

LTESA (firming) – Term Sheet – Demand Response Model

[PRELIMINARY DRAFT FOR PUBLICATION]

This document sets out a summary of the key terms and conditions for the proposed Long Term Energy Service Agreement (“LTESA”) for firming projects that are not connected to REZ network infrastructure projects (and which would otherwise require access rights).

This document is a preliminary 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.

This term sheet contemplates a *demand response model* that broadly mirrors a capacity payment model and makes a periodic payment to LTES Operator as consideration for LTES Operator bidding an amount of demand side capacity into the NEM wholesale demand response (**WDR**) market. Like the Firming Supply Model, the Project must meet a minimum availability requirement and must meet the bidding requirements set out in the LTESA.

Detailed calculations for the model are set out in Schedule 2 to this term sheet.

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| Part 1 – Details and interpretation | | |
| 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 firming projects in the form of long-term energy services contracts, which will involve the LTESA which is the overarching agreement for the construction and operation phases of the Project, the option structure by which LTES Operator can exercise its derivative transaction with SFV. <i>[Drafting note: Given the different nature of WDR projects, it is not proposed to have a separate PDA dealing with construction obligations. Depending on the project, the LTESA will include:</i> <ul style="list-style-type: none"> • <i>the “construction” or implementation obligations;</i> • <i>the dates for COD and COD sunset date, and</i> • <i>any bonding obligations,</i> <i>each tailored for the project.]</i> |
| 3 | Definitions and interpretation | Capitalised terms in this agreement have the meaning set out in Schedule 1 |
| Part 2 - Term | | |
| 4 | 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 (“ Final Annuity Product End Date ”). (b) The “ First Option Date ” is the earlier of: <ul style="list-style-type: none"> (i) the first 1 July occurring: <ul style="list-style-type: none"> (A) not less than six months after COD; or (B) not less than six months after the COD Sunset Date (as extended in accordance with the terms of the LTESA). |
| Part 3 - Construction and operation of the Project | | |
| 5 | Performance of obligations | (a) During the Term, LTES Operator must operate and maintain the Project in accordance with applicable law and authorisations. |

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| | | <p>(b) During an Annuity Period, 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 6; (ii) the operation, bidding and dispatch requirements in clause 7; and (iii) the maintenance requirements in clause 8; <p>(together, Operating Requirements).</p> <p>(c) LTES Operator acknowledges that:</p> <ul style="list-style-type: none"> (i) the purpose of the Annuity Product 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. |
| 6 | 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) wholesale demand response (i.e. as a ‘Demand Response Service Provider’); and (ii) subject to paragraph (b), any other services for which the Project could earn revenue in the NEM (excluding market ancillary services). <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 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> <p>(d) LTES Operator must be a single purpose vehicle established for the sole purpose of carrying on the Project and not previously carried on any other business.</p> |
| 7 | Operation, bidding and dispatch requirements | <p>LTES Operator must:</p> <ul style="list-style-type: none"> (i) participate in the market for Project Services at the WDR Capacity; (ii) bid the Project at the WDR Capacity in accordance with the WDR bidding requirements; (iii) bid the Project at or below the WDR bid price; and (iv) use reasonable endeavours to minimise any payments payable by SFV under the demand response model. <p>(b) The WDR bidding requirements are still under development but could include a requirement that LTES Operator:</p> <ul style="list-style-type: none"> (i) bid into the WDR for a minimum of two hours per day; (ii) bid into the WDR for a minimum of two hours per day during specified peak days or Peak Periods; and (iii) bid into the WDR during forecast LOR3 events for a prescribed duration. |
| 8 | Maintenance requirements | <p>(a) LTES Operator:</p> |

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| | | <ul style="list-style-type: none"> (i) 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; (ii) ensure that the Project has a WDR Capacity equal to that specified in the Project characteristics that is available to provide the Project Services; (iii) 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% does not occur during Peak Periods without the prior written consent of SFV; (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 (iii) and reasonably consider any comments made on the plan by SFV; and (v) must insure the Project in accordance with good electricity industry practice. <p><i>[Drafting note – the maintenance regime for WDR may need to be tailored depending on whether the Project is a single Wholesale Demand Response Unit or aggregated units and the nature of those unit/s.]</i></p> <ul style="list-style-type: none"> (b) Subparagraph (iv) 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 Periods” 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 24 months’ notice, notify of revised Peak Periods 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 | Alterations to Project | <ul style="list-style-type: none"> (a) LTES Operator may not make material alterations to the capacity or duration of the Project without the prior written consent of SFV. (b) LTES Operator must notify SFV with details of: <ul style="list-style-type: none"> (i) the proposed material alterations to Project; (ii) changes to the capacity or availability of the Project; (iii) any resulting outages; and (iv) the impact of those proposed material alterations on LTES Operator’s ability to carry out its obligations under this agreement, with sufficient details to enable SFV to form a view under paragraph (c). (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: <ul style="list-style-type: none"> (i) SFV’s rights or obligations under this agreement; including SFV’s expected financial outcomes and financial product it has entered into with a third party in relation to the LTESA; and (ii) long-term financial interests of electricity customs in New South Wales. (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. |
| 10 | Operating reporting | <ul style="list-style-type: none"> (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). (b) The Operating Strategy must contain all relevant information and data (including commercial strategies in relevant markets) to demonstrate how |

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| | | <p>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 after the end of the financial year, LTES Operator must provide a report 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. 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 LTES Operator operates the Project.]</p> |
| 11 | Availability Report and Availability Rebate | <p>[Drafting note: the availability regime is under consideration but could include requirements to bid plant as available (as measured by PASA data) during specified periods or events e.g., during forecast LOR3 events with a duration of at least 4 consecutive trading intervals. The availability rebate for the financial year will be capped at the Annuity Cap for that financial year.]</p> |
| 12 | Revenue reports | <p>(a) Within 20 Business Days of the end of each financial year during the Term, LTES Operator must provide SFV with a statement of its Net Operational Revenue (including each of its components) for that financial year and the Repayment Amount due (if any).</p> <p>(b) "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 administered by AEMO in the NEM determined by reference to the prices set by AEMO for that service; and</p> <p>(ii) the revenue earned under Demand Response Contracts, less the amount payable by LTES Operator under clause 3.15.6B(b) of the NER in respect of wholesale demand response services provided in the relevant financial year ("Permitted Costs"). [Drafting note: the Permitted Costs covers the amounts that the DRSP pays the retailer (via AEMO)].</p> <p>(c) If LTES Operator exercises its option for an Annuity Product in accordance with the terms of this agreement, then LTES Operator must provide SFV with a report setting out its Net Operational Revenue at the end of each quarter during the Annuity Period and any annuity payment is payable in respect of that quarter.</p> |
| 13 | Assurance of reports | <p>The reports provided under clauses 10, 11 and 12 and any further information requested by the SFV in respect of a report must be certified by a relevant director of LTES Operator to be true and fair statements and comply with relevant accounting standards.</p> |
| 14 | SFV's audit rights | <p>(a) No more than once in 12 months, SFV may commission an independent audit of the books, and records of LTES Operator for the purposes of verifying the accuracy of reports provided under clauses 10, 11 and 12 and LTES Operator's compliance with the agreement.</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) LTES Operator will bear the costs of the audit.</p> |
| 15 | Knowledge sharing | <p>(a) LTES Operator must provide certain knowledge sharing deliverables to SFV. [Drafting note – see full form LDS LTESA for an example of the knowledge sharing deliverables.]</p> <p>(b) If LTES Operator receives funding for the Project from the Australian Renewable Energy Agency or another Government Authority, then SFV will act reasonably in agreeing any amendments to the Knowledge Sharing Deliverables to align with any equivalent obligation on LTES Operator to provide knowledge sharing deliverables to those Government Authorities.</p> |

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| | | <p>(c) LTES Operator must, acting reasonably and in good faith, categorise the Knowledge Sharing Deliverables it provides to SFV pursuant to this clause 15 as follows:</p> <p>(i) public information: information that may be shared freely within SFV, with industry participants and with the public in general; or</p> <p>(ii) confidential information: information that may only be shared in accordance with paragraph (d) or clause 35.</p> <p>(d) SFV may disclose information received pursuant to this clause 15 that is marked by LTES Operator as 'confidential information' to the public on an aggregated and anonymised basis.</p> <p>(e) This clause 15 ceases to apply if SFV ceases to be a scheme financial vehicle for the purposes of the EII Act and/or a Government Entity.</p> |
| Part 4 Annuity Product and payment terms | | |
| 16 | Option structure | <p>(a) LTES Operator has an option to require SFV to enter into an arrangement for a derivative arrangement for the Annuity Period (a “Annuity Product”) commencing on:</p> <p>(i) the First Option Date; or</p> <p>(ii) each anniversary of the First Option Date, (such date of commencement being the “Annuity Product Start Date” for that Annuity Product).</p> <p>(b) Subject to paragraph (c), the “Annuity Period” for an Annuity Product is two years from the applicable Annuity Product Start Date for that Annuity Product.</p> <p>(c) Notwithstanding any other clause, if an Annuity Product extends beyond the Final Annuity Product End Date then it is deemed to end on the Final Annuity Product End Date.</p> <p>(d) LTES Operator must 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><i>[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 years (except where the expiry of the Term occurs first). Start dates of Annuity Products must always align with the start of a financial year.]</i></p> |
| 17 | Exercise notice | 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 ”). |
| 18 | Exercise Condition | <p>LTES Operator may only exercise an option if, at the time of exercise:</p> <p>(a) the Project has achieved COD; and</p> <p>(b) LTES Operator:</p> <p>(i) has not failed to make payments due under this agreement; or</p> <p>(ii) is not subject of an insolvency event.</p> |
| 19 | Annuity Product payments | SFV and LTES Operator agree to pay the amounts, calculated in accordance with Schedule 2 at the end of each quarter during the Annuity Period for an Annuity Product. |
| 20 | Repayment mechanism | <p>(a) Following the end of each financial year during the Term that is not an Annuity Period (“Non-Exercise Year”), LTES Operator must pay SFV the Repayment Amount if each of the following conditions is satisfied:</p> <p>(i) the Net Operational Revenue during that Non-Exercise year is above its Annual Net Revenue Threshold. “Annual Net Revenue Threshold” means \$[bid variable]; and</p> <p>(ii) at the end of the Non-Exercise Year, the Historical Net Payments is a positive number.</p> <p>(b) The Repayment Amount and Historical Net Payments are calculated in accordance with Schedule 4.</p> <p>(c) Within 60 Business Days after the later of:</p> |

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| | | <ul style="list-style-type: none"> (i) SFV receiving LTES Operator's revenue report under clause 12(a); and (ii) the finalisation of an audit (if necessary) of the revenue report under clause 14, <p>SFV must notify LTES Operator whether it agrees or not with the Repayment Amount.</p> <ul style="list-style-type: none"> (d) If SFV agrees with the Repayment Amount, LTES Operator must pay SFV the Repayment Amount as a lump sum amount within 30 Business Days of the notification under paragraph (c). (e) If SFV does not agree with the Repayment Amount, the senior representatives of the parties must meet to negotiate in good faith and if the matter is not resolved within 20 Business Days, the matter will be referred to dispute resolution in accordance with clause 37. (f) 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). |
| Part 5 Material events | | |
| 21 | Project Force Majeure Event | <ul style="list-style-type: none"> (a) A "Project Force Majeure Event" is an event or circumstance which is beyond the reasonable control of LTES Operator and could not have been prevented by the exercise of reasonable care and good electricity industry practice, and includes a Major Casualty Event and network congestion that satisfies the foregoing criteria. (b) Despite paragraph (a), the following events will not constitute a Project Force Majeure Event: <ul style="list-style-type: none"> (i) lack of funds, financial hardship or inability to obtain financing or insurance by LTES Operator and its related bodies corporate; (ii) 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 agreement; (iii) breakdown of property or equipment caused by normal wear and tear; (iv) any event or circumstance arising due to a failure by LTES Operator, any of its Related Bodies Corporate or any of their respective employees, agents or subcontractors to properly maintain any equipment, property or asset in accordance with good industry practice; (v) strikes and industrial disputes that only affect LTES Operator; (vi) failure by any person (other than the other party to this agreement) to perform an obligation, except where such failure is caused by any event or circumstance that, if such event or circumstance had happened to LTES Operator, would have been a Project Force Majeure Event under the LTESA; (vii) delay in obtaining any authorisation required to be held by a party to perform its obligations under this agreement; or (viii) lack or excess of natural resources. (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. (d) If a Project Force Majeure Event occurs during an Annuity Period and the capacity of the Project to operate is reduced as a result of that Project Force Majeure Event, then: |

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| | | <ul style="list-style-type: none"> (i) LTES Operator must use best endeavours to operate the Project in accordance with clause 5; (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; (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; and (C) provided SFV with an updated every 2 weeks (or as otherwise agreed) on the impact of the Project Force Majeure Event. |
| 22 | 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 WDR Capacity contained in the definition of the Project <i>[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. To be confirmed if applicable to WDR]</i> (b) If a Major Casualty Event occurs, then LTES Operator must within six months, 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 give SFV a plan to reinstate the Project that is satisfactory to SFV (acting reasonably) and comply with that plan in all material respects; (ii) SFV may request changes to a reinstatement plan or approve a reinstatement plan; and (iii) 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. (d) If LTES Operator does not elect to reinstate the Project, or does not provide a reinstatement plan or fails to comply with a reinstatement plan (and does not cure that failure on 2 months’ notice), then SFV may terminate this agreement. |
| 23 | Prolonged Unavailability Event | <ul style="list-style-type: none"> (a) “Prolonged Unavailability Event” means the Project: <ul style="list-style-type: none"> (i) is not available for dispatch (as forecast in the “short term PASA”, as defined in the NER) for a cumulative period of 12 months across of period of four consecutive financial years during the Term; or (ii) has achieved a performance level for availability of less than [•] for a period of two consecutive financial years during the Term, in each case other than as a result of a Project Force Majeure Event. (b) If a Prolonged Unavailability Event occurs, then LTES Operators must notify SFV of whether it elects to remedy the event. (c) If LTES Operator elects to reinstate the Project, then: <ul style="list-style-type: none"> (i) LTES Operator must give SFV a plan to remedy the event as soon as reasonably practicable and in any event within 12 months that is satisfactory to SFV (acting reasonably) and comply with that plan in all material respects; (ii) SFV may request changes to a reinstatement plan or approve a reinstatement plan; (iii) 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. (d) If LTES Operator does not elect to remedy the event, or does not provide a remedy plan or fails to comply with a remedy plan (and does not cure that failure on 2 months’ notice), then SFV may terminate this agreement. |
| 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; |

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| | | <ul style="list-style-type: none"> (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) change in planning or environmental requirements associated with the development, construction, operation or decommissioning of the Project; or (vi) any change to the NER which at the Tender Date is subject of a final determination of the AEMC or the Energy Security Board. <p>(b) If at any time after the Tender Date, 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:</p> <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 Signing Date. <p>(c) Ineligible Tax means any income, capital gains, stamp, payroll, land, council or transaction duty, tax or charge, or any taxes or charges analogous to such taxes or charges.</p> |
| 25 | 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; or (ii) operating the Project; or (iii) storing and exporting electricity, <p>that arises as a result of a Change in Law but excludes any Permitted Costs.</p> <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 \$500,000 per annum in relation to operation and maintenance expenditure or \$500,000 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. <p>(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.</p> <p>(d) The "Cost Change Principles" are:</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) and will commence at the start of a Financial Year; (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 |

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| | | (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. |
| Part 6 Other terms | | |
| 26 | Termination | <p>(a) 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) 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 20 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) SFV does not cure that failure within [60] Business Days of being notified of that failure by the Non-defaulting Party or LTES Operator does not cure that failure within 40 Business Days of being notified of that failure by the Non-defaulting Party;</p> <p>(iii) (misrepresentation) an express representation made by the Defaulting Party is incorrect or misleading in any material respects;</p> <p>(iv) (insolvency) the Defaulting Party is subject of an insolvency event; or</p> <p>(v) (prolonged force majeure) a Project Force Majeure Event impacting:</p> <p>(A) at least 50% of the Registered Capacity; and/or</p> <p>(B) 50% of the storage capacity of the Project, is subsisting for a period of 3 consecutive financial years.</p> <p>(b) SFV may terminate the LTESA immediately by providing notice to LTES Operator if:</p> <p>(i) (Tender misrepresentation) an express tender representation made by LTES Operator is incorrect or misleading in any material respects and SFV forms the view that the Consumer Trustee would likely onto have recommended an LTESA to LTES Operator and LTES Operator fails to remedy that representation or pay compensation within 60 Business Days of a notice from SFV to do so (which notice may only be given in the first 2 years of the Term) ;</p> <p>(ii) (Fraudulent project reports) LTES Operator:</p> <p>(A) fraudulently, recklessly or knowingly provides a project report or further information that is incorrect of misleading; and</p> <p>(B) after receiving notice from the SFV following a breach under paragraph (A) above, LTES Operator does not pay SFV compensation or ensure persons involved have no future involvement in the project and LTES Operator does not procure audits of the project reports.</p> <p>(iii) (No remedy following Prolonged Unavailability Event) a Prolonged Unavailability Event occurs and:</p> <p>(A) LTES Operator does not elect to remedy the event;</p> <p>(B) LTES Operator does not provide a remedy plan or amended plan;</p> <p>(C) SFV rejects a proposed remedy plan; or</p> <p>(D) LTES Operator elects to remedy but does not comply with the remedy plan in all material respects and does not cure that failure within 2 months after being notified of such failure; or</p> |

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| | | <p>(iv) (No reinstatement following Major Casualty Event) a Major Casualty Event occurs and:</p> <p>(E) LTES Operator does not elect to reinstate the Project;</p> <p>(F) LTES Operator does not provide a reinstatement plan or amend plan;</p> <p>(G) SFV rejects a proposed reinstatement plan; or</p> <p>(H) LTES Operator elects to reinstate the Project but does not comply with the reinstatement plan in all material respects and does not cure that failure within 2 months after being notified of such failure; or</p> <p>(v) (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 agreement 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 agreement.</p> <p>(c) (Termination for convenience) SFV terminate this agreement for convenience by providing notice to LTES Operator. <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 27 below).]</i></p> |
| 27 | Termination payments | <p>(a) The following termination amounts are payable on termination of the LTESA:</p> <p>(i) (LTES Operator default) In the case of termination by SFV under clauses 26(a)(i) - (a)(iv) (inclusive), clauses 26(b)(i) - 26(b)(ii) (inclusive), where LTES Operator is the defaulting party, LTES Operator will pay SFV the Early Termination Amount.</p> <p>(ii) (SFV's default) In the case of termination by LTES Operator under clauses 26(a)(i) - (a)(iv) (inclusive), where SFV is the defaulting party, then SFV will pay LTES Operator the Fixed Termination Amount.</p> <p>(iii) (Prolonged Unavailability Event) in the case of termination by SFV in accordance with clause 26(b)(iii), LTES Operator will pay SFV the Early Termination Amount.</p> <p>(iv) (Major Casualty Event) In the case of termination by SFV for the termination described under clause 26(b)(iv) then no termination amount is payable unless the relevant Major Casualty Event was a Project Force Majeure Event or the Project is reinstated within 5 years in which case, LTES Operator will pay SFV the Early Termination Amount.</p> <p>(v) (LTESA Change in Law) In the case of termination by SFV for an LTESA Change in Law described under clause 26(b)(v), SFV must pay LTES Operator the Fixed Termination Amount.</p> <p>(vi) (Termination for convenience) In the case of termination by SFV for convenience described under clause 26(c), SFV must pay LTES Operator the Fixed Termination Amount.</p> <p>(b) "Early Termination Amount" means the sum of:</p> <p>(i) \$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000; and</p> <p>(ii) the greater of 90% of Historical Net Payments and zero calculated at the date of termination.</p> <p>(c) "Fixed Termination Amount" means a specified value for the year that this agreement is terminated by SFV.</p> <p><i>[Drafting note: bidders will bid in a LTESA value (at year 1) and this will be amortised on a straight-line basis.]</i></p> |

| No | Item | Detail |
|------------------|----------------------------------|---|
| Disposals | | |
| 28 | 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; or (ii) any person who replaces SFV as the scheme financial vehicle under the EII Act, 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> |
| 29 | 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. <p>(b) LTES Operator may only Dispose of the LTESA or the Project if LTES Operator has Disposed of the LTESA and the Project.</p> |
| 30 | Security and tripartite | <p>(a) LTES Operator may grant a security interest over the LTESA or the Project with its debt financiers in accordance with its debt financing arrangements 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 29 will govern any Disposal as part of the enforcement of security by the financiers to LTES Operator.</p> |
| 31 | Change in control | <p>(a) Subject to paragraph (b), LTES Operator may not undergo, or agree to undergo, a Change in Control without SFV's prior consent, not to be unreasonably withheld or delayed if:</p> <ul style="list-style-type: none"> (i) LTES Operators' legal, financial and technical capability to perform its obligations under the LTESA will not be adversely affected; and (ii) if the Change in Control occurs prior to COD, SFV considers (in its absolute discretion) LTES Operator (as applicable) would have achieved an equivalent or higher merit score from the Consumer Trustee during the tender assessment. <p>(b) A change of Control of LTES Operator is deemed to be a disposal of the LTESA to which clause 29 applies.</p> <p>(c) 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 or internal restructure or reorganisation provided it doesn't change the ultimate holding company.</p> |
| 32 | Excluded Loss | <p>(a) 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> <ul style="list-style-type: none"> (i) any cost, expense, loss or damage of an indirect nature (including loss of profits and revenue); (ii) business interruption; or (iii) any other consequential loss. <p>(b) SFV will have a limitation of liability of \$1M per event and \$2M in aggregate for all events occurring within 12 months.</p> <p>(c) LTES Operator will have a limitation of liability of \$5M per event and \$10M in aggregate for all events occurring within 12 months.</p> |

| No | Item | Detail |
|----|---------------------------------------|---|
| | | (d) LTES Operator will indemnify SFV for certain defined conduct and third party claims. |
| 33 | Representations and warranties | Each party represents that: (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 (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. |
| 34 | GST | (a) All amounts in this agreement, are expressed exclusive of GST. (b) The LTESA will include customary provisions dealing with the treatment of GST. |
| 35 | Confidentiality | The LTESA will include an Australian market standard confidentiality regime. |
| 36 | Independent Expert | (a) Where a dispute under this agreement 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. (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 CEO of the Resolution Institute (or its independent nominee) nominates an Independent Expert within 20 Business Days of the request. (c) An Independent Expert must: (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. (d) The determination of the Independent Expert will be, in the absence of manifest error or fraud, final and binding on the parties. (e) The costs of an Independent Expert must be borne equally between the parties. |
| 37 | Dispute resolution | The LTESA will include an Australian market standard dispute resolution regime that allows for referral to an independent expert in appropriate circumstances. |
| 38 | 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 as described in clause 24 and clause 26(b)(v). |
| 39 | Notices | The LTESA will include an Australian market standard regime for the delivery and receipt of notices given under the LTESA. |
| 40 | Governing law | The LTESA is governed by and construed in accordance with the laws of New South Wales. |

Schedule 1 Definitions

In this agreement:

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

Annual Net Revenue Threshold has the meaning given to that term in clause 20.

Annuity Cap means *[bid variable]*.

Annuity Period has the meaning given to that term in clause 16(b).

Annuity Product has the meaning given to that term in clause 16.

Annuity Product Start Date has the meaning given to that term in clause 16.

Annuity Reduction Threshold means, in respect of an Annuity Product, the difference between the Annual Net Revenue Threshold for that Annuity Product and the Annuity Cap for that Annuity Product.

Adjustment Date means each 1 July following the Tender Date.

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 conditions for the commercial operation of Project are satisfied, or waived by the parties.

COD Sunset Date *[insert]*, as may be extended from time to time.

[Drafting Note: the COD Sunset Date is the last date (as may be extended) by which LTES Operator must achieve commercial operations for the Project or agree a cure plan at the discretion of SFV, following which SFV may be entitled to terminate this agreement. This will be the date that is 18 months after the initial target date for COD.]

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

Demand Response Contract means any contract, arrangement or understanding entered into by LTES Operator in relation to demand response, relevant services in the wholesale energy market and capacity markets and any derivative, forward, option or any such combination where the consideration under it is derived by reference to the Project.

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.

Early Termination Amount has the meaning given to that that in clause 27.

Exercise Notice Period has the meaning given to that term in clause 17.

Final Annuity Product End Date has the meaning given in clause 4. *[Drafting note: this item is a bid variable]*.

First Option Date has the meaning given to that term in clause 4.

Fixed Termination Amount has the meaning given to that term in clause 27.

Historical Net Payments has the meaning given to that term in Schedule 4.

Independent Expert means an expert appointed in accordance with clause 36.

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 22.

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 12.

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.

Non-Exercise Year has the meaning given to that term in clause 20.

Operating Requirements has the meaning given to that term in clause 5.

Operating Strategy has the meaning given to that term in clause 10.

Peak Periods has the meaning given to that term in clause 8

Permitted Cost has the meaning given in clause 12.

Project means *[bid variable]*. *[Drafting note – Project definition will include key project characteristics.]*

Project Services has the meaning given to that term in clause 6.

Project Force Majeure Event has the meaning given to that term in clause 21.

Quarterly Annuity Payment is an amount calculated in accordance with Item 1 of Schedule 2

Related Entity has the meaning given in the Corporations Act.

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

Registered Capacity has the meaning given to that term in Part 6 of the EII Act.

Repayment Amount means the amount calculated in accordance with Schedule 4.

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 4.

Tender Date means the date on which LTES Operator submitted its “Financial Value Bid” in connection with its tender bid.

WDR Capacity means the maximum responsive component (as defined in the NER) for the Project.

Schedule 2 Annuity Product payment calculations

1 SFV Payments

1.1 SFV must pay to LTES Operator:

- a) the 25% of the Annuity Cap (**Quarterly Annuity Payment**); and
- b) any positive Annual Reconciliation Payment.

1.2 SFV must pay the Quarterly Annuity Payment within 30 Business Days of the end of the first, second and third Quarters of each financial year in an Annuity Period. No Quarterly Annuity Payment is payable in respect of the fourth quarter of a financial year in an Annuity Period.

1.3 SFV must pay any positive Annual Reconciliation Payment within 30 Business Days of the end of a financial year in an Annuity Period.

[Drafting note: consideration is being given to half-yearly rather than quarterly annuity payments.]

2 LTES Operator payments

2.1 LTES Operator must pay SFV the lesser of the Historical Net Payments and the absolute value of any negative Annual Reconciliation Payment within 30 Business Days of the end of a financial year in an Annuity Period.

3 Annual Reconciliation Payment

The “**Annual Reconciliation Payment**” for a financial year in an Annuity Period is calculated as follows:

$$ARP_{FY} = AAA_{FY} - ARS_{FY} - \sum QAP_{FY}$$

where:

- ARP_{FY} = the Annual Reconciliation Payment for the financial year;
- AAA_{FY} = the Adjusted Annuity Amount for the financial year;
- ARS_{FY} = the Annual Revenue Sharing Amount for the financial year; and
- ∑QAP_{FY} = the sum of the Quarterly Annuity Payment paid by SFV in respect of quarters in the financial year.

4 Adjusted Annuity Amount

The “**Adjusted Annuity Amount**” for a financial year in an Annuity Period is:

- (a) if the Net Operational Revenue for the financial year is less than or equal to the Annuity Reduction Threshold for the financial year in an Annuity Period, an amount that is equal to the Annuity Cap;
- (b) if the Net Operational Revenue for the financial year is greater than the Annuity Reduction Threshold for the financial year, an amount calculated as follows:

$$AAA_{FY} = AC_{FY} - 75\% \times (NOR_{FY} - ART_{FY})$$

where:

- AAA_{FY} = the Adjusted Annuity Amount for the financial year;
- AC_{FY} = the Annuity Cap;
- NOR_{FY} = the Net Operational Revenue for the financial year; and
- ART_{FY} = the Annuity Reduction Threshold for the financial year,
provided that if the Adjusted Annuity Amount is less than zero then it will be deemed to be zero.

5 Annual Revenue Sharing Amount

The “**Annual Revenue Sharing Amount**” for a financial year in an Annuity Period is calculated as follows:

$$ARS_{FY} = 50\% \times (NOR_{FY} + AAA_{FY} - NRT_{FY})$$

where:

- ARS_{FY} = the Annual Revenue Sharing Amount for the financial year;
- NOR_{FY} = the Net Operational Revenue for the financial year;
- AAA_{FY} = the Adjusted Annuity Amount for the financial year; and
- NRT_{FY} = the Annual Net Revenue Threshold for the financial year,
provided that if the Annual Revenue Sharing Amount is less than zero then it will be deemed to be zero.

Schedule 3 Availability Rebate

[Drafting note: Availability rebate regime to be confirmed. Availability Rebate for the financial year will be capped at the Annuity Cap for that financial year.]

Schedule 4 Repayment Amount

1 Historical Net Payments

The “**Historical Net Payments**” at a particular time is calculated as follows:

$$HNP_T = \sum SP - \sum LP$$

where:

- HNP_T = the Historical Net Payments at that time;
- $\sum SP$ = the sum of the Quarterly Annuity Payments and Annual Reconciliation Payments paid by SFV to LTES Operator prior to that time; and
- $\sum LP$ = the sum of Annual Reconciliation Payments (expressed as a positive number), Availability Rebates, and Repayment Amounts paid by LTES Operator to SFV prior to that time.

2 The “**Repayment Amount**” for a Non-Exercise Year is an amount equal to the lesser of:

- a) the Historical Net Payments at the end of that Non-Exercise Year; and
- b) an amount calculated as follows

$$50\% \times (NOR_{FY} - NRT_{FY})$$

where:

- NOR_{FY} = the Net Operational Revenue for the Non-Exercise Year; and
- NRT_{FY} = the Annual Net Revenue Threshold for the Non-Exercise Year, provided that the Repayment Amount may not be less than zero.