Returnable Schedule – Process Deed Poll

The Proponent must complete and sign this Process Deed Poll (**Deed Pol**l) as part of its submission for Stage A, as outlined in Section 2.1.2 of the Tender Guidelines.

**Date**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Made by**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ABN / ACN:\*** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\**Strike out whichever is not applicable and insert Proponent’s ABN or ACN***

**Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**E-mail:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(**Proponent**)

**In favour of each of**:

(a) the Commonwealth of Australia as represented by the Department of Climate Change, Energy, the Environment and Water (**Australian Government**);

(b) the Australian Energy Market Operator Limited ABN 94 072 010 327 (**AEMO Limited**); and

(c) AEMO Services Limited ABN 59 651 198 364 (**AEMO Services**).

**Background**

1. This Deed Poll is provided in connection with the Capacity Investment Scheme (**CIS**) Tender 3 Process (**Tender 3 Process**) being conducted by the Australian Government pursuant to the Capacity Investment Scheme National Electricity Market Dispatchable Capacity Tender Guidelines, issued by the Australian Government on or about 13 November 2024 (**Tender Guidelines**).
2. The Australian Government has engaged AEMO Limited and its independent subsidiary, AEMO Services, as service providers to assist in administering the Tender 3 Process.

**Definitions and Interpretation**

1. In this Deed Poll, unless the context requires otherwise:
	* 1. capitalised terms that are used but not defined in this Deed Poll have the meaning given in the Tender Guidelines;
		2. references to clauses are to clauses of this Deed Poll; and
		3. the rules of interpretation set out in Section 4.2 of the Tender Guidelines apply to this Deed Poll, except that, for the purpose of this clause 3(c), references to the Tender Guidelines in Section 4.2 of the Tender Guidelines will be read as references to this Deed Poll.

**Benefit**

1. The Proponent agrees that this Deed Poll is provided by the Proponent:
	* 1. on its own behalf and on behalf of each of its Consortium Members (if any) and its and their Related Bodies Corporate (if any) – and, as a consequence, that:
			1. the undertakings, representations, warranties and other obligations, and all liabilities, of the Proponent in this Deed Poll apply equally in respect of each of the Proponent, each Consortium Member (if any) and each of its and their Related Bodies Corporate (if any) jointly and severally; and
			2. references to ‘the Proponent’ or ‘it’ will, where applicable and not otherwise specified, be read to include each Consortium Member (if any) and each of its, and their, Related Bodies Corporate (if any); and
			3. in circumstances of breach, the Proponent will be taken to be the authorised representative of those parties; and
		2. in favour of, and for the benefit of, each of AEMO Limited and AEMO Services (together, **AEMO**) and the Australian Government – and that it may be relied upon by each of them jointly and severally.

**Tender Matters**

1. The Proponent:
	* 1. agrees and represents to each of the Australian Government and AEMO that the Tender Guidelines are legally binding on it;
		2. undertakes to each of the Australian Government and AEMO that it has complied (and after the date of this Deed Poll will continue to comply) with the Tender Guidelines;
		3. represents and warrants to each of the Australian Government and AEMO that:
			1. it has, and its Associates have, complied (and after the date of this Deed Poll it and they will continue to comply) with the Tender Guidelines in all respects in connection with its participation in the Tender 3 Process, including (without limitation) the preparation, evaluation and negotiation of its or any other Bid; and
			2. all information provided by the Proponent to the Australian Government or AEMO arising from or in connection with the Tender 3 Process, including in its Bid, is (and, in respect of information provided after the date of this Deed Poll, will be) true, complete and accurate in every respect; and
		4. acknowledges and agrees, and must ensure that its Consortium Members acknowledge and agree, that, under subsection 137.1 of the Criminal Code enacted by the *Criminal Code Act 1995* (Cth), giving false or misleading information to the Australian Government is a serious offence for which criminal penalties may apply and may also lead to:

			1. exclusion of the Proponent from this Tender 3 Process, and any subsequent CIS Tender Process;
			2. termination for default of any CISA that may be entered into with a Successful Proponent; and
			3. the payment of damages by the Proponent to the Australian Government.
2. The Proponent represents and warrants that:
	* 1. it will not, in negotiating the terms of any Project Document, depart from the information it has provided (including in respect of its acceptance of any draft Project Document) or representations, statements or claims it makes or has made in its Bid;
		2. neither it, nor any Consortium Member (if any), any of its or their Related Bodies Corporate (if any) or any Bid Entity, has had any judicial decision relating to employee entitlements made against it (not including decisions under appeal or instances in which the period for appeal or payment/settlement has not expired) in respect of which the Proponent, any Consortium Member and their Related Bodies Corporate, has failed to pay any amounts relating to unpaid employee entitlements where the entitlements remain unpaid;
		3. neither it, nor any Consortium Member (if any), any of its or their Related Bodies Corporate (if any) is named as an organisation that is currently not complying with the *Workplace Gender Equality Act 2012* (Cth);
		4. neither it, nor any of its Associates, has, within the previous 10 years, been subject to an inquiry by the National Anti-Corruption Commission, or an equivalent body in a jurisdiction in Australia, in which a finding has been made against any of them (including a finding that one of them has engaged in corrupt conduct);
		5. neither it, nor any Consortium Member (if any), nor any of its or their Related Bodies Corporate (if any), is named as an organisation on the Consolidated List maintained by the Australian Sanctions Office within the Department of Foreign Affairs and Trade;
		6. neither it, nor any of its Associates, has prepared its Bid after consultation or communication, or pursuant to a contract, arrangement or understanding, with any competitor, other than when:
			1. the Proponent and the competitor have an agreement that has been authorised by the Australian Competition and Consumer Commission; or
			2. the Proponent has communicated with a competitor for the purpose of subcontracting a portion of proposed services in connection with the CIS, and the communication with that competitor is limited to the information required to facilitate that particular subcontract;
		7. neither it, nor any of its Associates, has engaged in, or procured or encouraged others to engage in any activity that would result in a breach of the Lobbying Code of Conduct published by the Attorney-General's Department of the Australian Government;
		8. neither it, nor any of its Associates, has engaged in misleading or deceptive conduct in relation to its or any other Bid or the Tender 3 Process;
		9. neither it, nor any of its Associates, has breached Section 4.15 of the Tender Guidelines (Anti-Competitive Conduct) or violated any applicable laws or Commonwealth policies regarding the offering of inducements in connection with the Tender 3 Process;
		10. neither it, nor any of its Associates, has acted in an unethical or improper manner or contrary to any Law. In particular, the Proponent represents and warrants that it and its Associates, have not:
			1. sought or obtained the assistance of the Australian Government or AEMO (or any person who has been an Associate of the Australian Government or AEMO within the 12 months prior to the Registration Date) in the preparation of its Bid (other than as permitted by the Tender Guidelines or approved in writing by the Australian Government);
			2. engaged in any collusion, anti-competitive conduct or any other similar conduct with any other person in connection with the preparation of its or any other Bid or the Tender 3 Process; or
			3. lobbied the Australian Government or AEMO or otherwise taken actions to influence the outcome of the Tender 3 Process (other than as permitted by the Tender Guidelines);
		11. neither it, nor any of its Associates, has any Claim, or will bring any Claim, against the Australian Government or AEMO arising out of, or in connection with, the Australian Government’s or AEMO’s conduct of the Tender 3 Process;
		12. its Financial Value Bid(s) (together with its Project Bid) will, unless withdrawn in accordance with Section 4.23 of the Tender Guidelines, remain open for acceptance from the time the Financial Value Bid is submitted up to and including the last date of the Validity Period;
		13. from the date of this Deed Poll until the end of the Validity Period, it will notify the Australian Government and AEMO in writing of any changes to information contained in any part of its Bid, or to any circumstances which may affect the completeness, accuracy, adequacy or currency of any of the information provided in, or in connection with, any part of its Bid, including this Deed Poll, promptly upon becoming aware of that change; and
		14. it will, and will ensure that each of its Associates (including its Arms’ Length Associates) does, comply with any and all protocols and procedures in relation to any data room, meetings, presentations, workshops, question and answer processes, or any other aspect of the Tender 3 Process, as set out in the Tender Guidelines or as otherwise advised by the Australian Government or AEMO consistent with the Tender Guidelines.
3. The Proponent represents and warrants that it has read, understood and informed itself (including by obtaining any necessary professional advice) as to the contents of the Tender Guidelines (including (without limitation) the Tender Conditions) and any additional instructions or materials, including Addenda to the Tender Guidelines, that have been issued as part of the Tender 3 Process.
4. The Proponent represents and warrants that it is compliant with all conditions and requirements imposed on it or its Bid, or applicable to the Proponent or its Bid, by the Tender Guidelines and all published documents issued pursuant to the Tender Guidelines regarding the CIS.
5. The Proponent confirms that it has not previously been awarded:

	* 1. a CISA; or
		2. a Long-Term Energy Service Agreement (LTESA),

in respect of the Project and acknowledges that, if it is awarded a CISA or an LTESA in respect of the Project as a result of another tender process during the course of this Tender 3 Process, the Project will be considered ineligible for this Tender 3 Process.

1. The Proponent acknowledges that a Hybrid Project that is currently participating in the Tender 1 Process will be eligible to participate in this Tender 3 Process, subject to satisfying the Eligibility Criteria.
2. The Proponent acknowledges that, if the Bid relates to a Project in NSW that requires an access right to connect to the network, in addition to satisfying the Eligibility Criteria, it must comply with EC 15 and Section 3.3 of the Tender Guidelines which, in particular, provides that the Proponent must:
	* 1. be currently participating in the access rights for South West (SW) or Central West Orana (CWO) Renewable Energy Zones (REZs) and are awaiting an access right notification response; or
		2. intend to participate in future NSW access right processes in the CWO REZ or SW REZ. The access right process must have commenced by the Stage B – Financial Value Bid Closing Date and Time, otherwise the Project will become ineligible under this Tender 3 Process.

**Conflict of interests**

1. The Proponent represents and warrants that, at the time of signing this Deed Poll, the Proponent has made reasonable enquiries (including of its Associates) and is not aware of:
	* 1. any actual, potential or perceived conflict of interests concerning the Proponent, or any of its Associates (as described in detail in Section 4.14 of the Tender Guidelines (Conflict of Interests)), that exists or may arise in the Tender 3 Process, a Bid or delivery of a Project, either during the Tender 3 Process or if the Proponent is successful as a result of the Tender 3 Process, other than any conflict of interests disclosed in the Proponent’s Returnable Schedules; or
		2. any other fact, matter or thing that may have an adverse effect on the Tender 3 Process, or which may affect the probity or perception of probity in respect of the Tender 3 Process, other than as disclosed in the Proponent’s Returnable Schedules.
2. If, after signing this Deed Poll and before the finalisation of the Tender 3 Process, the Proponent becomes aware that a matter described in clause 12 above or Section 4.14 of the Tender Guidelines (Conflict of Interests) has arisen or is likely to arise, the Proponent undertakes to promptly notify the Australian Government and AEMO in writing of those circumstances.

**Significant Events**

1. The Proponent represents and warrants that, at the time of signing this Deed Poll, the Proponent has made reasonable enquiries and:
	* 1. is not aware of any Significant Event (as defined in the Tender Guidelines), concerning the Proponent or any Bid Entity (if different to the Proponent).

OR

* + 1. is aware of the following Significant Event(s) concerning the Proponent or any Bid Entity (if different to the Proponent):

[insert any applicable details]

***[Drafting note: Proponent to delete para (b) if nothing to disclose OR delete para (a) and insert applicable details in para (b)]***

1. If, after signing this Deed Poll and before the finalisation of the Tender 3 Process, the Proponent becomes aware of a Significant Event concerning the Proponent or any Bid Entity (if different to the Proponent), the Proponent undertakes to promptly notify the Australian Government and AEMO in writing of that Significant Event.

**Proponent’s due diligence**

1. The Proponent acknowledges and agrees that:
	* 1. the Australian Government and AEMO have not verified the information contained in the Tender Guidelines and the Disclosed Information (except where expressly stated otherwise);
		2. it and its Associates:
			1. have not in any way relied upon:
				1. information provided by the Australian Government or AEMO; or
				2. a failure by the Australian Government or AEMO to provide information,

in the Tender Guidelines and the Disclosed Information; and

* + - 1. have exercised their own judgment in respect of the information contained in the Tender Guidelines and the Disclosed Information, including by carrying out their own investigations and evaluations as required.

**Confidentiality**

1. The Proponent undertakes to, and undertakes to ensure that its Associates do:
	* 1. only disclose Disclosed Information to a person who has a need to know (and only to the extent that each such person has a need to know) that Disclosed Information for the Permitted Purpose;
		2. not use the Disclosed Information for any purpose whatsoever except the Permitted Purpose;
		3. not disclose the Disclosed Information to any person who is involved with a Competing Proponent; and
		4. keep strictly confidential all Disclosed Information (subject to disclosure as permitted by clause 18).
2. The obligations of confidentiality in clause 17 do not apply to the Proponent (or its Associates) to the extent that:
	* 1. prior to disclosure to a person by the Australian Government or AEMO, the relevant Disclosed Information was rightfully known to and in the possession or control of that person, and not subject to an obligation of confidentiality binding that person; or
		2. that person is required by Law to disclose the relevant Disclosed Information, provided that, if so required, that person:
			1. promptly gives notice to the Australian Government and AEMO; and
			2. makes disclosure on terms that preserve the confidentiality of the Disclosed Information to the greatest extent possible.
3. The Proponent undertakes to, and undertakes to ensure that its Associates do:
	* 1. ensure, at all times, that each person to whom Disclosed Information has been disclosed in accordance with clause 18 complies with the requirements of confidentiality set out in clause 17;
		2. notify the Australian Government or AEMO promptly if it becomes aware of a suspected or actual breach of the requirements of confidentiality set out in clause 17 or any unauthorised disclosure or use of the Disclosed Information; and
		3. promptly take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use.
4. At any time, the Australian Government or AEMO may request any of the Proponent and its Associates to enter into a confidentiality agreement or deed in respect of any specific Disclosed Information, in a form and substance determined to be suitable by the Australian Government or AEMO in its sole discretion. In that case, the Proponent undertakes to, and undertakes to ensure that its Associates (as applicable) do, enter into that agreement or deed within 10 Business Days after being requested to do so. If they do not do so, they may be excluded from further involvement in the Tender 3 Process.

**No publicity**

1. The Proponent undertakes that, except to the extent required by Law or the binding requirement of a recognised stock exchange, it will not, and undertakes to ensure that its Associates do not, make any public or media announcement or participate in or be party to any media reports in respect of the Tender Guidelines, Tender 3 Process or the progress or outcome of its or any other Bid, without the prior written consent of the Australian Government or AEMO, which consent may be provided in the absolute discretion of the Australian Government or AEMO.

**Bids commercial-in-confidence**

1. The Proponent agrees, and undertakes to ensure that its Associates agree, that (unless otherwise indicated in the Tender Guidelines) the Australian Government and AEMO will retain all Bids and may, at any time:
	* 1. copy and distribute Bids for the purposes of designing, facilitating and conducting the Tender 3 Process, including the evaluation and negotiation of Bids, and to support its and their due diligence and strategic risk-assessment; or
		2. disclose Bids or information contained in them:
			1. as required or permitted by Law, or in the course of legal proceedings;
			2. to the extent that information contained in the Bid is publicly available, or becomes publicly available other than through a breach of any obligation of confidentiality owed by the Australian Government or AEMO to the Proponent under the Tender Guidelines;
			3. to the extent that information contained in the Bid is deidentified and disclosed in the public interest for the purposes of informing the market of tender outcomes including:
				1. the number of Bids received and the average number of Bids per Proponent;
				2. the distribution of the Bids received across each of the Merit Criteria;
				3. the levels of scoring or price from Bids, including as they may delineate successful and unsuccessful Bids; or
				4. graphical or numerical information on any aspect of a Bid or the Bid evaluation;
			4. requested by any Authority having jurisdiction over the Australian Government, AEMO or its or their activities;
			5. requested by any relevant Commonwealth, State or Territory Ministers or their advisers, any relevant parliament, parliamentary committee, ombudsman or anti-corruption commission (or similar body in any jurisdiction);
			6. as required by AEMO or the Australian Government when, in order to conduct due diligence, they contact a relevant Australian Government, State or Territory Government, or other relevant parties, about the Bid, Project or Proponent;
			7. requested by the Consumer Trustee or EnergyCo, when the Proponent of the relevant Bid has also submitted a bid in respect of the Project in the NSW Round Tender 5 process, the CWO REZ access rights application process or any future access right processes, as relevant, for the Project to which that Bid relates;
			8. consistent with the ordinary transparency or reporting processes of the Commonwealth; or
			9. to the Australian Government’s Associates, including Government agencies and entities, insurers or subject matter experts, for any purpose described in clause 23.

**Ownership and licence of Intellectual Property Rights and ownership and use of Bid documents**

1. The Proponent agrees, and undertakes to ensure that its Associates agree, that (unless otherwise indicated in the Tender Guidelines):
	* 1. the Australian Government or AEMO (as applicable) owns such IP Rights as may exist in the Tender Guidelines and the Disclosed Information;
		2. they are permitted to use and copy the Tender Guidelines and the Disclosed Information for the sole purpose of considering the opportunity provided by this Tender 3 Process and preparing and submitting a Bid;
		3. upon submission of any Bid document, that document becomes the property of the Australian Government and neither the Australian Government nor AEMO is required to return any Bid document, or the media on which it is contained (or any copies of it), to the Proponent;
		4. the Proponent (or relevant other party) will retain ownership of any IP Rights contained in each Bid document submitted and each copy made; and
		5. the submission of a Bid document does not transfer to the Australian Government or AEMO any ownership interest in the IP Rights of the Proponent (or other relevant person) in that document, or give the Australian Government or AEMO any rights in relation to the relevant Bid, except as expressly set out below.
2. The Proponent grants, and to the extent necessary undertakes to procure from its Associates the grant of, to the Australian Government and AEMO, an irrevocable, perpetual, non-exclusive, transferable, worldwide, free-of-charge licence to use, reproduce, develop, communicate, modify and/or sub-license the whole or any part of any Bid document for the purposes of:
	* 1. evaluating and negotiating Bids, supporting the Australian Government’s and AEMO’s due diligence and strategic risk-assessment in respect of the Proponent’s Bid and for the Tender 3 Process, and otherwise facilitating a competitive Tender 3 Process;
		2. providing generalised learnings and improvements to any future tender processes, including any tender guidelines and other tender documentation, on a de-identified basis;
		3. provision to a person, to the extent necessary in connection with an exercise of the rights set out in the Tender Guidelines;
		4. provision to any Commonwealth Entity or Government Authority (as defined in the draft Dispatchable CISA), when this serves the Commonwealth’s legitimate interests, including to the Australian National Audit Office;
		5. provision to the officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities referred to in the preceding paragraphs; and
		6. making any other disclosure that is permitted by clause 22 of this Deed Poll.
3. The Proponent warrants that:
	* 1. it has, and, as applicable, its Associates have, the authority to grant the licence referred to in clause 24;
		2. the exercise by the Australian Government or AEMO, or any person authorised by it or them, of the rights granted by the Proponent and, as applicable, its Associates, under the Tender Guidelines and in this Deed Poll, consistent with, or as contemplated by, this Deed Poll or the Tender Guidelines, will not infringe the IP Rights, moral rights, rights of confidentiality or any other rights, of any person.
4. The Proponent (on its own behalf and on behalf of each of its Associates) indemnifies the Australian Government and AEMO against any Liability incurred or Claim received, by the Australian Government or AEMO or any of their Associates arising from any breach of the warranty in clause 25.
5. The Proponent acknowledges and agrees, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity agree, that the Australian Government or AEMO may, consistent with the requirements of applicable policy, publish (on the internet or otherwise):
	* 1. the name of the successful or recommended Proponent(s) and Bid Entity(s);
		2. the value of the successful Bids; and
		3. the Proponent’s name and the Bid Entity’s name and the names of other Consortium Members, together with the provisions of the Project Documents generally.
6. The Proponent warrants that it has obtained, or will obtain, the necessary permissions to grant the above authority to the Australian Government and AEMO, including from any persons who may have moral rights in respect of a Bid.
7. If the Proponent of the relevant Bid has also submitted a bid in the:

	* 1. NSW Tender 5 process;
		2. CWO access rights application process; or
		3. any future access rights process

in respect of the Project to which that relevant Bid relates, the Proponent:

* + 1. consents to AEMO or the Australian Government disclosing its name and any Project details to the Consumer Trustee and/or EnergyCo; and
		2. acknowledges that:
			1. pursuant to the NSW Tender 5 Guidelines, the Consumer Trustee may also disclose a NSW Tender 5 proponent’s name and any project details to the Australian Government, if the proponent may be invited to enter into an LTESA or granted access rights in relation to the Project that is the subject of a Bid in this Tender 3 Process; and
			2. the Australian Government and AEMO may use any such information received from the Consumer Trustee for the purposes of due diligence on the Proponent’s Bid in this Tender 3 Process.

**No warranty**

1. The Proponent agrees, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity agree, that (except to the extent otherwise required by Law) neither the Australian Government nor AEMO:
	* 1. makes any warranties or representations (express or implied), or assumes any duty of care, or accepts any Liability, with respect to the completeness, accuracy, adequacy or currency of the Tender Guidelines or the Disclosed Information;
		2. makes any warranty or representation as to the exercise or non-exercise of any executive or statutory discretion, right or power in connection with the Tender Guidelines, the Tender 3 Process, any Project or any Bid; or
		3. accepts responsibility or is liable in any way for any Liability of whatever kind (whether foreseeable or not) however arising (including by reason of negligence or default), incurred by any person in connection with the Tender Guidelines, the Tender 3 Process, any Project, or any Disclosed Information, in preparing any Bid, or in the conduct of, participation in or outcome of the Tender 3 Process.

**No contract and no representations**

1. The Proponent acknowledges and agrees, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity acknowledge and agree, that:
	* 1. no representation made by or on behalf of the Australian Government or AEMO in relation to the Tender 3 Process or its subject matter will be binding on any one or more of those parties unless that representation is expressly incorporated into any final Project Documents entered into in respect of the Project;
		2. the Tender 3 Process and the Tender Guidelines:
			1. are not an offer and, in particular, are not an offer to enter into any Project Document or other contract with any recipient of the Tender Guidelines;
			2. are only an invitation for persons to submit a Project Bid and, if applicable, a Financial Value Bid; and
			3. must not be construed, interpreted or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person;
		3. neither the Tender Guidelines (subject to their Section 4.1 and to this Deed Poll), nor the preparation or submission of a Bid by a Proponent, has any contractual effect in relation to any person proceeding with any Project or the Australian Government entering into the Project Documents with any person and does not create any contractual, promissory, restitutionary or other rights;
		4. the Australian Government and AEMO are under no obligation to complete the Tender 3 Process outlined in the Tender Guidelines or to recommend or accept any Bid or any Project; and
		5. the Australian Government or AEMO may change or cancel the Tender 3 Process, or change the description of the requirements outlined in the Tender Guidelines, by issuing an Addendum.

**No reimbursement of costs**

1. The Proponent acknowledges and agrees, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity agree, that:
	* 1. its and their participation in any part or the whole of the Tender 3 Process, or in relation to any matter concerning the Tender 3 Process, will be at its and their sole risk, cost and expense; and
		2. it is, and they are, not entitled to be reimbursed, or to make a Claim, for any Liability incurred in connection with its or their participation in the Tender 3 Process, including any Liability arising from or in connection with or related to considering the opportunity, the preparation and/or submission of a Bid, or incurred in attending meetings with the Australian Government or AEMO, or providing any further clarification requested by the Australian Government or AEMO, or for any work undertaken in relation to any Project.

**Exclusion of Liability**

1. To the extent permitted by Law, the Proponent releases, and undertakes to ensure that its Associates release, the Australian Government and AEMO from all Claims for any Liability incurred by any of them or their Associates arising out of, or in connection with, its or their participation in, or the Australian Government’s or AEMO’s conduct of, the Tender 3 Process including any Liability incurred in attending meetings with the Australian Government or AEMO, or providing any further clarification requested by the Australian Government or AEMO or for any work undertaken in relation to any Project.
2. Without limiting the foregoing, the Proponent represents and warrants that it and its Associates will have no Claim, and will not bring any Claim, against the Australian Government or AEMO, or their Associates, arising from or in connection with the exercise or the failure to exercise the rights or discretions of the Australian Government or AEMO consistent with the rights and discretions set out in the Tender Guidelines including the Australian Government or AEMO’s rights to vary, suspend or not proceed with all or any part of the Tender 3 Process or not to enter into a contract with any Proponent.

**Indemnification**

1. The Proponent indemnifies the Australian Government and AEMO from and against all Liability incurred by the Australian Government or AEMO arising out of, or in connection with:
	* 1. a breach of the Tender Guidelines by the Proponent or any of its Associates or any breach of a representation or warranty made or given by any of them in this Deed Poll;
		2. the Claims referred to in clause 33 of this Deed Poll; and
		3. (if applicable) any site inspection to the extent that the Liability is caused by the act or omission, including any negligence, of the Proponent or any of its Associates, including its Arms’ Length Associates.

**Compliance with Australian standards**

1. The Proponent represents that it is, or at the relevant time will be, able to meet any Australian standards applicable to the performance of the Dispatchable CISA.

**Declaration about proceedings**

1. The Proponent declares that there are no legal proceedings that, to the best of its knowledge and belief after having made due and proper enquiry, are taking place, pending or threatened, against the Proponent, or its Associates, being proceedings that will or have the potential to have an adverse impact on either:
	* 1. the Proponent’s (or Bid Entity’s) capacity to perform and fulfil its obligations in any Project Document, if it is a Successful Proponent; or
		2. the reputation of the Proponent, its Consortium Members (if any), its and their Related Bodies Corporate (if any), or any Bid Entity, or the reputation of the Australian Government or AEMO,

in each case other than the following:

* + 1. *[insert details if applicable]*

***[Drafting note: Proponent to insert details if any or strike out this carve out].***

**Declaration about Workplace Gender Equality**

1. The Proponent (or any Bid Entity) is:

***[Drafting note: Proponent to select the option that applies].***

☐ a Relevant Employer and the Proponent (or Bid Entity) has included in its Bid a current letter of compliance from the Workplace Gender Equality Agency which indicates its compliance with the *Workplace Gender Equality Act 2012* (Cth).

OR

☐ a Relevant Employer and, if the Proponent is selected as a Successful Proponent, the Proponent or Bid Entity will obtain a letter of compliance from the Workplace Gender Equality Agency which indicates its compliance with the *Workplace Gender Equality Act 2012* (Cth). The Proponent understands that it will be required to provide this letter before the Australian Government will enter into a Dispatchable CISA with the Proponent or Bid Entity.

OR

☐ not a Relevant Employer.

**Acknowledgements about Shadow Economy Procurement Connected Policy**

1. The Proponent acknowledges that, in accordance with the Shadow Economy Procurement Connected Policy, if it is a Successful Proponent, it (or any applicable Bid Entity) will be required to:
	* 1. hold all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of any Dispatchable CISA entered into with the Australian Government and, on request by the Australian Government, provide to the Australian Government a copy of any such Statement of Tax Record;
		2. ensure that any first tier subcontractor that it engages to deliver goods or services with an estimated value of over $4 million (GST inclusive) holds all Valid and Satisfactory Statements of Tax Record required for its entity type for the duration of any subcontract (or the Dispatchable CISA, whichever is shorter) in relation to those goods or services; and
		3. retain a copy of all Statements of Tax Record held by any first tier subcontractor, as required for its entity type, in accordance with clause 39(b) and, on request by the Australian Government, provide to the Australian Government, a copy of any such Statements of Tax Record.
2. The Proponent acknowledges that, if it is a Successful Proponent and it or its Bid Entity does not comply with the requirements outlined in clause 39(a), that it will be a breach of the Dispatchable CISA.

**Representation and warranty about Modern Slavery**

1. If the Proponent or any Bid Entity is a *reporting entity* (as defined by the *Modern Slavery Act 2018* (Cth)), the Proponent represents and warrants that it (or the Bid Entity, as applicable) has complied, and will comply, with its obligations arising under that Act.

**Representation and warranty about Prohibited Dealings**

1. The Proponent represents and warrants that, at the time of signing this Deed Poll, it is not, and its Consortium Members (if any), its and their Related Bodies Corporate (if any) and any Bid Entity are not, and, to the best of the Proponent’s knowledge (having made proper enquires), their respective Close Associates are not:
	* 1. directly or indirectly engaged in preparing, planning, assisting or fostering a terrorist act;
		2. a listed terrorist organisations for the purposes of the *Criminal Code Act 1995* (Cth) (details of listed terrorist organisations are available at <https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations>);
		3. subject to sanctions or similar measures under the *Charter of the United Nations Act 1945* (Cth) or the *Autonomous Sanctions Act 2011* (Cth) (details of individuals and entities are available at: <https://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>);
		4. listed on the 'World Bank's Listing of Ineligible Firms and Individuals' posted at: <https://www.worldbank.org/en/projects-operations/procurement/debarred-firms>;
		5. owned, controlled by, acting on behalf of, or at the direction of individuals, persons, entities or organisations referred to in clauses 42(a) to 42(d); or
		6. providing direct or indirect support, resources or assets (including any grant monies) to individuals, persons, entities or organisations referred to in clauses 42(a) to 42(d).
2. If, after signing this Deed Poll and before the finalisation of the Tender 3 Process, the Proponent becomes aware that there are reasonable grounds to suspect that the representation and warranty given in clause 42 is no longer accurate or reliable, the Proponent undertakes to promptly notify the Australian Government and AEMO in writing of the relevant circumstances.
3. The Proponent acknowledges that, if it is a Successful Proponent and it or its Bid Entity does not comply with the requirements outlined in clause 42, it will be a breach of the Dispatchable CISA.

**Consents**

1. The Proponent agrees to, consents to and authorises the Australian Government and AEMO (and undertakes to ensure that each of its Associates agree to, consents to and authorises the Australian Government and AEMO) to:
	* 1. undertake such investigations;
		2. seek further information about and enquire into:
			1. the Proponent and any of its Associates;
			2. the proposed Project;
			3. any Bid submitted as part of the Tender 3 Process including as part of Section 4.13 (Requests for clarifications and further information) of the Tender Guidelines; and
			4. the status of the network connection process, Generator Performance Standard (GPS) Compliance and technical information with AEMO or relevant network service provider; and
		3. assess the portfolio impact of the proposed Project on the network through detailed power systems modelling,

as the Australian Government or AEMO deems necessary, and the Proponent acknowledges, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity acknowledge, that any additional information may be taken into account in the evaluation of Bids.

1. The Proponent expressly consents, and undertakes to ensure that each of its Associates consent, to AEMO disclosing information under section 54B of the NEL for the purposes described in clause 45, and acknowledges that any additional information obtained (including protected information) may be taken into account in the evaluation of Bids.
2. The Proponent agrees to (and undertakes to ensure that each of its Associates agree to) provide to the Australian Government and AEMO, at its or their cost, all reasonable assistance that may be required (including providing any consents required).

**Other Laws**

1. The Proponent represents that it and its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity, and, to the best of its knowledge after having made proper enquiries, its and their respective Close Associates has complied with, and will continue to comply with:
	* 1. any obligations applicable to the relevant person contained in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth); and
		2. all other relevant Laws in preparing and lodging its Bid and taking part in the Tender 3 Process.

**Reliance**

1. The Proponent acknowledges and agrees, and undertakes to ensure that its Consortium Members, its and their Related Bodies Corporate (if any) and any Bid Entity acknowledge and agree, that the Australian Government and AEMO:
	* 1. have received or will receive, and will assess, the Proponent’s Bid in reliance on (among other things):
			1. this Deed Poll;
			2. the declarations, documents or information provided by or on behalf of the Proponent and its Consortium Members; and
		2. may suffer loss if any of the declarations, documents, information, representations, warranties, undertakings, consents or other statements in, or required to be obtained by, this Deed Poll, or contained in its Bid, are false, misleading or deceptive.

**Survival**

1. This Deed Poll survives the termination or expiry of the Tender 3 Process.

**Governing Law**

1. This Deed Poll is subject to and is to be construed in accordance with the Laws in force in the Australian Capital Territory.
2. The courts of the Australian Capital Territory will have non-exclusive jurisdiction to decide any matter in connection with or arising out of this Deed Poll.

**Executed as a deed poll in favour of and for the benefit of the Commonwealth of Australia, Australian Energy Market Operator Limited and AEMO Services Limited**

**Execution by a company incorporated in Australia**

***The following execution block should be used by the Proponent that is a company incorporated in Australia***

|  |  |  |
| --- | --- | --- |
| **Executed** by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\*\**\*\* Insert name and ABN/ACN of Proponent*in accordance with section 127 of the *Corporations Act 2001* |  |  |
|  |  |  |
|  |  |  |
| Signature of director |  | Signature of director/company secretary(Please strike out as applicable) |
|  |  |  |
| Name of director (print) |  | Name of director/company secretary (print) |