee or transferee would have achieved an equivalent or higher merit score from the Commonwealth during the assessment of the Tender; and
 - (iii) the proposed assignment, novation or transfer:
 - (A) is not against the national interests;
 - (B) would not have a material adverse effect on the Project; and
 - (C) would not increase the liability of, or risks accepted by the Commonwealth under any Project Documents or in any other way in connection with the Project.

- (c) Project Operator must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project unless it also assigns, novates or otherwise transfers (as applicable):
- (i) its rights and obligations under, title to or interest in and its obligations under this agreement; and
 - (ii) the Project [and, if applicable, the Associated Project], ***[Note: square bracketed wording is to be included for all Hybrid Projects, except that the words “if applicable” will be omitted for Assessed Hybrid Projects.]***
- to the same person.
- (d) Notwithstanding anything else in this clause 23.1, the parties agree that Project Operator may grant a Security Interest in respect of its rights and obligations under this agreement or the Project [and, if applicable, the Associated Project] in favour of a secured lender (or a trustee acting on its behalf) which is providing financial accommodation on secured terms to Project Operator (or to any of its Related Bodies Corporate) in connection with the Project [or, if applicable, the Associated Project]. ***[Note: square bracketed wording is to be included for all Hybrid Projects, except that the words “if applicable” are to be omitted for Assessed Hybrid Projects.]***
- (e) The parties acknowledge and agree that the provisions of this clause 23.1 will apply to any assignment, novation or transfer of Project Operator’s rights and obligations under, title to and interest in this agreement following the enforcement of a Security Interest granted by Project Operator in accordance with paragraph (d).

23.2 Assignment by the Commonwealth

- (a) The Commonwealth must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement other than in accordance with this clause 23.2.
- (b) Subject to paragraph (c), the Commonwealth may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with Project Operator’s prior written consent, such consent not to be unreasonably withheld or delayed.
- (c) The Commonwealth may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement without Project Operator’s consent to:
 - (i) a Commonwealth Entity; or
 - (ii) another entity which has been guaranteed by or has the financial support of the Commonwealth,

provided that the Commonwealth use reasonable endeavours to notify Project Operator no later than 20 Business Days after that assignment, novation or transfer and that notice:

- (iii) identifies that assignee, novatee or transferee; and
- (iv) sets out the terms and conditions of that assignment, novation or transfer.

23.3 Release

If a party assigns, novates or otherwise transfers its rights and obligations under, title to or interest in this agreement in accordance with this clause 23 (“Assignment and Change in Control”), then the non-assigning party agrees to release the assigning party from its obligations under this agreement arising on and from the date of the assignment, novation or transfer to the extent that those obligations are assumed in writing by the assignee on terms reasonably acceptable to the non-assigning party.

23.4 Change in Control

- (a) Project Operator must not undergo, or agree to undergo, a Change in Control without the Commonwealth’s prior written consent.
- (b) The Commonwealth’s consent to a Change in Control of Project Operator must not be unreasonably withheld or delayed where:
 - (i) Project Operator’s legal, financial and technical capability to perform its obligations under this agreement will not be adversely affected;
 - (ii) in the case of Change in Control that would occur prior to the Commercial Operations Date, the Commonwealth considers (at its discretion) that Project Operator would have achieved an equivalent or higher merit score from the Commonwealth during the assessment of the Tender had the Change in Control occurred prior to the determination of Project Operator’s merit score;
 - (iii) Project Operator will not have an interest which conflicts in a material way with the interests of the Commonwealth; and
 - (iv) the proposed Change in Control:
 - (A) is not against the national interest;
 - (B) would not have a material adverse effect on the Project; and
 - (C) would not increase the liability of, or risks accepted by the Commonwealth under any Project Documents or in any other way in connection with the Project.

23.5 Tripartite Deed

On request from Project Operator, the Commonwealth agrees to enter into the Tripartite Deed.

24 Liability

24.1 Excluded Loss

Subject to clauses 24.2 (“Limitation of liability”) and 24.3 (“No exclusion”), and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this agreement for:

- (a) any cost, expense, loss or damage of an indirect nature;

- (b) any loss of profits, loss of reputation or goodwill, loss of revenue or loss of use of property (whether direct or indirect);
- (c) any cost of business interruption; or
- (d) any other consequential loss, including loss which does not arise naturally, or in the usual course of things,

suffered by the other party however arising due to any causes including the default or sole or concurrent negligence of a party, or its officers, employees, Subcontractors or agents, and whether or not foreseeable at the Signing Date.

24.2 Limitation of liability

To the extent permissible by Law and subject to clause 24.3 (“No exclusion”):

- (a) the Commonwealth’s liability to Project Operator under or in connection with this agreement is limited to:
 - (i) \$1,000,000 in respect of any single event; and
 - (ii) \$2,000,000 in aggregate in respect of all events occurring within any 12 months; and
- (b) Project Operator’s liability to the Commonwealth under or in connection with this agreement is limited to:
 - (i) \$5,000,000 in respect of any single event; and
 - (ii) \$10,000,000 in aggregate in respect of all events occurring within any 12 months,

in each case, adjusted in accordance with clause ~~1.51.45~~ (“Adjustment for indexation”).

24.3 No exclusion

Clauses 24.1 (“Excluded Loss”) and 24.2 (“Limitation of liability”) do not limit a party’s obligation:

- (a) to make any payments expressly required to be made under this agreement, including a payment under clause 16 (“Billing and payment”) or a Termination Payment;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 24.4(b) (“Indemnity by Project Operator”); or
- (c) arising from any criminal or fraudulent act or omission, or wilful misconduct or wilful breach of a party, or its officers, employees, Subcontractors or agents.

24.4 Indemnity by Project Operator

- (a) Project Operator indemnifies the Commonwealth against, and agrees to reimburse and compensate it for, any liability or Loss:
 - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of Project Operator or its Related Bodies Corporate, or their respective officers, employees, Subcontractors or agents; or

- (ii) in respect of death or personal injury,
arising from the Project.
- (b) Without limiting paragraph (a), Project Operator indemnifies the Commonwealth against, and agrees to reimburse and compensate it for, any liability or Loss arising from, and any costs incurred in connection with, any Claim by a third party against the Commonwealth in relation to:
 - (i) the Project; or
 - (ii) any act or omission of Project Operator or its Related Bodies Corporate, or their respective officers, employees, Subcontractors or agents, in each case, arising from the Project.
- (c) The amounts payable under this clause 24.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by the Commonwealth's officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 24.4 are not payable to the extent that the Commonwealth's liability or Loss:
 - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of the Commonwealth, its officers, employees, subcontractors or agents; or
 - (ii) arises in respect of an electricity hedging arrangement entered into by the Commonwealth and a third party.

25 Representations and warranties

25.1 General representations and warranties

Each party represents and warrants that:

- (a) **(power and authority)** it has full power and authority to enter into and perform its obligations under this agreement and carry out the transactions contemplated by this agreement;
- (b) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this agreement; and
- (c) **(binding nature)** this agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms.

25.2 Project Operator representations and warranties

Project Operator represents and warrants that:

- (a) **(corporate existence)** it is duly registered and validly existing under the laws of its place of incorporation and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(no Claims)** it, its directors and/or its Related Body Corporates are not engaged in any Claim or are aware of any pending or threatened Claim of which written or verbal communication has been given or received and there are no facts, matters, circumstances or events which are

reasonably likely to give rise to any such Claims by any third party against it, its directors and/or its Related Body Corporates in each case which would have a material adverse effect on the subject matter of any Project Document;

- (c) **(no breach)** the execution, delivery and performance of this agreement does not and will not violate, breach or result in a contravention of:
 - (i) any Law by which it is bound;
 - (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
 - (iii) the constitutional documents of that party; or
 - (iv) any Security Interest by which it is bound;
- (d) **(Authorisations)** it holds and will continue to hold all Authorisations that it is required by Law to hold in order to lawfully execute, deliver and perform its obligations under the Project Documents;
- (e) **(not a trustee)** unless otherwise expressly provided or permitted in this agreement, it is not the trustee or responsible entity of any trust nor does it hold any property subject to or impressed by any trust;
- (f) **(information)** all information that has been provided to the Commonwealth by Project Operator is true and correct at the time it was provided to the Commonwealth;
- (g) **(no adverse effects)** it is not aware of any material facts or circumstances that have not been disclosed to the Commonwealth as at the Signing Date:
 - (i) that may have an adverse effect on Project Operator's ability to meet its obligations under any Project Document; or
 - (ii) which, had they been disclosed, may have made a prudent person in the Commonwealth's position, considering whether or not to enter into any Project Document, determine not to do so;
- (h) **(no insolvency)** it is not subject to an Insolvency Event;
- (i) **(bona fide contracts)** it has not entered into any Wholesale Contract or other arrangement which would have been a breach of clause 15.6 ("Bona fide and arm's length arrangements") if it had entered into that arrangement during the Term;
- (j) **(no subsidiaries)** it has no subsidiaries;
- (k) **(Security Interests)** none of its assets are subject to any Security Interest other than:
 - (i) any Security Interest arising solely by operation of Law and in the ordinary course of Project Operator's ordinary business; and
 - (ii) any Security Interest granted in support of the external debt financing whose sole purpose is to fund the design, construction, commissioning, testing, operation and maintenance of the Project;

- (l) **(no partnership)** it is not a partner in a partnership, it is not a party to an unincorporated joint venture and it is not a participant in or a member of an association or other incorporated body;
- (m) **(AFSL)** to the extent required by Law, it holds (or is exempt from the requirement to hold) an Australian financial services licence under Division 2 of Part 7.6 of the Corporations Act; and
- (n) **(wholesale client)** it is a "wholesale client" within the meaning of section 761G of the Corporations Act.

25.3 Anti-bribery and anti-corruption

Project Operator represents and warrants that neither it nor any of its Related Bodies Corporate have engaged in any activity or conduct in connection with the Project which would violate any applicable anti-bribery, anti-corruption, anti-money laundering or counter-terrorism financing laws, regulations or rules in any applicable jurisdiction.

25.4 Tender representations and warranties from Project Operator

Project Operator represents and warrants that:

- (a) each statement, representation, declaration and material, and all information, provided by or on behalf of Project Operator to the Commonwealth in connection with the Tender (other than forecasts or projections) was true, correct and not misleading in any material respect (whether by omission or otherwise) as at the Tender Date; and
- (b) all forecasts and projections which were provided by or on behalf of Project Operator to the Commonwealth in connection with the Tender were prepared using due care and skill based on assumptions which Project Operator and its associates believed, in good faith, were fair and reasonable assumptions as at the Tender Date.

25.5 Repetition

Unless expressly stated otherwise, each representation and warranty given by Project Operator (other than clauses 25.2(b) ("no Claims"), 25.2(g) ("no adverse effects") and 25.4 ("Tender representations and warranties from Project Operator")) is deemed to be given on the Signing Date and repeated on each day thereafter throughout the Term with references to the facts and circumstances then subsisting.

25.6 No reliance

Each party acknowledges that it has not relied on any representation or warranty (whether express or implied) about the subject matter of this agreement other than those contained in this agreement.

26 [Trustee provisions]

26.1 Trustee representations and warranties

Project Operator represents and warrants to the Commonwealth that:

- (a) **(existence)** the Trust has been duly established and constituted;
- (b) **(sole trustee)** it is the only trustee of the Trust;

- (c) **(appointment and no removal)** it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust;
- (d) **(power)** it has power under the terms of the Trust to enter into this agreement and comply with its obligations under it;
- (e) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this agreement, perform obligations under it and allow it to be enforced (including any authorisation required under the Trust Deed and its constitution (if any));
- (f) **(indemnity)** it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under this agreement and there are no facts, matters or circumstances that would disentitle Project Operator from being so indemnified;
- (g) **(no default)** it is not, and never has been, in default under the Trust Deed;
- (h) **(no termination)** no action has been taken or proposed to terminate the Trust;
- (i) **(officers' compliance)** it and its directors and other officers have complied with their obligations in connection with the Trust;
- (j) **(exercise of powers)** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (k) **(benefit)** entry into the documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of the beneficiaries of the Trust.

26.2 Trustee undertakings

Project Operator undertakes to comply with its obligations as trustee of the Trust.

26.3 Restrictions on trustee

Without the consent of the Commonwealth, Project Operator may not, and may not agree, attempt or take any step to, do anything which:

- (a) **(retirement, removal, replacement)** effects or facilitates the retirement, removal or replacement of Project Operator as trustee of the Trust;
- (b) **(restriction on right of indemnity)** could restrict Project Operator's right of indemnity from the Trust Property in respect of obligations incurred by Project Operator under this agreement;
- (c) **(restrict or impair compliance)** could restrict or impair the ability of Project Operator to comply with its obligations under this agreement;
- (d) **(termination of trust)** effects or facilitates the termination of the Trust;
- (e) **(variation of Trust Deed)** effects or facilitates the variation of the Trust Deed; or
- (f) **(resettlement of Trust Property)** effects or facilitates the resettlement of the Trust Property.

26.4 Trustee limitation of liability

[Note: This clause is to be included if Project Operator is trustee of a trust.]

- (a) This clause 26.4 applies to Project Operator as trustee of the Trust to the extent that Project Operator is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), Project Operator's liability to any person in connection with this agreement (or any transaction in connection with it) is limited to the extent to which the liability is or can be satisfied out of the Trust Property by Project Operator exercising its right of indemnity out of the Trust Property.
- (c) Subject to subparagraphs (c)(i) and (ii), the Commonwealth may not seek to recover any amounts owing to it under this agreement by bringing proceedings against Project Operator in its personal capacity. However, the Commonwealth may:
 - (i) do anything necessary to enforce its rights in connection with the Trust Property; and
 - (ii) take proceedings to obtain either or both:
 - (A) an injunction or other order to restrain any breach of this agreement by Project Operator; and
 - (B) declaratory relief or other similar judgment or order as to the obligations of Project Operator under this agreement.
- (d) The limitations and restrictions under paragraphs (b) and (c) do not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of Project Operator's indemnification out of the Trust Property either as a result of Project Operator's fraud, negligence or wilful default, or by operation of Law.
- (e) The limitation of Project Operator's liability under paragraph (b) is to be disregarded for the purposes of determining whether Project Operator has failed to comply with or perform any obligation under this agreement because of a failure by Project Operator to pay an amount payable by it under this agreement.]

27 Dispute Resolution

27.1 Dispute mechanism

Any dispute or difference of any kind arising between the parties in connection with or arising out of this agreement, whether during or after the Term ("**Dispute**") must be resolved pursuant to this clause 27.

27.2 No proceedings

Subject to clause 27.9 ("Interim relief"), a party must not commence or maintain a court action or proceedings in relation to a Dispute until the party has complied with this clause 27 and, if applicable, clause 28 ("Pooled Disputes").

27.3 Disputes

If a party wishes to raise a Dispute, then that party must deliver to the other party a notice of Dispute (“**Dispute Notice**”) setting out the:

- (a) nature of the Dispute;
- (b) facts, matters and circumstances relied upon by the party serving the Dispute Notice; and
- (c) anticipated quantum of the Dispute (in money and, if applicable, in time).

27.4 Procedure to resolve Disputes

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) Subject to clause 28 (“Pooled Disputes”), the procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 27.5 (“Negotiation”);
 - (ii) second, if permitted under clause 27.5(b) (“Negotiation”), referral of the Dispute for determination by an Independent Expert under clause 27.6 (“Independent Expert”); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

27.5 Negotiation

- (a) Within 10 Business Days after the service of a Dispute Notice, a senior representative of each party must meet, negotiate and seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved within 20 Business Days after the negotiations between senior representatives commencing pursuant to paragraph (a), then either party may by written notice:
 - (i) where:
 - (A) expressly provided for under this agreement;
 - (B) the Dispute is of a technical or engineering nature; or
 - (C) the parties agree otherwise,refer the Dispute for determination by an Independent Expert; and
 - (ii) where the Dispute is not of a technical or engineering nature, commence proceedings in a court of competent jurisdiction unless the parties agree to adopt a different form of alternative dispute resolution.

27.6 Independent Expert

- (a) If this agreement provides that a Dispute is to be referred for determination by an independent expert, then the parties must appoint a person to which the Dispute will be referred for determination

("Independent Expert") by mutual agreement within 10 Business Days after a notice referring a Dispute to an Independent Expert being given (or such longer period the parties agree).

- (b) Failing agreement within the period specified in paragraph (a), either party may request the CEO of the Resolution Institute (or their independent nominee) to appoint an Independent Expert.
- (c) If an Independent Expert is not appointed within 20 Business Days after the date of the request being made under paragraph (b), then either party may commence proceedings in a court of competent jurisdiction in relation to the Dispute.
- (d) The Independent Expert appointed must have reasonable qualifications, and commercial and practical experience, in the area of the Dispute (including in the context of the NEM) and no interest or duty which conflicts or may conflict with their function as an Independent Expert.
- (e) The Independent Expert will act as an expert and not as an arbitrator.
- (f) The parties must comply with all reasonable requests by an Independent Expert for information relating to the Dispute.
- (g) The parties must ensure that the Independent Expert's terms of appointment include the following requirements:
 - (i) the Independent Expert must consult with the parties concerning the matters under Dispute;
 - (ii) the Independent Expert must make a draft report available to the parties within 30 Business Days after their appointment;
 - (iii) the Independent Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
 - (iv) the Independent Expert must keep information provided by or on behalf of the parties to the Independent Expert confidential;
 - (v) the Independent Expert may investigate the matters under Dispute and make inquiries in relation to them, and take the advice of any other person the Independent Expert deems appropriate; and
 - (vi) the Independent Expert will use their best endeavours to notify the parties of the Independent Expert's determination within 60 Business Days after the reference to the Independent Expert.
- (h) In the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding.
- (i) Each party will bear its own costs in respect of or in connection with any determination by an Independent Expert.
- (j) The costs of the Independent Expert will be borne equally between the parties.

27.7 Other relief

The Dispute resolution procedures in this clause 27 or clause 28 (“Pooled Disputes”) do not apply to impair, delay or otherwise prejudice the exercise by a party of its rights provided in this agreement (including any right of termination).

27.8 Continued performance following a Dispute

Despite the existence of any Dispute, each party must continue to perform its obligations under this agreement, other than an obligation to make payment that is in dispute.

27.9 Interim relief

Nothing in this clause 27 or clause 28 (“Pooled Disputes”) prevents either party from seeking urgent injunctive or declaratory relief.

28 Pooled Disputes

28.1 Referral of Pooled Disputes

- (a) If, in the Commonwealth’s opinion (acting reasonably):
 - (i) a Dispute in relation to clause 21 (“Change in Law”) is identical or similar to an Other Dispute; or
 - (ii) the outcome of a Dispute or an Other Dispute could affect the entitlements and/or obligations of a party under this agreement or an Other CISA (as relevant),

then that Dispute and/or Other Dispute (as applicable) is a **“Pooled Dispute”**.

- (b) If the Commonwealth gives a Dispute Notice to or receives a Dispute Notice from:
 - (i) Project Operator; or
 - (ii) an Other CISA Counterparty,

relating to a Pooled Dispute, then the Commonwealth may refer the Pooled Dispute to a Pooled Dispute Panel for resolution in accordance with clause 28.2 (“Resolution by Pooled Dispute Panel”) (**“Pooled Dispute Referral”**).

28.2 Resolution by Pooled Dispute Panel

- (a) If the Commonwealth gives a Pooled Dispute Referral in respect of a Pooled Dispute, then:
 - (i) each Pooled Dispute Participant may appoint a person to represent it on the Pooled Dispute Panel; and
 - (ii) the Pooled Dispute Panel will meet within 1 month (or such other period as reasonably determined by the Commonwealth) from the Pooled Dispute Referral to resolve the Pooled Dispute.
- (b) The Pooled Dispute Panel will determine its own procedures for meeting, and unless the Pooled Dispute Panel otherwise determines, all meetings

of the Pooled Dispute Panel will be held in Sydney with an option provided for participation via technology.

- (c) If a party provides information or documents relevant to a Pooled Dispute to the other party, then it must use its best endeavours to promptly provide the information and documents to each representative on the Pooled Dispute Panel.
- (d) Subject to clause 28.3 (“Bilateral resolution”), if the Pooled Dispute Panel unanimously resolves the Pooled Dispute, then that resolution will be binding on the parties to this agreement regardless of whether they participated in the Pooled Dispute Panel or not.
- (e) If the Pooled Dispute Panel does not unanimously resolve the Pooled Dispute within 3 months from the Pooled Dispute Referral, then the Commonwealth may refer the Pooled Dispute for resolution in accordance with clause 27.6 (“Independent Expert”), provided that:
 - (i) the Independent Expert will be appointed by the CEO of the Resolution Institute (or their independent nominee);
 - (ii) each Pooled Dispute Participant will be afforded equal treatment and equal opportunity to present its views and to reply to the comments and submissions presented by any other Pooled Dispute Participant;
 - (iii) in the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding on all Pooled Dispute Participants; and
 - (iv) the costs of the Independent Expert will be borne equally between the Pooled Dispute Participants.

28.3 Bilateral resolution

- (a) If Project Operator and the Commonwealth bilaterally resolve a Pooled Dispute as it applies to this agreement, then clause 28.2 (“Resolution by Pooled Dispute Panel”) will cease to apply and Project Operator will:
 - (i) cease to be a Pooled Dispute Participant in respect of that Pooled Dispute; and
 - (ii) not be required to participate in, and will not be bound by any resolution by, the Pooled Dispute Panel in respect of that Pooled Dispute.
- (b) If the Commonwealth notifies Project Operator that an Other CISA Counterparty has bilaterally resolved the Pooled Dispute with the Commonwealth, then that Other CISA Counterparty will cease to be a Pooled Dispute Participant.

29 Intellectual Property

29.1 Project Intellectual Property

As between Project Operator and the Commonwealth, all Project Intellectual Property vests in Project Operator upon creation.

29.2 Licence of Specified Material

- (a) Subject to paragraph (b) and clause 31 (“Confidentiality”), Project Operator grants to the Commonwealth a permanent, irrevocable, royalty free, worldwide, nonexclusive, transferrable licence (including a right to sublicense) to use, copy and otherwise do any acts in relation to Specified Material for non-commercial purposes and for purposes only connected to this agreement and the Commonwealth’s Capacity Investment Scheme including the future design of that scheme.
- (b) Project Operator must obtain a licence of any material contained in the Specified Material in respect of which the intellectual property rights are owned by a person other than the Commonwealth, Project Operator or any Related Body Corporate of Project Operator (“**Third Party**”) that enables Project Operator to grant to the Commonwealth the licence required by paragraph (a).

29.3 Moral rights

If any Specified Material that is a copyright work contains information over which a third party (including Project Operator’s officers, employees, Subcontractors or agents) has “Moral Rights” (as defined in the *Copyright Act 1968* (Cth)), then Project Operator must ensure that it has in place all necessary consents sufficient to allow the Commonwealth to deal with the Specified Material in accordance with any Project Document.

29.4 Warranties

Project Operator warrants that:

- (a) it is entitled to use for the Project and for the purposes of meeting its obligations under any Project Document:
 - (i) all Background Intellectual Property and Project Intellectual Property; and
 - (ii) all Specified Material,(together, “**Warranted Materials**”); and
- (b) it has the right to grant the licence in clause 29.2 (“Licence of Specified Material”); and
- (c) it will obtain the consents referred to in clause 29.3 (“Moral rights”).

29.5 Intellectual Property indemnity

- (a) Project Operator indemnifies (and must keep indemnified) the Commonwealth, its officers, employees, subcontractors or agents (and its licensees or sub-licensees of any Intellectual Property) (“**Indemnified Party**”) against any liability, licence fee or royalty sustained or incurred by an Indemnified Party regarding:
 - (i) any Loss which arises out of any Claim brought by any third party in respect of any infringement or alleged infringement of that third party’s Intellectual Property, “Moral Rights” (as defined in the *Copyright Act 1968* (Cth)) or any other rights, when the infringement or alleged infringement arises out of any activity permitted under any licence or sublicense granted or referred to in this clause 29 or otherwise under this agreement; or

- (ii) any breach of clause 29.4 (“Warranties”).
- (b) For the purposes of this clause 29.5, “**infringement**” includes unauthorised acts which would, but for the operation of section 163 of the *Patents Act 1990* (Cth), section 100 of the *Designs Act 2003* (Cth), section 183 of the *Copyright Act 1968* (Cth), and section 25 of the *Circuit Layouts Act 1989* (Cth), constitute an infringement.

29.6 Remedy for breach of warranty

If Project Operator breaches this clause 29 and, as a result of that breach, a third party claims that the use of all or part of the Warranted Materials by an Indemnified Party infringes its Intellectual Property, Project Operator must, in addition to any other rights that the Commonwealth or any Indemnified Party may have against Project Operator, promptly, at Project Operator’s expense:

- (a) use its best efforts to secure the rights for the Commonwealth or Indemnified Party to continue to use the affected Warranted Materials as permitted under clause 29.2 (“Licence of Specified Material”) free of any Claim or liability for infringement; or
- (b) replace or modify the affected Warranted Materials so that the Commonwealth’s or Indemnified Party’s use of them as permitted under this clause 29 does not infringe the Intellectual Property of any other person without any degradation of the performance or quality of the affected Warranted Materials.

30 Subcontracting

30.1 Project Operator remains responsible

Project Operator:

- (a) is responsible to the Commonwealth for the management, coordination and supervision of all Subcontractors and for the acts, omissions, negligence and recklessness of its officers, employees, Subcontractors or agents (whether employed or engaged directly or indirectly by Project Operator) in each case in connection with this agreement and/or the Project as if they were the acts, omissions, negligence and recklessness of Project Operator;
- (b) remains fully responsible for the performance of all of its obligations under this agreement which it has subcontracted to a Subcontractor and for all costs incurred with respect to its Subcontractors, whether or not the Commonwealth is aware of and has approved the use of the Subcontractor;
- (c) must ensure that its Subcontractors comply with Project Operator’s obligations under this agreement when carrying out any work or activities under a Subcontract; and
- (d) agrees that a Subcontractor’s failure to perform does not constitute a Force Majeure Event, except to the extent that the Subcontractor’s failure to perform is exclusively caused or contributed to by a Force Majeure Event (and, for clarity, not including any Concurrent Delays).

30.2 Key Subcontractors

- (a) Subject to clauses 30.2(b) and 30.2(c), Project Operator must not (and must procure that its Subcontractors do not) enter into a Key

Subcontract to perform any of its obligations under any Project Document without the prior written consent of the Commonwealth. The Commonwealth must give, or refuse, that consent within 20 Business Days after receipt of such a request. If the Commonwealth fails to give, or refuse, that consent within that 20 Business Day period, Project Operator must issue a notice to the Commonwealth warning it that, if the Commonwealth fails to give, or refuse, that consent within a further 20 Business Days after receipt of that warning, the Commonwealth will be deemed to have given its consent to Project Operator entering into that Key Subcontract. If the Commonwealth then fails to give, or refuse, that consent within that further 20 Business Day period, the Commonwealth will be deemed to have consented to Project Operator entering into that Key Subcontract.

[Drafting note: the requirements regarding Key Subcontractors are intended to reflect the fact that prospective Project Operators will be evaluated during the tender phase, in part, on their technical solution and proposed Key Subcontractors to the extent they are known. The Commonwealth therefore wishes to ensure that a Project Operator utilises the relevant Key Subcontractors and technologies referred to their Bid (to the extent that Key Subcontractors are known and form part of the evaluation of the relevant Bid of a Proponent). If changes to the proposed Key Subcontractors are warranted, Project Operator may follow the process set out in this clause 30.2. If the identities of any Key Subcontractors are not known as at the Signing Date, the Commonwealth is open to preapproving a limited number of potential Key Subcontractors from which Project Operator may seek proposals to perform the relevant Key Subcontract(s).]

- (b) Project Operator is not required to seek prior written approval from the Commonwealth for any Key Subcontractor identified in Schedule 7 provided that the applicable Key Subcontractor is to be engaged to provide or perform or deliver the goods, services and parts of the work comprising or in relation to the Project which they are approved to provide and perform as set out in Schedule 7.
- (c) The Commonwealth may only refuse approval for a Key Subcontractor not identified in Schedule 7 if that proposed Key Subcontractor:
 - (i) does not have the legal, commercial, technical, managerial and financial capability to enable it to perform or deliver the relevant goods, services or parts of the works which it is being engaged to provide; or
 - (ii) is insolvent or not reputable or has an interest which conflicts in a material way with the interests of the Commonwealth and there is no prohibition or restriction imposed by Law which would prevent or impact its ability to perform or deliver the relevant goods, services or parts of the works which it is being engaged to provide.
- (d) Project Operator is not discharged from any obligation or Liability under this agreement by entering into any Subcontract.

31 Confidentiality

31.1 Disclosure of information

Each party agrees not to disclose information provided by the other party (including the contents of this agreement) except:

- (a) information that is publicly available (other than through a breach of this clause 31 or another obligation of confidentiality);
- (b) to any person to the limited extent necessary in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement (and provided the recipient is bound by an equivalent obligation of confidentiality);
- (c) to officers, employees, agents, contractors, legal and other advisers, insurers and auditors of the party (or to insurers and auditors of the party's Related Bodies Corporate), in each case to the extent that such a person has a need to know (and provided the recipient is bound by an equivalent obligation of confidentiality, except any Commonwealth officers, employees and servants who are already subject to confidentiality obligations);
- (d) to:
 - (i) a bank or other financial institution (and its professional advisers) in connection with any existing or proposed loan or other financial accommodation of, or sought to be arranged by, the recipient of the information;
 - (ii) any person who is proposing to acquire a direct or indirect interest in the party; or
 - (iii) any Related Body Corporate of a party to this agreement but only to the extent that such a person has a need to know,and in each case provided the recipient is bound by an equivalent obligation of confidentiality;
- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (f) in the case of disclosure by the Commonwealth, Knowledge Sharing Deliverables that have been categorised by Project Operator as 'public information' pursuant to clause 13(c) ("Knowledge sharing");
- (g) when the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this agreement, and then only in accordance with the terms of that order;
- (h) any disclosure that the recipient reasonably believes is required by any Law or securities exchange, and then only to the extent reasonably required;
- (i) to a rating agency (provided the recipient is bound by an equivalent obligation of confidentiality); or
- (j) in the case of disclosure by the Commonwealth, to:
 - (i) a Minister or Parliament in accordance with statutory or portfolio duties or functions or for public accountability reasons including

following a request by a Minister, Parliament or a House or a Committee of the Parliament of the Commonwealth or their respective staff;

- (ii) any Commonwealth Entity or Government Authority, when this serves the Commonwealth's legitimate interests, including to the Australian National Audit Office;
- (iii) AEMO or its Related Bodies Corporate;
- (iv) any person entitled to a licence or sublicense of Specified Materials rights pursuant to this agreement; and
- (v) officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (iv).

31.2 Publicity

- (a) Unless required by Law, Project Operator must not make any public announcements relating to the subject matter of this agreement without the Commonwealth's prior written consent.
- (b) The Commonwealth may make public announcements relating to the subject matter of this agreement (including in respect of the Project's expected generation and Project Operator's Social Licence Commitments) without Project Operator's prior written consent, provided that the Commonwealth must:
 - (i) consult with Project Operator before making a public announcement that contains commercially sensitive information set out in this agreement (and for the avoidance of doubt, amount of support which the Commonwealth is providing Project Operator under this agreement, the Project details [and Associated Project details] set out in the Reference Details and Project Operator's Social Licence Commitments are not commercially sensitive information); and [**Note: bracketed wording is to be included for all Hybrid Projects.**]
 - (ii) reasonably consider any request from Project Operator to not include that commercially sensitive information, or to only include that commercially sensitive information on an anonymised and aggregated basis, in the relevant public announcement.

31.3 Freedom of information

- (a) If the Commonwealth has received a request for access to a document created by, or in the possession of, Project Operator or any Subcontractor that relates to the performance of this agreement (and not to the entry into this agreement), then the Commonwealth may at any time by written notice require Project Operator to provide the document to the Commonwealth and Project Operator must, at no additional cost to the Commonwealth, promptly comply with the notice.
- (b) In this clause 31.3, "**document**" has the same meaning as in the *Freedom of Information Act 1982* (Cth).
- (c) Nothing in this clause 31 derogates from or restricts the Commonwealth's ability to comply with its obligations under the *Freedom of Information Act 1982* (Cth).

32 Access, records and reporting

32.1 Project Operator to retain records

- (a) Project Operator must, throughout the Term and for a period of 7 years after the termination or expiry of this agreement (or such longer period as may be required by Law), keep true and accurate books of account, records and other documents (however stored) in relation to the Project and this agreement including:
- (i) operational data relating to the Project including technical, metering, revenue, costs and financial data, and Specified Materials;
 - (ii) information relating to Eligible Wholesale Contracts entered into by Project Operator and any other records relevant to calculation of payments to be made by one party to the other under this agreement;
 - (iii) all Accounts and Records relating to the work and services undertaken pursuant to this agreement; and
 - (iv) those related to other matters relating to the Project in accordance with Good Industry Practice including Project governance documentation,
- (together the “Accounts and Records”).
- (b) Project Operator must:
- (i) ensure that the Accounts and Records are prepared in accordance with, as applicable, the Corporations Act and generally accepted Australian Accounting Standards and practices consistently applied, and fairly represent its operations and financial condition or consolidated financial position (as the case may be); and
 - (ii) procure that each Key Subcontractor's Accounts and Records truly reflect the status and scheduled achievement of the Project and are prepared in accordance with generally accepted Australian Accounting Standards (or equivalent) and fairly represent its operations and financial condition or consolidated financial position (as the case may be).
- (c) Project Operator must ensure that the Accounts and Records, and any representatives, employees, directors, or Associates of Project Operator required to provide or explain the information required to be contained in the Accounts and Records, are available to the Commonwealth and its nominee at any time during business hours (subject to receiving 5 Business Days' prior notice from the Commonwealth) during the Term and for a period of 7 years after the termination or expiry of this agreement for examination, audit, inspection, transcription and copying and must ensure that each Key Subcontractor does likewise.
- (d) This clause 32.1 applies for the Term and for a period of 7 years from the termination or expiry of this agreement.

32.2 Access to records

- (a) During the performance of this agreement, Project Operator must give the Commonwealth and its nominee access to:

- (i) its premises during business hours and with at least 10 Business Days; prior notice; and
- (ii) any of the Accounts and Records,

relevant to or impacting on the performance of this agreement, including the right to copy any Accounts and Records for the purposes of this agreement.

- (b) Project Operator shall ensure that each Key Subcontractor gives the Commonwealth and its nominee, access to its or their:

- (i) premises during business hours and with at least 10 Business Days' prior notice; and
- (ii) Accounts and Records,

relevant to or impacting on the performance of Project Operator's obligations under this agreement including the right to copy any Accounts or Records for the purposes of this agreement, in each case for the following periods:

- (iii) for Key Subcontractors undertaking works or services pursuant to this agreement during the construction of the Project, for a period of seven years after the earlier of termination of that Key Subcontract and COD; and
- (iv) for Key Subcontractors undertaking works or services pursuant to this agreement during the operation of the Project, for a period of seven years after termination or expiration of this agreement or such longer period as may be required by Law.

- (c) The Commonwealth's access to premises, systems, equipment and personnel will be subject to Project Operator's reasonable instructions relating to site access and to physical and information security.

32.3 Other information

Project Operator must give to the Commonwealth the following information:

- (a) details of any changes to the constitution or trust deed of Project Operator within 20 Business Days after the change; and
- (b) such other financial and associated information relating to the Project as the Commonwealth may reasonably require from time to time and such information must be provided to the Commonwealth within 20 Business Days after it is requested.

32.4 Right to access and audit

- (a) The Commonwealth may elect to, or commission a third party "**Auditor**", to audit and inspect the Accounts and Records of Project Operator and, to the extent reasonably required by the Commonwealth, Project Operator's Related Bodies Corporate and/or Key Subcontractors, for the purpose of verifying:
 - (i) the accuracy of any report or information provided by Project Operator arising from or in connection with this agreement; and
 - (ii) Project Operator's compliance with this agreement,

("Audit").

- (b) The Commonwealth may appoint either the Australian National Audit Office or an appropriately qualified independent professional firm as the Auditor.
- (c) The Commonwealth must give Project Operator at least 20 Business Days' prior notice of any Audit.
- (d) Project Operator must comply with any such audit, including that it must:
 - (i) subject to paragraph (e), allow the Auditor to access during business hours the Accounts and Records kept by Project Operator and its Related Bodies Corporate and/or Key Subcontractors (as applicable) and any premises, systems, equipment, personnel and information of Project Operator and/or its Related Bodies Corporate and/or Key Subcontractors (as applicable) relating to the Project or this agreement;
 - (ii) provide (and procure its Related Body Corporates and/or Key Subcontractors (as applicable) to provide) reasonable co-operation, information and assistance to the Auditor including answering reasonable questions relating to the audit and inspection in writing; and
 - (iii) if an Audit reveals any breach of this agreement by Project Operator, then Project Operator must take remedial action including complying with any reasonable directions or instructions from the Commonwealth,in each case in connection with any Audit.
- (e) The Auditor's access to any premises, systems, equipment and personnel will be subject to Project Operator's reasonable instructions relating to site access and to physical and information security.
- (f) In absence of fraud or manifest error, a finding of the Auditor in respect of any matter referred to in paragraph (a) will be binding on the parties.
- (g) Subject to paragraphs (h) and (i), Project Operator must bear the reasonable costs associated with any Audit.
- (h) Subject to paragraph (i), if the Commonwealth has required an audit under paragraph (a) more than once in any Financial Year (excluding any audits or investigations undertaken pursuant to Law including by the Auditor-General), then the Commonwealth will bear the reasonable costs associated with any such second and subsequent audit undertaken in that Financial Year pursuant to paragraph (a) (excluding any costs incurred by or on behalf of Project Operator).
- (i) If any second or subsequent audit undertaken pursuant to paragraph (a) in any Financial Year (excluding any audits or investigations undertaken pursuant to Law including by the Auditor-General):
 - (i) does not identify any breach of this agreement by Project Operator; or
 - (ii) demonstrates that any information or report provided by Project Operator is not materially inaccurate,

then the Commonwealth will bear all the reasonable costs of that audit (excluding any costs incurred by or on behalf of Project Operator).

- (j) If an Audit is in respect of any amount to which Project Operator is entitled and such Audit reveals that Project Operator has overcharged the Commonwealth, then Project Operator must promptly reimburse the Commonwealth for those costs overcharged following any request by the Commonwealth to do so.
- (k) If any Audit reveals that Project Operator's invoices (including tax invoices) for the audited period are not correct for such period, then:
 - (i) Project Operator must promptly reimburse the Commonwealth for the amount of any overcharges; or
 - (ii) the Commonwealth must promptly pay to Project Operator the amount of any undercharges,in each case, as the case may be.
- (l) The requirement for, and participation in, Audits does not in any way reduce Project Operator's responsibility to perform its obligations in accordance with this agreement.
- (m) Any Audit, acceptance, certificate, approval, attendance, permission, comment or recommendation by, or on behalf of, the Commonwealth (or failure to do so) will not:
 - (i) constitute waiver of any default or acceptance of any act or omission on the part of Project Operator; or
 - (ii) affect or modify any of Project Operator's obligations to perform this agreement in accordance with its terms and conditions.
- (n) Nothing in this agreement modifies, limits or restricts the Auditor-General exercising any of its rights, functions or powers at Law including to undertake an audit of Project Operator, any Project Document, the Project or the Capacity Investment Scheme program in part or as a whole.

32.5 Site inspection

- (a) The Commonwealth may request access to the Project site from time to time for the purposes of undertaking a visual site inspection.
- (b) The Commonwealth must give Project Operator reasonable notice of the Commonwealth's requested site inspection under paragraph (a), including details of preferred dates and times of the site inspection, and relevant personnel who will be present for it.
- (c) The Commonwealth and Project Operator will agree (acting reasonably) a date and time for the site inspection.
- (d) During the site inspection, the Commonwealth agrees to comply with Project Operator's reasonable requirements, including in respect of site safety and security, work health and safety and other applicable site rules.

33 Costs

Project Operator will pay in advance or reimburse on demand (as required by the Commonwealth) any external costs incurred by the Commonwealth associated with:

- (a) any extensions of time requested or proposed by Project Operator, including to the Milestone Dates, FC Sunset Date, COD Target Date or COD Sunset Date;
- (b) any cure plans or remedial actions proposed by Project Operator, including any Draft Milestone Cure Plan, Draft COD Cure Plan, Draft SLC Cure Plan, Proposed Cure Plan and Proposed Reinstatement Plan;
- (c) any proposed Material Alteration;
- (d) any request by Project Operator to assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project, or to undergo a Change in Control; or
- (e) any other request by Project Operator for the Commonwealth's consent or approval in connection with this agreement.

34 Relevant Commonwealth Policies and other requirements

Project Operator must comply with the requirements imposed on it in Schedule 6 ("Commonwealth Policy and Other Requirements").

35 Contract Representative

- (a) At all times, Project Operator must appoint and maintain the appointment of a natural person who is involved with the day-to-day operation and administration of the Project and this agreement as its Contract Representative.
- (b) Project Operator must ensure that it notifies the Commonwealth as soon as reasonably practicable (and in any event within 5 Business Days) of any changes to the identity or contact details of the Contract Representative, including any temporary changes to the identity or contact details of the Contract Representatives.
- (c) The Commonwealth may contact the Contract Representative at all reasonable times in respect of any matter in connection with the day-to-day operation or administration of the Project or this agreement.
- (d) Despite paragraph (c), any notices and other communications that the Commonwealth is required to give under this agreement will be given to Project Operator in accordance with clause 36 ("Notices").

36 Notices

36.1 Form

- (a) Unless this agreement expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing and signed by the

sender (if an individual) or a director, secretary or any other person nominated by a party to act as an authorised officer of the sender.

- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

36.2 Delivery

- (a) Communications must be:
 - (i) left at the address referred to in the Details;
 - (ii) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
 - (iii) sent by email to the address referred to in the Details, provided that email must not be used for any termination notice issued pursuant to this agreement.
- (b) If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

36.3 When effective

Communications take effect from the time they are received or are taken to be received under clause 36.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

36.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); and
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message within that 4 hour period that the delivery failed,

whichever happens first.

36.5 Receipt outside business hours

Despite anything else in this clause 36, if communications are received or taken to be received under clause 36.4 (“When taken to be received”) after 5.00pm on a Business Day or on a non-Business Day, then they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

37 General

37.1 Variation and waiver

A provision of this agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

37.2 Consents, approvals or waivers

By giving any consent, approval or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

37.3 Discretion in exercising rights

Unless this agreement expressly states otherwise, a party may exercise a right, power or remedy, or give or refuse its consent, approval or a waiver, in connection with this agreement at its discretion (including by imposing conditions).

37.4 Partial exercising of rights

Unless this agreement expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this agreement fully or at a given time, they may still exercise it later.

37.5 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this agreement even if this involves a conflict of duty or they have a personal interest in their exercise.

37.6 Remedies cumulative

The rights, powers and remedies in connection with this agreement are in addition to other rights, powers and remedies given in any other agreement or by Law independently of this agreement.

37.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this agreement:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this agreement, any settlement or any other thing;
- (b) is independent of any other obligations under this agreement or any other agreement; and
- (c) continues after this agreement, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this agreement.

37.8 Supervening Law

Subject to clause 21 ("Change in Law"), any present or future Law which operates to vary the obligations of a party in connection with this agreement with the result that another party's rights, powers or remedies are adversely affected

(including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

37.9 Counterparts

This agreement may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

37.10 Entire agreement

This agreement constitutes the entire agreement of the parties on their subject matter and supersedes all prior agreements, understandings and negotiations on that subject matter, provided that this agreement does not remove any rights of the Commonwealth or obligations of Project Operator or its associates arising under any tender process deed or tenderer declaration that were provided as part of the Tender.

37.11 No liability for loss

Unless this agreement expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this agreement.

37.12 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

37.13 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction, then it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

37.14 Governing Law and jurisdiction

The Law in force in the Relevant Jurisdiction governs this agreement. The parties submit to the exclusive jurisdiction of the courts of the Relevant Jurisdiction.

37.15 Electronic execution

- (a) A party may execute this agreement as well as modifications to it by electronic means (including by electronic signature or by email of a signed document in PDF or scanned format).
- (b) The parties agree and intend that such signature by electronic means or by email in PDF or scanned format will bind the party so signing with the same effect as though the signature were an original signature.
- (c) This agreement may be executed as set out above in two or more counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same document.
- (d) The parties to this agreement acknowledge and agree that:

- (i) they consent to the use of the electronic signatures and to the agreement proceeding by electronic means; and
- (ii) they intend to be legally bound by the terms of the agreement on which the electronic signature(s) has or have been placed.

37.16 Directions as to management of this agreement

The Commonwealth may, from time to time, provide to Project Operator reasonable guidance in relation to the management of this agreement, including:

- (a) information required to be provided to the Commonwealth pursuant to this agreement; and
- (b) clarifications on the requirements of this agreement,

in order to comply with the terms of this agreement and Australian Government policy, and Project Operator must comply with that guidance provided that:

- (c) it does not have a material cost impact for Project Operator; or
- (d) if Project Operator can substantiate to the reasonable satisfaction of the Commonwealth that it will have a material cost impact for Project Operator, the Commonwealth agrees to meet that additional cost.

EXECUTED as an agreement.

Schedule 1 Support terms

1 Application and interpretation

1.1 Application to the Support Receipt Period

- (a) The terms contained in this Schedule 1 apply to each Financial Year (or part thereof) occurring during the Support Receipt Period separately.
- (b) In interpreting this Schedule 1 in respect of a Financial Year, a reference to “the Financial Year” is a reference to that Financial Year (including the First Financial Year and Final Financial Year as relevant).

1.2 Schedule items

A reference in this Schedule 1 to an “item” is a reference to an item of this Schedule 1.

2 Support payments

In respect of the Financial Year, each party agrees to pay:

- (a) any Quarterly Payment Amount; and
- (b) any Annual Adjustment Amount,

that it is required to pay under this Schedule 1 on the terms and conditions contained in this agreement.

3 Quarterly Payment Amount

3.1 Payment of Quarterly Payment Amount

- (a) The Quarterly Payment Amount is payable for each quarter (other than the last quarter) of the Financial Year, in accordance with clause 16 (“Billing and payment”) as follows:
 - (i) if the Quarterly Net Operational Revenue is less than the Quarterly Revenue Floor, then the Commonwealth must pay to Project Operator the Quarterly Payment Amount calculated in accordance with item 3.2(a) (“Calculation of Quarterly Payment Amount”); and
 - (ii) if the Quarterly Net Operational Revenue is greater than the Quarterly Revenue Ceiling, then Project Operator must pay to the Commonwealth the Quarterly Payment Amount calculated in accordance with item 3.2(b),

in each case subject to item 3.12 (“Cap on Quarterly Payment Amounts”).

- (b) No amount is payable on account of the Quarterly Payment Amount in respect of the last quarter in the Financial Year.

3.2 Calculation of Quarterly Payment Amount

- (a) If the Quarterly Net Operational Revenue is less than the Quarterly Revenue Floor, then the “**Quarterly Payment Amount**” payable in respect of a quarter is calculated as follows:

$$QPA_Q = 90\% \times (QRF_Q - QNOR_Q)$$

where:

QPA_Q = the Quarterly Payment Amount for the quarter payable by the Commonwealth;

QRF_Q = the Quarterly Revenue Floor for the quarter calculated in accordance with item 3.7 (“Calculation of Quarterly Revenue Floor”); and

$QNOR_Q$ = the Quarterly Net Operational Revenue for the quarter calculated in accordance with item 3.3 (“[Calculation of Quarterly Net Operational Revenue](#)”).

- (b) If the Quarterly Net Operational Revenue is greater than the Quarterly Revenue Ceiling, then the “**Quarterly Payment Amount**” payable in respect of the quarter is calculated as follows:

$$QPA_Q = 50\% \times (QNOR_Q - QRC_Q)$$

where:

QPA_Q = the Quarterly Payment Amount for the quarter payable by Project Operator;

$QNOR_Q$ = the Quarterly Net Operational Revenue for the quarter calculated in accordance with item 3.3 (“[Calculation of Quarterly Net Operational Revenue](#)”); and

QRC_Q = the Quarterly Revenue Ceiling for the quarter calculated in accordance with item 3.8 (“[Calculation of Quarterly Revenue Ceiling](#)”).

- (c) If the Quarterly Net Operational Revenue is equal to or greater than the Quarterly Revenue Floor and equal to or less than the Quarterly Revenue Ceiling, then the “**Quarterly Payment Amount**” payable in respect of the quarter is deemed to be zero.

3.3 Calculation of Quarterly Net Operational Revenue

- (a) If there is no Eligible Wholesale Contract applicable to a quarter, the “**Quarterly Net Operational Revenue**” in respect of that quarter is calculated as follows:

$$QNOR_Q = \sum SMR_{TI} + GPR_Q + OMR_Q$$

where:

$QNOR_Q$ = the Quarterly Net Operational Revenue for the quarter;

$\sum SMR_{TI}$ = the sum of the Spot Market Revenue for all Trading Intervals in the quarter calculated in accordance with item 3.4 (“Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue”);

GPR_Q = the Green Product Revenue for the quarter calculated in accordance with item 3.5 (“Calculation of Green Product Revenue and Uncontracted Green Product Revenue”); and

OMR_Q = the Other Market Revenue for the quarter,

provided that if the Quarterly Net Operational Revenue is a negative amount, then it is deemed to be zero.

- (b) If there are one or more Eligible Wholesale Contracts applicable to a quarter, the “**Quarterly Net Operational Revenue**” in respect of that quarter is calculated as follows:

$$QNOR_Q = \sum USMR_{TI} + UGPR_Q + OMR_Q + \sum EWCR_{TI}$$

where:

$QNOR_Q$ = the Quarterly Net Operational Revenue for the quarter;

$\sum USMR_{TI}$ = the Uncontracted Spot Market Revenue for all Trading Intervals in the quarter calculated in accordance with item 3.4 (“Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue”);

$UGPR_Q$ = the Uncontracted Green Product Revenue for the quarter calculated in accordance with item 3.5 (“Calculation of Green Product Revenue and Uncontracted Green Product Revenue”);

OMR_Q = the Other Market Revenue for the quarter; and

$\sum EWCR_{TI}$ = the sum of the Eligible Wholesale Contract Revenue for each Trading Interval in the quarter calculated in accordance with item 3.6 (“[Calculation of Eligible Wholesale Contract Revenue](#)”, ~~Calculation of Eligible Wholesale Contract Revenue~~),

provided that if the Quarterly Net Operational Revenue is a negative amount, then it is deemed to be zero.

3.4 Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue

Subject to clause 8.3(c) (“Project Operator is a special purpose vehicle”):

- (a) the “**Spot Market Revenue**” in respect of a Trading Interval is calculated as follows:

$$SMR_{TI} = NQ_{TI} \times FP_{TI}$$

where:

SMR_{TI} = the Spot Market Revenue for the Trading Interval;

NQ_{TI} = the Notional Quantity for the Trading Interval calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

FP_{TI} = subject to item 3.11 (“Impact of Negative Pricing Events”), the Floating Price (in \$/MWh) for the Trading Interval; and

- (b) the “**Uncontracted Spot Market Revenue**” in respect of a Trading Interval is calculated as follows:

$$USMR_{TI} = UNQ_{TI} \times FP_{TI}$$

where:

$USMR_{TI}$ = the Uncontracted Spot Market Revenue for the Trading Interval;

UNQ_{TI} = the Notional Quantity for the Trading Interval calculated in accordance with item 3.9 (“Calculation of Notional Quantity”) less that portion of that Notional Quantity which is subject to an Eligible Wholesale Contract ; and

FP_{TI} = subject to item 3.11 (“Impact of Negative Pricing Events”), the Floating Price (in \$/MWh) for the Trading Interval.

3.5 Calculation of Green Product Revenue and Uncontracted Green Product Revenue

- (a) The “**Green Product Revenue**” in respect of a period is calculated as follows:

$$GPR_P = \sum NQ_{TI} \times GPP_P$$

where:

GPR_P = the Green Product Revenue for the period;

$\sum NQ_{TI}$ = the sum of the Notional Quantity for all Trading Intervals in the period calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

GPP_P = the market price (in \$/MWh) for the Green Product for the period determined in accordance with item 3.13 (“Determination of market prices”).

- (b) The “**Uncontracted Green Product Revenue**” in respect of a period is calculated as follows:

$$UGPR_P = \sum UNQ_{TI} \times GPP_P$$

where:

$UGPR_P$ = the Uncontracted Green Product Revenue for the period;

ΣUNQ_{TI} = the sum of the Notional Quantity for all Trading Intervals in the period calculated in accordance with item 3.9 (“Calculation of Notional Quantity”), less that portion of that Notional Quantity which is subject to an Eligible Wholesale Contract, which includes the sale of Green Products in consideration for the contract price (or a separate price for Green Products) under that Eligible Wholesale Contract) ; and

GPP_P = the market price (in \$/MWh) for the Green Product for the period determined in accordance with item 3.13 (“~~Determination of market prices~~Determination of market prices”).

3.6 Calculation of Eligible Wholesale Contract Revenue

Subject to clauses 8.3(c) (“Project Operator is a special purpose vehicle”) ~~and~~, 15.2 (“Notification of Revenue Contract”) ~~and~~ 15.6 (“Bona fide and arm’s length arrangements”), the “**Eligible Wholesale Contract Revenue**” in respect of a Trading Interval is calculated as follows:

$$\sum_{EWC=1}^n (CNQ_{TI} \times FXP_{TI}) EWCR_{TI} = \sum_{EWC=1}^n (CNQ_{TI} \times FXP_{TI})$$

where:

$EWCR_{TI}$ = the Eligible Wholesale Contract Revenue for the Trading Interval;

EWC = each Eligible Wholesale Contract that applies to the Trading Interval;

n = the number of Eligible Wholesale Contracts that apply to the Trading Interval; and

CNQ_{TI} = that portion of the Notional Quantity for the Trading Interval (calculated in accordance with item 3.9 (“Calculation of Notional Quantity”) which is subject to that Eligible Wholesale Contract, ~~and which must not, together with the Notional Quantity subject to all other Eligible Wholesale Contracts applying to that Trading Interval, exceed the total Notional Quantity for the Trading Interval; and~~

FXP_{TI} = the contract price (including any separate price for Green Products, whether or not in addition to the price payable in respect of -electricity) for the Trading Interval under that Eligible Wholesale Contract which Project Operator is entitled to receive for the Trading Interval).

3.7 Calculation of Quarterly Revenue Floor

The “**Quarterly Revenue Floor**” in respect of a quarter is calculated as follows:

$$QRF_Q = \sum NQ_{TI} \times AF_{FY}$$

where:

QRF_Q = the Quarterly Revenue Floor for the quarter;

$\sum NQ_{TI}$ = the sum of the Notional Quantity for all Trading Intervals in the quarter calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

AF_{FY} = the Annual Floor for the Financial Year.

3.8 Calculation of Quarterly Revenue Ceiling

The “Quarterly Revenue Ceiling” in respect of a quarter is calculated as follows:

$$QRC_Q = \sum NQ_{TI} \times AC_{FY}$$

where:

QRC_Q = the Quarterly Revenue Ceiling for the quarter;

$\sum NQ_{TI}$ = the sum of the Notional Quantity for all Trading Intervals in the quarter calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

AC_{FY} = the Annual Ceiling for the Financial Year.

3.9 Calculation of Notional Quantity

The “Notional Quantity” for a Trading Interval is calculated as follows:

$$NQ_{TI} = (SOG_{TI} + FMG_{TI}) \times MLF_{TI}$$

where:

NQ_{TI} = the Notional Quantity for the Trading Interval (in MWh);

SOG_{TI} = Sent Out Generation for the Trading Interval (in MWh);

FMG_{TI} = PFME Generation for the Trading Interval (in MWh) calculated in accordance with item 6 (“PFME Generation”). If there is no Project Force Majeure Event affecting the Trading Interval, then PFME Generation is deemed to be zero; and

MLF_{TI} = the Marginal Loss Factor for the Trading Interval.

[Note: for all Hybrid Projects, an additional “Discount Factor” (DF_{TI}) is to be applied to the calculation of the Notional Quantity such that the resulting formula is:

$$NQ_{TI} = (SOG_{TI} + FMG_{TI}) \times MLF_{TI} \times DF_{TI}$$

This is to account for the additional losses that are expected to occur between the sub-meter (at which Sent Out Generation is measured) and the Connection Point.

This Discount Factor will use the assumed values outlined in the description of DF_{TI} below. For Non-Assessed Hybrid Projects, this factor will only apply if the Associated Project is developed.

MLF_{TI} will also be replaced with the below definition to reflect the potential for different MLFs to apply to exported quantities.]

[MLF_{TI} = the volume weighted average of:

- (a) for Sent Out Generation that is directly exported to the Network, the Marginal loss Factor for the Project; or
- (b) for Sent Out Generation that is imported by the Associated Project from the Project prior to export to the Network (“**AP Redirected Quantities**”), the Marginal loss Factor for the Associated Project;

DF_{TI} = the “**Discount Factor**” for the Trading Interval, which is:

[Note: the bracketed wording that splits DF_{TI} into pre/post Associated Project Commencement Date is to be included for Non-Assessed Hybrid Projects only.]

- (a) [for Trading Intervals occurring prior to the Associated Project Commencement Date, 1; and
- (b) for Trading Intervals occurring on or after the Associated Project Commencement Date,] the volume weighted average of the following factors:
 - (i) for Sent Out Generation that is directly exported to the Network, [X]; and
 - (ii) for AP Redirected Quantities, the product of:
 - (A) [X];
 - (B) [Y]; and
 - (C) [Z]. **[Note: paragraph (C) is to be included for AC-coupled hybrids only.]**

[Notes: the components of paragraph (b) of the Discount Factor will be fixed numbers that are intended to approximate the following losses:

“X” – the losses resulting from the connection assets between the sub-meter by which Sent Out Generation is calculated and the meter at the Connection Point. This factor will apply to all generated quantities. This component will be “0.978” for all Hybrid Projects.

“Y” – the discharge efficiency of the Associated Project and will only apply to energy that is charged/discharged by the Associated Project prior to export through the Connection Point. This component will be “0.931” for solar PV projects or “0.928” for wind projects,

“Z” – the additional losses resulting from the AC-coupling of a hybrid project in comparison to a DC-coupled hybrid. This factor will not apply to DC-coupled hybrids. This component will be “0.983” for solar PV projects or “0.976” for wind projects.]

3.10 [Determining AP Redirected Quantities]

For the purpose of calculating MLF_{TI} and the Discount Factor, Project Operator will determine AP Redirected Quantities:

- (a) based on the amount of electricity imported by the Associated Project, as measured by the meter identified as [insert] in the Metering Diagram; and **[Note: this is to be the sub-meter that measures energy flows to the Associated Project.]**

- (b) using the methodology determined by the Commonwealth (acting reasonably) or, if the Commonwealth has not provided such a methodology to Project Operator, using a methodology determined by Project Operator (acting reasonably).

3.11 Impact of Negative Pricing Events

If a Negative Pricing Event occurs, then:

- (a) Project Operator may, but is not required to, continue to generate and export electricity from the Project during that Negative Pricing Event; and
- (b) for the purposes of item 3.4 (“Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue”), the Floating Price for that Negative Pricing Event is \$0/MWh.

3.12 Cap on Quarterly Payment Amounts

- (a) The Commonwealth will not be required to pay any Quarterly Payment Amount to the extent that the sum of the Quarterly Payment Amounts paid or payable by the Commonwealth in the Financial Year as at that date is greater than the Annual Payment Cap.
- (b) Project Operator will not be required to pay any Quarterly Payment Amount to the extent that the sum of the Quarterly Payment Amounts paid or payable by Project Operator in the Financial Year as at that date is greater than the Annual Payment Cap.

3.13 Determination of market prices

- (a) Subject to paragraph (b), for the purposes of determining market prices in calculating the Green Product Revenue or the Uncontracted Green Product Revenue under item 3.5 (“Calculation of Green Product Revenue and Uncontracted Green Product Revenue”) or Other Market Revenue, the market price for a Green Product or Capacity Product will be determined by the Commonwealth (acting reasonably and in good faith), having regard to:
 - (i) in respect of a type of Green Product or Capacity Product (as relevant):
 - (A) the historic spot market price for that certificate or product type of Green Product or Capacity Product (as relevant) that is calculated as the average of the quotations (stated on a GST inclusive basis) for that certificate or product type of Green Product or Capacity Product (as relevant) for the 3 month period immediately preceding the relevant calculation date; or
 - (B) if there is no historic spot market price for that certificate or product type of Green Product or Capacity Product (as relevant), then the spot market price for that certificate or product type of Green Product or Capacity Product (as relevant) as at the relevant calculation date, obtained from two independent and suitably qualified brokerage firms nominated by the Commonwealth; and
 - (ii) any other information that the Commonwealth has relating to the prices for that Green Product or Capacity Product (as relevant).

- (b) The Commonwealth must either:
 - (i) within [20] Business Days after the end of each quarter in the Financial Year, publish or notify Project Operator of, the market prices determined in accordance with paragraph (a) which will apply to that quarter for the purposes of determining the Quarterly Net Operational Revenue or Annual Net Operational Revenue (as applicable); or
 - (ii) within [20] Business Days after:
 - (A) the end of the first quarter in the Financial Year, publish, or notify to Project Operator, the indicative market prices that will apply to each quarter in that Financial Year for the purposes of determining the Quarterly Net Operational Revenue; and
 - (B) the end of the Financial Year, publish, or notify Project Operator of the market prices determined in accordance with paragraph (a) which will apply to that Financial Year for the purposes of determining the Annual Net Operational Revenue (as applicable).

[Note: the Commonwealth may either: (1) publish or notify the relevant market prices for each quarter, or (2) set an indicative price on a look-forward basis for a Financial Year which will be used for the Quarterly Payment Amounts, and at the end of the Financial Year publish or notify the actual market price determined in accordance with paragraph (a) which will be used to calculate the Annual Adjustment Payment to true-up the Quarterly Payment Amounts calculated on the indicative market price.]

- (c) At all times, Project Operator is not entitled to, and must not make a Claim to receive, any information held by the Commonwealth referred to in subparagraph (a)(ii).
- (d) Any Disputes in respect of this item 3.13 may not be referred to an Independent Expert under clause 27.5(b) ("Negotiation") or 27.6 ("Independent Expert").

3.14 Consent to use and disclose pricing information

For the purposes of clause 31.1(e) ("Disclosure of information"), Project Operator consents to the Commonwealth using and disclosing pricing information (including under any publication or notice referred to in item 3.13(b) ("Determination of market prices")) for any Green Product or Capacity Product that Project Operator receives under a Wholesale Contract or otherwise in the market, provided that:

- (a) such information is disclosed on an anonymised basis and is not attributable to either Project Operator, the Project or any particular contract counterparty; and
- (b) such information is used by the Commonwealth for the purposes of determining the market price for that certificate or product type of Green Product or Capacity Product (as relevant) under a comparable provision to item 3.13(a) ("Determination of market prices") in an Other CISA.

4 Annual Adjustment Amount

4.1 Payment of Annual Adjustment Amount

The Annual Adjustment Amount is payable for the Financial Year in accordance with clause 16 (“Billing and payment”) as follows:

- (a) if the Annual Net Operational Revenue is less than the Annual Revenue Floor, then in accordance with item 4.2(a) (“Calculation of Annual Adjustment Amount”);
- (b) if the Annual Net Operational Revenue is greater than the Annual Revenue Ceiling, then in accordance with item 4.2(b); and
- (c) if the Annual Net Operational Revenue is equal to or greater than the Annual Revenue Floor and equal to or less than the Annual Revenue Ceiling, then in accordance with item 4.2(c).

4.2 Calculation of Annual Adjustment Amount

- (a) If the Annual Net Operational Revenue is less than the Annual Revenue Floor, then:

- (i) the “**Annual Adjustment Amount**” payable in respect of the Financial Year is calculated as follows:

$$AAA_{FY} = 90\% \times (ARF_{FY} - ANOR_{FY}) - \sum CQPA_{FY} + \sum OQPA_{FY}$$

where:

AAA_{FY} = the Annual Adjustment Amount for the Financial Year;

ARF_{FY} = the Annual Revenue Floor for the Financial Year calculated in accordance with item 4.4 (“Calculation of Annual Revenue FloorCalculation of Annual Revenue Floor”);

$ANOR_{FY}$ = the Annual Net Operational Revenue for the Financial Year calculated in accordance with item 4.3 (“Calculation of Annual Net Operational RevenueCalculation of Annual Net Operational Revenue”);

$\sum CQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by the Commonwealth calculated in accordance with item 3 (“Quarterly Payment AmountQuarterly Payment Amount”); and

$\sum OQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by Project Operator calculated in accordance with item 3 (“Quarterly Payment AmountQuarterly Payment Amount”); and

- (ii) subject to item 4.6 (“Cap on Annual Adjustment Amount”):

- (A) the Commonwealth must pay a positive Annual Adjustment Amount to Project Operator; and

(B) Project Operator must pay the absolute value of a negative Annual Adjustment Amount to the Commonwealth.

(b) If the Annual Net Operational Revenue is greater than the Annual Revenue Ceiling, then:

(i) the “**Annual Adjustment Amount**” payable in respect of the Financial Year is calculated as follows:

$$AAA_{SY} = 50\% \times (ANOR_{FY} - ARC_{FY}) - \sum OQPA_{FY} + \sum CQPA_{FY}$$

where:

AAA_{FY} = the Annual Adjustment Amount for the Financial Year;

$ANOR_{FY}$ = the Annual Net Operational Revenue for the Financial Year calculated in accordance with item 4.3 (“[Calculation of Annual Net Operational Revenue](#)”);

ARC_{FY} = the Annual Revenue Ceiling for the Financial Year calculated in accordance with item 4.5 (“[Calculation of Annual Revenue Ceiling](#)”);

$\sum OQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by Project Operator calculated in accordance with item 3 (“[Quarterly Payment Amount](#)”); and

$\sum CQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by the Commonwealth calculated in accordance with item 3 (“[Quarterly Payment Amount](#)”); and

(ii) subject to item 4.6 (“Cap on Annual Adjustment Amount”):

(A) Project Operator must pay a positive Annual Adjustment Amount to the Commonwealth; and

(B) the Commonwealth must pay the absolute value of a negative Annual Adjustment Amount to Project Operator.

(c) If the Annual Net Operational Revenue is equal to or greater than the Annual Revenue Floor and equal to or less than the Annual Revenue Ceiling, then:

(i) the “**Annual Adjustment Amount**” payable in respect of the Financial Year is calculated as follows:

$$AAA_{FY} = \sum CQPA_{FY} - \sum OQPA_{FY}$$

where:

AAA_{FY} = the Annual Adjustment Amount for the Financial Year;

$\sum CQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by the Commonwealth calculated in accordance with item 3 ("~~Quarterly Payment Amount~~Quarterly Payment Amount"); and

$\sum OQPA_{FY}$ = the sum of all Quarterly Payment Amounts for quarters in the Financial Year payable by Project Operator calculated in accordance with item 3 ("~~Quarterly Payment Amount~~Quarterly Payment Amount"); and

- (ii) subject to item 4.6 ("Cap on Annual Adjustment Amount"):
- (A) Project Operator must pay a positive Annual Adjustment Amount to the Commonwealth; and
 - (B) the Commonwealth must pay the absolute value of a negative Annual Adjustment Amount to Project Operator.

4.3 Calculation of Annual Net Operational Revenue

- (a) If there is no Eligible Wholesale Contract applicable to a Financial Year, the "**Annual Net Operational Revenue**" in respect of that Financial Year is calculated as follows:

$$ANOR_{FY} = \sum SMR_{TI} + GPR_{FY} + OMR_{SY}$$

where:

$ANOR_{FY}$ = the Annual Net Operational Revenue for the Financial Year;

$\sum SMR_{TI}$ = the sum of the Spot Market Revenue for all Trading Intervals in the Financial Year calculated in accordance with item 3.4 ("Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue");

GPR_{FY} = the Green Product Revenue for the Financial Year calculated in accordance with item 3.5 ("Calculation of Green Product Revenue and Uncontracted Green Product Revenue"); and

OMR_{FY} = the Other Market Revenue for the Financial Year,

provided that if the Annual Net Operational Revenue is a negative amount, then it is deemed to be zero.

- (b) If there are one or more Eligible Wholesale Contracts applicable to a Financial Year, the "**Annual Net Operational Revenue**" in respect of that Financial Year is calculated as follows:

$$ANOR_{FY} = \sum USMR_{TI} + UGPR_{SY} + OMR_{SY} + \sum EWCR_{TI}$$

where:

$ANOR_{FY}$ = the Annual Net Operational Revenue for the Financial Year;

$\sum USMR_{TI}$ = the Uncontracted Spot Market Revenue for all Trading Intervals in the Financial Year calculated in accordance with item 3.4 (“Calculation of Spot Market Revenue and Uncontracted Spot Market Revenue”);

$UGPR_{FY}$ = the Uncontracted Green Product Revenue for the Financial Year calculated in accordance with item 3.5 (“Calculation of Green Product Revenue and Uncontracted Green Product Revenue”);

OMR_{FY} = the Other Market Revenue for the Financial Year; and

$\sum EWCR_{TI}$ = the sum of the Eligible Wholesale Contract Revenue for all Trading Intervals in the Financial Year calculated in accordance with item 3.6 (“[Calculation of Eligible Wholesale Contract Revenue](#)”, ~~“Calculation of Eligible Wholesale Contract Revenue”~~),

provided that if the Annual Net Operational Revenue is a negative amount, then it is deemed to be zero.

4.4 Calculation of Annual Revenue Floor

The “**Annual Revenue Floor**” in respect of the Financial Year is calculated as follows:

$$ARF_{FY} = \sum NQ_{TI} \times AF_{FY}$$

where:

ARF_{FY} = the Annual Revenue Floor for the Financial Year;

$\sum NQ_{TI}$ = the sum of the Notional Quantity for all Trading Intervals in the Financial Year calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

AF_{FY} = the Annual Floor for the Financial Year applicable to the Financial Year.

4.5 Calculation of Annual Revenue Ceiling

The “**Annual Revenue Ceiling**” in respect of a Financial Year is calculated as follows:

$$ARC_{FY} = \sum NQ_{TI} \times AC_{FY}$$

where:

ARC_{FY} = the Annual Revenue Ceiling for the Financial Year;

$\sum NQ_{TI}$ = the sum of the Notional Quantity for all Trading Intervals in the Financial Year calculated in accordance with item 3.9 (“Calculation of Notional Quantity”); and

AC_{FY} = the Annual Ceiling for the Financial Year applicable to the Financial Year.

4.6 Cap on Annual Adjustment Amount

- (a) The Commonwealth will not be required to pay any Annual Adjustment Amount to the extent that the sum of:
- (i) the Annual Adjustment Amount payable by the Commonwealth; and
 - (ii) the sum of the Quarterly Payments Amounts paid by the Commonwealth,
- in a Financial Year is greater than the Annual Payment Cap.
- (b) Project Operator will not be required to pay any Annual Adjustment Amount to the extent that the sum of:
- (i) the Annual Adjustment Amount payable by Project Operator; and
 - (ii) the sum of the Quarterly Payment Amounts paid by Project Operator,
- in a Financial Year is greater than the Annual Payment Cap.

5 Minimum Generation

5.1 Minimum Generation

[Note: for all Hybrid Projects, “Sent Out Generation (Discounted)” is to be used instead of “Sent Out Generation” when measuring performance against Minimum Generation.]

If Sent Out Generation [(Discounted)] in a Financial Year is less than the Minimum Generation for that Financial Year, then Project Operator must within 20 Business Days after the end of that Financial Year, provide to the Commonwealth with a report setting out the reason for Project Operator’s failure to achieve the Minimum Generation for that Financial Year and reasonable supporting information in respect of that reason.

5.2 Cure Plan

- (a) If:
- (i) Sent Out Generation [(Discounted)] in a Financial Year (“**First Period**”) is less than the Minimum Generation for that First Period; and
 - (ii) Sent Out Generation [(Discounted)] in a Financial Year that is immediately following the First Period (“**Second Period**”) is less than the Minimum Generation for that Second Period,

then Project Operator must provide the Commonwealth a proposed cure plan that sets out how Project Operator will achieve Minimum Generation in subsequent Financial Years (“**Proposed Cure Plan**”).

- (b) If the Commonwealth receives a Proposed Cure Plan, then:
 - (i) the Commonwealth must either:
 - (A) request any changes to the Proposed Cure Plan that it considers (acting reasonably) are in the best long term financial interests of electricity customers in the Relevant Jurisdiction; or
 - (B) approve the Proposed Cure Plan,

provided that if the Commonwealth does not request any changes to the Proposed Cure Plan within 40 Business Days after receipt of the Proposed Cure Plan then the Commonwealth will be taken to have approved the Proposed Cure Plan;
 - (ii) if the Commonwealth requests any changes to the Proposed Cure Plan in accordance with subparagraph (b)(i)(A), then:
 - (A) within 20 Business Days after the Commonwealth's request, Project Operator must provide an amended Proposed Cure Plan to the Commonwealth; and
 - (B) within 20 Business Days after receipt of Project Operator's amended Proposed Cure Plan, the Commonwealth must (acting reasonably) approve or reject the amended Proposed Cure Plan. If the Commonwealth fails to either approve or reject the Proposed Cure Plan within that period, then the Commonwealth is deemed to have rejected the Proposed Cure Plan.
- (c) If the Commonwealth approves a Proposed Cure Plan, then:
 - (i) that Proposed Cure Plan will become an "**Approved Cure Plan**"; and
 - (ii) Project Operator must, at its sole cost, comply with that Approved Cure Plan in all material respects.

5.3 Lost Generation

- (a) For the purposes of determining whether Sent Out Generation [(Discounted)] in a Financial Year is less than the Minimum Generation, the aggregate of any Lost Generation during any Trading Intervals in a Financial Year is to be added to the Sent Out Generation [(Discounted)] for that Financial Year.
- (b) The "**Lost Generation**" for a relevant Financial Year is an amount (in MWh) equal to Sent Out Generation [(Discounted)] that would have been generated during a Trading Interval in the Financial Year but for:
 - (i) a Project Force Majeure Event (and, for the purposes of this clause only, Project Operator will not be taken to have caused any curtailment or congestion affecting the availability of the Network by virtue of the Project dispatching electricity to the Network); or
 - (ii) Project Operator electing not to generate electricity from the Project during a Negative Pricing Event.

- (c) Subject to paragraph (d), if AEMO has published the UIGF for the Project or equivalent measure, then Project Operator will calculate Lost Generation for each Trading Interval using the following formula:

$$LG_{TI} = (UIGF_{TI} \times T) - SOG_{TI}$$

where:

LG_{TI} = Lost Generation for the Trading Interval (in MWh);

$UIGF_{TI}$ = the 5-minute Predispatch UIGF for the Project for the Trading Interval (in MW);

T = 1/12 (being the duration of a Trading Interval, in hours); and

SOG_{TI} = Sent Out Generation [(Discounted)] in the Trading Interval (in MWh).

- (d) If:
- (i) AEMO has published the UIGF (or an equivalent measure) for the Project but the Commonwealth does not consider (acting reasonably) that it is an appropriate measure for the Project or it is inconsistent with any guidance published by the Commonwealth from time to time; or
 - (ii) AEMO has not published the UIGF (or an equivalent measure) for the Project, then Project Operator must provide to the Commonwealth (for the Commonwealth's approval) an estimate of the Lost Generation using best available data (such as local site renewable resource data (e.g. solar irradiance or wind / turbine speed), relevant SCADA data and historical dispatch) or as otherwise provided for in accordance with any guidance published by the Commonwealth from time to time.
- (e) Project Operator must use all reasonable endeavours and Good Industry Practice to minimise, mitigate and resolve occurrences of Lost Generation, other than where Lost Generation is a result of a Negative Pricing Event.

6 PFME Generation

- (a) The “**PFME Generation**” for a Trading Interval is an amount (in MWh) equal to Sent Out Generation that would have been generated during that Trading Interval but for a Project Force Majeure Event (and, for the purposes of this clause only, Project Operator will not be taken to have caused any curtailment or congestion affecting the availability of the Network by virtue of the Project dispatching electricity to the Network).
- (b) Project Operator will calculate PFME Generation for each Trading Interval using the following formula:

$$FMG_{TI} = DSOG_{TI} - SOG_{TI}$$

where:

FMG_{TI} = PFME Generation for the Trading Interval (in MWh);

$DSOG_{TI}$ = the deemed generation for a Trading Interval (in MWh) calculated using best available data (such as local site renewable resource data (e.g. solar irradiance or wind / turbine speed), relevant SCADA data and historical dispatch) or as otherwise provided for in accordance with any guidance published by the Commonwealth from time to time, which Project Operator must provide to the Commonwealth; and

SOG_{TI} = Sent Out Generation in the Trading Interval (in MWh).

Capacity Investment Scheme Agreement

Schedule 2 Social Licence Commitments

[Note: This Schedule 2 will contain:

- (a) *the Social Licence Commitments including those made in respect of First Nations and Community Engagement and community benefits made under Merit Criteria 4 and 7 of the Project Bid; and*
- (b) *timelines for delivery and values associated with each Social Licence Commitment for the purpose of clause 11.6 (“~~Abatements for non-compliance~~Abatements for non-compliance”)]*

Form

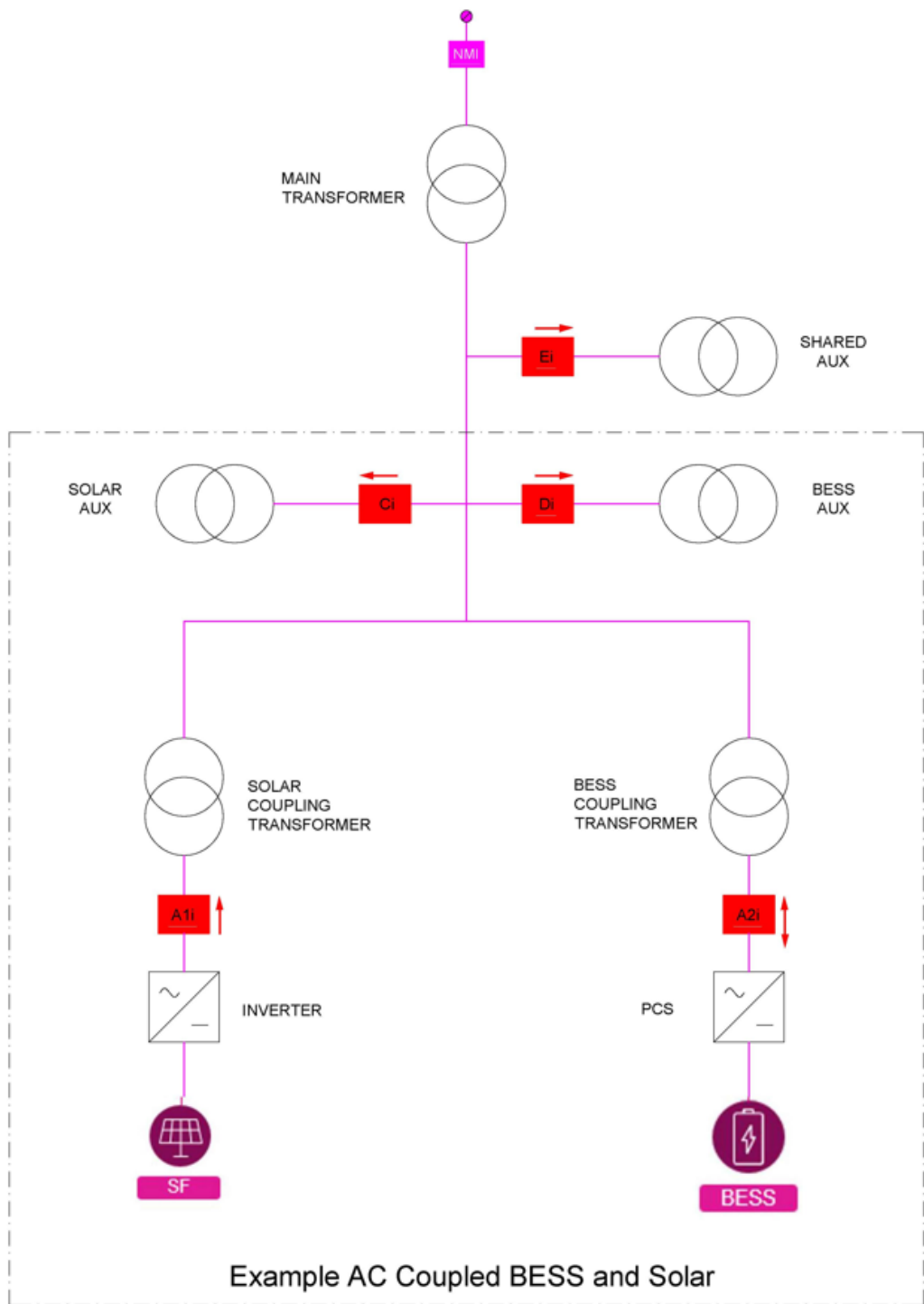
Capacity Investment Scheme Agreement

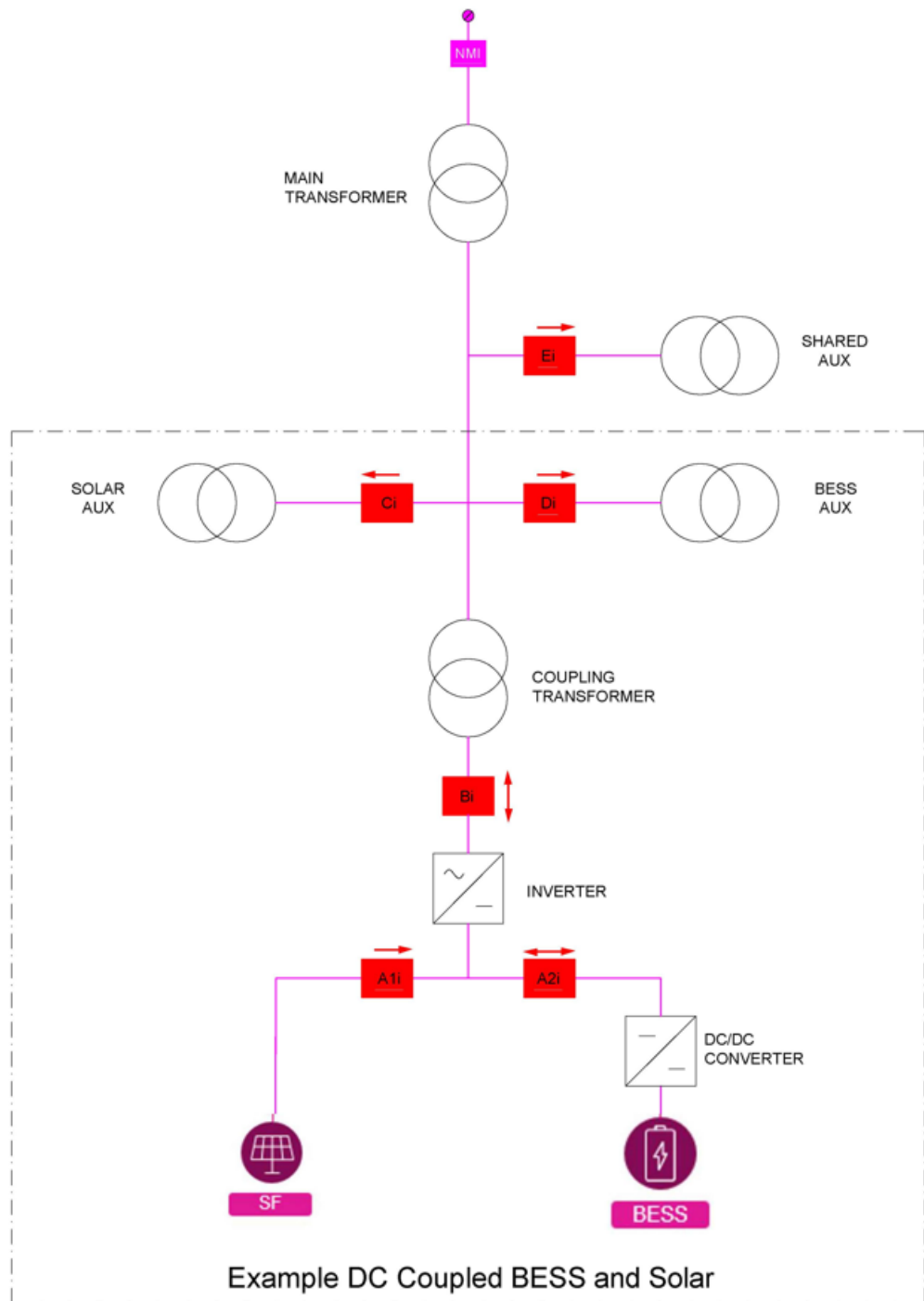
Schedule 3 Metering Diagram

[Note: for all Hybrid Projects, the Proponent must include a metering diagram and an accompanying table which outlines how the metering of the projects will work. The metering solution must comply with the requirements in clause [4.24-32](#). The metering diagram provided by the Proponent must include all relevant generation assets, energy storage assets, shared auxiliary loads, separate auxiliary loads, inverters, converters, coupling transformers and main transformers.]

It is expected that the metering solution will be sufficient to distinguish generated energy that is directly exported to the Network from generated energy that is imported by the Associated Project prior to export to the Network.

Indicative examples of metering diagrams are provided on the following pages together with a legend explaining each metering icon.]





Point	Type of Measurement	
	DC Coupled	AC Coupled
A1	Export Energy from the Solar Farm. Energy flows may be from DC metering	Export Energy from the Solar Farm. Internal AC metering of the Solar Inverter.
A2	Bi-directional Energy flows of the BESS. Energy flows from DC metering	Bi-directional Energy flows of the BESS. Internal AC metering of the PCS

B	Bi-directional Energy flows of the DC Coupled BESS/Solar. Internal AC metering of the shared Inverter. <i>Note that export levels from the inverter can be used to determine the net flows from the DC Coupled BESS/solar, with contributions from each source determined based on ratios of A1 and A2 measurements</i>	N/A
C	Solar farm Auxiliary Loads. AC Metering on supply points to the Solar Farm Auxiliaries.	
D	BESS Auxiliary Loads. AC Metering on supply points to the BESS Auxiliaries.	
E	Shared Auxiliary Loads (example, substation/house loads). AC Metering on supply points to the shared Auxiliaries.	

Capacity Investment Scheme Agreement

Schedule 4 Knowledge sharing plan

1 Knowledge sharing context

The Commonwealth may use the Knowledge Sharing Deliverables for the following purposes:

- (a) to perform the Commonwealth's obligations under this agreement;
- (b) to monitor and evaluate the performance of the Commonwealth's Capacity Investment Scheme;
- (c) to accurately inform and engage key stakeholders on the following aspects of electricity storage projects in Australia:
 - (i) actual CAPEX and OPEX costs for such projects, including pathways for cost reductions particularly around risk premiums applied by suppliers as they build experience and confidence in these types of projects;
 - (ii) challenges and lessons learned about the integration of the various systems and technologies at commercial scale;
 - (iii) what commercial, regulatory and social barriers the Project encounters, and how they are effectively addressed;
 - (iv) the capabilities, depth and maturity of the various supply chains required to deliver this Project;
 - (v) how social licence and genuine support for the Project is established and maintained with relevant communities; and
 - (vi) how the actual operation of the completed Project compares to the design forecasts, and how this could be optimised for future projects.

2 Knowledge Sharing Deliverables

All deliverables are to be prepared to a standard acceptable to the Commonwealth and, where relevant, reflect any guidelines provided by the Commonwealth relating to the preparation and delivery of Knowledge Sharing Deliverables.

[Note: examples of the Knowledge Sharing Deliverables will be included by the Commonwealth in the table below as part of Stage B. The shortlisted Proponent is required to complete this table as part of its Financial Value Bid in Stage B of the Tender Process.]

No.	Knowledge Sharing Deliverable	Purpose	Frequency	When?	Public information or confidential information	Content and delivery
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

Schedule 5 Fixed Termination Amount and Early Termination Amount

Fixed Termination Amount

The Fixed Termination Amount will be calculated as follows:

$$\text{FTA} = \text{A} - \text{C} - \text{E} - \text{F} + \text{G}$$

Where:

FTA = the Fixed Termination Payment

- A = the aggregate of the Annual Payment Cap for each of the remaining Financial Years over the remainder of the Term provided however that for the basis of determining that aggregate amount, this agreement must be read on the assumption that it has not been terminated;
- C = any Liability of Project Operator to the Commonwealth under this agreement as at the date on which this agreement is terminated;
- E = any gains which have accrued, or will accrue, to Project Operator as a result of terminating any finance or hedge agreement related to the Project including as a result of terminating, reversing or closing out any derivative position (in part or full) or arising from the prepayment of any debt or interest;
- F = the aggregate of any insurance proceeds related to loss of revenue or profit or to business interruption (howsoever named) received or receivable (or which should have been received) by Project Operator or any of its Related Bodies Corporate regarding the Project (other than those insurance proceeds required to be applied to repair or reinstate the Project or to indemnify a third party); and
- G = any Liability of the Commonwealth under this agreement as at the date on which this agreement is terminated (other than the Liability of the Commonwealth to Project Operator regarding this Fixed Termination Payment).

Early Termination Amount

The Early Termination Amount is calculated as follows: in the periods identified:

For the period from and including the Signing Date to the period immediately prior to the COD, the Early Termination Amount is \$[insert].

[Note: for the purpose of determining the amount payable as an Early Termination Amount for termination by the Commonwealth prior to the COD for Project Operator default, the Commonwealth has calculated a genuine pre-estimate of its loss at greater than \$4,000,000. However, in recognition of the fact that Projects will have a different Maximum Capacity, the Commonwealth is willing to set the Early Termination Amount, for termination for default prior to COD, to which the Commonwealth is entitled under this section at a lower amount for value for money]

reasons. The amount will be calculated using the following formula: \$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000. The shortlisted Proponent is required to provide that amount here as part of its Financial Value Bid in Stage B of the Tender Process.

For the period from and including the COD to the end of the Term, the Early Termination Amount is calculated as follows:

$$\text{ETA} = \text{A} + \text{B} + \text{C} + \text{D} + \text{E} - \text{F}$$

Where:

ETA = the Early Termination ~~Payment~~Amount

A = the aggregate of the net increase in the support amounts to which the Commonwealth is exposed under a replacement agreement on substantially the same terms as this agreement with a new operator over and above the support amounts to which the Commonwealth would have been exposed under this agreement had it not been terminated (assuming for that comparison that the Commonwealth would be exposed to pay Project Operator the Annual Payment Cap under this agreement and the new operator the Annual Payment Cap under the new agreement in each case as determined over the remaining Financial Years over the remainder of the Term under this agreement determined on the assumption that this agreement has not been terminated) which for the purpose of this section 1 is calculated as follows:

$$\text{A} = (\sum \text{MC}_{\text{RSY}}) \times 10\%$$

Where $\sum \text{MC}_{\text{RSY}}$ = the sum of the Annual Payment Cap over the remaining Financial Years in the remainder of the Term under this agreement, determined on the assumption that this agreement has not been terminated;

B = the reasonable and proper internal and external costs incurred by or on behalf of the Commonwealth in carrying out a tender to identify another project to replace the Maximum Capacity of the Project which for the purpose of this section 1 is fixed at \$15 million (indexed);

C = any Liability of Project Operator to the Commonwealth under this agreement as at the date on which this agreement is terminated;

D = any other additional costs reasonably incurred by the Commonwealth as a direct result of the termination of this agreement;

E = any gains which have accrued, or will accrue, to Project Operator as a result of terminating any finance or hedge agreement related to the Project including as a result of terminating, reversing or closing out any derivative position (in part or full) or arising from the prepayment of any debt or interest;

F = any Liability of the Commonwealth to Project Operator under this agreement as at the date on which this agreement is terminated.

Schedule 6 Commonwealth Policy and Other Requirements

Project Operator is required to comply with the Commonwealth policies and other requirements as set out in this Schedule 6. Please note that some of the Commonwealth policies identified below have been modified to suit the subject matter of this agreement and Project Operator is only required to comply with that part of the Commonwealth policy and requirements referred to and set out below.

1 Taxation and Shadow Economy Policy

1.1 Definitions

In this section 1:

- (a) **Satisfactory**, in respect of a Statement of Tax Record, means the Statement of Tax Record meets the conditions set out in Part 6.b of the Shadow Economy Policy or, if the circumstances in Part 6.c of the Shadow Economy Policy apply, the conditions set out in Part 8 of the Shadow Economy Policy;
- (b) **Statement of Tax Record** means a statement of tax record issued by the Australian Taxation Office following an application made in accordance with the process set out at: [https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR](https://www.ato.gov.au/Business/Bus/Statement-of-tax-record/?page=1#Requesting_an_STR;);
- (c) **Shadow Economy Policy** means the *Shadow economy – increasing the integrity of government procurement: Procurement connected policy guidelines March 2019* available at: <https://treasury.gov.au/publication/p2019-t369466>; and
- (d) **Valid** means valid in accordance with Part 7.e of the Shadow Economy Policy.

1.2 Taxation

- (a) Project Operator must comply with all applicable Laws relating to taxation.
- (b) Project Operator must ensure that any first tier Subcontract (namely those which Project Operator enters into directly with a Subcontractor) for the purposes of fulfilling its obligations under this agreement imposes on the first tier Subcontractor the same obligations that Project Operator has under this section 1.2.

1.3 Valid Statement of Tax Record

- (a) In this section 1.3, **Required Entity** includes each of the applicable entities listed in the table below. If more than one row of the table below applies to Project Operator, Required Entity includes all relevant entities listed in each row that applies to Project Operator.

If Project Operator is:	Required Entity includes:
a body corporate or natural person	that body corporate or person.
a trustee acting in its capacity as trustee of a trust	a) Project Operator; and b) the trust.
a member of a Consolidated Group	a) Project Operator; and b) the head company in the Consolidated Group.
a member of a GST Group	a) Project Operator; and b) the GST Group representative.

- (b) Project Operator:
- (i) warrants that at the date of this agreement each Required Entity holds a Valid and Satisfactory Statement of Tax Record; and
 - (ii) must ensure that each Required Entity holds a Valid and Satisfactory Statement of Tax Record at all times from the date of this agreement until the end of the Term.
- (c) Project Operator, in relation to each Subcontractor it has engaged to deliver goods or services with an estimated value of over \$4 million (GST inclusive):
- (i) warrants that such Subcontractor holds a Satisfactory Statement of Tax Record for the Subcontractor that was Valid at the commencement of the term of the relevant Subcontract;
 - (ii) must ensure that such Subcontractor holds a Valid and Satisfactory Statement of Tax Record at all times during the term of the relevant Subcontract; and
 - (iii) must retain a copy of any Statement of Tax Record held by such Subcontractor.
- (d) The Commonwealth may, by notice in writing to Project Operator at any time, require Project Operator to provide a copy of any Statement of Tax Record held or retained by Project Operator or required to be held or retained by Project Operator under this section 1.3. Project Operator must provide a copy of the relevant Statement of Tax Record held or retained by Project Operator to the Commonwealth within 5 Business Days after receiving the notice under this section 1.3(d).
- (e) Project Operator must notify the Commonwealth if it is in breach of this section 1 and that notice must be provided by Project Operator to the Commonwealth within 10 Business Days after Project Operator becomes aware of that breach.
- (f) A failure by Project Operator to comply with this section 1 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

2 Workplace Gender Equality

2.1 Workplace Gender Equality

- (a) In this section 2.1, **WGE Act** means the *Workplace Gender Equality Act (Cth)* 2012.
- (b) Project Operator must:
 - (i) comply with its obligations (if any) under the WGE Act;
 - (ii) immediately notify the Commonwealth of any non-compliance by Project Operator with the WGE Act; and
 - (iii) if requested by the Commonwealth at any time, provide a current letter of compliance with the WGE Act issued by the Workplace Gender Equality Agency.
- (c) Project Operator must not enter into a Subcontract with a Subcontractor named by the Workplace Gender Equality Agency as an employer currently not complying with the WGE Act.
- (d) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 2.1, including this requirement to impose obligations on any further Subcontractor.
- (e) A failure by Project Operator to comply with this section 2 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

3 Modern Slavery

- (a) Project Operator must comply with the *Modern Slavery Act 2018 (Cth)*. Project Operator must take reasonable steps to identify, assess and address risks of Modern Slavery (as defined in the *Modern Slavery Act 2018 (Cth)*) practices in its operations and supply chains used by it and its Subcontractors in the procurement or provision of the goods and/or services in relation to the Project.
- (b) If at any time Project Operator becomes aware of Modern Slavery (as defined in the *Modern Slavery Act 2018 (Cth)*) practices in its operations and supply chains used by it and its Subcontractors in the procurement or provision of the goods and/or services in relation to the Project, Project Operator must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.
- (c) A failure by Project Operator to comply with this section 3 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

4 Workplace Laws

- (a) Project Operator must perform its obligations under this agreement in such a way that Project Operator does not breach, and the Commonwealth is not placed in breach of, any applicable Workplace Laws.
- (b) Project Operator must, at no cost to the Commonwealth:
 - (i) comply with any request, policy or lawful and reasonable direction issued by the Commonwealth; and
 - (ii) otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth,that is required or authorised by any applicable Workplace Law.
- (c) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement after the Signing Date imposes on the Subcontractor the same obligations that Project Operator has under this section 4, other than this requirement to impose obligations on any further Subcontractor.
- (d) If Project Operator fails to comply with this section 4, such that a breach, or potential breach, of Workplace Laws occurs that does or may result in proceedings being commenced alleging that an offence under Workplace Laws has occurred, the Commonwealth may terminate this agreement pursuant to clause 22.3(o) ("Termination by the Commonwealth for default").

5 Significant Events

5.1 Definition

In this section 5, "**Significant Event**" means:

- (a) any adverse comments or findings made by a court, commission, tribunal or other statutory or professional body regarding the conduct or performance of Project Operator or its officers, employees, Subcontractors or agents that impacts or could be reasonably perceived to impact on their professional capacity, capability, fitness or reputation;
- (b) any other significant matters, including the commencement of legal, regulatory or disciplinary action involving Project Operator or its officers, employees, Subcontractors or agents, that may adversely impact on compliance with Commonwealth policy, applicable Laws or the Commonwealth's reputation;
- (c) any unsettled judicial decisions against Project Operator (including in or related to overseas jurisdictions relating to employee entitlements where the employee entitlements remain unpaid (but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired));
- (d) any non-compliance by Project Operator or its officers, employees, Subcontractors or agents any judgment against that person from any court or tribunal (including overseas jurisdictions, but excluding judgments under appeal or instances where the period for appeal or payment/settlement has not expired) relating to a breach of any applicable Workplace Laws; or

- (e) a security incident meaning any actual or suspected breach of Project Operator's security in relation to the Project, including any unauthorised access to, or any unauthorised disclosure of, or loss involving any systems used in connection with the Project or any data which Project Operator has access to as a result of this agreement.

5.2 No existing Significant Event

Project Operator warrants and represents that there is no Significant Event in relation to Project Operator and its officers, employees, Subcontractors or agents as at the Signing Date.

5.3 Notice of Significant Event

- (a) Project Operator must, immediately upon becoming aware of a Significant Event in relation to Project Operator or its officers, employees, Subcontractors or agents, notify the Commonwealth in writing, providing:
 - (i) a summary of the Significant Event, including the date or dates on which it occurred and the date on which Project Operator became aware of it; and
 - (ii) details of the relevant Operator and/or its officers, employees, Subcontractors or agents involved in the Significant Event and of any actions being taken by any person to address that Significant Event.
- (b) If, prior to Project Operator providing notice under section 5.3(a), the Commonwealth notifies Project Operator in writing that an event or circumstance is to be considered a Significant Event for the purposes of this section 5, Project Operator must notify the Commonwealth in writing as if section 5.3(a) applied, within 3 Business Days after receiving the notice issued under this section 5.3(b).
- (c) When reasonably requested by the Commonwealth, Project Operator must, within 3 Business Days after the request, provide to the Commonwealth additional information in writing regarding a Significant Event, to the extent that information is known by or reasonably available to Project Operator.

5.4 Commonwealth response to a Significant Event

If the Commonwealth is notified of a Significant Event pursuant to section 5.3(a) or notifies Project Operator of a Significant Event pursuant to section 5.3(b), the Commonwealth may:

- (a) notify Project Operator that no further action in relation to the Significant Event is required;
- (b) request Project Operator to submit a remediation plan to the Commonwealth; or
- (c) acting reasonably, determine that the Significant Event is of such a serious or significant nature that it is not appropriate in the circumstances for Project Operator to continue as a party to this agreement, in which case the Commonwealth may terminate this agreement in accordance with clause 22.3 ("Termination by the Commonwealth for default").

5.5 Remediation plan

- (a) If notified by the Commonwealth pursuant to section 5.4(b), Project Operator must prepare a draft remediation plan and submit that draft plan to the Commonwealth for approval within 10 Business Days after receipt of that request.
- (b) A draft remediation plan prepared by Project Operator under section 5.5(a) must include the following information:
 - (i) how and the timeframe within which Project Operator will address the Significant Event in the context of this agreement and the Project, including confirmation that the implementation of the remediation plan will not in any way impact this agreement or the Project or compliance by Project Operator with its other obligations under this agreement or otherwise at Law;
 - (ii) how Project Operator will ensure that events or circumstances similar to the Significant Event do not occur again; and
 - (iii) any other matter reasonably requested by the Commonwealth.
- (c) The Commonwealth must review the draft remediation plan and may:
 - (i) approve the draft remediation plan;
 - (ii) notify Project Operator of the details of any changes that the Commonwealth considers are reasonably required to the draft remediation plan; or
 - (iii) reject the draft remediation plan if the Commonwealth, acting reasonably, considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan could address the matters raised by the Significant Event. If this applies, the Commonwealth will notify Project Operator in writing of that fact, and that the failure to provide a satisfactory remediation plan will be a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 (“Termination by the Commonwealth for default”).
- (d) Project Operator must make any changes to the draft remediation plan reasonably requested by the Commonwealth and resubmit the draft remediation plan to the Commonwealth for approval within 3 Business Days after the request unless otherwise agreed in writing by the Commonwealth. This section 5.5(d) will also apply to any resubmitted draft remediation plan.
- (e) The Commonwealth must review the draft resubmitted remediation plan and may:
 - (i) approve the draft remediation plan;
 - (ii) notify Project Operator of the details of any changes that the Commonwealth considers are reasonably required to the draft remediation plan; or
 - (iii) reject the draft remediation plan if the Commonwealth, acting reasonably, considers that the draft remediation plan is unsatisfactory having regard to the nature of the Significant Event and the likelihood that the draft remediation plan could

address the matters raised by the Significant Event. If this applies, the Commonwealth will notify Project Operator in writing of that fact, and that the failure to provide a satisfactory remediation plan will be a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

- (f) Without limiting its other obligations under this agreement, Project Operator must comply with the approved remediation plan or approved resubmitted remediation plan.
- (g) Project Operator must provide reports and other information about Project Operator's progress in implementing the approved remediation plan as reasonably requested by the Commonwealth and within the time reasonably requested by the Commonwealth.
- (h) A failure by Project Operator to comply with its obligations under this section 5 will be a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3.

5.6 General

- (a) The Commonwealth's rights under this section 5 are in addition to and do not otherwise limit or affect any other rights the Commonwealth may have under this agreement or otherwise at Law.
- (b) The performance by Project Operator of its obligations under this section 5 will be at no additional cost to the Commonwealth.
- (c) The Commonwealth may, in addition to any of its other rights or remedies under this agreement or otherwise at Law, take into account the occurrence of a Significant Event at any time, including when:
 - (i) conducting future tenders or procurement processes;
 - (ii) exercising any rights of the Commonwealth in relation to access, audit, or the treatment of documentation under or in connection with this agreement; and
 - (iii) deciding whether to exercise any rights in relation to termination of this agreement.
- (d) If Project Operator fails to comply with this section 5, the Commonwealth may terminate this agreement pursuant to clause 22.3(p) ("Termination by the Commonwealth for default").

6 Archives Act

- (a) In this section 6, "**Archives Act**" means the *Archives Act 1983* (Cth).
- (b) Project Operator acknowledges that the Commonwealth is the owner of certain records relating to the Project (including those required to be delivered to the Commonwealth in accordance with this agreement) that are created or maintained by Project Operator and that these records are to be dealt with in accordance with the Archives Act.
- (c) Project Operator must not take any action which would cause the Commonwealth to be in breach of its obligations under the Archives Act.

- (d) Project Operator must comply with any reasonable request, policy or direction issued by the Commonwealth and otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth required or authorised by the Archives Act at no cost to the Commonwealth.
- (e) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 6, including this requirement to impose obligations on any further Subcontractor.
- (f) Project Operator's obligations under this section 6 will survive termination or expiry of this agreement.
- (g) A failure by Project Operator to comply with this section 6 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

7 National Anti-Corruption Commission

- (a) In this section 7, "**NACC Act**" means the *National Anti-Corruption Commission Act 2022* (Cth).
- (b) Project Operator must comply with any reasonable request, policy or direction issued by the Commonwealth and otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth required or authorised by the NACC Act.
- (c) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 7, including this requirement to impose obligations on any further Subcontractor.
- (d) Project Operator's obligations under this section 7 will survive termination or expiry of this agreement.
- (e) A failure by Project Operator to comply with this section 7 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

8 Public Interest Disclosure

- (a) In this section 8, "**PID Act**" means the *Public Interest Disclosure Act 2013* (Cth).
- (b) Project Operator must comply with any reasonable request, policy or direction issued by the Commonwealth and otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth required or authorised by the PID Act.
- (c) Project Operator must ensure that any Subcontract entered into by Project Operator after the Signing Date for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 8, other than this requirement to impose obligations on any further Subcontractor.

- (d) Project Operator's obligations under this section 8 will survive termination or expiry of this agreement.
- (e) A failure by Project Operator to comply this section 8 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

9 Criminal Code

- (a) In this section 9, "**Criminal Code**" means *Criminal Code Act 1995* (Cth).
- (b) Project Operator acknowledges that the giving of false or misleading information to the Commonwealth is a serious offence under section 137.1 of the schedule to the Criminal Code.
- (c) Project Operator acknowledges that unauthorised disclosure of security-classified information is an offence and that there are Laws, including the Criminal Code which contain provisions relating to the protection of certain information and set out the penalties for the unauthorised disclosure of that information.
- (d) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 9, including this requirement to impose obligations on any further Subcontractor.
- (e) Project Operator's obligations under this section 9 will survive termination or expiry of this agreement.
- (f) If proceedings are brought against Project Operator or any of its officers, employees, or any of its Subcontractors or agents who are involved in the Project, for a breach of the Criminal Code, or Project Operator otherwise fails to comply with this section 9, the Commonwealth may terminate this agreement pursuant to clause 22.3(q) ("Termination by the Commonwealth for default").

10 Prohibited dealings

- (a) Project Operator must ensure that Project Operator and any individuals, persons, entities or organisations involved in the Project, including its officers, employees, Subcontractors or agents, are not:
 - (i) directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act;
 - (ii) listed terrorist organisations for the purposes of the *Criminal Code Act 1995* (Cth) (details of listed terrorist organisations are available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>);
 - (iii) subject to sanctions or similar measures under the *Charter of the United Nations Act 1945* (Cth) or the *Autonomous Sanctions Act 2011* (Cth) (details of individuals and entities are available at: <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>);

- (iv) listed on the 'World Bank's Listing of Ineligible Firms and Individuals' posted at: <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>;
 - (v) owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in section 10(a)(i) to 10(a)(iv); or
 - (vi) providing direct or indirect support, resources or assets (including any grant monies) to individuals, persons, entities or organisations referred to in section 10(a)(i) to 10(a)(iv).
- (b) If Project Operator becomes aware that there are reasonable grounds to suspect it or any of its officers, employees, Subcontractors or agents has or may have contravened any part of section 10(a), Project Operator must:
- (i) notify the Commonwealth and confirm that information in writing as soon as possible, which must be no later than within 24 hours;
 - (ii) immediately take all reasonable action to mitigate the risks; and
 - (iii) take any other action required by the Commonwealth.
- (c) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 10, including this requirement to impose obligations on any further Subcontractor.
- (d) If Project Operator fails to comply with this section 10, the Commonwealth may terminate this agreement pursuant to clause 22.3(r) ("Termination by the Commonwealth for default").

11 Environment, native title and cultural heritage

- (a) Project Operator must perform its obligations under this agreement in such a way that it does not breach, and the Commonwealth is not placed in breach of, any applicable:
- (i) environmental Laws, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any environmental laws of the Relevant Jurisdiction;
 - (ii) native title Laws, including the *Native Title Act 1993* (Cth) and any native title legislation of the Relevant Jurisdiction; or
 - (iii) indigenous cultural heritage Laws, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and any indigenous cultural heritage Laws of the Relevant Jurisdiction.
- (b) Project Operator must comply with any reasonable request, policy or direction issued by the Commonwealth and otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth required or authorised by applicable:

- (i) environmental Laws, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and any environmental laws of the Relevant Jurisdiction;
 - (ii) native title Laws, including the *Native Title Act 1993* (Cth) and any native title legislation of the Relevant Jurisdiction; or
 - (iii) indigenous cultural heritage Laws, including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and any indigenous cultural heritage Laws of the Relevant Jurisdiction.
- (c) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 11, including this requirement to impose obligations on any further Subcontractor.
 - (d) Project Operator's obligations under this section 11 will survive termination or expiry of this agreement.
 - (e) A failure by Project Operator to comply with this section 11 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

12 Privacy

- (a) In this section 12, "**Privacy Act**" means the *Privacy Act 1988* (Cth).
- (b) Project Operator must perform its obligations under this agreement in such a way that it does not breach, and the Commonwealth is not placed in breach of, any applicable privacy Laws, including the Privacy Act and the "Australian Privacy Principles" as defined in the Privacy Act.
- (c) Project Operator must comply with any reasonable request, policy or direction issued by the Commonwealth and otherwise cooperate with the Commonwealth in relation to any action taken by the Commonwealth required or authorised by applicable privacy Laws, including the Privacy Act and the "Australian Privacy Principles" as defined in the Privacy Act.
- (d) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 12, including this requirement to impose obligations on any further Subcontractor.
- (e) Project Operator's obligations under this section 12 will survive termination or expiry of this agreement.
- (f) A failure by Project Operator to comply with this this section 12 will constitute a failure to comply in a material respect with an obligation under this agreement for the purposes of clause 22.3 ("Termination by the Commonwealth for default").

13 Fraud

- (a) In this section 13, "**Fraud**" means dishonestly obtaining a benefit from the Commonwealth or causing a loss to the Commonwealth by deception or other means and includes alleged, attempted, suspected or detected fraud.
- (b) Project Operator must take all reasonable steps to prevent and detect Fraud in relation to the performance of this agreement and the Project.
- (c) Project Operator acknowledges the occurrence of Fraud in relation to the performance of this agreement and the Project will constitute a failure to comply in a material respect with an obligation under this agreement.
- (d) If an investigation finds that Project Operator or any of its officers, employees, Subcontractors or agents have committed Fraud, or that Project Operator has failed to take reasonable steps to prevent Fraud in relation to the performance of this agreement and the Project:
 - (i) Project Operator must reimburse or compensate the Commonwealth in full; and
 - (ii) the Commonwealth may terminate this agreement pursuant to clause 22.3(s) ("Termination by the Commonwealth for default").
- (e) Project Operator must ensure that any Subcontract entered into by Project Operator for the purposes of fulfilling its obligations under this agreement imposes on the Subcontractor the same obligations that Project Operator has under this section 13, including this requirement to impose obligations on any further Subcontractor.
- (f) Project Operator's obligations under this section 13 will survive termination or expiry of this agreement.

Schedule 7 Key Subcontractors

The following Subcontractors are Key Subcontractors for the purpose of this agreement:

[Drafting note: a shortlisted Proponent will be required to complete the table below as part of its Financial Value Bid in Stage B of the Tender Process. If a shortlisted Proponent does not complete the table below, it will be deemed to have not requested preapproval for any of its Key Subcontractors]

	Key Subcontractor and Address	Relevant goods, services or work	Engaged By	Country of Headquarters and from which the relevant goods, services or work will be provided
[# insert]	[insert]	[insert]	[insert]	[insert]

Annexure A Form of Tripartite Deed

[See Annexure A: Form of Tripartite Deed]