

Tender Process Deed - Tender Round 1

Dated: _____

Insert Proponent entity name

ABN / ACN:* _____

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

(“the **Proponent**”)

Tender Process Deed - Tender Round 1

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Details

**Insert details as marked*

Proponent details

Proponent	Name*
	ABN / ACN*
	Address*
	Email*
	Attention*

Details for notices (clause 10)

Consumer Trustee	Name	AEMO Services Limited
	Address	Level 10, 580 George Street, Sydney NSW 2000
	Email	tender1@aemoservices.com.au
	Attention	General Manager, Commercial, AEMO Services Limited
Proponent	Address*	
	Email*	
	Attention*	

Other details

Tender Round	Tender Round 1 of the NSW Electricity Infrastructure Tender.
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Process Bond Amount	AUD _____, * as calculated in accordance with clause 3.2.
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**Proponent to calculate and insert Process Bond Amount, as set out in clause 3.2, which provides that the Process Bond Amount is equal to the lesser of \$4,000 per MW of Maximum Capacity, and \$800,000 (see clause 3.2(b) if there is more than one Bid Variable for Maximum Capacity).*

Governing law New South Wales

Recitals

- A** The Tender Rules were gazetted pursuant to section 45(7) of the *Electricity Infrastructure Investment Act 2020* (NSW).
- B** The Consumer Trustee has announced the Tender Round in accordance with the Tender Rules and the applicable Tender Guidelines.
- C** The Consumer Trustee wishes to ensure the probity, competitiveness and due administration of the Tender Round.
- D** The Proponent has agreed to the terms contained in this Deed Poll in relation to its participation in the Tender Round including to ensure the probity, competitiveness and due administration of the competitive tender.

Tender Process Deed - Tender Round 1

General terms

It is declared as follows.

1 Definitions and interpretation

1.1 Defined terms

In this Deed Poll, unless the context otherwise requires:

Acceptable Credit Rating means a credit rating of at least BBB- by S&P Global or Baa3 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 the Consumer Trustee (acting reasonably).

Access Right means access rights allocated under a declared Access Scheme that authorises access to, and use of, the electricity transmission network as included in an applicable access scheme declaration pursuant to section 24 of the EII Act.

Associate means:

- (a) in relation to a person, any Related Body Corporate of that person or any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of that person or that Related Body Corporate; and
- (b) in the case of the Proponent, includes:
 - (i) any special purpose vehicle or entity that is intended to be the party that enters into the Project Documents on behalf of the Proponent; and
 - (ii) the Debt or Equity Providers, and any Related Body Corporate, adviser, officer, employee, agent, contractor, consultant, nominee, licensee or adviser of each Debt or Equity Provider (other than the Consumer Trustee or any of its Associates).

Bid means, as the context requires, a Project Bid or Financial Value Bid submitted by the Proponent.

Bid Entity has the meaning given to that term in the Tender Guidelines.

Bid Variable has the meaning given to that term in the Tender Guidelines in respect of a Bid.

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).

Claim has the meaning given to that term in the Tender Guidelines.

Competing Proponent means, in respect of a Proponent, any other Proponent, or bidder which the Consumer Trustee has invited, or proposes to invite, to submit a Bid.

Consortium Deed Poll has the meaning given to that term in clause 6.1(b).

Consumer Trustee means AEMO Services Limited (ABN 59 651 198 364), in its capacity as the NSW Consumer Trustee appointed pursuant to section 60 of the EII Act.

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

Debt or Equity Provider has the meaning given to that term in the Tender Guidelines.

Deed Poll means the deed poll constituted by this document.

Details means the section of this document headed 'Details'.

Disclosed Information means all information (of whatever nature, including written, graphical, electronic, oral or in any other form) which is disclosed to, or otherwise obtained by or on behalf of the Proponent or its Associate in connection with the Project or Tender Round whether before or after the execution of this Deed Poll, including:

- (a) the Tender Documentation;
- (b) the Project Documents and any other contract documents issued in conjunction with the Tender Documentation, including any Final Project Documents;
- (c) any oral or written advice, representations or information given by or on behalf of the Consumer Trustee of any of its Associates during the Tender Round;
- (d) all material contained in any data room used by the Consumer Trustee and the Proponents; and
- (e) each Bid to the extent that it contains or would reveal any of the information referred to in the paragraphs above, any other information which the Proponent or its Associates knows or ought reasonably to know is confidential to the Consumer Trustee or any of its Associates or should be treated as such,

but excludes:

- (f) information which was in the public domain before the date of this Deed Poll; or
- (g) information which comes into the public domain after the date of this Deed Poll, except through disclosure by the Proponent or any of its Associates in contravention of this Deed Poll or any other obligations of confidence.

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

Final Project Documents means each final Project Document and other contract documentation entered into, or to be entered into, by the Selected Proponent and the relevant counterparties, including SFV, among others (as applicable) in order to document the terms and conditions for undertaking the Project.

Financial Value Bid means the Default Financial Value Bid and (if applicable) the Alternative Financial Value Bid, as each of those terms are defined in the Tender Guidelines.

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.

GST has the meaning given by the GST Law.

GST Amount has the meaning given to that term in clause 11.3.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Infrastructure Planner has the meaning given to that term in the Tender Guidelines.

Law means the common law, principles of equity and any binding legal requirement such as an act, regulation, order, award, local law and mandatory code, decision or direction of any Government Authority, minister, agency or other authority, and includes the NER and the binding rules of any recognised securities exchange.

Liability means any Loss, cost, liability or expense whether:

- (a) arising from or in connection with any proceeding or Claim or not;
- (b) liquidated or not;
- (c) legal or equitable;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

Loss means any debt, obligation, expense (including legal expenses on a full indemnity basis, deductions and increased premiums), loss, charges, fees, payments, damage or liability of any kind whatsoever irrespective of whether it:

- (a) is actual, prospective, contingent or otherwise;
- (b) is direct, indirect or consequential;
- (c) is at any time ascertained or unascertained;
- (d) is owing or incurred by or on account of the party alone or severally or jointly with any other person; or

comprises any combination of the above.

LTESA means a “long-term energy service agreement” (as defined under the EII Act).

Maximum Capacity has the meaning given to that term in the Tender Guidelines in respect of a Bid.

Minister means the NSW Minister for Energy.

National Electricity Law or **NEL** 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.

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

Permitted Purpose means, in relation to a Proponent, to consider the opportunity in the Tender Round and to prepare and submit Bids.

Process Bond Amount means the amount calculated in accordance with clause 3.2.

Project has the meaning given to that term in the Tender Guidelines.

Project Bid has the meaning given to that term in the Tender Guidelines.

Project Development Agreement or **PDA** has the meaning given to that term in the Tender Guidelines.

Project Document means, as applicable:

- (a) the PDA and (where applicable) LTESA, together with any other documents that are:
 - (i) required or contemplated under the PDA and/or applicable LTESA; or
 - (ii) specified by the Consumer Trustee as required to be entered into by the Consumer Trustee, the Proponent and, if relevant, others at or around the same time as the PDA and/or the applicable LTESA; and
- (b) any other documents that are required or contemplated for Access Rights.

Related Body Corporate has the meaning given in the Corporations Act, but on the basis that 'subsidiary' means another entity which is a subsidiary of the first entity within the meaning of the Corporations Act, provided that 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.

Returnable Schedule has the meaning given to that term in the Tender Guidelines.

Security for Process Bond means a letter of credit or guarantee:

- (a) with a face value of not less than the Process Bond 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) which is otherwise in a form reasonably satisfactory to the Consumer Trustee (acting reasonably).

Selected Proponent has the meaning given to that term in the Tender Guidelines.

SFV means the counterparty to the LTESAs and Project Development Agreements, responsible for administering payments and, where applicable, collecting access fees for distribution to relevant entities.

Tender Conditions means the conditions set out in section 5 of the Tender Guidelines.

Tender Documentation means the documentation issued by the Consumer Trustee in respect of the Tender Round, including:

- (a) the Tender Rules;
- (b) the Tender Guidelines;
- (c) Tender Round market briefing materials; and
- (d) this Deed Poll,

but does not include:

- (e) the Project Documents and any other contract documents issued in conjunction with the Tender Documentation listed above.

Tender Guidelines means the tender guidelines document released by the Consumer Trustee at or around the time of the announcement of the Tender Round, including its schedules (including the Returnable Schedules), attachments and appendices and any addenda to it.

Tender Round means the tender round as specified in the Details and as further described in the applicable Tender Guidelines.

Tender Rules means the tender rules applicable to this Tender Round published by the Consumer Trustee under the EII Act, section 47(5) and EII Regulation, regulation 42A(2)(a), that sets out how the Consumer Trustee will conduct Tender Rounds in respect of the award of LTESAs and allocation of Access Rights.

Validity Period has the meaning given to that term in the Tender Guidelines.

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) a reference to “**person**” includes a natural person, a firm, a company, a corporation, a body corporate, a trust, a partnership, a joint venture, an unincorporated association or a government agency;
- (e) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to a time of day is a reference to Sydney time;

- (g) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (h) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (j) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (k) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (l) 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;
- (m) if a party must do something under this Deed Poll 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;
- (n) if the day on which a party must do something under this Deed Poll is not a Business Day, then the party must do it on the next Business Day; and
- (o) the Details and Schedules to this Deed Poll form part of this Deed Poll.

2 Tender Round obligations and probity

2.1 Compliance with tender process

The Proponent acknowledges and agrees that it has and will continue to comply with and/or acknowledge and accept:

- (a) the Tender Guidelines, including the Tender Conditions;
- (b) the Tender Rules; and
- (c) any other Tender Documentation in connection with participation in the Tender Round.

2.2 Proponent probity checks

The Proponent (including its directors) consents to, and warrants that its respective directors consent to, probity checks being conducted at any time. Such probity checks may include:

- (a) investigations into commercial structure, business and credit history of the Proponent (including its directors);
- (b) prior contract compliance by the Proponent (including its directors);
- (c) any criminal records or pending charges of the Proponent (including its directors);
- (d) interviews with any referees nominated; and

- (e) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.

3 Security for Process Bond

3.1 Obligation to provide Security for Process Bond

- (a) The Proponent must at the same time as it submits the Financial Value Bid, procure and deliver the Security for Process Bond to the Consumer Trustee.
- (b) If the Proponent does not provide the Security for Process Bond where required under clause 3.1(a) or a replacement Security for Process Bond where required under clause 3.3, then the Proponent acknowledges and agrees that the Consumer Trustee may terminate the Proponent's participation in the Tender Round with immediate effect and otherwise take any action in accordance with the Tender Guidelines.

3.2 Calculation of Process Bond Amount

- (a) The **Process Bond Amount** is the amount equal to the lesser of:
 - (i) \$4,000 per MW of Maximum Capacity; and
 - (ii) \$800,000.
- (b) If there is more than one Bid Variable for Maximum Capacity submitted as part of the Bid, the applicable 'Maximum Capacity' for the purposes of clause 3.2(a)(i) will be the highest Bid Variable for Maximum Capacity submitted as part of that Bid.

3.3 Replacement of Security for Process Bond

- (a) The Proponent must provide a replacement Security for Process Bond to the Consumer Trustee:
 - (i) if the issuer of the Security for Process Bond ceases to hold an Acceptable Credit Rating, then within 10 Business Days of the issuer ceasing to hold an Acceptable Credit Rating; or
 - (ii) if the Security for Process Bond has an expiry date, no later than 20 Business Days prior to that expiry date.
- (b) If a replacement Security for Process Bond is not provided to the Consumer Trustee in accordance with clause 3.3(a), the Consumer Trustee may draw on under the Security for Process Bond for the Process Bond Amount.
- (c) If the Consumer Trustee draws on the Security for Process Bond under clause 3.3(b), the Consumer Trustee will hold that amount on trust for the Consumer Trustee and the Proponent unless 3.4(b) applies, in which case the Consumer Trustee may retain the Process Bond Amount for its own benefit. The Consumer Trustee will promptly pay the amounts held on trust to the Proponent when the Proponent provides a replacement Security for Process Bond.

3.4 Payment of Process Bond Amount

- (a) If the Consumer Trustee considers that:

- (i) if the Proponent is selected by the Consumer Trustee as the Selected Proponent, the Proponent fails to execute the Final Project Documents on the terms (excluding immaterial conforming changes and variables to be completed), or substantially the same terms, contained in the Financial Value Bid; or
- (ii) if the Proponent executes the Final Project Documents, the Proponent fails to deliver the 'Initial Security' (as that term is defined in the PDA) to the SFV in accordance with the PDA,

the Proponent must pay the Consumer Trustee the Process Bond Amount on 10 Business Days' notice.

- (b) If the Proponent does not pay the Consumer Trustee the Process Bond Amount in accordance with clause 3.4(a), the Consumer Trustee may draw on the Security for Process Bond for the Process Bond Amount.
- (c) The Proponent acknowledges and agrees that:
 - (i) the Process Bond Amount is a genuine pre-estimate of the Consumer Trustee's Losses arising from the events in clause 3.4(a);
 - (ii) the exercise of, or failure to exercise, the Consumer Trustee's discretion pursuant to the Tender Documentation; or
 - (iii) any other application of the Tender Guidelines,

will not affect or limit the rights of the Consumer Trustee to draw on the Security for Process Bond.

3.5 Return of Security for Process Bond

The Consumer Trustee must return the Security for Process Bond to the Proponent on or before the earlier of:

- (a) 10 Business Days following receipt of payment of the Process Bond Amount in accordance with clause 3.4(a);
- (b) promptly after the delivery of the 'Initial Security' (as that term is defined in the PDA) to the SFV under the Final Project Documents; and
- (c) 10 Business Days after the Consumer Trustee notifies the Proponent that it is not a Selected Proponent in the Tender Round in accordance with the terms of the Tender Documentation.

4 Disclosed Information

4.1 Use of Disclosed Information

The Proponent agrees that it will, and that it will procure that each of its Associates to whom the Proponent has disclosed Disclosed Information in accordance with this clause 4.1 will:

- (a) only disclose Disclosed Information to any Associate who has a need to know (and only to the extent that each has a need to know) Disclosed Information for the Permitted Purpose;

- (b) not use the Disclosed Information for any purpose whatsoever except the Permitted Purpose;
- (c) keep strictly confidential all Disclosed Information (subject to disclosure permitted under this clause); and
- (d) at the request of the Consumer Trustee, in its absolute discretion, enter into a confidentiality acknowledgment in respect of any specified Disclosed Information.

4.2 Exclusion from obligation of confidentiality

The obligations of confidentiality under this Deed Poll do not apply to the Proponent and each of its Associates to the extent that:

- (a) prior to the date of this Deed Poll 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 on that person; or
- (b) that person is required by Law to disclose, provided that that person:
 - (i) immediately gives notice to the Consumer Trustee; and
 - (ii) makes disclosure on terms which preserve the confidentiality of the Disclosed Information to the greatest extent possible.

4.3 Disclosure obligations

- (a) The Proponent must:
 - (i) ensure, at all times, that each person to whom Disclosed Information has been disclosed in accordance with clause 4.1(a) complies with the requirements of confidentiality in this clause 4;
 - (ii) notify the Consumer Trustee immediately if it becomes aware of a suspected or actual breach of this Deed Poll or any unauthorised disclosure or use of the Disclosed Information; and
 - (iii) immediately take all reasonable steps to prevent or stop any such suspected or actual breach or unauthorised disclosure or use.
- (b) A Proponent and each of its Associates must not disclose Disclosed Information to any person who is involved with a Competing Proponent.

5 Information provided during Tender Round

5.1 Proponent information provided for benefit of Consumer Trustee, SFV and Infrastructure Planner

The Proponent acknowledges and agrees that the information provided during the competitive tender process for the Tender Round, including as part of any Bid, by the Proponent is provided for the benefit of the Consumer Trustee, the SFV and the Infrastructure Planner.

5.2 Information included in recommendation to SFV

The Proponent acknowledges and agrees that:

- (a) the Consumer Trustee may, as part of its recommendation to the SFV and/or the Infrastructure Planner (as applicable) of a Selected Proponent, include:
 - (i) information obtained or produced during the competitive tender process for the Tender Round; and
 - (ii) information obtained or produced during the Consumer Trustee's assessment of a Bid, including information obtained or produced by a person acting at the direction of the Consumer Trustee; and
- (b) the information referred to in clause 5.2(a)(ii) has been obtained or produced for the benefit of the Consumer Trustee and the SFV and/or the Infrastructure Planner (as applicable).

5.3 Use of Bids by the Consumer Trustee

Without limiting clause 2.1, the terms of section 5.23 ('Bids commercial-in-confidence') and 5.24 ('Use of Bids') of the Tender Conditions are incorporated into this Deed Poll and are taken to be set out in full in this document.

6 Change to form a consortium

6.1 Change to form a consortium

- (a) Where the Proponent seeks to form a consortium with any additional entities as part of its participation in the Tender Round the Proponent must first obtain the written consent of the Consumer Trustee.
- (b) If the Consumer Trustee consents to the implementation of a consortium structure of the Proponent pursuant to paragraph (a), the Proponent and any additional entities proposed to be included in the Proponent will together enter into a new, separate deed poll for the Tender Round (**Consortium Deed Poll**) and replace any Security for Process Bond provided under this Deed Poll.
- (c) Upon entry into the Consortium Deed Poll, this Deed Poll will terminate and the Proponent acknowledges and agrees that nothing in this clause 6.1 or the entry into the Consortium Deed Poll:
 - (i) extinguishes, prejudices or adversely affects any right, power, authority, discretion or remedy under or in connection with the Deed Poll which arose, or was due to a fact, matter or circumstances which arose, before the date of entry into the Consortium Deed Poll; or
 - (ii) discharges, releases or otherwise affects any Liability or obligation under or in connection with the Deed Poll, including any Loss, which arose or accrued, or was due to a fact, matter or circumstances which arose, before the date of entry into the Consortium Deed Poll.
- (d) For the avoidance of doubt, the incorporation or use by the Proponent of any wholly-owned subsidiary special purpose vehicle as a Bid Entity does not require the Consumer Trustee's consent under clause 6.1(a).

7 Acknowledgements for Participation in Tender Round

7.1 Tender participation

The Proponent acknowledges and agrees, and without limitation to sections 5.3 and 5.22 of the Tender Conditions, that:

- (a) the Tender Documentation and Project Documents do not purport to contain all of the information that the Proponent requires for preparing and lodging a Bid and do not purport to be prepared having regard to the Proponent's or its Associates' business objectives or financial situation;
- (b) neither the Consumer Trustee or its Associates has made any representation or warranty either express or implied as to the currency, adequacy, suitability, accuracy, reliability or completeness of the Tender Documentation and Project Documents, and is under no obligation to update the whole or any part of the Tender Documentation or Project Documents.
- (c) the Proponent is required to do everything that would have been expected of a prudent, competent and experienced contractor, adviser or Debt or Equity Provider (as applicable) in:
 - (i) assessing the risks that it is assuming in connection with the Project; and
 - (ii) ensuring that the Financial Value Bid submitted by the Proponent contains allowances to protect it against any of these risks, including all those things, activities and tasks set out in the Tender Documentation and this Deed Poll; and
- (d) the Proponent will rely solely on its own opinion and professional advice based upon their own independent analysis, assessment, investigation and appraisal in deciding to lodge a Bid.

7.2 Acknowledgement by submitting a Bid

- (a) By submitting a Bid, the Proponent is taken to have:
 - (i) read and understood the requirements of the Tender Documentation;
 - (ii) made all reasonable enquiries, investigations and assessment of available information relevant to the risks, contingencies, costs, procedures and other circumstances relating to the Tender Round and Project; and
 - (iii) satisfied itself as to the correctness and sufficiency of its Bid.
- (b) The Proponent acknowledges and agrees that the Consumer Trustee's acceptance of a Bid does not mean that the Consumer Trustee or any of its Associates in any way warrants or makes any representations as to the feasibility of, or assumes responsibility for, or has any obligations in relation to, the implementation of the Project.

7.3 Cost of participation in the Tender Round

The Proponent acknowledges and agrees that, and without limitation to section 5.28 of the Tender Conditions:

- (a) all costs incurred by the Proponent or any of its Associates in connection with the Tender Round will be borne by the Proponent or its Associates; and
- (b) the Consumer Trustee will not be responsible for, and will not be liable to pay, any such costs including any such costs that arise as a result of cancellations, supplements, variations, extensions, clarifications, negotiations, waivers, addenda, suspensions, termination or exclusion made or issued by the Consumer Trustee of, or in connection with, the Tender Round.

8 No warranty or representation

Without limiting clause 2.1, the terms of sections 5.5 and 5.6 of the Tender Conditions are incorporated into this Deed Poll and are taken to be set out in full in this document.

9 Liability

9.1 Limitation of liability and indemnity

Without limiting clause 2.1, the terms of section 5.4 of the Tender Conditions are incorporated into this Deed Poll and are taken to be set out in full in this document.

9.2 Exercise of Consumer Trustee discretion

- (a) It is acknowledged by the Proponent that if the Consumer Trustee forms a view that there has been a failure by the Proponent to comply with this Deed Poll, the Consumer Trustee may, without limiting any other discretion, rights or actions including under clause 3, exclude the Proponent from further participation in the Tender Round, without any Claim for compensation, or any other Liability, and without prejudice to the Consumer Trustee's rights to make, continue or enforce any Claim against, or seek, pursue or obtain an indemnity against Liability or Loss from the Proponent.
- (b) The Proponent acknowledges and agrees that the Consumer Trustee has relied on the representation and warranty set out in clause 9.2(a) in deciding to consider a Bid.

9.3 Damages not an adequate remedy

- (a) The Proponent acknowledges that:
 - (i) monetary damages may not be an adequate remedy for any breach of the obligations under this Deed Poll; and
 - (ii) without prejudice to the Consumer Trustee's other rights under Law, the Consumer Trustee may apply for injunctive or declaratory relief, orders for specific performance or other equitable relief if the Proponent breaches, or is suspected by the Consumer Trustee to have breached, any of its obligations under this Deed Poll.

- (b) In respect of an application by the Consumer Trustee for any equitable relief in relation to this Deed Poll, the Proponent undertakes not to make, or permit to be made on their behalf, any submission or contention in any relevant proceeding to the effect that granting such an order or equitable relief is not appropriate because the payment of damages alone would be adequate to compensate the Consumer Trustee or that any such equitable remedy is otherwise inappropriate or disproportionate.

10 Notices

10.1 Form

- (a) Unless this Deed Poll expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed Poll (**Communication**) 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 Communications by email) 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) Communications by email must state the first and last name of the sender and are taken to be signed by the named sender.

10.2 Delivery

- (a) Communications must be:
 - (i) either left at, or sent by email to; or
 - (ii) sent by regular ordinary post (airmail if appropriate) to, the address referred to in the Details.
- (b) If the intended recipient has notified changed contact details, then Communications must be sent to the changed contact details.

10.3 When effective

Communications take effect from the time they are received or taken to be received under clause 10.4 (whichever happens first) unless a later time is specified in the Communication.

10.4 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.

10.5 Receipt outside business hours

Despite anything else in this clause 10, if communications are received or taken to be received under clause 10.4 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.

11 Goods and Services Tax

11.1 Definitions and interpretation

For the purposes of this clause 11:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 11, unless the contrary intention appears; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Law applies is to be treated as if it were a separate supply.

11.2 GST exclusive

Unless this Deed Poll expressly states otherwise, all consideration to be provided under this Deed Poll is exclusive of GST.

11.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made in connection with this Deed Poll, then the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

11.4 Adjustment events

If an adjustment event arises for a supply made in connection with this Deed Poll, then the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

11.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this Deed Poll which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a Taxable Supply, then clause 11.3 applies to the reduced payment.

12 Miscellaneous

12.1 Benefit of this Deed Poll

The Proponent acknowledges and agrees that:

- (a) this Deed Poll is made in favour of the Consumer Trustee and for the Consumer Trustee's benefit;
- (b) this Deed Poll may be relied on and enforced by the Consumer Trustee, in accordance with its terms, even though the Consumer Trustee is not a party to this Deed Poll; and
- (c) without limiting clauses 12.1(a) and 12.1(b), the Consumer Trustee holds the benefit of this Deed Poll on trust for the SFV and accordingly this Deed Poll may be relied upon and enforced by the Consumer Trustee in accordance with its terms for and on behalf of the SFV, notwithstanding that the SFV is not a party to this Deed Poll.

12.2 Amendments

The Proponent acknowledges and agrees that this Deed Poll cannot be amended, varied or revoked without the prior consent of the Consumer Trustee.

12.3 Duration of Deed Poll

This Deed Poll terminates (without prejudice to any accrued right or liability under or made by this Deed Poll) at the earlier of:

- (a) in the circumstance where the Proponent has executed the Final Project Documents, 1 Business Day after the delivery of the 'Initial Security' (as that term is defined in the PDA) to the SFV in accordance with the PDA; and
- (b) 2 years from the date of this Deed Poll.

12.4 Survival of Deed Poll

The Proponent acknowledges and agrees that its obligations pursuant to this Deed Poll shall exist prior to, and shall survive the termination or completion of, the Project and, in the case of obligations in relation to the Disclosed Information, such obligations shall continue until such time as the Disclosed Information becomes public knowledge other than by breach of this Deed Poll.

12.5 Further acts and documents

The Proponent must promptly do all further acts and execute and deliver all further documents (in such form and content reasonably satisfactory to the Consumer Trustee) required by Law or reasonably requested by the Consumer Trustee to give effect to this Deed Poll.

12.6 Discretion in exercising rights

Unless this Deed Poll expressly states otherwise, a Proponent or the Consumer Trustee may exercise a right, power or remedy, and in the case of the Consumer Trustee may give or refuse its consent, approval or a waiver (including by imposing conditions), in connection with this Deed Poll in its absolute discretion.

12.7 Partial exercising of rights

Unless this Deed Poll expressly states otherwise, if a Proponent or the Consumer Trustee does not exercise a right, power or remedy in connection with this Deed Poll fully or at a given time, they may still exercise it later.

12.8 Consents, approvals and waiver

- (a) A consent, approval or waiver required in respect of this Deed Poll from the Consumer Trustee may be given or withheld, or may be given subject to any conditions, as the Consumer Trustee thinks fit, unless this Deed Poll expressly provides otherwise.
- (b) By giving any consent, approval or waiver the Consumer Trustee does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.
- (c) A waiver given by the Consumer Trustee in respect of this Deed Poll is only effective and binding on the Consumer Trustee if it is given or confirmed in writing by the Consumer Trustee.
- (d) A failure to, a delay in or the partial exercise or enforcement of a right provided by Law or in respect of this Deed Poll by the Consumer Trustee does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by Law or in respect of this Deed Poll.
- (e) No waiver of a breach of a term of this Deed Poll operates as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.

12.9 Remedies cumulative

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

12.10 Expenses

Except as otherwise expressly provided in this Deed Poll, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed Poll.

12.11 Severability

If the whole or any part of a provision of this Deed Poll is void, unenforceable or illegal in a jurisdiction, then it is severed for that jurisdiction. The remainder of this Deed Poll 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 Deed Poll or is contrary to public policy.

12.12 Counterparts

This Deed Poll may be executed (including by electronic execution in accordance with clause 12.18) in any number of counterparts and by the parties in separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart. All such counterparts taken together will be deemed to constitute one and the same Deed Poll.

12.13 Rules of construction

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

12.14 Supervening Law

Any present or future Law which operates to vary the obligations of a party in connection with this Deed Poll with the result that the Consumer Trustee'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.

12.15 Assignment

- (a) The Proponent must not assign or otherwise transfer any of its rights arising under this Deed Poll without the written consent of the Consumer Trustee and in accordance with clause 6.
- (b) The Consumer Trustee may assign or otherwise transfer the benefit of this Deed Poll or any of its rights arising under this Deed Poll to a Government Authority or otherwise to an entity authorised to conduct competitive tenders in accordance with the EII Act.
- (c) If the Consumer Trustee exercises its rights under clause 12.15(b), the Consumer Trustee will give notice to the Proponent.

12.16 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this Deed Poll:

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

12.17 Indemnities held on trust

The Proponent declares and acknowledges that each indemnity and right referred to in this Deed Poll in favour of any of the Consumer Trustee's Associates is held on trust by the Consumer Trustee for the benefit of any of the Consumer Trustee's Associates from the date of this Deed Poll.

12.18 Electronic execution

- (a) A party may execute this Deed Poll 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.

12.19 Governing Law and jurisdiction

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

EXECUTED as a deed poll

Tender Process Deed - Tender Round 1

Signing page

DATED: _____

SIGNED, SEALED AND DELIVERED by)

_____)

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