

Generation LTESA – Term Sheets

[DRAFT]

This document sets out a summary of the key terms and conditions for the proposed Long-Term Energy Service Agreement (“LTESA”) for the following three structures:

- (1) a fixed shape and fixed volume (**FSFV**) generation LTESA;
- (2) a variable volume generation LTESA; and
- (3) a Green Products (**GP**) only generation LTESA. The swaps under the GP only generation LTESA are structured as a cash settled swap against a market price with the SFV having a right to elect to instead take physical delivery of Green Products.

This term sheet assumes that the Project is not connected to a Renewable Energy Zone.

This document is a draft for feedback purposes only. It is not intended to create rights of any party or constitute any form of legally binding obligation or commitment. This document does not constitute an offer by the Scheme Financial Vehicle (SFV) to enter into a LTESA with the recipient and does not impose any legal commitment on the SFV.

AEMO Services may decide to allow proponents to bid against one or more of the three structures outlined in the draft term sheets, or some variation on these three structures. Where AEMO Services allows bidders to bid against multiple structure, the Tender Guidelines will outline the evaluation and comparison of different structures.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
Section 1: Overview				
1	Parties	[Bidder] (“LTES Operator”) [Scheme Financial Vehicle] (“SFV”)	As per FSFV generation LTESA.	As per FSFV generation LTESA.
2	Documentation overview	(a) As part of the framework under the <i>Electricity Infrastructure Investment Act 2020</i> (“ EII Act ”) to provide long term revenue certainty for investors and developers of clean energy projects in New South Wales, the NSW Government is offering financial support to eligible projects in the form of long-term energy services contracts, which will involve two documents being entered into between LTES Operator and SFV:	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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		<ul style="list-style-type: none"> (i) the Project Development Agreement which sets out the detailed requirements and milestones by which LTES Operator will develop and construct the Project; and (ii) the LTESA which is the overarching document for the operation phase of the Project, the option structure by which LTES Operator can exercise its derivative arrangement and the arrangement for social and other contributions made by LTES Operator. <p>(b) To assist readability, this LTESA term sheet comprises three sections:</p> <ul style="list-style-type: none"> (i) this section 1 sets out an overview of the LTESA and this term sheet; (ii) section 2 of this document outlines the overall commercial terms of arrangement between SFV and LTES Operator; and (iii) section 3 of this document sets out the specific terms that will apply each time LTES Operator exercises its put option to enter the derivative transaction with SFV. 		
3	SFV, Consumer Trustee, and Energy Corporation of NSW interaction	<ul style="list-style-type: none"> (a) The parties acknowledge and agree that, in discharging its obligations under the LTESA, SFV may: <ul style="list-style-type: none"> (i) consult with Consumer Trustee and Energy Corporation of NSW; and (ii) consider Consumer Trustee and Energy Corporation of NSW's advice in relation to those obligations (as relevant). (b) LTES Operator acknowledges and consents to the sharing of information received in relation to LTES Operator or the Project by SFV, Consumer Trustee or Energy Corporation of NSW with each of SFV, Consumer Trustee, Energy Corporation of NSW. (c) SFV will procure that information shared with the Consumer Trustee or Energy Corporation of NSW is managed under confidentiality arrangements equivalent to those set out in the LTESA. 	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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4	Inconsistency	In the event of any inconsistency between the terms of the LTESA and the PDA, the terms of the LTESA will prevail to the extent of any such inconsistency.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
5	Definitions	Capitalised terms in this document have the meaning set out in Schedule 1.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
Section 2: Commercial terms				
Term				
6	Term of LTESA	<p>(a) The “Term” commences on the Signing Date and continues until the date that is 20 years after the First Option Date (“LTESA End Date”).</p> <p>(b) The “First Option Date” is the earlier of:</p> <p>(i) the first 1 July occurring:</p> <p>(A) not less than six months after COD; or</p> <p>(B) if requested by LTES Operator, immediately after COD, provided that SFV is satisfied (acting reasonably) that the Project will achieve COD in accordance with the terms of the PDA before that 1 July; or [Drafting note: if the LTES Operator wishes for a Swap to commence on an early First Option Date that is set under subparagraph (i)(B), then it will still need to exercise that Swap with at least 6-months’ notice per clause 39.]</p> <p>(ii) the first 1 July occurring not less than six months after the COD Sunset Date (as may be extended in accordance with the PDA).</p> <p>[Drafting note:</p> <ul style="list-style-type: none"> the ‘First Option Date’ is the date that commences the 20-year term of the put option under the LTESA. The First Option Date is linked to COD, however if the Project has not achieved COD by the ‘COD Sunset Date’ (except for only those extensions described in the PDA term sheet), the 20-year term of the LTESA will commence and each day of delay after COD Sunset Date will erode the 20-year term. 	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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		<ul style="list-style-type: none"> <i>The intention is to have all exercised options apply to financial year/s. To enable the SFV to manage its liabilities and cashflows through contribution orders levelled on distributors, it needs at least 6 months notice of exercise (see clause 39(a)).</i> <i>Where COD occurs in 2025, then under subparagraph (b)(i)(A) the First Option Date would be 1 July 2026.</i> <i>However, if COD occurs on 1 January 2025 for example, as the First Option Date would be 1 July 2026, this is a gap of 18 months and considered too long.</i> <i>Accordingly, under subparagraph (b)(i)(B), the LTES Operator could give an exercise notice prior to 1 January 2025 advising that COD will occur before 1 July 2025, and if accepted, the First Option Date would be 1 July 2025.</i> <i>However, there will still likely be a gap between COD and when the first Swap can commence which the Project will need to manage.]</i> 		
Construction of the Project				
7	Construction	LTES Operator must construct the Project in accordance with the Project Development Agreement.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
Operation of the Project				
8	Operation and maintenance	(a) In periods where LTES Operator has entered a Swap: <ul style="list-style-type: none"> (i) LTES Operator must operate and maintain the Project in accordance with good electricity industry practice; (ii) LTES Operator must use best endeavours to ensure that any planned maintenance that is reasonably likely to affect the available capacity of the Project by more than 10%: <ul style="list-style-type: none"> (A) is undertaken outside of periods of expected high prices; and (B) does not occur during Peak Months without the prior written consent of SFV; and 	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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		<ul style="list-style-type: none"> (iii) provide to SFV at least 20 Business Days prior to the start of a financial year, a maintenance plan for the next financial year consistent with subparagraph (ii) and reasonably consider any comments made on the plan by SFV; (iv) LTES Operator must insure the Project in accordance with good electricity industry practice. (b) Subparagraph (a)(ii) does not prevent LTES Operator undertaking maintenance at time in accordance with good electricity industry practice where required to prevent property damage or personal injury or required to maintain manufacturer's warranties that cannot be rescheduled or required. (c) "Peak Months" are periods generally expected to align with high spot prices which, at the Signing Date, is in the period from 1 December to 30 March. (d) SFV may, on not less than 3 years notice, notify of revised Peak Months where required to reflect changes in demand and peak spot prices in NSW, provided that the aggregate Peaks Periods cannot exceed 4 months in a year. 		
9	Operating reporting	<p>Within 30 Business Days after the end of each financial year to which a Swap applies, LTES Operator must give SFV a report in a prescribed form setting out:</p> <ul style="list-style-type: none"> (a) the quantity of electrical energy that was actually generated and exported to the grid by the Project at the connection point during that financial year; (b) the applicable loss factors that apply to the Project for that financial year; and (c) the quantity of electrical energy that the Project was deemed to have generated during that financial year for the purposes of clause 12. 	As per FSFV generation LTESA.	As per FSFV generation LTESA.
10	Social Licence Commitments	<ul style="list-style-type: none"> (a) "Social Licence Commitments" means commitments made by LTES Operator in its returnable schedule for the Project submitted as part of its bid submissions in relation to: <ul style="list-style-type: none"> (i) First Nations Guidelines and Renewable Energy Sector Board's plans; (ii) local content employment quotas; 	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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		<p>(iii) community engagement obligations; and</p> <p>(iv) regional economic development initiatives.</p> <p>(b) Within 30 Business Days after the end of each financial year, LTES Operator must give SFV a report in a prescribed form on LTES Operator's compliance with its Social Licence Commitments.</p> <p>(c) If following:</p> <p>(i) the receipt of LTES Operator's report under paragraph (a); or</p> <p>(i) the completion of an audit of LTES Operator's compliance with its Social Licence Commitments in accordance with paragraph (d),</p> <p>SFV determines (acting reasonably) that LTES Operator is not complying with its Social Licence Commitments, then SFV must notify LTES Operator of LTES Operator's non-compliance with the relevant Social Licence Commitments. SFV may specify in the notice that it considers the non-compliance is not remediable.</p> <p>(d) SFV may request an audit of LTES Operator's compliance with its Social Licence Commitments at any time but not more than once in any 12 month period. SFV will bear the costs (but not those of LTES Operator) associated with an audit undertaken under this clause 10, unless the audit demonstrates that the certified statements and availability reports provided by LTES Operator are materially inaccurate, in which case LTES Operator will bear all the costs of the audit.</p> <p>(e) Within 20 Business Days of receipt of notice under paragraph (c), LTES Operator must submit a cure plan to SFV in relation to the non-compliance identified by SFV. The cure plan must set out:</p> <p>(i) the progress made by LTES Operator in satisfying the remaining work or obligations for the relevant Social Licence Commitment;</p> <p>(ii) LTES Operator's best estimate of when the relevant Social Licence Commitment will be achieved to remedy the non-compliance; and</p> <p>(iii) where relevant, an alternative proposal to the Social Licence Commitment where LTES Operator or SFV</p>		

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		<p>considers that the Social Licence Commitment's non-compliance cannot be remedied. The alternative proposal may include:</p> <ul style="list-style-type: none"> (A) the payment of a liquidated sum amount that is commensurate with the value of the Social Licence Commitment; or (B) an alternative to the Social Licence Commitment which is of equivalent merit as the Social Licence Commitment. <p>(f) For the purposes of subparagraph (e)(iii), SFV will determine at its discretion (acting reasonably) whether the proposed alternative to the Social Licence Commitment is acceptable having regard to the original Social Licence Commitment. In making any such determination, SFV will take into account the merit criteria applied by the Consumer Trustee.</p> <p>(g) SFV must either accept or reject the cure plan submitted under paragraph (e) within 40 Business Days of receipt of that cure plan.</p> <p>(h) If SFV rejects the cure plan submitted under paragraph (e):</p> <ul style="list-style-type: none"> (i) SFV will provide comments and suggested amendments to the cure plan, including an assessment of the merit of any alternative proposal; and (ii) LTES Operator must include all reasonable amendments proposed by SFV in an amended cure plan and resubmit the amended cure plan for approval by SFV within 20 Business Days of SFV notifying LTES Operator of the rejection. <p>(i) LTES Operator must:</p> <ul style="list-style-type: none"> (i) comply with an agreed cure plan which may include an alternative Social Licence Commitment acceptable to SFV; or (ii) at SFV's absolute discretion, agree to provide a cash payment sufficient to allow SFV to undertake: <ul style="list-style-type: none"> (A) the Social Licence Commitment; or (B) an alternative to the Social Licence Commitment which SFV determines (acting 		

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		<p>reasonably) is of equivalent merit to the Social Licence Commitment.</p> <p>(j) If LTES Operator does not:</p> <ul style="list-style-type: none"> (i) submit a cure plan under paragraph (e); or (ii) commence and comply with the agreed cure plan; or (iii) make the payment agreed pursuant to subparagraph (i)(ii) above, <p>then (without derogating from SFV's rights under clause 21 to terminate the LTESA), LTES Operator may not exercise its option for a Swap in accordance with clause 40.</p>		
11	Alterations to Project	<p>(a) LTES Operator may not make material alterations to the Project's generating system that affects the Project's capacity, availability or generation profile without the prior written consent of SFV.</p> <p>(b) LTES Operator must notify SFV with details of:</p> <ul style="list-style-type: none"> (i) the proposed material alterations to Project's generating system; and (ii) the impact of those proposed material alterations on LTES Operator's ability to carry out its obligations under the LTESA, with sufficient details to enable SFV to form a view under (c). <p>(c) SFV must not unreasonably withhold or delay its consent under paragraph (a) if the proposed material alterations to the Project's generating system does not (in SFV's reasonable opinion) materially and adversely impact:</p> <ul style="list-style-type: none"> (i) SFV's rights and obligations under the LTESA, including SFV's expected financial outcomes; and (ii) the Social Licence Commitments of LTES Operator. <p>(d) The parties acknowledge that SFV may withhold its consent under paragraph (a) if (in SFV's reasonable opinion) the proposed alterations would result in the Project no longer being infrastructure to which Part 6 of the EII Act applies.</p> <p><i>[Drafting note: if the Project is connected to a declared REZ and holds an access right with respect to that declared REZ, LTES Operator will also be required to obtain the consent under its connection arrangements/access scheme to make</i></p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.

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		material alterations to Projects. Obtaining these consents will be a condition to obtaining SFV's consent under paragraph (c).]		
12	Minimum Generation Quantity	<p>(a) The “Minimum Generation Quantity” in a Swap Period is an amount (in MWh) equal to 75% of the forecast P90 Sent Out Generation of the Project for that Swap Period.</p> <p>(b) For the purposes of this clause 12, the Project is deemed to have generated and exported the amount of electrical energy that the Project does not generate and export as a result of:</p> <ul style="list-style-type: none"> (i) curtailment during negative price periods in accordance with clause 44; (ii) a Network Event; or (iii) a Project Force Majeure Event. <p>(c) If the Project does not export the Minimum Generation Quantity during a Swap Period, then LTES Operator must, within 20 Business Days after the end of the Swap Period, provide SFV with a report outlining the reasons for not meeting the Minimum Generation Quantity and setting out a remediation plan.</p> <p>(d) If the Project does not export the Minimum Generation Quantity for any two consecutive Swap Periods, then SFV is entitled to terminate the LTESA pursuant to clause 21(c)(i)(A), except where:</p> <ul style="list-style-type: none"> (i) SFV is satisfied (at its absolute discretion) that the underlying cause has been remedied or is reasonably likely to be remedied within a reasonable timeframe; or (ii) SFV has accepted a remediation plan under paragraph (c) (acting reasonably) and LTES Operator is complying with that remediation plan. <p>(e) For the purpose of paragraph (d) and clause 21(c)(i), two Swap Periods will be consecutive notwithstanding that there is an intervening period for which an option has not been exercised. It is not necessary for the second Swap Period to commence the day after the first Swap Period ends.</p> <p>[Drafting note: A P90 yield estimate is expected to be provided at the bid stage. This is anticipated to be the</p>	<p>As per FSFV generation LTESA, except that paragraphs (c) onwards are amended to read as follows:</p> <p>(c) If the Project does not export the Minimum Generation Quantity for a Swap Period, then LTES Operator must, within 20 Business Days after the end of the Swap Period:</p> <ul style="list-style-type: none"> (i) provide SFV with a report outlining the reasons for not meeting the Minimum Generation Quantity and a remediation plan; and (ii) pay SFV the “Shortfall Sum” for that Swap Period, calculated in accordance with Schedule 2. <p>(d) If the Project does not export the Minimum Generation Quantity for any two consecutive Swap Periods, then SFV is entitled to terminate the LTESA pursuant to clause 21(c)(i)(A), except where:</p> <ul style="list-style-type: none"> (i) SFV is satisfied (at its absolute discretion) that the underlying cause has or is reasonably likely to be remedied; or (ii) SFV has accepted a remediation plan under paragraph (c) (acting reasonably) and LTES Operator is complying with that remediation plan. <p>(e) For the purpose of paragraph (d) and clause 21(c)(i), two Swap</p>	As per FSFV generation LTESA.

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		reference for the Minimum Generation Quantity. Minimum Generation Quantity will apply in swap periods only.]	Periods will be consecutive notwithstanding that there is an intervening period for which an option has not been exercised. It is not necessary for the second Swap Period to commence the day after the first Swap Period ends.	
Material events				
13	Project Force Majeure Event	<p>(a) A “Project Force Majeure Event” is an event or circumstance which is beyond the reasonable control of LTES Operator and could not have prevented by the exercise of reasonable care and good electricity industry practice, and includes a Major Casualty Event that satisfies the foregoing criteria.</p> <p>(b) Despite paragraph (a), the following events will not constitute a Project Force Majeure Event:</p> <ul style="list-style-type: none"> (i) Network Events; <i>[Drafting note: Network Events are dealt with in clause 14. Projects and the SFV should not be required to use the FM administration process such as notices and mitigation concepts for these type of events.]</i> (ii) lack of funds, financial hardship or inability to obtain financing or insurance by LTES Operator and its related bodies corporate; (iii) shortage of materials and consumables required by LTES Operator except the extent it is itself caused by a Project Force Majeure Event; (iv) breakdown of property or equipment caused by normal wear and tear; (v) strikes and industrial disputes that only affect LTES Operator; and (vi) lack of solar/wind resources. <p>(c) The rights and obligations of LTES Operator under the LTESA (other than the obligation to pay amounts of money) will be suspended in whole or in part to the extent the ability of LTES Operator is affected by the Project Force Majeure Event.</p>	<p>As per FSFV generation LTESA, except that subparagraph (d)(ii) does not apply.</p> <p>See also the amendments to clause 42 for the variable volume generation LTESA.</p>	As per FSFV generation LTESA.

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		<p>(d) If a Project Force Majeure Event occurs and the amount of Sent Out Generation the Project during a Swap Period is reduced as a result of that Project Force Majeure Event, then:</p> <p>(i) LTES Operator must:</p> <p>(A) use best endeavours to maximise Sent Out Generation from the Project;</p> <p>(B) use best endeavours to remedy the impact of the Project Force Majeure Event as soon as practicable; and</p> <p>(C) as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Project Force Majeure Event) provide notice of the occurrence of the Project Force Majeure Event including reasonable details of that Project Force Majeure Event; and</p> <p>(ii) the Notional Quantity for a Trading Interval is reduced (on a pro rata basis that the reduction in capacity bears to the total Project capacity) to the extent that the Project is unable to generate and export an amount of electricity equivalent to the Notional Quantity in that Trading Interval (adjusted for loss factors), as a result of that Project Force Majeure Event.</p>		
14	Network Event	<p>(a) A “Network Event” is any network outage, network congestion or network constraint that results in a reduction in the Sent Out Generation of the Project during a Swap Period and that is not caused by LTES Operator failing to operate and maintain the Project in accordance with good electricity industry practice.</p> <p>(b) If a Network Event occurs, then the Notional Quantity for a Trading Interval is reduced to the extent that the Project is unable to export an amount of electricity (adjusted for loss factors) in that Trading Interval, as a result of that Network Event.</p>	<p>This clause 14 does not apply to the variable volume generation LTESA. See also the amendments to clause 42 for the variable volume generation LTESA.</p>	<p>As per FSFV generation LTESA.</p>
15	Non-Firm Interval	<p>(a) A “Non-Firm Interval” is a Trading Interval during which the Sent Out Generation of the Project is reduced due to scheduled maintenance of Project (subject to an annual cap of [bid variable]), amended from time to time at the</p>	<p>This clause 15 does not apply to the variable volume generation LTESA.</p>	<p>As per FSFV generation LTESA.</p>

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		<p>agreement of the parties (acting reasonably) to reflect maintenance requirements of the Project in accordance with good electricity industry practice.</p> <p>(b) If a Non-Firm Interval occurs, then:</p> <p>(i) LTES Operator must use best endeavours to maximise the Sent Out Generation from the Project; and</p> <p>(ii) the Notional Quantity for that Non-Firm Interval is the lesser of:</p> <p>(A) the Sent Out Generation (adjusted for loss factors) of the Project during that Non-Firm Interval; and</p> <p>(B) the Notional Quantity that is bid by LTES Operator for the purpose of clause 42 (i.e. before any adjustment in accordance with the terms of the LTESA).</p> <p>(c) This clause 15 applies only during periods where LTES Operator has entered a Swap.</p>	<p>See also the amendments to clause 42 for the variable volume generation LTESA.</p>	
16	Major Casualty Event	<p>(a) A "Major Casualty Event" is an event that causes loss, damage or destruction to the Project and results in a loss of at least []% of the rated capacity (in MW) contained in the definition of the Project.</p> <p>[Drafting note: the value of this threshold will be set on a per project basis reflect a scenario where LTES Operator will be unable to reasonably meet its obligations under this LTESA]</p> <p>(b) If a Major Casualty Event occurs, then LTES Operator must within one year, or as otherwise agreed by both parties (acting reasonably), notify SFV of whether LTES Operator elects to reinstate the Project.</p> <p>(c) If LTES Operator elects to reinstate the Project, then:</p> <p>(i) to the extent the Project is impacted by the Major Casualty Event, LTES Operator will be provided relief from any terms of the LTESA relating to the generation output of the Project (and supply of Black Products/Green Products) until the Project is reinstated;</p>	<p>As per FSFV generation LTESA.</p>	<p>As per FSFV generation LTESA.</p>

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		<ul style="list-style-type: none"> (ii) LTES Operator must at its own cost reinstate the Project to a state that is substantially the same as prior to the Major Casualty Event; and (iii) LTES Operator must give SFV a plan to reinstate the Project that is satisfactory to SFV (acting reasonably) and comply with that plan in all material respects. (d) If LTES Operator does not elect to reinstate the Project, then SFV may elect to terminate the LTESA in accordance with clause 21(c)(ii)(A). 		
Change in Law				
17	Change in Law	<ul style="list-style-type: none"> (a) A "Change in Law" is: <ul style="list-style-type: none"> (i) the introduction of a new law; (ii) the amendment or repeal of an existing law; or (iii) a change in the way a law is applied or interpreted as a result of an administrative decision or a binding decision of a court of competent jurisdiction, that occurs during the Term that applies generally to generators of the Project's technology type in NSW, but does not include: <ul style="list-style-type: none"> (iv) the repeal, amendment or enactment of any law or change of application of any law relating to an Ineligible Tax; (v) a LMP Event or Market Disruption Event; or (vi) any change to the National Electricity Rules which at the Signing Date is the subject of a final determination of the AEMC or the Energy Security Board. (b) If at any time during the Term a Change in Law occurs that prevents or materially interferes with the operation of the LTESA or any of the transactions contemplated by the LTESA, then the parties will: <ul style="list-style-type: none"> (i) use best endeavours to mitigate the impact of the Change in Law; and (ii) negotiate in good faith any specific amendment to the LTESA (other than the Fixed Price) requested by a party to as to preserve the efficacy of the 	As per FSFV generation LTESA.	As per FSFV generation LTESA, except that subparagraph (a)(v) will not apply.

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		<p>operation of the LTESA in the manner originally intended at Signing Date.</p> <p>(c) "Ineligible Tax" means:</p> <ul style="list-style-type: none"> (i) corporate tax and personal income tax; (ii) fringe benefits tax, payroll tax, non-resident withholding tax, capital gains tax and financial institutions duty; (iii) excise, customs duties, import duties and any anti-dumping tax; (iv) any subcontractor's taxes; and (v) any taxes analogous to the above. 		
18	Relevant Cost Change	<p>(a) A "Relevant Cost Change" is a net increase or decrease in LTES Operator's direct costs of:</p> <ul style="list-style-type: none"> (i) constructing and commissioning of the Project; (ii) generating and exporting electricity from the Project; or (iii) creating, registering or transferring Green Products, that arises as a result of a Change in Law, but excluding costs in relation to existing or new participant fees, market charges or ancillary services charges. <p>(b) If LTES Operator incurs a Relevant Cost Change, then:</p> <ul style="list-style-type: none"> (i) LTES Operator must use best endeavours to mitigate any cost increase and to maximise any cost savings, as a result of the Relevant Cost Change; and (ii) if the aggregate net impact of all Relevant Cost Changes exceeds \$[] per annum in relation to operation and maintenance expenditure or \$[] in relation to capital expenditure, then the parties will negotiate in good faith an adjustment to the Fixed Price which the parties consider is required to pass through 50% of the net impact of the Relevant Cost Change to SFV in accordance with the Cost Change Principles. <p>(c) If the parties fail to agree to an adjustment to the Fixed Price, then the matter may be referred by either party to an Independent Expert for determination of an adjusted Fixed Price in accordance with the Cost Change Principles.</p>	<p>As per FSFV generation LTESA, except that new subparagraph (d)(v) is added that reads:</p> <ul style="list-style-type: none"> (v) it will be assumed that the generation of the Project for the remainder of the Term is the P50 generation of the Project as recalculated at the time of Relevant Cost Change; 	<p>This clause 18 does not apply to the LGC only generation LTESA.</p>

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		<p>(d) The “Cost Change Principles” are the following principles:</p> <ul style="list-style-type: none"> (i) the cost or benefit passed through to SFV will not include the threshold amount in paragraph (b)(ii); (ii) it will be assumed that LTES Operator will exercise all remaining options under the LTESA (noting that SFV is not required to share the net impact of the Relevant Cost Change during any period in respect of which a Swap has not been exercised); (iii) any increase in LTES Operator’s costs will be discounted for any related economic benefit to LTES Operator associated with the relevant Change in Law (including any tax benefits); and (iv) where the most efficient response to the Change in Law involves the incurring of capital expenditure, the cost of that capital expenditure will be allocated on a proportional basis between the remaining Term and the useful economic life of the relevant capital item. 		
19	Market Disruption Events	<p>(a) Subject to paragraph (b), each of the following events is a “Market Disruption Event”:</p> <ul style="list-style-type: none"> (i) a failure of or delay by AEMO in announcing or publishing the spot price; (ii) a temporary or permanent discontinuance of the spot price being announced or published, or a material change in the method by which the spot price is calculated; (iii) a change in the location of the applicable regional reference node, the abolishment of the applicable regional reference node or a change in the boundaries or number of regional reference nodes; and (iv) the temporary or permanent discontinuance of the NEM. <p>(b) The following are not Market Disruption Events:</p> <ul style="list-style-type: none"> (i) a LMP Event; (ii) a change in the market floor price or market price cap; and 	As per FSFV generation LTESA.	This clause 19 does not apply to the LGC only generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(iii) the setting of an administered dispatch price during administered price periods.</p> <p>(c) If a Market Disruption Event occurs, then a party may notify other party of its occurrence and the parties must meet and negotiate in good faith the amendments to the LTESA.</p> <p>(d) If the parties are unable to agree the relevant affected price within 60 Business Days of the occurrence of the Market Disruption Event, then the parties must appoint an Independent Expert to determine the Floating Price.</p> <p>(e) Unless otherwise agreed by the parties, the Independent Expert must make a determination about the Floating Price within 60 Business Days of its appointment.</p>		
20	Locational marginal pricing (LMP)	<p>(a) A “LMP Event” is the introduction of a new law, or the amendment or repeal of an existing law, in each case occurring after the Signing Date, which:</p> <p>(i) results in a circumstance in which the price paid by AEMO per MWh for the Sent Out Generation of the Project differs, or may differ, from the Floating Price (being the Regional Reference Price, as it is calculated at the Signing Date), other than in circumstances where the difference is solely attributable to a loss factor of the Project; and</p> <p>(ii) includes the introduction of reforms proposed (or having substantially the same effect as those proposed):</p> <p>(A) in the Australian Energy Market Commission’s final report of ‘Coordination of generation and transmission investment review’ dated 21 December 2018 and subsequent discussion papers dated 14 October 2019; and</p> <p>(B) in the Energy Security Board post 2025 Market Design Options Paper dated 30 April 2021 regarding the ‘congestion management model’ mechanism.</p> <p>(b) If a LMP Event occurs, then:</p> <p>(i) LTES Operator must take commercially reasonable steps to mitigate the negative impacts of the LMP Event; and</p>	As per FSFV generation LTESA.	This clause 20 does not apply to the LGC only generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(ii) if the aggregate net impact of the LMP Event exceeds \$[] per annum, then the parties will negotiate in good faith any changes that need to be made to the LTESA to take into account the LMP Event and, as far as is practicable, put LTES Operator in the same commercial, financial and risk allocation positions as contemplated under the LTESA during those Swap Periods where the option is exercised by LTES Operator as if the LMP Event had not occurred.</p> <p>(c) If the parties are unable to agree to an outcome under subparagraph (b)(ii) within [60] Business Days of commencement of the LMP Event, then either party may refer the matter to an Independent Expert for determination and the Independent Expert must base its recommendation or decision on the LMP Event Amendment Principles. A dispute under this clause 20 in relation to an LMP Event is a matter to be determined by the pooled dispute mechanism in accordance with clause 35.</p> <p>(d) The “LMP Event Amendment Principles” are the following principles:</p> <p>(i) LTES Operator is to be put in the same commercial and risk allocation position as contemplated under the LTESA during those Swap Periods where the option is exercised by LTES Operator had the LMP Event not occurred; and</p> <p>(ii) the amendments will reflect the impact of the LMP Event on a benchmark owner and operator for a generator of the same technology type as the Project that is located in:</p> <p>(A) if the Project is located in a declared renewable energy zone, that declared renewable energy zone; or</p> <p>(B) if the Project is not located in a declared renewable energy zone, the location of the Project.</p> <p>(iii) LTES Operator will continue to:</p> <p>(A) receive the Fixed Price during the Swap Periods;</p>		

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(B) account to SFV all revenue receivable from AEMO related to the Project (including any congestion rebates); and</p> <p>(C) account to SFV for any other revenue or benefit attributable to Project arising out of or in connection with the LMP Event (including from any firm transmission rights),</p> <p>in respect of the Notional Quantity.</p> <p><i>[Drafting note: The purpose of this provision is to ensure that LTES Operators are protected from the introduction of an LMP Event should this occur. Under (b)(ii) and (d)(i), LTES Operator is put in the same commercial, financial and risk allocation position as at the signing date.]</i></p>		
Default and termination				
21	Termination	<p>(a) The LTESA automatically terminates with immediate effect if the PDA is terminated.</p> <p>(b) A party ("Non-defaulting Party") may terminate the LTESA by providing notice to the other party ("Defaulting Party") if:</p> <p>(i) (failure to pay or deliver) the Defaulting Party:</p> <p>(A) fails to make a payment or delivery as due in accordance with the requirements of the LTESA; and</p> <p>(B) does not cure that failure within 10 Business Days of being notified of that failure by the Non-defaulting Party;</p> <p>(ii) (breach and repudiation) other than in respect of the obligation referred to in subparagraph (i), the Defaulting Party:</p> <p>(A) materially fails to comply with or perform any obligation under the LTESA; and</p> <p>(B) does not cure that failure within 20 Business Days of being notified of that failure by the Non-defaulting Party; or</p> <p>(iii) (insolvency) the Defaulting Party is the subject of an insolvency event.</p> <p>(c) SFV may terminate the LTESA immediately by notice to LTES Operator if:</p>	As per FSFV generation LTESA.	<p>As per FSFV generation LTESA, with the addition of subparagraph (c)(iv) as follows:</p> <p>(iv) (No Green Products) the Project is not entitled to create any Green Products in respect of the Notional Quantity.</p>

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(i) (Minimum generation) the Project:</p> <p>(A) does not generate and export the Minimum Generation Quantity in respect of any two consecutive Swap Periods, except in the circumstances described in clause 12(d)(i) or (ii); or</p> <p>(B) fails to comply with a remediation plan accepted by SFV under clause 12(d)(ii) within 20 Business Days of a notice from SFV to do so;</p> <p>(ii) (No reinstatement following Major Casualty Event) a Major Casualty Event occurs and:</p> <p>(A) LTES Operator does not elect to reinstate the Project; or</p> <p>(B) LTES Operator:</p> <p>(aa) elects to reinstate the Project but fails to comply with the reinstatement plan in all material respects; and</p> <p>(ab) does not cure that failure within 2 months' of being notified of that failure by SFV; or</p> <p>(iii) (Amendment or repeal of EII Act) the NSW Parliament amends or repeals the EII Act or regulations, or introduces new regulations, or passes new laws, that results in SFV being unable to recover amounts under contribution orders required for it to meet its liabilities as they fall due under this document and the NSW Government has not arranged or procured other sources of funds or funding mechanisms for SFV to meet its liabilities under this document. <i>[Drafting note: in this case it is intended that the SFV will be indemnified by the State to enable it to pay out the Fixed Termination Amount (as set out in clause 22 below).]</i></p>		
22	Termination payments	<p>(a) The following termination amounts are payable on termination of the LTESA:</p> <p>(i) (PDA termination) In the case of the LTESA automatically terminating in accordance with clause</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA, with the addition of subparagraph (a)(vi) as follows:

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>21(a), there are no termination payments payable under the LTESA.</p> <p>(ii) (Default by LTES Operator) In the case of termination by SFV under clause 21(b), LTES Operator must pay SFV the Early Termination Amount.</p> <p>(iii) (Default by SFV) In the case of termination by LTES Operator under clause 21(b), SFV must pay LTES Operator the Fixed Termination Amount.</p> <p>(iv) (Minimum generation and Major Casualty Event) In the case of termination by SFV under clauses 21(c)(i) or 21(c)(ii), LTES Operator must pay SFV the Early Termination Amount.</p> <p>(v) (Amendment or repeal of EII Act) In the case of termination by SFV under clause 21(c)(iii), SFV must pay LTES Operator the Fixed Termination Amount.</p> <p>(d) “Early Termination Amount” means SFV’s retendering costs and [90%] of Historical Net Payments, calculated at the date of termination.</p> <p>(e) “Fixed Termination Amount” means a specified value for the year that the LTESA is terminated by SFV. [Drafting note: bidders will bid in a LTESA value (at year 1) and this will be amortised to zero on a straight-line basis over the term of the LTESA.]</p>		<p>(vi) (No Green Products) In the case of termination by SFV under clause 21(c)(iv), SFV must pay LTES Operator the Fixed Termination Amount.</p>
Repayment mechanism				
23	Repayment mechanism	<p>(a) In a financial year during the Term where LTES Operator has not exercised its option for the Swap (“Non-Exercise Year”), LTES Operator must pay SFV the Repayment Amount if each of the following conditions is satisfied:</p> <p>(i) LTES Operator’s dispatch weighted average price for the Project during the Non-Exercise Year, is above its Repayment Threshold Price. “Repayment Threshold Price” means \$[bid variable]/MWh; and</p> <p>(ii) up to the commencement of the relevant Non-Exercise Year, SFV has been the net payer under the LTESA (including previous repayments under this mechanism, swap payments from SFV to LTES</p>	As per FSFV generation LTESA.	<p>As per FSFV generation LTESA, except that paragraphs (b) and (c) are replaced with the following:</p> <p>(b) The “Repayment Amount” for a Non-Exercise Year is calculated as the lower of X and Y where: X is Historical Net Payments except that where SFV has elected for physical delivery of those Green Products under</p>

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>Operator minus swap payments made by LTES Operator to SFV) arising from the previous exercise of options for the Swap ("Historical Net Payments").</p> <p>(b) The "Repayment Amount" for a Non-Exercise Year is calculated as the lower of X and Y where: X is Historical Net Payments Y is calculated as follows: $75\% \times (A - B) \times C$ where: A is the dispatch weighted average price for the Non-Exercise Year (in \$/MWh) B is the Repayment Threshold Price (in \$/MWh) C is the Sent Out Generation (adjusted for loss factors) of the Project for the Non-Exercise Year minus the volume contracted during that Non-Exercise Year under an Eligible Contract</p> <p>(c) "Eligible Contract" means a contract or series of contracts that</p> <p>(i) is directly related to the purchase or sale, or price for the purchase or sale of electricity from the wholesale electricity market; and</p> <p>(ii) LTES Operator entered to manage its exposure to the volatility of the spot price for electricity, in each case subject to an anti-avoidance mechanism to disregard arrangements that:</p> <p>(iii) are not on reasonable commercial terms; or</p> <p>(iv) do not have the net effect of reducing the exposure of LTES Operator to the volatility of the spot price for electricity.</p> <p>(d) LTES Operator must pay SFV each Repayment Amount as a lump sum amount within 30 Business Days of SFV notifying LTES Operator that the relevant Repayment Amount is payable.</p> <p>(e) If LTES Operator is at risk of financial hardship due to the requirement to pay the Repayment Amount, LTES Operator may request deferral of payment of the Repayment Amount. SFV will consider such a request and</p>		<p>clause 45, the Historical Net Payments will be reduced by</p> <p>(i) the Green Product Market Price of the Green Products delivered calculated on an average basis over the financial year in they were to be delivered; and</p> <p>(ii) any Green Product Shortfall Sums paid by LTES Operator under clause 45.</p> <p>Y is calculated as follows: $75\% \times (A - B) \times C$ where: A is the average Green Product Market Price for the Non-Exercise Year (in \$/MWh) B is the Repayment Threshold Price (in \$/MWh) C is the Notional Quantity of Green Products for the Non-Exercise Year minus the volume contracted during that Non-Exercise Year under an Eligible Contract</p> <p>(c) "Eligible Contract" means a contract for the sale of Green Products in respect of the Project, subject to an anti-avoidance mechanism to disregard arrangements that are not on reasonable commercial terms.</p>

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		may grant this deferral at its discretion. A deferral will not be granted where SFV determines that the financial hardship is due to an action taken by LTES Operator or its debt or equity investors (e.g. payment of distributions).		
LTESA Disposal				
24	Disposal by SFV	<p>(a) SFV may Dispose of the LTESA (in each case without the consent of LTES Operator) to:</p> <ul style="list-style-type: none"> (i) a government entity; (ii) a non-government entity with a credit rating of at least AA- by Standard & Poor's, Aa3 by Moody's or AA by Fitch provided that the entity is not a competitor of LTES Operator. The activities of the transferee in respect of the LTESA (including any related risk management, on-sale and administration) will be disregarded for the purpose of determining whether the transferee is a competitor of LTES Operator; or (iii) any person who replaces SFV as the scheme financial vehicle under the <i>Electricity Infrastructure Investment Act 2000</i> (NSW), provided that such person is entitled to contributions made by distribution network service providers to the Electricity Infrastructure Fund. <p>(b) SFV may otherwise Dispose of the LTESA with the consent of LTES Operator (not to be unreasonably withheld or delayed).</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
25	Disposal by LTES Operator	<p>(a) Subject to paragraph (b), LTES Operator may Dispose of the LTESA or the Project with the consent of SFV, not to be unreasonably withheld or delayed if:</p> <ul style="list-style-type: none"> (i) the transferee has the legal, financial and technical capability to perform its obligations under the LTESA; and (ii) if the Disposal occurs prior to COD, SFV considers (in its absolute discretion) the transferee would have achieved an equivalent or higher merit score from the Consumer Trustee during the tender assessment. 	As per FSFV generation LTESA.	As per FSFV generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(b) LTES Operator may only Dispose of the LTESA or the Project if LTES Operator has Disposed of the LTESA, the Project and, if relevant, the PDA to the same person.</p> <p>(c) For the avoidance of doubt, nothing in this clause 25 prevents LTES Operator creating PPSA security interests with its debt financiers in accordance with its debt financing arrangements.</p>		
26	Security and tripartite	<p>(a) LTES Operator may grant a PPSA security interest over the Project without the consent of SFV.</p> <p>(b) If requested by LTES Operator, SFV will enter into a tripartite agreement with LTES Operator and LTES Operator's debt financiers in the form attached to the LTESA.</p> <p>(c) Clause 25 will govern any Disposal as part of the enforcement of security by the financiers to LTES Operator.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
27	Change of control	<p>(a) A Change of Control of LTES Operator is deemed to be a disposal of the LTESA to which clause 25 applies.</p> <p>(b) The definition of "Control" is to be based upon section 50AA of the Corporations Act and include a direct or indirect power to control an entity and will exclude a change of control of a listed entity through a transfer or issue of shares that are listed on a recognised public securities exchange.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
Risk and liability				
28	Excluded Loss	<p>To the extent permissible by law, except for any express liability to pay an amount (including any termination amounts), neither party is liable for:</p> <p>(a) any loss which does not arise naturally, or in the usual course of things, as a consequence of a breach of the LTESA; or</p> <p>(b) any other indirect or consequential loss.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
29	Representations and warranties	<p>Each party represents that:</p> <p>(a) 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</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		(b) under section 761G of the Corporations Act, it deals in the relevant financial products and the relevant financial services with the other party as a wholesale client.		
Other legal terms				
30	GST	<p>(a) All amounts in the LTESA, including the Fixed Price, are expressed exclusive of GST.</p> <p>(b) The LTESA will include customary provisions dealing with the treatment of GST, including notional values in respect of supplies that are not separately priced (for example, Black Products and Green Products).</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
31	Data sharing	<p>(a) LTES Operator must promptly provide SFV with data relating to the Project as may be requested by SFV from time to time. Such data may include project commissioning data, operational data, operational financial data and other such data as SFV may require perform its obligations under the LTESA and the EII Act, to use, monitor and evaluate the LTESA program, and to share the learnings of the LTESA program with the Australian electricity industry.</p> <p>(b) If LTES Operator, acting reasonably, is not able to comply with a data request because the required data is unavailable, or it is not able to be extracted, LTES Operator must notify SFV in writing stating why the required data is unavailable. This request must be submitted within 10 Business Days of SFV's data request. SFV may, in its absolute discretion, withdraw the request or require LTES Operator to take such reasonable additional steps as SFV directs to allow LTES Operator to comply with the data request.</p> <p>(c) SFV reserves the right to share any such data or information with the NSW Government, the Consumer Trustee and any third parties contracted to help SFV perform its functions under the EII Act. LTES Operator should clearly mark any information provided under this clause 31 that it considers to be commercially sensitive information before that deliverable is submitted to SFV or SFV's knowledge sharing agent. Any commercially confidential data will be aggregated and anonymised before any public disclosure.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
32	Confidentiality	The LTESA will include an Australian market standard confidentiality regime.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
33	Independent Experts	<p>(a) Where a dispute under this document is referred to an Independent Expert for resolution, the parties will cooperate in good faith to appoint an Independent Expert who has the appropriate commercial and practical expertise in the National Electricity Market.</p> <p>(b) If the parties are unable to agree on the appointment of the Independent Expert within 10 Business Days of a party giving notice that a matter is to be referred to an Independent Expert, either party may request that the President of the Resolution Institute (or the President's independent nominee) nominates an Independent Expert within 20 Business Days of the request.</p> <p>(c) An Independent Expert must:</p> <ul style="list-style-type: none"> (i) declare any conflict of interest and not be appointed without the consent of the parties if he or she has any conflict of interest; (ii) act as an expert and not as an arbitrator; (iii) keep confidential all materials and information made available to or by the parties; and (iv) initiate such enquiries and investigations as he or she considers necessary or desirable for the purposes of performing its function. <p>(d) The determination of the Independent Expert will be, in the absence of manifest error or fraud, final and binding on the parties.</p> <p>(e) The costs of an Independent Expert must be borne equally between the parties.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
34	Dispute resolution	The LTESA will provide for resolution by the relevant executive officers, expert determination (if specified as applicable) and then referral to the courts.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
35	Pooled dispute	The LTESA will include a dispute pooling regime that will apply in the event of common or similar disputes across multiple LTESAs. This regime may apply to disputes in relation to Market Disruption Events, LMP Event, Change in Law and any amendment or repeal of the EII Act as described under clause 21(c)(iii).	As per FSFV generation LTESA.	As per FSFV generation LTESA, except that the references to "Market Disruption Events" and "LMP Event" are omitted.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
36	Notices	The LTESA will include an Australian market standard regime for the delivery and receipt of notices given under the LTESA.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
37	Governing law	The LTESA is governed by and construed in accordance with the laws of New South Wales.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
Section 3: Details of the option and swap				
Overview				
38	Option structure	<p>(a) LTES Operator has an option to require SFV to enter into a cash settled swap contract on terms outlined in this Section 3 (a “Swap”) commencing on:</p> <p>(i) the First Option Date; or</p> <p>(ii) any anniversary of the First Option Date (up to the 19th anniversary),</p> <p>(such date of commencement being the “Swap Start Date” for that Swap).</p> <p>(b) LTES Operator may not exercise its option to enter into a Swap if it would mean that more than one Swap is in effect at any time.</p> <p>[Drafting Note: LTES Operator has the right to enter a Swap annually but each Swap, once entered, is a period of two financial years. Start dates of Swaps must always align with Financial Years.]</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
Exercise of option				
39	Exercise notice	<p>(a) LTES Operator may exercise its option to enter into a Swap at any time at least 6 months but no more than 12 months prior to the Swap Start Date for that Swap (the “Exercise Notice Period”).</p> <p>(b) The parties may agree to shorten the Exercise Notice Period for Swaps commencing after the First Option Date in circumstances where SFV is reasonably satisfied that it is able to manage the liquidity and settlement procedures associated with such shorter Exercise Notice Period.</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.
40	Exercise Condition	<p>(a) LTES Operator may only exercise an option if, at the time of exercise:</p> <p>(i) either:</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>(A) the Project has achieved COD in accordance with the terms of the PDA; or</p> <p>(B) pursuant to a request under clause 6(b)(i)(B), SFV is satisfied (acting reasonably) that the Project will achieve COD in accordance with the terms of the PDA before the proposed commencement date for that Swap;</p> <p>(ii) LTES Operator:</p> <p>(A) has not failed to make payments due under the LTESA; or</p> <p>(B) is not subject of an insolvency event;</p> <p>(iii) if a Project Force Majeure Event impacting at least 20% of the Project's capacity is subsisting, SFV considers (acting reasonably) that the impact is unlikely to be remedied by the relevant Swap Start Date;</p> <p>(iv) if a Major Casualty Event has occurred, LTESA Operator has successfully completed the reinstatement of the Project in accordance with clause 16(c); or</p> <p>(v) if LTES Operator has breached the Social Licence Commitments, LTES Operator has cured that breach in accordance with clause 10(i).</p> <p>(b) SFV may (at its absolute discretion) waive any of the requirements set out in paragraph (a).</p>		
Price and payment terms of the Swap				
41	Swap Period	<p>(a) The "Swap Period" for a Swap is two years from the applicable Swap Start Date for that Swap.</p> <p>(b) If there is only one year left in the Term, the Swap Period is 12 months, and in any case the Swap Period cannot be less than 12 months.</p> <p>(c) The Swap Period for a Swap commencing on or after the fourth anniversary of the First Option Date may be reduced from two years to one year at any time with the agreement by both parties.</p> <p><i>[Drafting note: Our preference is to provide projects with flexibility where it reduces the likelihood of option exercise. Where SFV has the systems and processes to manage more</i></p>	As per FSFV generation LTESA.	As per FSFV generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		regular, shorter option periods then SFV may offer to shorten the period from two years to one year.]		
42	Notional Quantity	<p>(a) The Swap will settle against the Notional Quantity for each Trading Interval (as may be reduced in accordance with clauses 13, 14 and 15).</p> <p>(b) LTES Operator must bid a Notional Quantity (in MWh) that is a set for each Trading Interval, as set out in [bid variable].</p> <p>[Drafting note: negative prices do not reduce the notional quantity. Rather, the Floating Price has a floor at zero creating an economic incentive for projects to turn off during negative prices or prices below their operating costs.]</p>	The Swap will settle against a Notional Quantity that is equal to the Sent Out Generation (adjusted for loss factors) of the Project for each Trading Interval.	As per FSFV generation LTESA.
43	Payment mechanics	<p>(a) On a monthly basis during the Swap Period:</p> <p>(i) SFV will pay LTES Operator the Fixed Price multiplied by the Notional Quantity for all the Trading Intervals in the month (“Fixed Price Amount”). “Fixed Price” means the fixed nominal price of \$[bid variable]/MWh.</p> <p>(ii) LTES Operator will pay SFV the Floating Price multiplied by the Notional Quantity for all the Trading Intervals in the month (“Floating Price Amount”). “Floating Price” is the spot price for electricity for that Trading Interval (in \$/MWh) set at the NSW Regional Reference Node.</p> <p>(b) The payments set out in paragraph (a) will be subject to netting and set off mechanics such that:</p> <p>(i) if the Fixed Price Amount calculated under subparagraph (a)(i) is <i>more</i> than the Floating Price Amount calculated under subparagraph (a)(ii), then SFV will pay LTES Operator the difference between those amounts; and</p> <p>(ii) if the Fixed Price Amount calculated under subparagraph (a)(i) is <i>less</i> than the Floating Price Amount calculated under subparagraph (a)(ii), then LTES Operator will pay SFV the difference between those amounts.</p> <p>(c) For the purposes of calculating GST only, if the supply of Green Products attracts a separate GST liability then the</p>	As per FSFV generation LTESA.	<p>As per FSFV generation LTESA, except paragraph (a)(ii) is amended to read:</p> <p>(i) LTES Operator will pay SFV the Floating Price multiplied by the Notional Quantity for all the Trading Intervals in the month (“Floating Price Amount”). “Floating Price” is the average Green Product Market Price for the Green Products that have, or could be, created from or in respect of the Notional Quantity for relevant month.</p>

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		Green Products associated with the Notional Quantity are taken to have been supplied for \$[bid variable]/MWh.		
44	Negative prices	If the Floating Price for a Trading Interval would be less than zero, then: (a) the Floating Price is deemed to be zero for that Trading Interval; and (b) LTES Operator may curtail the generation of electrical energy from the Project at any time during such Trading Interval.	As per FSFV generation LTESA.	As per FSFV generation LTESA.
45	Physical delivery of LGCs	This clause 45 does not apply to the FSFV generation LTESA.	This clause 45 does not apply to the variable volume generation LTESA.	<ul style="list-style-type: none"> (a) SFV may elect to take physical delivery of LGCs or other Green Products under a Swap (“Physical Delivery Election”), provided that SFV may not make a Physical Delivery Election in respect of a Swap if physical delivery would cause the Swap to longer be a derivative. (b) SFV may make a Physical Delivery Election in respect of a Swap at any time at least 6 months prior to the Swap Start Date for that Swap. (c) During the Exercise Notice Period for a Swap, LTES Operator may request SFV to confirm whether it will make a Physical Delivery Election in respect of that Swap. If LTES Operator makes such a request: <ul style="list-style-type: none"> (i) within 1 month of the request, SFV must provide such confirmation; and (ii) if LTES Operator exercises its option to enter into that Swap, then SFV will be bound by such confirmation.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
				<p>(d) If SFV makes a Physical Delivery Election in respect of a Swap, then:</p> <ul style="list-style-type: none"> (i) the Floating Price will be zero for all Trading Intervals in the Swap Period for that Swap; and (ii) LTES Operator must, on a monthly basis, deliver the Notional Quantity of Green Products to SFV's nominated account; and (iii) all Green Products delivered to SFV in any given month pursuant to subparagraph (ii) must have been created from the Project, provided that LTES Operator will be relieved from this requirement in this subparagraph (iii) to the extent that it is unable to create Green Products during that month as a result of any Project Force Majeure Events, Network Events and Non-Firm Intervals (as described in clauses 13, 14 and 15). <p>(e) To avoid doubt, SFV's obligation to pay the Fixed Price Amount under a Swap will continue notwithstanding any Physical Delivery Election in respect of that Swap.</p> <p>(f) If LTES Operator fails to deliver the Notional Quantity of particular Green Product in a month, then LTES Operator must, within 20 Business Days</p>

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
				<p>after the end of the month pay SFV a liquidated damages amount for that Green Product, calculated in accordance with the following formula:</p> <p>GPSS = SE x GPMP</p> <p>Where</p> <p>GPSS = the Green Product Shortfall Sum</p> <p>SE = the difference between the quantity of the relevant Green Product that LTES Operator was required to deliver to SFV in that month and the quantity that was actually delivered to SFV in that month</p> <p>GPMP = the average Green Product Market Price for the relevant Green Product for the month.</p>
Other key terms of the Swap				
46	Black Products	<p>(a) SFV is entitled to the benefit of any Black Products that the Project is entitled to create during any Swap Period in respect of the Project in an amount that corresponds with the Notional Quantity (as may be reduced in accordance with clauses 13, 14 and 15).</p> <p>(b) For the purposes of this clause 46, the Notional Quantity is reduced to the extent that the Project does not create Black Products during negative price periods in accordance with clause 44.</p> <p>(c) SFV may elect to require LTES Operator to take all reasonable steps to enable the Project to create specified Black Products.</p> <p>(d) If SFV requires LTES Operator to create specified Black Products, then SFV must provide reasonable assistance to LTES Operator in connection with the creation of such Black Products including reimbursing LTES Operator for</p>	As per FSFV generation LTESA.	This clause 46 does not apply to the LGC only generation LTESA.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>any reasonable incremental costs of creating such Black Products.</p> <p>(e) SFV may request (at its absolute discretion) that LTES Operator monetise Black Products and provide SFV with a cash equivalent amount for Black Products due to SFV. If the parties fail to agree the cash equivalent value for Black Products, then, then the matter may be referred by either party to an Independent Expert for determination.</p> <p>(f) “Black Products” includes any payment, credit, compensation, certificate or similar right or benefit that is attributable to the capacity or availability of the Project.</p>		
47	Green Products	<p>(a) SFV is entitled to the benefit of any Green Products that a person is entitled to create in in respect of the Notional Quantity (as may be reduced in accordance with clauses 13, 14 and 15).</p> <p>(b) For the purposes of this clause 47, the Notional Quantity is reduced in respect of a particular Green Product to the extent that the Project does not create that Green Product during negative price periods in accordance with clause 44.</p> <p>(c) LTES Operator must deliver Green Products to SFV on a monthly basis.</p> <p>(d) SFV may elect to require LTES Operator to take all reasonable steps to enable the Project to create specified Green Products.</p> <p>(e) SFV may request (at its absolute discretion) that LTES Operator monetise Green Products and provide SFV with a cash equivalent value for Green Products. If the parties fail to agree the cash equivalent value for Green Products, then, then the matter may be referred by either party to an Independent Expert for determination.</p> <p>(e) If SFV requires LTES Operator to create specified Green Products, then SFV must provide reasonable assistance to LTES Operator in connection with such Green Products including reimbursing LTES Operator for any reasonable incremental costs of creating such Green Products (other than LGCs).</p> <p>(f) If at any time during the Term, the occurrence of a Change in Law or the expiry of the RET Scheme prevents, limits or</p>	As per FSFV generation LTESA.	As per FSFV generation LTESA, except that this clause 47 will only apply during Swap Periods that are subject of a Physical Delivery Election.

No	Item	Fixed shape fixed volume (FSFV) generation LTESA	Variable volume generation LTESA	GP only generation LTESA
		<p>restricts LTES Operator from being entitled to create or transfer any Green Products:</p> <ul style="list-style-type: none"> (i) the LTESA is not regarded as frustrated and neither party has the right to terminate the LTESA; (ii) LTES Operator's obligations to create the Green Product affected by the Change in Law (for example, LGCs) will not apply; and (iii) SFV may request LTES Operator to supply a specific alternative Green Product in accordance with paragraph (d) and there will be no change to the Fixed Price for that specific Green Product. <p>(g) "Green Products" means any rights, entitlements, credits, offsets, allowances, benefits or certificates of any kind that may be created by, or relate to, the level of greenhouse gas emissions associated with generation of electrical energy by the Project, including LGCs, but not including any Black Products.</p>		

Schedule 1 Definitions

In this document:

AEMC means the Australian Energy Market Commission.

AEMO means the Australian Energy Market Operator Limited (ACN 072 010 327).

Black Products has the meaning given to that term in clause 46.

Business Day means any day on which banks are open for business in Sydney, New South Wales other than Saturday or Sunday.

Change in Law has the meaning given to that term in clause 17.

COD means the date on which the Generation Conditions for the Project are satisfied, or waived by the parties, under the Project Development Agreement.

COD Sunset Date means the COD Sunset Date under the Project Development Agreement.

Consumer Trustee means AEMO Services Limited (ACN 651 198 364) in its capacity as consumer trustee under the EII Act.

EII Act means the *Electricity Infrastructure Investment Act 2020* (NSW).

Exercise Notice Period has the meaning given to that term in clause 39.

First Option Date has the meaning given to that term in clause 6.

Fixed Price has the meaning given to that term in clause 43.

Fixed Price Amount has the meaning given to that term in clause 43.

Floating Price has the meaning given to that term in clause 43.

Green Products has the meaning given to that term in clause 47.

Green Product Market Price means:

- (i) for LGCs, is the average of the quotations (stated on a GST exclusive basis) for non-woodwaste LGCs for the relevant period obtained from two independent and suitably qualified brokerage firms nominated by SFV; **[Drafting note: It is being considered whether brokers such as ICAP or Mercari should be specified upfront]**
- (ii) if not an LGC, is an independently quoted or determined price that best reflects the market price of the Green Product in the relevant period as agreed by the parties (acting reasonably) and, in the absence of an agreement as determined by an Independent Expert. **[Drafting note: a dispute on this issue will be a linked dispute.]**

Historical Net Payments has the meaning given to that term in clause 23.

Independent Expert means an expert appointed in accordance with clause 33.

Ineligible Tax has the meaning given to that term in clause 17.

LGC means a large scale generation certificate (and excludes woodwaste LGCs).

LMP Event has the meaning given to that term in clause 20.

LTES Operator has the meaning given to that term in clause 1.

Major Casualty Event has the meaning given to that term in clause 16.

Market Disruption Event has the meaning given to that term in clause 19.

Minimum Generation Quantity has the meaning given to that term in clause 12.

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 applied in NSW.

Network Event has the meaning given to that term in clause 14.

Non-Firm Interval has the meaning given to that term in clause 15.

Notional Quantity has the meaning given to that term in clause 42.

National Electricity Rules means the National Electricity Rules made under the National Electricity Law as applied in NSW, as amended from time to time.

Project means **[bid variable]**.

Project Development Agreement or “**PDA**” means the project development agreement entered into on or about the date of the LTESA between LTES Operator and Consumer Trustee with respect to the Project.

Project Force Majeure Event has the meaning given to that term in clause 13.

Regional Reference Node means the Sydney West 330kV node.

Relevant Cost Change has the meaning given to that term in clause 18.

Sent Out Generation has the meaning given in the National Electricity Rules.

SFV has the meaning given to that term in clause 1.

Signing Date means the date that the LTESA is signed by both parties.

Social Licence Commitments has the meaning given to that term in clause 10.

Swap has the meaning given to that term in clause 38.

Swap Period has the meaning given to that term in clause 41.

Swap Start Date has the meaning given to that term in clause 38.

Term has the meaning given to that term in clause 6.

Trading Interval has the meaning given to that term in the National Electricity Rules.

Schedule 2 Shortfall Sum

This Schedule 2 sets out the formula for calculating the Shortfall Sum under clause 12 for a variable generation LTESA.

This Schedule 2 does not apply to a FSFV generation LTESA or a Green Products only generation LTESA.

1. Shortfall Sum

The “**Shortfall Sum**” for a Swap Period is calculated as follows:

$$SS = ESS + GPSS - (BP \times SE)$$

Where

SS = the Shortfall Sum

ESS = the Electricity Shortfall Sum calculated in accordance with item 2 of this Schedule 2

GPSS = the Green Product Shortfall Sum, calculated in accordance with item 3 of this Schedule 2

BP = the Fixed Price

SE = the Shortfall Electricity for that Swap Period to the nearest whole MWh

2. Electricity Shortfall Sum

The “**Electricity Shortfall Sum**” for a Swap Period is calculated as follows:

$$ESS = SE \times VWPP$$

Where

ESS = the Electricity Shortfall Sum

SE = the Shortfall Electricity for that Swap Period to the nearest whole MWh, calculated in accordance with item 5 of this Schedule 2

VWPP = the volume weighted spot price for electricity for that Swap Period (in \$/MWh) set at the NSW Regional Reference Node (but if VWPP is negative, it is deemed to be zero)

3. Green Product Shortfall Sum

The “**Green Product Shortfall Sum**” for a Swap Period is calculated as follows:

$$GPSS = SE \times GPMP$$

Where

GPSS = the Green Product Shortfall Sum

SE = the Shortfall Electricity for that Swap Period to the nearest whole MWh, calculated in accordance with item 5 of this Schedule 2

GPMP = the average Green Product Market Price for the Green Products associated with the Shortfall Electricity for that Swap Period.

4. Shortfall Electricity

The “**Shortfall Electricity**” for a Swap Period is calculated as follows:

$$SE = [PMG - (SOG + LG)] \times MLF$$

Where

SE = the Shortfall Electricity

PMG = the Minimum Generation Quantity for that Swap Period

SOG = the sum of the Sent Out Generation for the Project for all Trading Intervals in that Swap Period

LG = the aggregate of energy deemed to be generated and exported by the Project under clause 12(b)

MLF = the marginal loss factor for the Project.

If the Shortfall Electricity is a negative quantity, it is deemed to be zero.