

LTESA (long duration storage) – Term Sheet

[DRAFT]

This document sets out a summary of the key terms and conditions for the proposed Long Term Energy Service Agreement (“LTESA”) for long duration storage projects that are not connected to a declared REZ.

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.

No	Item	Detail
1	Parties	[Bidder] (“LTES Operator”) [Scheme Financial Vehicle] (“SFV”)
2	Documentation overview	As part of the framework under the <i>Electricity Infrastructure Investment Act NSW 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 the LTES Operator and SFV: (a) the Project Development Agreement (“PDA”) which sets out the detailed requirements and milestones by which the LTES Operator will develop and construct the Project; and (b) the LTESA which is the overarching document for the construction and operation phases of the Project, the option structure by which LTES Operator can exercise its derivative transaction with SFV and the arrangements for social and other contributions to be made by LTES Operator.
3	Inconsistency	Where there is any inconsistency between the terms of the LTESA and the PDA, the terms of the LTESA will prevail to the extent of such inconsistency.
4	Definitions and interpretation	Capitalised terms in this document have the meaning set out in Schedule 1.
Term		
5	Term of LTESA	(a) The “Term” commences on the Signing Date and continues until the date that is [bid variable] after the First Option Date (“LTESA End Date”). [Drafting note: for chemical battery projects, the default value for this bid variable is 14 years and for pumped hydro projects the default bid variable is 40 years. These are indicative and assumed in this document for ease of reading.] (b) The “First Option Date” is the earlier of: (i) the first 1 July occurring: (A) not less than six months after COD; or (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 an Annuity Product to commence on an early First Option Date that is set under subparagraph (i)(B), then it will still need to exercise that Annuity Product with at least 6-months’ notice per clause 13.] (ii) the first 1 July occurring not less than six months after COD Sunset Date (as extended in accordance with the PDA). [Drafting note:

No	Item	Detail
		<ul style="list-style-type: none"> the 'First Option Date' is the date that commences the 14/40-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 14/40-year term of the LTESA will commence and each day of delay after COD Sunset Date will erode the 14/40-year term. 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 13). Where COD occurs in 2025, then under subparagraph (b)(i)(A) the First Option Date would be 1 July 2026. 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. 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. <p>However, there will still likely be a gap between COD and when the first Annuity Product can commence which the Project will need to manage.]</p>
Construction of the Project		
6	Construction	LTES Operator must construct the Project in accordance with the Project Development Agreement.
Operation of the Project		
7	Operating Requirements	<p>(a) LTES Operator acknowledges that:</p> <ul style="list-style-type: none"> (i) the purpose of the Annuity Payment is to provide an option for a revenue top up during Annuity Periods to support the development of the Project and is not intended to distort the market signals that would otherwise apply to the Project; and (ii) the following Operating Requirements are to be interpreted and applied consistent with that purpose. <p>(b) LTES Operator must operate the Project in accordance with the following requirements:</p> <ul style="list-style-type: none"> (i) the registration requirements in clause 8; (ii) the maintenance requirements in clause 9; and (iii) the bidding requirements in clause 10, <p>(together, Operating Requirements)</p>
8	Registration requirements	<p>(a) LTES Operator must, at all times during the Term, ensure that it (or an intermediary) is registered with AEMO for the Project to enable it to provide the following services:</p> <ul style="list-style-type: none"> (i) market ancillary services; (ii) import and dispatch capability (ie as an 'integrated resource provider'); and (iii) subject to paragraph (b), any other services for which the Project could earn revenue in the NEM. <p>(b) If:</p> <ul style="list-style-type: none"> (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 participate; and (ii) it is consistent with industry practice for projects which are similar to the Project to participate in those markets, <p>LTES 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. At SFV's request, LTES</p>

No	Item	Detail
		<p>Operator must provide the basis on which it has decided not to register or otherwise participate in such a market.</p> <p>(c) A “Project Service” is a service for which LTES Operator is registered or entitled to participate in respect of the Project for the market in which that service is provided.</p>
9	Maintenance requirements	<p>(a) In periods where LTES Operator has entered an Annuity Product:</p> <p>(i) LTES Operator must operate and maintain the Project in accordance with good electricity industry practice and in a manner that will extend and preserve the asset life of the Project to its maximum asset life;</p> <p>(ii) ensure that the Project has a registered capacity that can be dispatched for at least 8 hours;</p> <p>(iii) 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%:</p> <p>(A) is undertaken outside of periods of expected high prices; and</p> <p>(B) does not occur during Peak Months without the prior written consent of SFV; and</p> <p>(iv) 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;</p> <p>(v) LTES Operator must insure the Project in accordance with good electricity industry practice.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>
10	Bidding requirements	<p>(a) During an Annuity Period, LTES Operator must:</p> <p>(i) operate, contract, bid and dispatch the Project in Good Faith in accordance with market signals for a storage technology project of its nature as if it were a stand-alone project (ie not operated as part of a portfolio of assets);</p> <p>(ii) not:</p> <p>(A) fail to offer electricity financial contracts;</p> <p>(B) limit or restrict its offers to enter into electricity financial contracts, or</p> <p>(C) offer to enter into electricity financial contracts in a way that has or on terms that have, the effect or likely effect of preventing, limiting or restricting acceptance of those offers, where, in each case, where LTES Operator does so for the purpose of substantially lessening competition in any electricity market; and</p> <p>(iii) not:</p> <p>(A) bid or offer to supply a Project Service in relation to a relevant market; or</p> <p>(B) fail to bid or offer to supply a Project Service in relation to a relevant market, where, in each case, LTES Operator does so fraudulently, dishonestly or in bad faith or for the purpose of distorting or manipulating prices in that market.</p>

No	Item	Detail
		<p>(b) For the purposes of subparagraph(a)(i), “Good Faith” means to act honestly, reasonably and with fair dealing having regard to the purpose set out in clause 7(a).</p> <p>(c) The parties acknowledge that the requirements set out in subparagraph(a)(ii) and (iii) are based on the requirements set out in section 153F and 153G of the <i>Competition and Consumer Act 2010</i> (also known as the “Big Stick” legislation) and compliance with those requirements will be interpreted consistently with:</p> <ul style="list-style-type: none"> (i) that legislation and any relevant ACCC guidelines; and (ii) the limited nature of the storage in the Project and decisions made by LTES Operator to operate or bid the Project (or not operate it or bid it) at a particular point in time to take advantage of forecast prices at a different point in time or its contracted positions that best utilises that limited storage. <p>[Drafting note: the objective of this agreement is that the LTES Operator operates the Project in a way that responds to market signals and does not rely on the revenue provided under this document. The good faith and the Big Stick requirements involve very high thresholds with a substantial burden of proof on the SFV. In reality, they would only be enforceable in the most egregious circumstances but give some comfort that there are mechanisms to address such behaviour. The alternative, which has been explored, is to include requirements to operate and dispatch to meet high priced events or LOR conditions. This will be complex given the decision making required as to when to charge and discharge to maximise revenue, the interaction of different markets, impact of contract positions and this is a long-term contract where the market will evolve.]</p>
11	Operating Reporting	<p>(a) LTES Operator must submit its operating strategy to SFV at least 60 Business Days before the start of each financial year in an Annuity Period (Operating Strategy).</p> <p>(b) The Operating Strategy must contain all relevant information and data (including commercial strategies in relevant markets) to demonstrate how the Project will be operated and contracted by LTES Operator in the next financial year to meet the Operating Requirements.</p> <p>(c) Within 20 Business Days of a request by SFV, LTES Operator must provide a report after the end of the financial year setting out the actual performance of the Project against the Operating Strategy, any changes to strategy during the year and an explanation of any material deviations from the strategy. The LTES Operator must, following the provision of the report, respond to any reasonable questions of SFV in relation to the report and the operation, bidding and dispatch of the Project in the previous financial year.</p> <p>(d) To avoid doubt, LTES Operator is not required to comply with the Operating Strategy but the Operating Strategy and any reporting relating to it may be used by SFV to assess compliance with the Operating Requirements.</p> <p>[Drafting note: the Operating Strategy is not binding and is not subject to SFV’s approval but provides a framework by which SFV may understand and assess the manner the LTES operator operates the Project.]</p>
Option for the Annuity Product		
12	Option structure	<p>(a) LTES Operator has an option to require SFV to enter into an arrangement for a derivative arrangement (an “Annuity Product”) commencing on:</p> <ul style="list-style-type: none"> (i) the First Option Date; or (ii) any anniversary after the First Option Date (up to the last year of the Term, ie 13th or 39th anniversary (as relevant)) <p>(such date of commencement being the “Annuity Product Start Date” for that Annuity Product).</p> <p>(b) LTES Operator may not exercise its option to enter an Annuity Product if it means that more than one Annuity Product is in effect at any one time.</p> <p>[Drafting Note: LTES Operator has the right to enter an Annuity Product annually but each Annuity Product, once entered, is a period of two financial</p>

No	Item	Detail
		years. Start dates of Annuity Products must always align with financial years.]
13	Exercise notice	<p>(a) LTES Operator may exercise its option to enter an Annuity Product at any time at least 6 months but no more than 12 months prior to the Annuity Product Start Date for that Annuity Product (the “Exercise Notice Period”).</p> <p>(b) The parties may agree to shorten the Exercise Notice Period 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>
14	Exercise Condition	<p>LTES Operator may only exercise an option if, at the time of exercise:</p> <p>(a) the Project:</p> <p>(i) has achieved COD in accordance with the terms of the PDA; or</p> <p>(ii) pursuant to a request under clause 5(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 Annuity Product.</p> <p>(b) LTES Operator:</p> <p>(i) has not failed to make payments due under this document; or</p> <p>(ii) is not subject of an insolvency event;</p> <p>(c) 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 Annuity Product Start Date;</p> <p>(d) if a Major Casualty Event has occurred, LTES Operator has completed the reinstatement of the Project in accordance with clause 23(c)(i); and</p> <p>(e) if LTES Operator has breached Social Licence Commitments, LTES Operator has cured that breach in accordance with clause 20(i).</p>
Price and payment for the Annuity Product		
15	Annuity Period	<p>(a) The “Annuity Period” for an Annuity Product is two years from the applicable Annuity Product Start Date for that Annuity Product.</p> <p>(b) If there is only one year left in the Term, the Annuity Period is 12 months, and in any case the Annuity Period cannot be less than 12 months.</p> <p>(c) The Annuity Period for an Annuity Product 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 of both parties.</p> <p>[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 regular, shorter option periods then SFV may offer to shorten the period from two years to one year.]</p>
16	Payment mechanics	<p>(a) SFV and LTES Operator agree to pay the Quarterly Annuity Amounts, calculated in accordance with Item 1(a) in Schedule 2 at the end of each quarter during the Annuity Period for the Annuity Product.</p> <p>(b) The Quarterly Annuity Amounts made throughout the quarters in a financial year during an Annuity Period for the Annuity Product will be trued up at the end of the relevant financial year as against the Net Operational Revenue and Net Revenue Threshold in accordance with Item 1(b) in Schedule 2.</p>
Project revenue and repayment mechanism		
17	Provision of revenue information	<p>(a) At the end of each financial year during the Term, LTES Operator must provide SFV with a statement of its Net Operational Revenue for that financial year and the Repayment Amount due (if any).</p> <p>(b) The statements provided under paragraph (a) must be certified by a relevant director of the LTES Operator to be true and fair statements and comply with relevant accounting standards.</p> <p>(c) “Net Operational Revenue” means:</p> <p>(i) the revenue generated by Project through the provision of electricity and relevant services in the wholesale energy market and ancillary services markets administered by AEMO in the NEM determined</p>

No	Item	Detail
		<p>by reference to the prices set by AEMO for that service (“Market Revenue”); and</p> <p>(ii) the revenue earned under Project Revenue Contracts (“Non-Market Revenue”),</p> <p>minus the costs of energy to generate these revenues, in the relevant financial year.</p> <p>(d) If LTES Operator exercises its option for an Annuity Product in accordance with the terms of this document, then LTES Operator must provide SFV with a certified statement of its Net Operational Revenue at the end of each quarter during the Annuity Period (“Quarterly Net Operational Revenue”).</p>
18	SFV’s audit rights	<p>(a) SFV may commission an independent audit of the books, and records of LTES Operator for the purposes of verifying the accuracy of:</p> <p>(i) certified statements provided by LTES Operator under clause 17;</p> <p>(ii) the Availability Reports provided by LTES Operator under clause 28.</p> <p>(b) In the absence of fraud or manifest error, the findings of the auditor will be binding on the parties.</p> <p>(c) SFV will bear the costs of any audit undertaken under this clause 18, unless the audit demonstrates that the certified statements or availability reports provided by LTES Operator are materially inaccurate, in which case the LTES Operator will bear the costs of the audit.</p>
19	Repayment mechanism	<p>(a) Following the end of each financial year during the Term that is not an Annuity Period, LTES Operator must pay SFV the Repayment Amount if each of the following conditions is satisfied:</p> <p>(i) the Net Operational Revenue during the immediately previous financial year is above its Net Revenue Threshold. “Net Revenue Threshold” means \$[bid variable]; and</p> <p>(ii) there is a net accrued amount paid by SFV under this document arising from the previous exercise of options of the Annuity Product and taking into account any Repayment Amounts (Historical Net Payments).</p> <p>(b) The Repayment Amount is calculated in accordance with Item 2 of Schedule 2.</p> <p>(c) LTES Operator must pay SFV the Repayment Amount as a lump sum amount within the later of 30 Business Days of LTES Operator’s report under clause 17(a) or the finalisation of the audit under clause 18.</p> <p>(d) 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 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).</p>
Social Licence Commitments and Alterations to Project		
20	Social Licence Commitments	<p>(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:</p> <p>(i) First Nations Guidelines and Renewable Energy Sector Board’s plans;</p> <p>(ii) local content employment quotas;</p> <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>

No	Item	Detail
		<p>(ii) the completion of an audit of LTES Operator's compliance with Social Licence Commitments in accordance with paragraph (d), SFV determines (acting reasonably) that LTES Operator is not complying with its Social Licence Commitments, then its 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 20, 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 does considers that the Social Licence Commitment's non-compliance cannot be remedied. The alternative proposal may include:</p> <p>(A) the payment of a liquidated sum amount that is commensurate with the value of the Social Licence Commitment; or</p> <p>(B) an alternative to the Social Licence Commitment which is of equivalent merit as the Social Licence Commitment.</p> <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).</p> <p>(h) If SFV rejects the cure plan submitted under paragraph (e):</p> <p>(i) SFV will provide comments and suggested amendments to the cure plan, including an assessment of the merit of any alternative proposal; and</p> <p>(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> <p>(i) LTES Operator must:</p> <p>(i) comply with an agreed cure plan which may include an alternative Social Licence Commitment acceptable to SFV; or</p> <p>(ii) at SFV's absolute discretion, provide an agreed cash payment sufficient to allow SFV to undertake:</p> <p>(A) the Social Licence Commitment; or</p> <p>(B) an alternative to the Social Licence Commitment which SFV determines (acting reasonably) is of equivalent merit to the Social Licence Commitment.</p> <p>(j) If LTES Operator does not:</p> <p>(i) submit a cure plan under paragraph (e);</p> <p>(ii) commence and comply with the agreed cure plan; or</p> <p>(iii) make the agreed cash payment pursuant to paragraph (i)(ii),</p>

No	Item	Detail
		then (without derogating from SFV's rights under clause 29 to terminate this document), LTES Operator may not exercise its option for an Annuity Product in accordance with clause 13.
21	Alterations to Project	<p>(a) LTES Operator may not make material alterations to the capacity and duration of the Project 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; (ii) intended registered capacity for the altered Project; and (iii) the impact of those proposed material alterations on LTES Operator's ability to carry out its obligations under this document, with sufficient details to enable SFV to form a view under paragraph (c). <p>(c) SFV must not unreasonably withhold or delay its consent under paragraph (a) if the proposed material alterations to the Project's system does not (in SFV's reasonable opinion) materially and adversely impact:</p> <ul style="list-style-type: none"> (i) SFV's rights or obligations under this document; 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>[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 of Energy Corporation of NSW under its connection arrangements to make material alterations to Projects. Obtaining Energy Corporation of NSW's consent is a pre-requisite to obtaining SFV's consent under paragraph (c).]</p>
Material events		
22	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; "Network Event" is any network outage, network congestion or network constraint that results in a reduction in the capacity of the Project during an Annuity Period and that is not caused by LTES Operator failing to operate and maintain the Project in accordance with good electricity industry practice. (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 where such failure is caused by any event or circumstance that, if such event or circumstance had happened to the affected party, would have been a Project Force Majeure Event under this document; (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 natural resources (eg water, as relevant). <p>(c) The rights and obligations of LTES Operator affected by the Project Force Majeure Event under this agreement (other than the obligation to pay amounts of money) will be suspended in whole or in part to the extent the ability of the affected party is affected by the Project Force Majeure Event.</p> <p>(d) If a Project Force Majeure Event occurs and the capacity of the Project to operate is reduced as a result of that Project Force Majeure Event, then:</p>

No	Item	Detail
		<ul style="list-style-type: none"> (i) LTES Operator must use best endeavours to operate the Project in accordance with clause 7; (ii) LTES Operator must: <ul style="list-style-type: none"> (A) notify SFV and use best endeavours to remedy the impact of the Project Force Majeure Event as soon as practicable; and (B) 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.
23	Major Casualty Event	<ul style="list-style-type: none"> (a) A “Major Casualty Event” is an event that causes loss, damage or destruction to at least []% of the rated capacity contained in the definition of the Project [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] (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. (c) If LTES Operator elects to reinstate the Project, then: <ul style="list-style-type: none"> (i) 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 (ii) 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 29.
Change in Law		
24	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, <p>that occurs during the Term that applies generally to Project’s technology type in NSW, but does not include:</p> <ul style="list-style-type: none"> (iv) the repeal, amendment or enactment of any law or change of application of any law relating to Ineligible Tax; (v) any change to the National Electricity Rules which at the Signing Date is subject of a final determination of the AEMC or the Energy Security Board; (vi) without prejudicing LTES Operator’s right to claim costs under clause 26, changes to transmission use of system charges that may be payable by LTES Operator in relation to the Project (Project TUOS) [Drafting note: to reflect the commercial principle that LTES Operators should respond to the same market signals as another LDS operator that does not have the benefit of a LTESA, TUOS is a risk borne by the LTES Operator to address. LTES Operators are encouraged to negotiate with the relevant NSP as per the market standard practice and to the extent that any TUOS is payable, there is a single reopener for TUOS where SFV will compensate for a portion of the costs. See clause 26.] (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:

No	Item	Detail
		<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 Annuity Cap) requested by a party to as to preserve the efficacy of the operation of the LTESA in the manner originally intended at the date of the LTESA. (c) "Ineligible Tax" means: <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.
25	Relevant Cost Change	<ul style="list-style-type: none"> (a) A "Relevant Cost Change" is a net increase or decrease in LTES Operator's direct costs of: <ul style="list-style-type: none"> (i) constructing and commissioning of the Project; or (ii) operating the Project, that arises as a result of a Change in Law, but excludes any net increase or decrease in the costs of procuring electricity used to operate the Project and costs in relation to existing or new participant fees, market charges or ancillary services charges. (b) If LTES Operator incurs a Relevant Cost Change, then: <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 Annuity Cap 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. (c) If the parties fail to agree to an adjustment to the Annuity Cap, then the matter may be referred by either party to an Independent Expert for determination of an adjusted Annuity Cap in accordance with the Cost Change Principles. (d) The "Cost Change Principles" are: <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 an Annuity Product has not been exercised); (iii) any increase in LTES Operator's costs will be discounted for any economic benefit to LTES Operator associated with the relevant Change in Law; 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.
26	TUOS Claim	<ul style="list-style-type: none"> (a) If, under its connection agreement with a network service provider, LTES Operator is required to pay Project TUOS and LTES Operator has used best endeavours to negotiate and minimise those charges with the relevant network service provider, then: <ul style="list-style-type: none"> (i) LTES Operator may, within 2 months of entering into its connection agreement, notify SFV of the Project TUOS amount; and

No	Item	Detail
		<p>(ii) the parties will negotiate in good faith an adjustment to the Annuity Cap which the parties consider is required to pass through [90]% of the net impact of the Project TUOS to SFV.</p> <p>(b) If the parties fail to agree to an adjustment to the Annuity Cap under paragraph (a), then the matter may be referred by either party to an Independent Expert for the determination of an adjusted Annuity Cap.</p> <p>(c) The parties agree that:</p> <p>(i) the adjustment to the Annuity Cap is a one-off adjustment and LTES Operator may only claim for Project TUOS costs once under paragraph (a) during the Term; and</p> <p>(ii) the LTES Operator's entitlement to an adjustment to the Annuity Cap referred to in paragraph (a) is the LTES Operator's sole remedy arising out of or in connection with Project TUOS.</p>
Availability		
27	Availability regime	<p>(a) "Available" or "Availability" means the Project is available to be dispatched for either the export of electricity or import of electricity.</p> <p>(b) "Equivalent Availability Factor" means the percentage of time the Project is Available during a period of time (measured to 1 decimal place).</p> <p>(c) The Availability of the Project and its Equivalent Availability Factor will be determined in accordance with the Institute of Electrical and Electronics Engineers Standard (IEEE) 762 – IEEE Standard Definitions for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity ("IEEE 762") except that the Project will be deemed to be Available for those hours where the Project:</p> <p>(i) is not Available due to a Project Force Majeure Event;</p> <p>(ii) is subject to a direction or instruction by AEMO under the NER which affects the Project's Availability;</p> <p>(iii) is subject to planned maintenance affecting its Availability in excess of an agreed planned maintenance cap,</p> <p>("Deemed Availability Period").</p> <p>[Drafting note:</p> <p>1. The proposed availability regime and the below 'Availability Threshold' is subject to technical review. It is being considered if the 'Availability Threshold' can be amended to be more generous to accommodate planned maintenance outages and to remove limb (iii) as a "deemed" carve out to availability.</p> <p>2. The intention is to have the Availability regime align with PASA reporting as much as possible. It is noted that AEMO has proposed "Rule Change Request – Establishing reason codes and recall times within Medium Term Projected Assessment of System Adequacy" to require reporting of unit status in MT PASA in accordance with reason codes in IEEE 762 (not yet initiated).]</p> <p>(d) During each year of an Annuity Period, LTES Operator must ensure that the Project achieves an 'Equivalent Availability Factor' of at least 97% ("Availability Threshold").</p> <p>[Drafting note: imposing availability requirements during AEMO declared reserve conditions level 2 and 3 were considered – whereby Projects will be required to be available with a set amount of capacity ready for dispatch at the commencement for those reserve periods for a defined period of time (eg 95% of registered capacity available for 8 hours) or deeming the Project Unavailable if it fails to dispatch at least once on a day where there is one or more high priced events. It is preferred to proceed with a simpler regime which is not linked to particular market events but this is on the assumption that the Agreed Operating Parameters regime provides sufficient assurance that Projects will respond to market signals rather than relying on the annuity payment.]</p>
28	Availability rebates	<p>(a) Within 20 Business Days of the end of each financial year in an Annuity Period, LTES Operator will provide to SFV an availability report (Availability Report) for the preceding financial year which sets out:</p>

No	Item	Detail								
		<p>(i) the calculation of the Availability Rebate for that financial year;</p> <p>(ii) a summary of all the Deemed Availability Periods that have occurred for that financial year (as applicable);</p> <p>(iii) the amount of any Availability Rebate owing to SFV (if any).</p> <p>(b) SFV may dispute the Availability Report within 40 Business Days of receipt under paragraph (a) and refer the matter for determination by an independent expert. If SFV does not dispute the Availability Report within that time, it is taken to be binding on both parties.</p> <p>(c) The Availability Rebate for the financial year is calculated in accordance with the table below:</p> <table border="1" data-bbox="544 562 1426 846"> <thead> <tr> <th data-bbox="544 562 842 629">Availability</th> <th data-bbox="842 562 1426 629">Adjustment to the proportion of the Annuity Cap payable in a financial year as a percentage</th> </tr> </thead> <tbody> <tr> <td data-bbox="544 629 842 734">If Availability is above Availability Threshold (97%)</td> <td data-bbox="842 629 1426 734">No adjustment</td> </tr> <tr> <td data-bbox="544 734 842 801">If Availability is between 80% and 96%</td> <td data-bbox="842 734 1426 801">Minus 1.25% for each 1% that is below 97% (or pro-rata for any fraction of 1%)</td> </tr> <tr> <td data-bbox="544 801 842 846">Below 80%</td> <td data-bbox="842 801 1426 846">No further adjustment</td> </tr> </tbody> </table> <p>(d) For example, if the Equivalent Availability Factor for the financial year is 77%, the Availability Rebate will be 20% of Annuity Payment payable by SFV for that year being:</p> <p>(i) 1.25% x 16 (for between 96 % and 80%) ie 20%; and</p> <p>(ii) no further adjustment to the extent that the Equivalent Availability Factor is below 80%.</p> <p>(e) The Availability Rebate will be payable within 20 Business Days of the end of the dispute period referred to in paragraph (b) or its final determination by an independent expert in case of a dispute.</p> <p>(f) Subject to clause 30(a)(iv), the payment of the Availability Rebate is SFV's sole remedy for LTES Operator's failure to achieve the Availability Threshold.</p> <p>[Drafting note: The intention is to have an Availability Regime that is high powered in the band immediately below the Availability Threshold to incentivise high availability and appropriate maintenance but is capped at 20% to ensure debt service coverage and stay in business expenditure. Where the Project is below 80% availability, it is assumed that the Project is incentivised to remedy it because it is losing revenue and the annuity is not sufficient.]</p>	Availability	Adjustment to the proportion of the Annuity Cap payable in a financial year as a percentage	If Availability is above Availability Threshold (97%)	No adjustment	If Availability is between 80% and 96%	Minus 1.25% for each 1% that is below 97% (or pro-rata for any fraction of 1%)	Below 80%	No further adjustment
Availability	Adjustment to the proportion of the Annuity Cap payable in a financial year as a percentage									
If Availability is above Availability Threshold (97%)	No adjustment									
If Availability is between 80% and 96%	Minus 1.25% for each 1% that is below 97% (or pro-rata for any fraction of 1%)									
Below 80%	No further adjustment									
Default and termination										
29	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 sub-paragraph (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 subject of an insolvency event.</p>								

No	Item	Detail
		<p>(c) SFV may terminate the LTESA immediately by providing notice to LTES Operator if:</p> <ul style="list-style-type: none"> (i) (Unavailability) the Project is not Available or fails to operate in accordance with the Operating Requirements for a cumulative period of 12 months across a period of four consecutive financial years during the Term. (ii) (No reinstatement following Major Casualty Event) A Major Casualty Event occurs and: <ul style="list-style-type: none"> (A) LTES Operator does not elect to reinstate the Project; or (B) LTES Operator elects to reinstate the Project but does not comply with the reinstatement plan in all material respects (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 the 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 the SFV to meet its liabilities under this document. [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 29 below).]
30	Termination payments	<p>(a) The following termination amounts are payable on termination of the LTESA:</p> <ul style="list-style-type: none"> (i) (PDA Termination) In the case of this document automatically terminating in accordance with clause 28(a), there are no termination amounts payable under this document. (ii) (LTES Operator default) In the case of termination by SFV under clause 28(b) where LTES Operator is the defaulting party, LTES Operator will pay SFV the Early Termination Amount. (iii) (SFV's default) In the case of termination by LTES Operator under clause 28(b) where SFV is the defaulting party, then SFV will pay LTES Operator the Fixed Termination Amount. (iv) (Unavailability) in the case of termination by SFV for Project failing to meet Minimum Project Availability described under clause 29(i) LTES Operator must pay SFV the Early Termination Amount. (v) (Major Casualty Event) In the case of termination by SFV for the termination described under clause 29(ii) , LTES Operator must pay SFV the Early Termination Amount. (vi) (LTESA Change in Law) In the case of termination by SFV for an LTESA Change in Law described under clause 29(iii), SFV must pay LTES Operator the Fixed Termination Amount. <p>(b) "Early Termination Amount" means SFV's retendering costs and [90%] of Historical Net Payments, calculated at the date of termination.</p> <p>(c) "Fixed Termination Amount" means a specified value for the year that this document is terminated by SFV. [Drafting note: bidders will bid in a LTESA value (at year 1) and this will be amortised on a straight-line basis.]</p>
Disposals		
31	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

No	Item	Detail
		<p>(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> <p>(b) SFV may otherwise Dispose of the LTESA with the consent of LTES Operator (not to be unreasonably withheld or delayed).</p>
32	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> <p>(i) the transferee has the legal, financial and technical capability to perform its obligations under the LTESA; and</p> <p>(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.</p> <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 32 will prevent LTES Operator creating PPSA security interests with its debt financiers in accordance with its debt financing arrangements.</p>
33	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 32 will govern any Disposal as part of the enforcement of security by the financiers to LTES Operator.</p>
34	Change of control	<p>(a) A change of Control of LTES Operator is deemed to be a disposal of the LTESA to which clause 32 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>
Risk and liability		
35	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> <p>[Drafting note: the final LTESA is expected to include representations and warranties consistent with similar contracts in the Australian market]</p>
36	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> <p>(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.</p>
Other legal terms		
37	GST	<p>(a) All amounts in this document, are expressed exclusive of GST.</p> <p>(b) The LTESA will include customary provisions dealing with the treatment of GST.</p>
38	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</p>

No	Item	Detail
		<p>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) Without limiting paragraph (a), the frequency and format of standard knowledge sharing deliverables will form a schedule to the LTESA. Wherever possible these deliverables will be aligned with the standard ARENA knowledge sharing deliverables.</p> <p>(c) 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>(d) 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 clause 38 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>
39	Confidentiality	The LTESA will include an Australian market standard confidentiality regime.
40	Independent Expert	<p>(a) Where a dispute under this document is referred to 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>
41	Dispute resolution	The LTESA will include an Australian market standard dispute resolution regime that allows for referral to an independent expert in appropriate circumstances.
42	Pooled dispute	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 Change in Law Events as described in clause 24.
43	Notices	The LTESA will include an Australian market standard regime for the delivery and receipt of notices given under the LTESA.
44	Governing law	The LTESA is governed by and construed in accordance with the laws of New South Wales.

Schedule 1 Definitions

In this document:

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

Annuity Cap means [bid variable].

Annuity Period has the meaning given to that term in clause 15.

Annuity Product has the meaning given to that term in clause 12.

Annuity Product Start Date has the meaning given to that term in clause 12.

Available or Availability has the meaning given to that term in clause 27.

Availability Rebate has the meaning given to that term in clause 27.

Availability Report has the meaning given to that term in clause 28.

Availability Threshold has the meaning given to that term in clause 27.

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 24.

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

Deemed Availability Period has the meaning given to that term in clause 27.

Dispose means assign, novate, transfer or otherwise dispose of any legal or equitable interest, either in whole or part, whether by sale, lease, declaration or creation of trust or otherwise and **Disposal** has a corresponding meaning.

Equivalent Availability Factor has the meaning given to that term in clause 27.

Exercise Notice Period has the meaning given to that term in clause 13.

First Option Date has the meaning given to that term in clause 5.

Fixed Termination Amount has the meaning given to that term in clause 30.

Historical Net Payments has the meaning given to that term in clause 19.

Independent Expert means an expert appointed in accordance with clause 40.

Ineligible Tax has the meaning given to that term in clause 24.

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

Major Casualty Event has the meaning given to that term in clause 23.

National Electricity Law means the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*.

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

Net Operational Revenue has the meaning given to that term in clause 17.

Net Revenue Threshold has the meaning given to that term in clause 19.

NEM means the national electricity market.

NER means the National Electricity Rules made under the National Electricity Law, as amended from time to time.

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

Operating Requirements has the meaning given to that term in clause 7.

Operating Strategy has the meaning given to that term in clause 11.

Project Revenue Contract means a contract or series of contracts that earns revenue or other benefits that relates or relies upon the output and/or capacity of the Project and, where there is the provision of services from LTES Operator to a related body corporate which is not the subject of a formal contract, includes a deemed contract for a reasonable market price for those services.

Quarterly Net Operational Revenue has the meaning given to that term in clause 17

Quarterly Annuity Amount is the amount calculated in accordance with item 1(a) of Schedule 2.

Quarterly Annuity Cap has the meaning given to that term in item 1(a)(i) in Schedule 2.

Project means [bid variable].

Project Services has the meaning given to that term in clause 10.

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 22.

Relevant Cost Change has the meaning given to that term in clause 25.

Project TUOS has the meaning given to that term in clause 24.

Review Date means each 1 January occurring after the Signing Date.

Repayment Amount means the amount calculated in accordance with Item 1(b) of Schedule 2

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

Signing Date means the date that the LTESA is signed.

Term has the meaning given to that term in clause 5.

Schedule 2 Payment calculations

1 Quarterly Annuity Amounts

- (a) The Quarterly Annuity Amount (**QAA**) in respect of a quarter in an Annuity Period is calculated as follows:
 $QAA = QAR - QTR$
where:
QAR is the Quarterly Net Operational Revenue
QTR is the Net Revenue Threshold divided by 4
- (b) Where QAA is a *negative amount* SFV will pay LTES Operator the absolute value of the Quarterly Annuity Amount, up to the Quarterly Annuity Cap (**SFV Payment**). "**Quarterly Annuity Cap**" means Annuity Cap divided by 4.
- (c) Where QAA is a *positive amount*, LTES Operator will pay SFV:
- if there are Historical Net Payments as at the end of that relevant quarter, 50% of the Quarterly Annuity Amount; and
 - if there is not a Historical Net Payment as at that relevant quarter, \$0,
(each, **LTES Operator Payment**).
- (d) At the end of the financial year, the parties will reconcile the Net Operational Revenue for the financial year against the Net Revenue Threshold and the Quarterly Annuity Amounts paid, as follows:
 $A = B - C$
A is the final payment to be made by either LTES Operator (if a positive number) or SFV (if a negative number)
B is:
- if the sum of the QAAs for all quarters is a *negative amount*, it is the lower of:
 - the absolute value of the sum of the QAAs; and
 - the Annuity Cap
 - if the sum of the QAAs for all four quarters is a positive amount, it is 50% of the sum of the QAAs.
- [Drafting note: "B" is the calculation of what would be paid if it was done on an annual basis. That is:**
- the sum of the QAAs provides (Net Operational Revenue– Net Revenue Threshold)**
 - where it is negative, SFV pays LTES Operator the difference of (Net Operational Revenue– Net Revenue Threshold), up to the Annuity Cap as bid**
 - where it is positive, LTES Operator pays the gain- share of 50% of revenue above the net revenue threshold, which is 50% of the sum of the QAAs]**
- C** is SFV Payment (expressed as a negative number) plus LTES Operator Payment (expressed as a positive number) **[Drafting note: "C" is what was paid throughout the year under the Quarterly Annuity Amounts]**

2 Repayment Amount

The Repayment Amount is calculated as the lower of X and Y where:

X is Historical Net Payments

Y is calculated as follows:

$$50\% \times (A - B)$$

where:

A is the Net Operational Revenue earned by LTES Operator during the relevant financial year.

B is the Net Revenue Threshold for the relevant financial year.

3 Escalation

- (a) The Annuity Cap and Net Revenue Threshold will be reviewed and adjusted on each Review Date in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

A is the Annuity Cap or Net Revenue Threshold payable from and including the relevant Review Date
B is the Annuity Cap or Net Revenue Threshold payable immediately before the relevant Review Date
C is the Consumer Price Index All Groups weighted average for the eight capital cities last published by the Australian Bureau of Statistics before the relevant Review Date; and
D is the Consumer Price Index All Groups weighted average for the eight capital cities last published by the Australian Bureau of Statistics before the Review Date preceding the relevant Review Date except that in the case of the first Review Date, D = the Consumer Price Index All Groups weighted average for the eight capital cities as at 1 January [202#].

- (b) If either:

- (i) the Consumer Price Index All Groups weighted average for the eight capital cities ceases to be published quarterly; or
- (ii) the method of calculation of the Consumer Price Index All Groups weighted average for the eight capital cities substantially alters,

then the Consumer Price Index All Groups weighted average for the eight capital cities is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made. That index and those amendments are to be determined as follows:

- (iii) by agreement between the parties; or
- (iv) if the parties do not agree, by the Australian Statistician or his nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.