

Project Development Agreement

Project without an Access Right

[Project name]

Dated

Scheme Financial Vehicle Pty Ltd (ACN 662 496 479) (“SFV”)

[insert] (“LTES Operator”)

[Drafting Note: Consumer Trustee will require further amendments to the PDA if the Project is a hybrid project or if the Project requires access rights.]

Project Development Agreement

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Project Development Agreement

Details

Parties	SFV and LTES Operator	
SFV	Name	Scheme Financial Vehicle Pty Ltd
	ACN	662 496 479
	Address	Company Address: Level 4, 7-15 Macquarie Place, Sydney NSW 2000
		Mailing Address: GPO Box 2307, Melbourne VIC 3001
	Email	[insert]
	Attention	[insert]
LTES Operator	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Recitals	A	Following a competitive tender process, LTES Operator has been awarded a “long-term energy service agreement” (as defined under the EII Act) in respect of the Project.
	B	To support the award of a long-term energy service agreement, LTES Operator will enter into this agreement and the LTESA with SFV.
	C	LTES Operator will: (a) develop and construct the Project; and (b) perform the Social Licence Commitments, in accordance with this agreement.
	D	Once the Project has been commissioned in accordance with this agreement, LTES Operator will be entitled to exercise an option to enter into a derivative arrangement in accordance with the LTESA.

Reference Details

	Item	Details												
Project details														
1.	Project	The '[insert project name]', which will be a [insert resource type e.g. wind farm / pumped hydro project] located at [insert location] with an export capacity that is equal to the Registered Capacity and an energy storage capacity that is equal to the Storage Capacity and includes Associated Infrastructure.												
2.	Registered Capacity	<p>An export capacity that is at least 95% of [insert] MW (being the export capacity of the Project as measured at the Connection Point in AC) and which is registered with AEMO as the "registered capacity" (as defined in Part 6 of the EII Act) for the Project.</p> <p>[Note: Capacity details updated to refer to a lower threshold of 95% of the bid variable to allow for under and overbuild of the Project]</p>												
3.	Import Capacity	An import capacity that is at least 95% of [insert] (being the import capacity of the Project as measured at the Connection Point in AC).												
4.	Storage Capacity	A storage capacity that is at least 95% of [insert] MWh (being the storage capacity of the Project as measured at the Connection Point in AC).												
5.	Contract Representative	<p>Name: [insert]</p> <p>Email: [insert]</p> <p>Telephone: [insert]</p>												
Delivery dates														
6.	Milestones and Milestone Date	<table> <tr> <th></th><th>Milestone</th><th>Milestone Date</th></tr> <tr> <td>(a)</td><td>LTES Operator securing all Tenure required for the Project</td><td>[insert]</td></tr> <tr> <td>(b)</td><td>LTES Operator obtaining all Tier 1 Planning Approvals for the Project</td><td>[insert]</td></tr> <tr> <td>(c)</td><td>LTES Operator obtaining notifications from AEMO under clauses 5.3.4A</td><td>[insert]</td></tr> </table>		Milestone	Milestone Date	(a)	LTES Operator securing all Tenure required for the Project	[insert]	(b)	LTES Operator obtaining all Tier 1 Planning Approvals for the Project	[insert]	(c)	LTES Operator obtaining notifications from AEMO under clauses 5.3.4A	[insert]
	Milestone	Milestone Date												
(a)	LTES Operator securing all Tenure required for the Project	[insert]												
(b)	LTES Operator obtaining all Tier 1 Planning Approvals for the Project	[insert]												
(c)	LTES Operator obtaining notifications from AEMO under clauses 5.3.4A	[insert]												

Item		Details
		and 5.3.4B of the NER in respect of the Project
	(d)	LTES Operator obtaining an offer to connect under clause 5.3.6 of the NER from the relevant network service provider in respect of the Project
	(e)	LTES Operator achieving Financial Close in respect of the Project
		<p>Subject to item 7 of the Reference Details, a Milestone Date may be extended under clause 6.2 ("Milestone Cure Plan").</p> <p>[Note: Milestone Dates (as may be extended) are the dates by which the corresponding Milestone must be achieved. The initial Milestone Dates are bid variables.]</p>
7.	FC Sunset Date	<p>The Milestone Date set out in item 6(e) of the Reference Details, as may be extended under clause 6.2 ("Milestone Cure Plan"), provided it may not extend beyond the date that is 18 months after the date set out in item 6(e).</p> <p>[Note: the FC Sunset Date (as may be extended) is the last date by which LTES Operator must achieve Financial Close for the Project, following which SFV may be entitled to terminate this agreement.]</p>
8.	COD Target Date	<p>[insert]</p> <p>[Note: the COD Target Date is the target date for LTES Operator to achieve commercial operations for the Project. The COD Target Date is a bid variable.]</p>
9.	COD Sunset Date	<p>[insert], as may be extended under clauses 8.3 ("COD Cure Plan") and 9.3 ("Extension for Force Majeure Event").</p> <p>[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:</p> <ul style="list-style-type: none"> in respect of BESS projects, 18 months; and in respect of pumped hydro projects, 24 months, <p>after the COD Target Date in item 8.]</p>
Other terms		
10.	Initial Security Amount	\$20,000 per MW multiplied by the Registered Capacity, up to a maximum amount of \$4,000,000.

	Item	Details
		<i>[Note: the Initial Security Amount is the amount of the security that LTES Operator must provide in accordance with this agreement.]</i>
11.	Termination Amount	<p>The Initial Security Amount.</p> <p><i>[Note: the Termination Amount is the termination payment payable by LTES Operator to SFV following termination of this agreement for LTES Operator default or insolvency, prior to LTES Operator achieving commercial operations for the Project. It is not intended that a termination payment will be payable by LTES Operator under each of the LTESA and the PDA in respect of the same termination event.]</i></p>

General terms

Part 1 Interpretation

1 Definitions and interpretation

1.1 Defined terms

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

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

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

Associated Infrastructure means associated connection assets, protection equipment and related infrastructure located at the site of the Project.

ASX means ASX Limited or the market operated by it, as the context requires.

Breach Notice has the meaning given in clause 15.3(f)(i) ("Termination by SFV").

Business Day means a day on which banks are open for business in Sydney, New South Wales, other than:

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

Change in Control occurs in relation to a party when:

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

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

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

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

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

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

COD Conditions has the meaning given in clause 8.1 (“COD Conditions”).

COD Cure Period has the meaning given in clause 8.3 (“COD Cure Plan”).

COD Cure Plan means a cure plan approved by SFV under clause 8.3 (“COD Cure Plan”).

Commercial Operations Date means the date on which the COD Conditions for the Project are satisfied or waived by SFV in accordance with clause 8 (“COD Conditions”).

Community Engagement Plan means the community engagement plan set out in Schedule 1 (“Community Engagement Plan”).

Connection Force Majeure Event has the meaning given in clause 9.2 (“Definition of Connection Force Majeure Event”).

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

Consumer Trustee means AEMO Services Limited (ACN 651 198 364) in its capacity as the consumer trustee under the EII Act, or any replacement or successor consumer trustee appointed under the EII Act.

Contract Representative means the person appointed by LTES Operator as Contract Representative in accordance with clause 23 (“Contract Representative”) which at the Signing Date is the person specified in the Reference Details.

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

- (a) the application of section 50AA(4) will be disregarded;
- (b) in the case of a body corporate, it includes the direct or indirect right to exercise more than 50% of the votes exercisable at a general meeting of that body corporate and the direct or indirect right to appoint more than 50% of its directors;
- (c) in the case of a trust, it includes the direct or indirect right to exercise more than 50% of the votes exercisable by the beneficiaries of that trust in their capacity as beneficiaries and the ability to appoint or remove the trustee(s) of the trust;
- (d) in the case of any other person, it includes the direct or indirect right to exercise more than 50% of the voting rights in the person; and

- (e) in the case of any person (including those listed in paragraphs (b) to (d)), it includes the direct or indirect capacity to determine the outcome of decisions about the person's financial and operating policies,

and **Controlled** has a corresponding meaning.

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

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

Dispute has the meaning given in clause 20.1 ("Dispute mechanism").

Dispute Notice has the meaning given in clause 20.3 ("Disputes").

Draft COD Cure Plan has the meaning given in clause 8.3 ("COD Cure Plan").

Draft Milestone Cure Plan has the meaning given in clause 6.2 ("Milestone Cure Plan").

Draft SLC Cure Plan has the meaning given in clause 14.5 ("Cure").

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

Financial Close occurs when:

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

Financial Default means a failure by LTES Operator to:

- (a) pay any amount due and payable to SFV under this agreement (other than an amount which is the subject of a bona fide dispute); or
- (b) provide or replace the Initial Security in the amount or at the time specified in the agreement.

Financial Trustee means the person authorised under section 61 of the EI Act to exercise the functions of the financial trustee.

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

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

- (a) are used by prudent, competent, experienced and reputable developers, contractors and operators who develop and operate projects of a similar nature to the Project; and

- (b) are consistent with all relevant standards, including international standards and “good electricity industry practice” (as defined in the NER) to the extent that that definition is relevant to the Project.

Government Authority means a government or a governmental, semi-governmental, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in any part of the world, including AEMO but excluding each of SFV, Consumer Trustee, Financial Trustee and Infrastructure Planner. It also includes a self-regulatory organisation established under statute or a securities exchange.

Government Entity means any entity established under the Laws of New South Wales or owned directly or indirectly by or on behalf of the State.

GST has the meaning given to that term in the “GST law” (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

Independent Expert has the meaning given in clause 20.6 (“Independent Expert”).

Industry and Aboriginal Participation Plan means the industry and Aboriginal participation plan set out in Schedule 2 (“Industry and Aboriginal Participation Plan”).

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.

Infrastructure Planner means any person appointed under a declaration under section 19 of the EII Act as the infrastructure planner for a renewable energy zone (if applicable).

Initial Security means a letter of credit or bank guarantee:

- (a) with a face value of not less than the Initial Security Amount;
- (b) issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;
- (c) which can be drawn in Sydney; and
- (d) in the form:
 - (i) notified by SFV or the Consumer Trustee to LTES Operator during the tender process; or
 - (ii) as otherwise agreed by SFV.

Insolvency Event means, in respect of a party:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a “controller” (as defined in the Corporations Act) appointed to all or substantially all of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium or compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or

amalgamation while solvent on terms approved by the other parties to this agreement);

- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 10 Business Days), resolution passed, proposal put forward or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c) or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that party under the law of any jurisdiction.

Insurance Policies has the meaning given in clause 12 (“Insurance”).

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

Loss means all damage, loss, cost, Claim, obligation or expense (including legal costs and expenses of any kind).

LTESA means the long-term energy service agreement entered into on or about the date of this agreement between LTES Operator and SFV with respect to the Project.

Material Alteration has the meaning given to that term under the LTESA.

Milestone means a milestone as described in item 6 (“Milestones and Milestone Date”) of the Reference Details.

Milestone Cure Plan means a cure plan approved by SFV under clause 6.2 (“Milestone Cure Plan”).

Milestone Date means, for a Milestone, the date specified for that Milestone in item 6 (“Milestones and Milestone Date”) of the Reference Details.

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the *Modern Slavery Act 2018* (Cth), the *Criminal Code Act 1995* (Cth), sch 1, divisions 270 and 271 and *Modern Slavery Act 2018* (NSW). For avoidance of doubt, **Modern Slavery** includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

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

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

NER means the National Electricity Rules made under the National Electricity Law, as it is applied in New South Wales.

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

Non-Financial Default means a failure by LTES Operator to comply in a material respect with an obligation under this agreement (other than a failure which constitutes a Financial Default or a failure to comply with a Social Licence Commitment).

Project Force Majeure Event has the meaning given in clause 9.1 ("Definition of Project Force Majeure Event").

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

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

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

Security Interest means:

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

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

SLC Cure Plan means a cure plan approved by SFV under clause 14.5 ("Cure").

Social Licence Commitments means the Community Engagement Plan and the Industry and Aboriginal Participation Plan.

State means the Crown in right of the state of New South Wales.

Subsidiary of an entity means another entity which:

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

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

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

Tenure means:

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

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

Term has the meaning given in clause 2 (“Term”).

Tier 1 Planning Approvals means:

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

[Trust means **insert]**.

Trust Deed means the trust deed establishing the Trust.

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

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

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

1.2 Interpretation provisions

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

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (d) a reference to a document also includes any variation, replacement or novation of it;

- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to AUD dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) [subject to clause 1.8 (“[References to LTES Operator”),] a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (n) if a party must do something under this agreement on or by a given day and it is done after 5.00pm on that day, then it is taken to be done on the next Business Day;
- (o) if the day on which a party must do something under this agreement is not a Business Day, then the party must do it on the next Business Day; and
- (p) the Details, Reference Details, schedules and annexures to this agreement form part of this agreement.

1.3 Inconsistency

In the event of any inconsistency between the terms of this agreement and the LTESA, the terms of the LTESA will prevail to the extent of any such inconsistency.

1.4 Legislation definition change

If:

- (a) a term used in this agreement (including as a result of a prior application of this clause 1.4) has the meaning given to it in legislation (including the NER and the Corporations Act); and
- (b) the term in the relevant legislation is subsequently renamed or replaced with another term of similar effect,

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

1.5 SFV, Consumer Trustee and Infrastructure Planner interaction

Notwithstanding anything else in this agreement, the parties acknowledge and agree that, in exercising its rights or discharging its obligations under this agreement, SFV may:

- (a) consult with Consumer Trustee and Infrastructure Planner; and
- (b) consider Consumer Trustee's and Infrastructure Planner's advice in relation to those obligations (as relevant).

1.6 Appointment of agent

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

1.7 Risk management contract

The parties acknowledge that this agreement is a "risk management contract" (as defined under the EII Act) for the purposes of the EII Act.

[Note: clause 1.8 is only to be included where more than one entity is to perform the obligations of LTES Operator under this contract.]

1.8 [References to LTES Operator

In this agreement, unless expressly stated otherwise:

- (a) subject to the other provisions of this clause 1.8, a reference to LTES Operator is a reference to **[insert parties]** jointly and to each of them individually;
- (b) an obligation or liability of LTES Operator under this agreement is an obligation or liability for which each of **[insert parties]** are responsible and liable, jointly and severally;
- (c) the performance, satisfaction or discharge of an obligation or liability of LTES Operator under this agreement may be performed, satisfied or discharged by either of **[insert parties]** individually; and
- (d) rights conferred on LTES Operator under this agreement benefit **[insert parties]** jointly, in a manner such that they cannot be independently exercised or enforced by each of **[insert parties]** against SFV to result in:
 - (i) double recovery from SFV in respect of any obligation or liability of SFV under this agreement; or
 - (ii) any greater obligation or liability of SFV than SFV would have had under this agreement if LTES Operator was a singular person entitled to those same rights.]

Part 2 Term

2 Term

This agreement commences on the Signing Date and ends on the date that this agreement is terminated in accordance with clause 15 ("Default and termination") ("Term").

Part 3 Development and construction of Project

3 Application of this Part

Other than clause 4.4 ("Return of Initial Security"), this Part 3 ("Development and construction of Project") commences on the Signing Date and expires on the Commercial Operations Date.

4 Initial Security

4.1 Provision of Initial Security

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

4.2 Replacement of Initial Security

LTES Operator must provide a replacement Initial Security to SFV:

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

4.3 Recourse to Initial Security

- (a) SFV may only draw on the Initial Security if LTES Operator has failed to:
 - (i) pay the Termination Amount in accordance with clause 15.4 ("Termination payment"); or
 - (A) provide a replacement Initial Security to SFV where required under clause 4.2 ("Replacement of Initial Security").
- (b) If SFV draws on the Initial Security in accordance with subparagraph (a)(i)(A), then SFV will:
 - (i) hold that amount on trust for LTES Operator and SFV; and

- (ii) promptly pay the amounts held on trust to LTES Operator (including any interest) if LTES Operator provides a replacement Initial Security.
- (c) If SFV is holding an amount on trust pursuant to paragraph (b) and is entitled to draw on the Initial Security in accordance with subparagraph (a)(i), then SFV may retain those funds (including any interest) to which it is entitled for its own benefit.

4.4 Return of Initial Security

SFV must return the Initial Security, or any amount SFV is holding on trust pursuant to clause 4.3(b) ("Recourse to Initial Security"), to LTES Operator within 10 Business Days after the earlier of:

- (a) the Commercial Operations Date;
- (b) the date on which LTES Operator has paid the full amount of the Termination Amount to SFV pursuant to clause 15.4(a) ("Termination payment"); and
- (c) the date on which LTES Operator terminates this document in accordance with clause 15.2 ("Termination by LTES Operator").

5 Development of Project

LTES Operator must:

- (a) develop the Project in accordance with the Social Licence Commitments, Good Industry Practice and all applicable Laws and authorisations;
- (b) use best endeavours to achieve each Milestone by the relevant Milestone Date;
- (c) use best endeavours to achieve Financial Close by the FC Sunset Date; and
- (d) report on the development of the Project in accordance with clause 10 ("Reporting").

6 Financial Close

6.1 Notification of satisfaction of Milestones

- (a) If a Milestone has been satisfied prior to the Signing Date, then LTES Operator must notify SFV of satisfaction of that Milestone within 20 Business Days after the Signing Date.
- (b) If a Milestone is satisfied after the Signing Date, then LTES Operator must notify SFV within 5 Business Days after satisfying that Milestone.
- (c) A notice issued in accordance with this clause 6.1 ("Notification of satisfaction of Milestones") must include evidence demonstrating that the relevant Milestone has been satisfied, including a copy of any relevant approval, notification or other document.

6.2 Milestone Cure Plan

- (a) If LTES Operator does not, or expects that it will not, achieve a Milestone by the relevant Milestone Date, then LTES Operator must submit a cure plan to SFV no later than 20 Business Days after the earlier of:
 - (i) the date on which LTES Operator became aware that it is unlikely to achieve a Milestone by the relevant Milestone Date; and
 - (ii) the Milestone Date,

("Draft Milestone Cure Plan").
- (b) A Draft Milestone Cure Plan must set out:
 - (i) the progress made by LTES Operator in satisfying the relevant Milestone and the remaining steps to be completed to achieve that Milestone;
 - (ii) LTES Operator's best estimate of when the Milestone will be achieved and the relevant impacts of delay on other Milestones; and
 - (iii) proposed extensions to any of the Milestone Dates, including any proposed extension to the FC Sunset Date, to reflect the impact of delays to the Milestones, provided the FC Sunset Date may not be extended beyond the date that is 18 months after the date set out in item 6(e) of the Reference Details (disregarding any extensions).
- (c) Within 40 Business Days after receiving the Draft Milestone Cure Plan, SFV (acting reasonably) must use reasonable endeavours to either approve or reject the Draft Milestone Cure Plan and LTES Operator's proposed extensions to any Milestone Date.
- (d) For the purpose of paragraph (c), it will be reasonable for SFV to reject a Draft Milestone Cure Plan if the result of SFV approving the Draft Milestone Cure Plan would be:
 - (i) a FC Sunset Date that is more than 18 months after the FC Sunset Date set out in item 6(e) of the Reference Details (disregarding any extensions); or
 - (ii) a project that is not of equivalent or greater merit than the Project, as assessed by SFV (acting reasonably) by reference to the Project's tender assessment.
- (e) If SFV approves the Draft Milestone Cure Plan under paragraph (c), then:
 - (i) LTES Operator must comply with the Milestone Cure Plan;
 - (ii) within 10 Business Days after the end of each month, LTES Operator must provide a monthly report that sets out LTES Operator's progress of achieving the Milestone Cure Plan; and
 - (iii) any references to the Milestone Dates (including the FC Sunset Date) is to the Milestone Dates (including the FC Sunset Date) as extended under the Milestone Cure Plan.

- (f) If SFV rejects a Draft Milestone Cure Plan, then:
 - (i) SFV will provide reasonable details of its reasons and may propose amendments to the Draft Milestone Cure Plan to LTES Operator; and
 - (ii) within 20 Business Days after SFV has provided its reasons to LTES Operator for rejecting the Draft Milestone Cure Plan, LTES Operator must amend and resubmit the Draft Milestone Cure Plan to SFV for approval.
- (g) Paragraphs (c), (d) and (e), but not paragraph (f), will apply to the amended Draft Milestone Cure Plan submitted by LTES Operator pursuant to subparagraph (f)(ii).

6.3 Failure to achieve a Milestone

- (a) Subject to paragraph (b), SFV may terminate this agreement by written notice to LTES Operator with immediate effect if LTES Operator:
 - (i) does not submit or resubmit a Draft Milestone Cure Plan that is approved by SFV in accordance with clause 6.2 ("Milestone Cure Plan");
 - (ii) fails to commence and comply with the steps set out in the Milestone Cure Plan in all material respects and does not remedy such failure within 20 Business Days after receiving notice from SFV to do so; or
 - (iii) does not achieve a Milestone by 20 Business Days after the relevant Milestone Date or Financial Close by 20 Business Days after the FC Sunset Date, in each case as extended by the Milestone Cure Plan.
- (b) SFV must not terminate this agreement pursuant to paragraph (a) if LTES Operator:
 - (i) fails to achieve a Milestone (other than to achieve Financial Close) by the relevant Milestone Date and SFV is satisfied (acting reasonably) that:
 - (A) having regard to the Milestone Cure Plan, Financial Close is reasonably likely to be achieved by the FC Sunset Date; and
 - (B) LTES Operator is complying with the steps set out in the Milestone Cure Plan in all material respects; or
 - (ii) has submitted a Draft Milestone Cure Plan to SFV under clause 6.2(a) or 6.2(f) ("Milestone Cure Plan"), and SFV has not yet approved or rejected the Draft Milestone Cure Plan under clause 6.2(c).

7 Construction of Project

On and from Financial Close, LTES Operator must:

- (a) construct the Project in accordance with the Social Licence Commitments, Good Industry Practice and all applicable Laws and authorisations;
- (b) use best endeavours to satisfy the COD Conditions by COD Target Date;
- (c) satisfy the COD Conditions by the COD Sunset Date; and
- (d) report on the construction of the Project as set out in clause 10 ("Reporting").

8 COD Conditions

8.1 COD Conditions

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

- (a) the Project is installed and commissioned so that the Project:
 - (i) is capable of exporting electrical energy through the Connection Point at a level of output that is equal to the Registered Capacity;
 - (ii) is capable of importing electrical energy through the Connection Point at the Import Capacity; and
 - (iii) has an energy storage capacity that is equal to the Storage Capacity;
- (b) the Project is capable of being dispatched at its Registered Capacity continuously for at least 8 hours, including that its Storage Capacity must be at least 8 times its Registered Capacity;
- (c) the relevant network service provider has confirmed that the Project is unconditionally released from a hold point that allows the Project to export a level of output equal to the Registered Capacity and import a quantity of electricity equal to the Import Capacity;
- (d) LTES Operator (or its intermediary) has been registered as an "Integrated Resource Provider" (as defined in the NER) with AEMO in respect of the Project and the Project is classified as a "scheduled bidirectional unit" (as defined in the NER); and
- (e) SFV has confirmed to LTES Operator pursuant to clause 14.2 ("Reporting") that all Social Licence Commitments which are to be satisfied prior to the Commercial Operations Date have been satisfied,

(each a "**COD Condition**").

8.2 Notification of satisfaction

- (a) The COD Conditions are for the benefit of SFV and may only be waived by SFV in writing.
- (b) LTES Operator must notify SFV:

- (i) with respect to each COD Condition that has been satisfied prior to the Signing Date, within 20 Business Days after the Signing Date; and
- (ii) with respect to each COD Condition satisfied after the Signing Date, within 5 Business Days after becoming aware of the satisfaction of the relevant COD Condition.

The notice must include evidence reasonably required to demonstrate that the COD Condition has been satisfied in accordance with this agreement.

- (c) LTES Operator is taken to not achieve the COD Conditions unless and until LTES Operator delivers to SFV:
 - (i) a report, which LTES Operator has commissioned and received from an independent engineering firm nominated by LTES Operator and approved by SFV, and upon which SFV may rely, confirming that the COD Conditions set out in clauses 8.1(a) and 8.1(b) ("COD Conditions") have been satisfied; and
 - (ii) certification by a director of LTES Operator that the information contained in each notice from LTES Operator to SFV under paragraph (b) is true and correct,

which may accompany LTES Operator's notice to SFV under paragraph (b).

8.3 COD Cure Plan

- (a) If the COD Conditions have not been satisfied on or before the COD Sunset Date, then SFV may at its discretion give LTES Operator a notice requiring LTES Operator to submit a cure plan which demonstrates that LTES Operator is reasonably likely to achieve the COD Conditions ("**Draft COD Cure Plan**").
- (b) Within 30 Business Days after receiving notice from SFV under paragraph (a) or such other period agreed between the parties ("**COD Cure Period**"), LTES Operator must submit a Draft COD Cure Plan to SFV that includes sufficient detail for SFV to determine (at its discretion) whether the Draft COD Cure Plan should be approved or rejected. SFV may request any further information from LTES Operator that SFV reasonably requires in order to determine whether to approve or reject the Draft COD Cure Plan, and LTES Operator must promptly provide that information to SFV.
- (c) Within 40 Business Days after the later of receiving the Draft COD Cure Plan and receiving any further information requested by SFV, SFV must use reasonable endeavours to either approve or reject the Draft COD Cure Plan.
- (d) If SFV approves (at its discretion) the Draft COD Cure Plan under paragraph (c), then:
 - (i) LTES Operator must comply with the COD Cure Plan;
 - (ii) within 10 Business Days after the end of each month, LTES Operator must provide to SFV a monthly report that sets out LTES Operator's progress of achieving the COD Cure Plan; and
 - (iii) any references to the COD Sunset Date will be read as being to the COD Sunset Date as extended under the COD Cure Plan.

8.4 Failure to meet the COD Sunset Date

- (a) Subject to paragraph (b), SFV may terminate this agreement by written notice to LTES Operator with immediate effect:
 - (i) if SFV does not require LTES Operator to submit a Draft COD Cure Plan under clause 8.3(a) ("COD Cure Plan") and LTES Operator does not satisfy the COD Conditions on or before the COD Sunset Date; or
 - (ii) if SFV does require LTES Operator to submit a Draft COD Cure Plan under clause 8.3(a) and LTES Operator does not:
 - (A) submit a Draft COD Cure Plan that is approved by SFV in accordance with clause 8.3(b);
 - (B) satisfy the COD Conditions by the relevant date set out in the COD Cure Plan; or
 - (C) commence and comply with the COD Cure Plan in all material respects, and does not remedy that failure (other than to satisfy the COD Conditions by the relevant date, in which case subparagraph (B) applies) within 20 Business Days after notice from SFV.
- (b) SFV must not terminate this agreement pursuant to paragraph (a) if LTES Operator has submitted a Draft COD Cure Plan to SFV under clause 8.3(b) ("COD Cure Plan") and SFV has not yet approved or rejected the Draft COD Cure Plan under clause 8.3(c).

9 Force Majeure Event

9.1 Definition of Project Force Majeure Event

- (a) Subject to paragraph (b), a "**Project Force Majeure Event**" is an event or circumstance, or combination of events or circumstances, occurring after the Signing Date that:
 - (i) is not within the reasonable control of LTES Operator; and
 - (ii) LTES Operator could not have avoided, mitigated, remedied or overcome through the exercise of reasonable care, compliance with its obligations under this agreement and Good Industry Practice,including any Change in Law to the extent it satisfies the above criteria.
- (b) For the purposes of paragraph (a), the following do not constitute a Project Force Majeure Event:
 - (i) lack of funds, financial hardship, failure or inability of any person to pay any sum due and payable, or the inability of LTES Operator (or any of its Related Bodies Corporate) to obtain financing or insurance or to profit or achieve a satisfactory rate of return;
 - (ii) a shortage or delay in delivery of materials, consumables, equipment or utilities required by LTES Operator or any failure by LTES Operator to hold sufficient stock of spares, except to the extent it is itself caused by a Project Force Majeure Event;

- (iii) a malfunction, temporary unavailability, breakdown or failure of LTES Operator's equipment, property or assets 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 take reasonable measures to maintain, secure and protect any equipment, property or asset in accordance with Good Industry Practice, except to the extent it is itself caused by a Project Force Majeure Event;
- (v) strikes, industrial disputes or other industrial actions or disruption that only affect LTES Operator or any group of companies of which it is a part;
- (vi) failure by any person (other than the other party to this agreement) to perform an obligation, except where such failure is caused by any event or circumstance that, if such event or circumstance had happened to LTES Operator, would have been a Project Force Majeure Event under this agreement;
- (vii) delay in obtaining any Authorisation required to be held by a party to perform its obligations under this agreement;
- (viii) any lack or excess of any natural resource, including any 'renewable energy source' (as defined in Part 6 of the EII Act), at the site of the Project, except for any lack of water required to commission the Project;
- (ix) wet or inclement weather (other than extreme storms, floods, hurricanes, cyclones, tornados, typhoons, tsunamis, ice and ice storms); or
- (x) a Connection Force Majeure Event.

9.2 Definition of Connection Force Majeure Event

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

[Note: see comment on clause 8.1(b) in respect of bracketed tolerance.]

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

9.3 Extension for Force Majeure Event

- (a) If LTES Operator is, or reasonably expects that it will be, delayed in satisfying the COD Conditions by the COD Sunset Date as a result of a Force Majeure Event, then LTES Operator must:

- (i) notify SFV of the occurrence of a Force Majeure Event as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Force Majeure Event) giving reasonable details of:
 - (A) the date on which the Force Majeure Event commenced;
 - (B) the Force Majeure Event, including its expected duration;
 - (C) any COD Conditions which are delayed or expected to be delayed by the Force Majeure Event, including the extent to which they can be achieved by the COD Sunset Date or are adversely affected; and
 - (D) subject to paragraph (c), any proposed extensions to the COD Sunset Date to reflect the impact of the Force Majeure Event on LTES Operator's achievement of the COD Conditions;
 - (ii) keep SFV informed of any material changes or developments to the information provided to SFV in the notice under subparagraph (i); and
 - (iii) use its best endeavours to overcome and mitigate the impact of the Force Majeure Event.
- (b) On receiving LTES Operator's notice under subparagraph (a)(i), SFV:
- (i) may request any further information from LTES Operator that SFV reasonably requires in order to assess the impact of the Force Majeure Event on LTES Operator's achievement of the COD Conditions (as relevant), and LTES Operator must promptly provide that information to SFV; and
 - (ii) subject to paragraph (c), must confirm:
 - (A) whether the proposed extension to the COD Sunset Date requested by LTES Operator under subparagraph (a)(i)(D) is granted; and
 - (B) the new COD Sunset Date,
 by the later of:
 - (C) 20 Business Days after receiving LTES Operator's notice under subparagraph (a)(i); and
 - (D) 20 Business Days after receiving any further information that SFV has requested from LTES Operator under subparagraph (b)(i).
- (c) If LTES Operator is prevented or delayed in achieving the Commercial Operations Date by the COD Sunset Date due to a Force Majeure Event, then the COD Sunset Date may be extended by one day for each day of delay, provided the COD Sunset Date may not be extended:
- (i) in the case of a Project Force Majeure Event, beyond the date that is 18 months after the COD Sunset Date set out in item 9 of the Reference Details (disregarding any extensions); and

- (ii) in the case of a Connection Force Majeure Event, by more than the length of delay caused by that Connection Force Majeure Event.

10 Reporting

- (a) LTES Operator must provide, within 20 Business Days after the end of each Quarter, a quarterly report that sets out the following information with reasonable supporting details:
 - (i) the progress of achieving the Milestones as against the relevant Milestone Date, including any matter which could cause LTES Operator to not achieve a Milestone by the relevant Milestone Date;
 - (ii) the date on which LTES Operator expects that it will satisfy all of the COD Conditions;
 - (iii) the progress of construction and information about events LTES Operator considers may prevent the satisfaction of the COD Conditions by the COD Sunset Date;
 - (iv) the progress in obtaining authorisations required for the construction and operation of the Project;
 - (v) any proposed changes to the scope of the Project;
 - (vi) any material occupational health and safety incidents;
 - (vii) complaints received or legal proceedings in relation to the Project;
 - (viii) any matter which constitutes a material breach, or could constitute a material breach, of LTES Operator's obligations under this agreement or the LTESA; and
 - (ix) any other matter reasonably requested in writing by SFV, which may include information that is:
 - (A) reasonably necessary for SFV to discharge its rights and obligations under this agreement or the LTESA; or
 - (B) required under the EII Act or as required by a Government Authority (and notified to SFV or LTES Operator) in respect of the Project.
- (b) If SFV considers (acting reasonably) that LTES Operator's [progress of achieving the Milestones as against the relevant Milestone Date indicates that LTES Operator may not achieve a Milestone by the relevant Milestone Date], then:
 - (i) SFV may request that LTES Operator provide monthly reports under paragraph (a); and
 - (ii) if requested by SFV under subparagraph (i), then LTES Operator must provide, within 10 Business Days after the end of each month, a monthly report that sets out the information in subparagraphs (a)(i) to (ix) with reasonable supporting details.

If LTES Operator is required under this paragraph (b) to provide monthly reports under paragraph (a), then LTES Operator is not required to

separately provide quarterly reports under paragraph (a) until SFV notifies LTES Operator that LTES Operator may revert to providing quarterly reports under paragraph (a).

- (c) A report provided under paragraph (a) must be:
 - (i) in a reporting format specified by SFV from time to time; and
 - (ii) certified by a director of LTES Operator to be true and correct.
- (d) LTES Operator must notify SFV:
 - (i) within 2 Business Days, of the occurrence of a death or serious injury related to the Project;
 - (ii) within 5 Business Days, of LTES Operator becoming aware of any breach of LTES Operator's material obligations under this agreement; and
 - (A) within 10 Business Days, of the occurrence of a dangerous incident or a complaint made in relation to contamination, environmental harm or breach of any environmental law.
- (e) LTES Operator acknowledges that the provision of any false or misleading information by it under this clause 10 is a breach of LTES Operator's obligations under this agreement and may constitute an offence under section 74 of the EII Act.

11 Inspection and access

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

12 Insurance

- (a) LTES Operator must, at its sole cost, take out and maintain at all times insurance policies in relation to the Project consistent with Good Industry Practice, including but not limited to (as applicable):
 - (i) contract works insurance for the replacement value of the Project, including coverage for material and equipment in transit;
 - (ii) public and product liability insurance for at least \$20 million per event;
 - (iii) workers' compensation insurance required by Law; and
 - (iv) motor vehicle liability insurance required by Law,

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

- (b) SFV may request certificates of currency issued by the relevant insurers or any other documentation evidencing that the Insurance Policies have been effected and all premiums have been paid. SFV may not exercise its right under this clause more than once in any 12 month period.
- (c) Within 10 Business Days after receiving SFV's request under paragraph (b), LTES Operator must provide such certificates or other documentation requested by SFV.

Part 4 Social Licence Commitments

13 Application of this part

This Part 4 ("Social Licence Commitments") commences on the Signing Date and continues until the end of the Term.

14 Social Licence Commitments

14.1 Performance

Subject to clause 14.6 ("Alternative cash payment"), during the Term, LTES Operator must perform the Social Licence Commitments.

14.2 Reporting

- (a) Within:
 - (i) 10 Business Days after LTES Operator satisfies all Social Licence Commitments that are to be satisfied prior to the Commercial Operations Date, LTES Operator must give SFV a report demonstrating LTES Operator's compliance with those Social Licence Commitments; and
 - (ii) 30 Business Days after the end of each Quarter, LTES Operator must give SFV a report demonstrating LTES Operator's compliance with its Social Licence Commitments,together with reasonable supporting information.
- (b) A report provided under paragraph (a) must be:
 - (i) in a reporting format specified by SFV from time to time; and
 - (ii) certified by a director of LTES Operator to be true and correct.
- (c) Within 40 Business Days after receiving LTES Operator's report under subparagraph (a)(i), SFV must:
 - (i) confirm that LTES Operator has satisfied all Social Licence Commitments that are to be satisfied prior to the Commercial Operations Date;
 - (ii) request any further information from LTES Operator that SFV reasonably requires in order to assess whether LTES Operator has complied with those Social Licence Commitments; or
 - (iii) reject that report.
- (d) If SFV requests any further information from LTES Operator under subparagraph (c)(ii), then:
 - (i) within 10 Business Days after SFV's request, LTES Operator must provide the requested information; and
 - (ii) within 40 Business Days after receiving the requested information from LTES Operator, SFV must use reasonable endeavours to either confirm or reject LTES Operator's report under subparagraph (a)(i).

- (e) If LTES Operator does not provide the requested information under paragraph (d) within the applicable period, then SFV is deemed to have rejected LTES Operator's report.
- (f) If SFV rejects, or is deemed to reject, LTES Operator's report, then:
 - (i) unless SFV is deemed to reject LTES Operator's report under paragraph (e), SFV will provide reasonable details of its reasons; and
 - (ii) within 20 Business Days after LTES Operator's report is rejected, LTES Operator must amend and resubmit an updated report to SFV.
- (g) Paragraphs (c), (d), (e) and (f), will apply to the updated report submitted by LTES Operator pursuant to paragraph (f).

14.3 Audit

- (a) SFV may, at any time, request an audit of LTES Operator's compliance with its obligation to perform the Social Licence Commitments.
- (b) LTES Operator will bear the costs associated with an audit undertaken under paragraph (a), except where SFV has requested an audit more than once in any 12 month period.
- (c) Subject to paragraph (d), if SFV has requested an audit more than once in any 12 month period, then SFV will bear the costs associated with an audit undertaken under paragraph (a) (excluding any costs incurred by or on behalf of LTES Operator).
- (d) If an audit demonstrates that the certified statements and reports provided by LTES Operator under clause 14.2 ("Reporting") are materially inaccurate, then LTES Operator will bear all the costs of that audit.

14.4 Notice of non-compliance

If following the:

- (a) receipt of LTES Operator's report and any additional information requested by SFV under clause 14.2 ("Reporting");
- (b) expiry of the 10 Business Day period in which LTES Operator must provide any additional information requested by SFV under clause 14.2 ("Reporting"); or
- (c) completion of an audit of LTES Operator's performance of its Social Licence Commitments in accordance with clause 14.3 ("Audit"),

SFV determines (acting reasonably) that LTES Operator is not complying with its obligation to perform the Social Licence Commitments, then SFV may give a notice to LTES Operator which:

- (d) specifies each Social Licence Commitment that LTES Operator has failed to comply with; and
- (e) may specify whether SFV considers LTES Operator's non-compliance to be not remediable, in which case SFV will provide reasonable details of its reasons.

14.5 Cure

- (a) Within 20 Business Days after receiving a notice under clause 14.4 (“Notice of non-compliance”), LTES Operator must submit a cure plan to SFV in relation to the non-compliance identified by SFV (“**Draft SLC Cure Plan**”).
- (b) A Draft SLC Cure Plan must set out:
 - (i) the progress made by LTES Operator in satisfying the relevant Social Licence Commitment;
 - (ii) LTES Operator’s best estimate of when the non-compliance will be remedied; and
 - (iii) if LTES Operator or SFV considers that a non-compliance cannot be remedied, an alternative proposal to the Social Licence Commitment. The alternative proposal may include:
 - (A) the payment of a cash payment to SFV in accordance with clause 14.6(a) (“Alternative cash payment”); or
 - (B) an alternative to the relevant Social Licence Commitment which is of equivalent or greater merit than that Social Licence Commitment.
- (c) If the non-compliance that cannot be remedied relates only to a part of that Social Licence Commitment, then the Draft SLC Cure Plan or an alternative cash payment under clause 14.6 (“Alternative cash payment”) may relate to that part of the relevant Social Licence Commitment.
- (d) SFV will determine (acting reasonably) whether any proposed alternative to the Social Licence Commitment is acceptable to SFV, having regard to the original Social Licence Commitment and taking into account the merit criteria applied by Consumer Trustee to LTES Operator’s tender assessment.
- (e) Within 60 Business Days after receiving the Draft SLC Cure Plan, SFV must use reasonable endeavours to either approve or reject that Draft SLC Cure Plan.
- (f) If SFV rejects a Draft SLC Cure Plan, then:
 - (i) SFV will provide reasonable details of its reasons and may suggest amendments to the Draft SLC Cure Plan, which may include an assessment of the merit of any alternative proposal made by LTES Operator pursuant to subparagraph (b)(iii); and
 - (ii) within 20 Business Days after the Draft SLC Cure Plan is rejected, LTES Operator must amend and resubmit the Draft SLC Cure Plan to SFV for approval.
 - (A) Paragraphs (d) and (e), but not paragraph (f), will apply to the amended Draft SLC Cure Plan submitted by LTES Operator pursuant to subparagraph (f)(ii).
- (g) If SFV approves a Draft SLC Cure Plan under paragraph (e), then LTES Operator must:
 - (i) comply with the SLC Cure Plan; and
 - (ii) provide a monthly report to SFV detailing LTES Operator’s progress towards satisfaction of the SLC Cure Plan, with such

report to be provided to SFV within 10 Business Days after the last day of that relevant month.

14.6 Alternative cash payment

- (a) At SFV's discretion, SFV may agree to accept a cash payment from LTES Operator proposed under clause 14.5(b)(iii) ("Cure") that is:
 - (i) commensurate with the value of the relevant Social Licence Commitment to SFV and any other person that would have benefitted from that Social Licence Commitment; and
 - (ii) sufficient to allow SFV to undertake:
 - (A) the Social Licence Commitment that LTES Operator has failed to comply with; or
 - (B) an alternative to the Social Licence Commitment that LTES Operator has failed to comply with, which SFV determines (acting reasonably) is of equivalent or greater merit than that Social Licence Commitment under clauses 14.5(b)(iii) and 14.5(d).
- (b) If LTES Operator pays SFV an amount agreed under paragraph (a) in respect of a Social Licence Commitment, then LTES Operator is not required to perform that Social Licence Commitment.

14.7 Termination for failure to comply with Social Licence Commitments

- (a) Subject to paragraph (b), SFV may terminate this agreement by written notice to LTES Operator with immediate effect if LTES Operator does not:
 - (i) submit or resubmit a Draft SLC Cure Plan that is approved by SFV in accordance with clause 14.5 ("Cure");
 - (ii) commence and comply with the SLC Cure Plan in all material respects, and does not remedy that failure within 10 Business Days after notice from SFV; or
 - (iii) make the agreed cash payment pursuant to clause 14.6(a) ("Alternative cash payment") within 10 Business Days after notice from SFV.
- (b) SFV must not terminate this agreement pursuant to paragraph (a) if LTES Operator has submitted a Draft SLC Cure Plan to SFV under clause 14.5(a) ("Cure") and SFV has not yet approved or rejected the Draft SLC Cure Plan under clause 14.5(e).

Part 5 Other terms

15 Default and termination

15.1 Automatic termination

If the LTESA is terminated, then this agreement will automatically terminate with immediate effect on the date the LTESA is terminated.

15.2 Termination by LTES Operator

LTES Operator may terminate this agreement with immediate effect by notice in writing to SFV if SFV fails to comply in a material respect with an obligation under this agreement and SFV does not remedy that failure within 60 Business Days after receiving notice from LTES Operator of that failure.

15.3 Termination by SFV

SFV may terminate this agreement with immediate effect by notice in writing to LTES Operator if:

- (a) **(Initial Security)** in accordance with clause 4.1(b) ("Provision of Initial Security");
- (b) **(Milestone Date)** in accordance with clause 6.3 ("Failure to achieve a Milestone");
- (c) **(Commercial Operations Date)** in accordance with clause 8.4 ("Failure to meet the COD Sunset Date");
- (d) **(Social Licence Commitments)** in accordance with clause 14.7 ("Termination for failure to comply with Social Licence Commitments");
- (e) **(Financial Default)** a Financial Default occurs and LTES Operator does not make due payment within 20 Business Days after receiving notice from SFV of that default;
- (f) **(Non-Financial Default)** a Non-Financial Default occurs and:
 - (i) LTES Operator does not commence remedying that Non-Financial Default within 20 Business Days after receiving notice from SFV of that default ("**Breach Notice**"); or
 - (ii) if LTES Operator has commenced remedying that default within 20 Business Days after receiving the Breach Notice, LTES Operator:
 - (A) does not pursue that remedy in a diligent manner; or
 - (B) does not remedy the relevant default within 40 Business Days after receiving the Breach Notice (or by any later date agreed by SFV acting reasonably);
- (g) **(misrepresentation)**
 - (i) an express representation made by LTES Operator under this agreement (other than under clause 18.3 ("Tender representations and warranties from LTES Operator")) is incorrect or misleading in any material respect when made; and

- (ii) LTES Operator does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from SFV of that incorrect or misleading representation (including by LTES Operator paying SFV compensation reasonably acceptable to SFV on account of loss suffered by it or by electricity customers in New South Wales (or both));
- (h) **(tender misrepresentation)**
 - (i) an express representation made by LTES Operator under clause 18.3 ("Tender representations and warranties from LTES Operator") is incorrect or misleading in any material respect when made;
 - (ii) SFV forms the view that Consumer Trustee would likely not have recommended that SFV award LTES Operator the LTESA but for the materials and information which caused or contributed to that representation being materially incorrect or misleading;
 - (iii) SFV notifies LTES Operator of that incorrect or misleading representation in writing no later than 2 years after the Commercial Operations Date; and
 - (iv) LTES Operator does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from SFV of that incorrect or misleading representation (including by LTES Operator paying SFV compensation reasonably acceptable to SFV on account of loss suffered by it or by electricity customers in New South Wales (or both)); or
- (i) **(insolvency)** LTES Operator is the subject of an Insolvency Event and LTES Operator does not cure that Insolvency Event within 5 Business Days after receiving notice from SFV.

15.4 Termination payment

- (a) If this agreement is terminated by SFV in accordance with clause 15.3 ("Termination by SFV"):
 - (i) prior to the Commercial Operations Date, then LTES Operator must pay SFV the Termination Amount; and
 - (ii) on or after the Commercial Operations Date, then LTES Operator must pay SFV any amount required under the LTESA in accordance with the LTESA.
- (b) Subject to paragraph (c), the parties acknowledge and agree that:
 - (i) SFV's sole remedy arising out of or in connection with LTES Operator's failure to achieve the Milestones or the COD Conditions is SFV's entitlement to the Termination Amount in accordance with paragraph (a); and
 - (ii) the Termination Amount is a genuine pre-estimate of SFV's anticipated losses arising from the termination of this agreement.
- (c) If:
 - (i) the Termination Amount becomes payable by LTES Operator under the terms of this agreement; and

- (ii) that Termination Amount is found to be a penalty or LTES Operator's obligation to pay the Termination Amount pursuant to this clause 15.4 is found to be void or unenforceable for any reason (whether in whole or in part),

then LTES Operator indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss (including in respect of loss of bargain) suffered by SFV or electricity customers in New South Wales arising from or in connection with the termination of this agreement, provided that LTES Operator's aggregate liability under this paragraph (c) will not exceed an amount equal to the Termination Amount.

15.5 Invoice

- (a) SFV must provide an invoice to LTES Operator for the Termination Amount within 60 Business Days after termination of this agreement.
- (b) LTES Operator must pay the amount of any such Termination Amount within 30 Business Days after receipt of an invoice provided under paragraph (a).
- (c) If LTES Operator does not pay the full amount of the Termination Amount within the period required under paragraph (b), then SFV may draw on and retain the full amount of the Initial Security.

15.6 Preservation of rights

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

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

15.7 Exclusion of rights

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

15.8 Survival

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

- (a) this clause 15 and clauses 4 ("Initial Security"), 17 ("Liability"), 20 ("Dispute Resolution") and 21 ("Confidentiality");
- (b) any clause that is required to enable a party to exercise rights accrued prior to the expiry or termination of the agreement; and
- (c) any clause which by its nature is intended to survive the expiry or termination of this agreement.

16 Assignment and Change in Control

16.1 Assignment by LTES Operator

- (a) LTES Operator must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project other than in accordance with this clause 16.1.

- (b) Subject to paragraph (c), LTES Operator may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with SFV's prior written consent, such consent not to be unreasonably withheld or delayed if:
 - (i) the assignee, novatee or transferee:
 - (A) has the legal, financial and technical capability to perform LTES Operator's obligations under this agreement; and
 - (B) agrees to assume all obligations of LTES Operator under or in connection with this agreement, including to provide any replacement Initial Security;
 - (ii) in the case of a proposed assignment, novation or transfer that would occur prior to the Commercial Operations Date, SFV considers (at its discretion) that the assignee, novatee or transferee would have achieved an equivalent or higher merit score from Consumer Trustee during the tender assessment conducted in connection with this agreement; and
 - (iii) the proposed assignment, novation or transfer:
 - (A) would not have a material adverse effect on the Project; and
 - (B) would not increase the liability of, or risks accepted by SFV under this agreement or the LTESA or in any other way in connection with the Project, its objects, functions or duties under applicable Law.
- (c) LTES Operator must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project unless it also assigns, novates or otherwise transfers:
 - (i) its rights and obligations under, title to or interest in and its obligations under this agreement and the LTESA; and
 - (ii) the Project,

to the same person.
- (d) Notwithstanding anything else in this clause 16.1, the parties agree that LTES Operator may grant a Security Interest in respect of its rights and obligations under this agreement or the Project in favour of a secured lender (or a trustee acting on its behalf) who is providing financial accommodation on secured terms to LTES Operator (or to any of its Related Bodies Corporate) in connection with the Project.
- (e) The parties acknowledge and agree that the provisions of this clause 16.1 will apply to any assignment, novation or transfer of LTES Operator's rights and obligations under, title to and interest in this agreement following the enforcement of a Security Interest granted by LTES Operator in accordance with paragraph (d).

16.2 Assignment by SFV

- (a) SFV must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement other than in accordance with this clause 16.2.

- (b) Subject to paragraph (c), SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with LTES Operator's prior written consent, such consent not to be unreasonably withheld or delayed.
- (c) SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement without LTES Operator's consent to:
 - (i) a Government Entity;
 - (ii) Consumer Trustee; or
 - (iii) any person who replaces SFV as the "scheme financial vehicle" under the EII Act, provided that such person is entitled under the EII Act to have recourse to amounts paid into the "electricity infrastructure fund" (as defined in the EII Act) by distribution network service providers in response to a "contribution order" under section 58 of the EII Act.
- (d) If SFV proposes an assignment, novation or transfer under paragraph (c), then LTES Operator must act reasonably and in good faith in negotiating any amendment to this agreement that is reasonably requested by SFV to accommodate that assignment, novation or transfer.

16.3 Release

If a party assigns, novates or otherwise transfers its rights and obligations under, title to or interest in this agreement in accordance with this clause 16 ("Assignment and Change in Control"), then the non-assigning party agrees to:

- (a) release the assigning party from its obligations under this agreement arising on and from the date of the assignment, novation or transfer to the extent that those obligations are assumed in writing by the assignee on terms reasonably acceptable to the non-assigning party; and
- (b) return any Initial Security provided by the assigning party, provided the assignee first delivers a replacement credit support or security to the non-assigning party.

16.4 Change in Control

- (a) LTES Operator must not undergo, or agree to undergo, a Change in Control without SFV's prior written consent.
- (b) SFV's consent to a Change in Control of LTES Operator must not be unreasonably withheld or delayed where:
 - (i) LTES Operator's legal, financial and technical capability to perform its obligations under this agreement will not be adversely affected; and
 - (ii) in the case of Change in Control that would occur prior to the Commercial Operations Date, SFV considers (at its discretion) that LTES Operator would have achieved an equivalent or higher merit score from Consumer Trustee during the tender assessment conducted in connection with this agreement had the Change in Control occurred prior to the determination of LTES Operator's merit score;

- (iii) LTES Operator will not have an interest which conflicts in any material way with the interests of SFV; and
- (iv) the proposed Change in Control:
 - (A) would not have a material adverse effect on the Project; and
 - (B) would not increase the liability of, or risks accepted by, SFV under this agreement or the PDA or in any other way in connection with the Project, its objects, functions or duties under applicable Law.

16.5 Tripartite deed

On request from LTES Operator, SFV agrees to enter into a tripartite deed with financiers of LTES Operator in the form attached in Annexure A ("Form of Tripartite").

17 Liability

17.1 Excluded Loss

Subject to clauses 17.2 ("Limitation of liability") and 17.3 ("No exclusion"), and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this agreement for:

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

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

17.2 Limitation of liability

To the extent permissible by Law and subject to clause 17.3 ("No exclusion"):

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

17.3 No exclusion

Clauses 17.1 ("Excluded Loss") and 17.2 ("Limitation of liability") do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this agreement, including the Termination Amount;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 17.4(b) ("Indemnity by LTES Operator"); or
- (c) arising from any criminal or fraudulent act or omission, or wilful misconduct or wilful breach of a party, or its officers, employees, subcontractors or agents.

17.4 Indemnity by LTES Operator

- (a) LTES Operator indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss:
 - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of LTES Operator or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents; or
 - (ii) in respect of death or personal injury,arising from the Project.
- (b) Without limiting paragraph (a), LTES Operator indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss arising from, and any costs incurred in connection with, any Claim by a third party against SFV in relation to:
 - (i) the Project; or
 - (ii) any act or omission of LTES Operator or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents arising from the Project.
- (c) The amounts payable under this clause 17.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by SFV's officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 17.4 are not payable to the extent that SFV's liability or Loss:
 - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or breach, or negligence of SFV, its officers, employees, subcontractors or agents; or
 - (ii) arises in respect of an electricity hedging arrangement entered into by SFV and a third party.

18 Representations and warranties

18.1 Representations and warranties

Each party represents and warrants that:

- (a) **(corporate existence)** it is duly registered and validly existing under the laws of its place of incorporation and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power and authority)** it has full power and authority to enter into and perform its obligations under this agreement and carry out the transactions contemplated by this agreement;
- (c) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this agreement;
- (d) **(no breach)** the execution, delivery and performance of this agreement does not and will not violate, breach or result in a contravention of:
 - (i) any Law by which it is bound;
 - (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
 - (iii) the constitutional documents of that party; or
 - (iv) any Security Interest by which it is bound;
- (e) **(binding nature)** this agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (f) **(no insolvency)** it is not subject to an Insolvency Event.

18.2 Anti-bribery and anti-corruption

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

18.3 Tender representations and warranties from LTES Operator

LTES Operator represents and warrants that:

- (a) all materials and information provided by LTES Operator to Consumer Trustee in connection with LTES Operator's tender bid for the LTESA (other than forecasts or projections) was true, correct and not misleading in any material respect (whether by omission or otherwise) as at the Tender Date; and
- (b) all forecasts and projections which were provided by LTES Operator to Consumer Trustee in connection with LTES Operator's tender bid for the LTESA were prepared using due care and skill based on assumptions which LTES Operator believed, in good faith, were fair and reasonable assumptions as at the Tender Date.

18.4 No reliance

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

19 [Trustee provisions]

19.1 Trustee representations and warranties

LTES Operator represents and warrants to SFV that:

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

19.2 Trustee undertakings

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

19.3 Restrictions on trustee

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

- (a) **(retirement, removal, replacement)** effects or facilitates the retirement, removal or replacement of LTES Operator as trustee of the Trust;

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

19.4 Trustee limitation of liability

- (a) This clause 19.4 applies to LTES Operator as trustee of the Trust to the extent that LTES Operator is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), LTES Operator's liability to any person in connection with this agreement (or any transaction in connection with it) is limited to the extent to which the liability is or can be satisfied out of the Trust Property by LTES Operator exercising its right of indemnity out of the Trust Property.
- (c) Subject to clauses 19.4(c)(i) and 19.4(c)(ii), SFV may not seek to recover any amounts owing to it under this agreement by bringing proceedings against LTES Operator in its personal capacity. However, SFV may:
 - (i) do anything necessary to enforce its rights in connection with the Trust Property; and
 - (ii) take proceedings to obtain either or both:
 - (A) an injunction or other order to restrain any breach of this agreement by LTES Operator; and
 - (B) declaratory relief or other similar judgment or order as to the obligations of LTES Operator under this agreement.
- (d) The limitations and restrictions under paragraphs (b) and (c) do not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of LTES Operator's indemnification out of the Trust Property either as a result of LTES Operator's fraud, negligence or wilful default, or by operation of Law.
- (e) The limitation of LTES Operator's liability under paragraph (b) is to be disregarded for the purposes of determining whether LTES Operator has failed to comply with or perform any obligation under this agreement because of a failure by LTES Operator to pay an amount payable by it under this agreement.]

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

20 Dispute Resolution

20.1 Dispute mechanism

Any dispute or difference of any kind arising between the parties in connection with or arising out of this agreement, whether during or after the Term ("**Dispute**") must be resolved pursuant to this clause 20.

20.2 No proceedings

Subject to clause 20.9 ("Interim relief"), a party must not commence or maintain a court action or proceedings in relation to a Dispute until the party has complied with this clause 20.

20.3 Disputes

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

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

20.4 Procedure to resolve Disputes

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 20.5 ("**Negotiation**");
 - (ii) second, if permitted under clause 20.5(b) ("**Negotiation**") referral of the Dispute for determination by an Independent Expert under clause 20.6 ("**Independent Expert**") (if applicable); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

20.5 Negotiation

- (a) Within 10 Business Days after the service of a Dispute Notice, a senior representative of each party must meet, negotiate and seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved within 20 Business Days after the negotiations between senior representatives commencing pursuant to paragraph (a), then either party may by written notice:
 - (i) where:
 - (A) expressly provided for under this agreement;
 - (B) the Dispute is of a technical or engineering nature, or in connection with a Social Licence Commitment; or
 - (C) the parties agree otherwise,

refer the Dispute for determination by an Independent Expert; and

- (ii) where the Dispute is not of a technical or engineering nature, commence proceedings in a court of competent jurisdiction unless the parties agree to adopt a different form of alternative dispute resolution.

20.6 Independent Expert

- (a) If this agreement provides that a Dispute is to be referred for determination by an independent expert, then the parties must appoint a person to which the Dispute will be referred for determination ("**Independent Expert**") by mutual agreement within 10 Business Days after a notice referring a Dispute to an Independent Expert being given (or such longer period the parties agree).
- (b) Failing agreement within the period specified in paragraph (a), either party may request the CEO of the Resolution Institute (or their independent nominee) to appoint an Independent Expert.
- (c) If an Independent Expert is not appointed within 20 Business Days after the date of the request being made under paragraph (b), then either party may commence proceedings in a court of competent jurisdiction in relation to the Dispute.
- (d) The Independent Expert appointed must have reasonable qualifications, and commercial and practical experience, in the area of the Dispute (including in the context of the NEM) and no interest or duty which conflicts or may conflict with their function as an Independent Expert.
- (e) The Independent Expert will act as an expert and not as an arbitrator.
- (f) The parties must comply with all reasonable requests by an Independent Expert for information relating to the Dispute.
- (g) The parties must ensure that the Independent Expert's terms of appointment include the following requirements:
 - (i) the Independent Expert must consult with the parties concerning the matters under Dispute;
 - (ii) the Independent Expert must make a draft report available to the parties within 30 Business Days after their appointment;
 - (iii) the Independent Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
 - (iv) the Independent Expert must keep information provided by or on behalf of the parties to the Independent Expert confidential;
 - (v) the Independent Expert may investigate the matters under Dispute and make inquiries in relation to them, and take the advice of any other person the Independent Expert deems appropriate; and
 - (vi) the Independent Expert will use their best endeavours to notify the parties of the Independent Expert's determination within 60 Business Days after the reference to the Independent Expert.

- (h) In the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding.
- (i) Each party will bear its own costs in respect of or in connection with any determination by an Independent Expert.
- (j) The costs of the Independent Expert will be borne equally between the parties.

20.7 Other Relief

The Dispute resolution procedures in this clause 20 do not apply to impair, delay or otherwise prejudice the exercise by a party of its rights provided in this agreement (including any right of termination).

20.8 Continued performance following a Dispute

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

20.9 Interim relief

Nothing in this clause 20 prevents either party from seeking urgent injunctive or declaratory relief.

21 Confidentiality

21.1 Disclosure of information

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

- (a) information that is publicly available (other than through a breach of this clause 21 or another obligation of confidentiality);
- (b) to any person to the limited extent necessary in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement (and provided the recipient is bound by an equivalent obligation of confidentiality);
- (c) to officers, employees, agents, contractors, legal and other advisers, insurers and auditors of the party (or to insurers and auditors of the party's Related Bodies Corporate), in each case to the extent that such a person has a need to know (and provided the recipient is bound by an equivalent obligation of confidentiality, except any SFV officers and employees who are already subject to confidentiality obligations);
- (d) to:
 - (i) a bank or other financial institution (and its professional advisers) in connection with any existing or proposed loan or other financial accommodation of, or sought to be arranged by, the recipient of the information;
 - (ii) any person who is proposing to acquire a direct or indirect interest in the party; or
 - (iii) any Related Body Corporate of a party to this agreement, but only to the extent that such a person has a need to know,

and in each case provided the recipient is bound by an equivalent obligation of confidentiality;

- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (f) when the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this agreement, and then only in accordance with the terms of that order;
- (g) any disclosure that the recipient reasonably believes is required by any Law or securities exchange, and then only to the extent reasonably required;
- (h) to a rating agency; or
- (i) in the case of disclosure by SFV, to:
 - (i) Consumer Trustee;
 - (ii) Financial Trustee;
 - (iii) AEMO or its Related Bodies Corporate;
 - (iv) Infrastructure Planner;
 - (v) any government department, agency, authority, instrumentality, Minister or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and
 - (vi) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (iv),

provided that SFV uses reasonable endeavours to ensure that any such person does not disclose such information to a person to whom disclosure is not otherwise permitted under this agreement; or

- (j) in the case of disclosure by SFV or any entity listed under paragraph (i), for the purpose of providing and publishing information published in connection with the exercise of functions as required under the EII Act, provided that information disclosed under this paragraph (j) is done so on a de-identified basis.

21.2 Publicity

- (a) Unless required by Law, LTES Operator must not make any public announcements relating to the subject matter of this agreement without SFV's prior written consent.
- (b) SFV and Consumer Trustee may make public announcements relating to the subject matter of this agreement (including in respect of the Project's expected import and export of electricity and LTES Operator's Social Licence Commitments) without LTES Operator's prior written consent, provided that SFV must (or must procure that Consumer Trustee, as applicable):
 - (i) consult with LTES Operator before making a public announcement that contains commercially sensitive information set out in this agreement (and, for the avoidance of doubt, the amount of support SFV is providing LTES Operator under this agreement, the Project details set out in the Reference Details

and LTES Operator's Social Licence Commitments are not commercially sensitive information); and

- (ii) reasonably consider any request from LTES Operator to not include that commercially sensitive information, or to only include that commercially sensitive information on an anonymised and aggregated basis, in the relevant public announcement.

22 Costs

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

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

23 Contract Representative

- (a) At all times, LTES Operator must appoint and maintain the appointment of a natural person who is involved with the day-to-day operation and administration of the Project and this agreement as its Contract Representative.
- (b) LTES Operator must ensure that it notifies SFV as soon as reasonably practicable (and in any event within 5 Business Days) of any changes to the identity or contact details of the Contract Representative, including any temporary changes to the identity or contact details of the Contract Representatives.
- (c) SFV may contact the Contract Representative at all reasonable times in respect of any matter in connection with the day-to-day operation or administration of the Project or this agreement.
- (d) Despite paragraph (c), any notices and other communications that SFV is required to give under this agreement will be given to LTES Operator in accordance with clause 24 ("Notices").

24 Notices

24.1 Form

- (a) Unless this agreement expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in

connection with this agreement must be in writing and signed by the sender (if an individual) or a director, secretary or any other person nominated by a party to act as an authorised officer of the sender.

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

24.2 Delivery

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

24.3 When effective

Communications take effect from the time they are received or taken to be received under clause 24.4 ("When taken to be received") (whichever happens first) unless a later time is specified in the communication.

24.4 When taken to be received

Communications are taken to be received:

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

whichever happens first.

24.5 Receipt outside business hours

Despite anything else in this clause 24, if communications are received or taken to be received under clause 24.4 ("When taken to be received") after 5.00pm on a Business Day or on a non-Business Day, then they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

25 General

25.1 Variation and waiver

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

25.2 Consents, approvals or waivers

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

25.3 Discretion in exercising rights

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

25.4 Partial exercising of rights

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

25.5 Conflict of interest

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

25.6 Remedies cumulative

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

25.7 Indemnities and reimbursement obligations

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

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

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

25.8 Supervening Law

Any present or future Law which operates to vary the obligations of a party in connection with this agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

25.9 Counterparts

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

25.10 Entire agreement

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

25.11 No liability for loss

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

25.12 Rules of construction

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

25.13 Severability

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

25.14 Governing Law and jurisdiction

The Law in force in New South Wales governs this agreement. The parties submit to the exclusive jurisdiction of the courts of New South Wales.

25.15 Electronic execution

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

25.16 Directions as to management of this agreement

SFV may, from time to time, provide to LTES Operator reasonable guidance in relation to the management of this agreement, including:

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

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

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

[Drafting note: new clause 25.16 inserted to enable SFV to issue guidance in relation to management of this agreement]

EXECUTED as an agreement.

Schedule 1 Community Engagement Plan

[Guidance note: To the extent certain template sections provided for below are not mandatory or applicable, those sections can be deleted]

1.1 Social Licence Binding Commitments

In accordance with clause 14.1 ("Performance"), LTES Operator will fund benefits to the local community in the following amounts by the relevant date of deliverable.

Table 1 – Shared benefits for the Local community

Scope (include community beneficiaries)	Date of deliverable	Value to beneficiary (\$/year)

[Guidance note: Commitments should be consistent with, or no less, than commitments outlined in Table 1 of the Merit Criteria 6 Returnable Schedule]

1.2 Other Social Licence Commitments

In accordance with clause 14.1 ("Performance"), LTES Operator will implement the following strategies and approaches to delivering on shared benefits for local community, including initiative objectives, roles and responsibilities, governance arrangement, issues management strategy, monitoring and reporting as further described below.

[insert]

LTES Operator will report against the above strategies and approaches in its report to SFV under clause 14.2 ("Reporting").

Schedule 2 Industry and Aboriginal Participation Plan

[Guidance note: To the extent certain template sections provided for below are not mandatory or applicable, those sections can be deleted]

1.1 Definitions

Apprentice means a person undertaking an approved structured employment-based training program (apprenticeship) under a registered training contract that leads to a nationally recognised qualification who is working on the Project.

First Nations Businesses means a business that is at least 50 per cent Aboriginal and/or Torres Strait Islander-owned and is recognised as an Aboriginal business through an appropriate organisation, such as Supply Nation or the NSW Indigenous Chamber of Commerce.

Full-time Equivalent (FTE) means the estimated FTE number for a group which is calculated as (estimated working hours of a group / working days x 7.6 hours).

Learning Worker means a worker without qualifications or who has undertaken or is undertaking Training to update their qualifications or skills to meet the needs of the infrastructure project. This includes:

- (a) trainees and Apprentices;
- (b) non-construction workers;
- (c) managers, engineers, finance team, environmental team, safety team, construction employees consisting of supervisors, those in leadership roles, tradespeople and operators who contribute to the Project; and
- (d) people who undertake training organised by the contractor prior to employment but only if they are employed on the project.

Once defined as a learning worker, the worker maintains this status for the duration of the Project.

Local means Australia and New Zealand.

Local Content means goods, services and labour procured from Australia and New Zealand.

Total Project Contract Value means the sum of all the costs that the Proponent has to pay to deliver the Project exclusive of GST calculated as follows:

$$TPCV = A + B$$

Where:

TPCV = Total Project Contract Value

A = Total capital expenditure (**CAPEX**)

B = Total operational expenditure (**OPEX**)

which as at the Signing Date is estimated to be \$[insert], which will be updated from time to time under this Schedule 2.

Total Project Workforce means the total working hours that the Proponent will engage to deliver the Project calculated as follows:

$$TPW = A \times B$$

Where:

TPW	=	Total Project Workforce in hours over the Term
A	=	number of FTE days that the Proponent will engage to deliver the Project up to Commercial Operations Date
B	=	7.6 hours

which as at the Signing Date is estimated to be [insert] hours, which will be updated from time to time under this Schedule 2.

Training means undertaking an accredited vocational education and training (“VET”) or nationally recognised professional qualifications that meet the needs of the Project and can be full or part qualifications (such as one or more units of competency). It may be subsidised by government funding or through a fee-for-service arrangement and includes participating in the NSW Government Trade Pathways Program.

Steel means all steel intensive components, such as anchor cages, wind turbine tower sections, racking and mounting for solar, transmission towers, piling, and civil and structural works for substations, but excludes steel components integral to a component not available locally at the time of bidding, such as steel inside a solar module, and miscellaneous small hardware items such as nails and bolts.

1.2 Social Licence Binding Commitments

For the purposes of this Schedule 2, LTES Operator will provide an updated estimate for the Total Project Contract Value (including the CAPEX and OPEX amounts), Total Project Workforce and the total trades positions, and total Steel required in each of LTES Operator’s annual reports to SFV under clause 14.2 (“Reporting”) and provide reasonable supporting information for the updated estimate. Without limiting SFV’s rights under clause 14 (“Social Licence Commitments”), if there is any material decrease in the estimated Total Project Contract Value or Total Project Workforce as compared to the estimates provided by LTES Operator as at the Signing Date, then SFV may (among other things) request further information pursuant to clause 14.2(c)(ii), reject LTES Operator’s report pursuant to clause 14.2(c)(iii) or request an audit of LTES Operator’s compliance pursuant to clause 14.3 (“Audit”).

(a) Local supply chain commitments

In accordance with clause 14.1 (“Performance”), LTES Operator will purchase Local Content with a value equal to or greater than the percentages specified below for the relevant phase of the Project.

Table 1 – Local supply chain commitments

Local Content commitments	% of total CAPEX	Cost in real dollars AU\$
Before COD – Development and construction phase		
Local Content commitments	% of total OPEX	Cost in real dollars AU\$
After COD – Operation and maintenance phase		

Local Content commitments	% of total Steel	Cost in real dollars AU\$
Local steel		

[Guidance note: Commitments should be consistent with, or no less, than commitments outlined in Table 1 of the Merit Criteria 7 Returnable Schedule]

(b) Investment and innovation commitments

In accordance with clause 14.1 (“Performance”), LTES Operator will invest in, or acquire goods and services, from Local supply chains or Local innovators in at least the following amounts, and in each case by the date specified.

Table 2 – Local supply chain investment and innovation

Specific commitment	Date of deliverable	Cost in real AU\$

[Guidance note: Commitments should be consistent with, or no less, than commitments outlined in Table 2 of the Merit Criteria 7 Returnable Schedule]

(c) Employment and workforce commitments

In accordance with clause 14.1 (“Performance”), LTES Operator will employ a number of Learning Workers and Apprentices for a number of hours equal to or greater than the percentage of the Total Project Workforce specified in the table below.

Table 3 – Employment and workforce commitments

Workforce category	Date of deliverable	% of Total Project Workforce
Learning Workers		
Workforce category	Date of deliverable	% of Total Project Workforce
Underrepresented Groups		
Workforce category	Date of deliverable	% of total trades positions
Apprentices		

[Guidance note: Commitments should be consistent with, or no less, than commitments outlined in Table 3 of the Merit Criteria 7 Returnable Schedule]

(d) First Nations participation

In accordance with clause 14.1 (“Performance”), LTES Operator will:

- (i) subcontract work related to the Project to First Nations Businesses with an aggregate contract value equal to or greater than the

percentage of the Total Project Contract Value specified in the second row of Table 4;

- (ii) employ a number of people from a First Nations background for a number of hours equal to or greater than the percentage of the Total Project Workforce specified in the fourth row of Table 4; and
- (iii) make First Nations economic participation commitments equal to or greater than the amount specified in the sixth row of Table 4.

Table 4 – First Nations participation

First Nations economic participation commitments	Date of deliverable	% of Total Project Contract Value
First Nations economic participation commitments	Date of deliverable	% of Total Project Workforce
First Nations economic participation commitments	Date of deliverable	Cost in real AU\$

[Guidance note: Commitments should be consistent with, or no less, than commitments outlined in Table 4 of the Merit Criteria 7 Returnable Schedule]

1.3 Other Social Licence Commitments

(a) Local supply chain commitments, investment and innovation, employment and workforce commitments

In accordance with clause 14.1 (“Performance”), LTES Operator will undertake to implement the following strategies and approaches to achieve Local procurement, Local supply chain targets, employment and workforce targets.

[insert]

LTES Operator will report against the above strategies and approaches in its report to SFV under clause 14.2 (“Reporting”).

(b) First Nations participation

In accordance with clause 14.1 (“Performance”), LTES Operator will undertake the following strategies and approaches to achieve First Nations targets, First Nations targets, economic participation, general engagement, reporting, monitoring and compliance.

[insert]

LTES Operator will report against the above strategies and approaches in its report to SFV under clause 14.2 (“Reporting”).

(c) Environmentally sustainable procurement throughout supply chain

In accordance with clause 14.1 (“Performance”), LTES Operator will undertake to implement the following strategies and approaches to promote environmentally sustainable procurement throughout the supply chain.

[insert]

LTES Operator will report against the above strategies and approaches in its report to SFV under clause 14.2 (“Reporting”).

Signing page

DATED: _____

SFV

EXECUTED by **SCHEME FINANCIAL VEHICLE PTY LTD** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

.....
Signature of director

Name of director (block letters)

Signature of director/company secretary*

*delete whichever is not applicable

Name of director/company secretary*
(block letters)
*delete whichever is not applicable

LTES OPERATOR

EXECUTED by [INSERT] in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

.....
Signature of director

Name of director (block letters)

Signature of director/company secretary*

*delete whichever is not applicable

Name of director/company secretary*
(block letters)
*delete whichever is not applicable

Annexure A Form of Tripartite

[Note: to be inserted.]