

Long-Term Energy Service Agreement

Demand response model

[Project name]

Dated

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

[insert] (“LTES Operator”)

[Note: The Demand Response LTESA contemplates that the LTES Operator is not undertaking any greenfield development or a material alteration to provide the service. If the Proponent bids a project that will require such matters, then changes will be required to the Demand Response LTESA to provide for that type of project.]

Long-Term Energy Service Agreement

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Long-Term Energy Service Agreement

Details

Parties	SFV and LTES Operator	
SFV	Name	Scheme Financial Vehicle Pty Ltd
	ACN	662 496 479
	Address	[insert]
	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 this “long-term energy service agreement” (as defined under the EII Act) in respect of the Project.
	B	LTES Operator will: (i) Construct, own and operate the Project; and (ii) perform the Social Licence Commitments, in accordance with the requirements set out in this agreement.
	C	If LTES Operator exercises an Option to enter into a derivative arrangement under this agreement, then the parties will make the payments set out in Schedule 2 (“Annuity Product terms”) in respect of the relevant Annuity Period.

Long-Term Energy Service Agreement

Reference Details

	Item	Details
Project details		
1.	Project	<p>The '<i>[insert project name]</i>', comprising one or more Wholesale Demand Response Units:</p> <p>(a) each having a Connection Point located in the Sydney-Newcastle-Wollongong Sub-Region; and</p> <p>(b) which in aggregate equal or exceed the Guaranteed Capacity,</p> <p>as specified in the WDR Schedule from time to time.</p>
2.	Guaranteed Capacity	<p><i>[insert]</i> MW and <i>[insert]</i> MWh</p> <p><i>[Note: The MW component of the Guaranteed Capacity is the minimum required MRC that LTES Operator must have contracted, ie the total MRC for all WDRUs comprising the Project from time to time must equal or exceed this MW capacity. Proponents should note that the Total MRC in Item 1 of Schedule 5 must equal or exceed the MW component of Guaranteed Capacity. The MWh component must equal the Guaranteed Capacity in MW multiplied by 2 ie the guaranteed MW must be capable of dispatch for at least 2 hours]</i></p>
3.	Contract Representative	<p>Name: <i>[insert]</i></p> <p>Email: <i>[insert]</i></p> <p>Telephone: <i>[insert]</i></p>
Term		
4.	Final Annuity Product End Date	<p>The date that is <i>[insert]</i> years after the First Option Date. <i>[The permitted value for this bid variable is up to a maximum of 10 years (noting shorter bids are preferred against MC1 assessment criteria.)]</i></p>
5.	Excluded Annuity Product Start Date	<p><i>[Option 1: for bids where LTES Operator commits to not exercise its Option in respect of the Annuity Product in certain Financial Years during the Term.]</i></p> <p>Each of the following Annuity Product Start Dates:</p> <p>(a) <i>[insert by reference to the First Option Date e.g. "the First Option Date" or "the second anniversary of the First Option Date"]</i>; and</p> <p>(b) <i>[insert further as necessary]</i>.</p>

	Item	Details												
		<p>[End option 1.]</p> <p>[Option 2: for bids where each Financial Year is eligible for an Annuity Product.]</p> <p>Not applicable.</p> <p>[End option 2.]</p>												
Annuity Product terms														
6.	Annual Net Revenue Threshold	<p>[Option 1: Annual Net Revenue Threshold is a fixed number]</p> <p>\$(insert)</p> <p>[End option 1.]</p> <p>[Option 2: Annual Net Revenue Threshold varies throughout the term.]</p> <table border="1" data-bbox="671 869 1426 1429"> <thead> <tr> <th data-bbox="671 869 1123 947">Financial Year commencing on:</th> <th data-bbox="1123 869 1426 947">Annual Net Revenue Threshold (\$)</th> </tr> </thead> <tbody> <tr> <td data-bbox="671 947 1123 994">First Option Date</td> <td data-bbox="1123 947 1426 994">[insert]</td> </tr> <tr> <td data-bbox="671 994 1123 1041">1 year after the First Option Date</td> <td data-bbox="1123 994 1426 1041">[insert]</td> </tr> <tr> <td data-bbox="671 1041 1123 1088">2 years after the First Option Date</td> <td data-bbox="1123 1041 1426 1088">[insert]</td> </tr> <tr> <td data-bbox="671 1088 1123 1135">3 years after the First Option Date</td> <td data-bbox="1123 1088 1426 1135">[insert]</td> </tr> <tr> <td colspan="2" data-bbox="671 1135 1426 1429"> <p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state "9 years after the First Option Date".]</p> </td> </tr> </tbody> </table> <p>[End option 2.]</p> <p>[Note: the amount payable by SFV under an Annuity Product is reduced if and to the extent the Net Operating Revenue received by LTES Operator, when aggregated with the annuity, would exceed the Annual Net Revenue Threshold.]</p>	Financial Year commencing on:	Annual Net Revenue Threshold (\$)	First Option Date	[insert]	1 year after the First Option Date	[insert]	2 years after the First Option Date	[insert]	3 years after the First Option Date	[insert]	<p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state "9 years after the First Option Date".]</p>	
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1 year after the First Option Date	[insert]													
2 years after the First Option Date	[insert]													
3 years after the First Option Date	[insert]													
<p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state "9 years after the First Option Date".]</p>														
7.	Annuity Cap	<p>[Option 1: Annuity Cap is a fixed number]</p> <p>\$(insert)</p> <p>[End option 1.]</p> <p>[Option 2: Annuity Cap varies throughout the term.]</p> <table border="1" data-bbox="671 1955 1426 2000"> <thead> <tr> <th data-bbox="671 1955 1123 2000">Financial Year commencing on:</th> <th data-bbox="1123 1955 1426 2000">Annuity Cap (\$),</th> </tr> </thead> </table>	Financial Year commencing on:	Annuity Cap (\$),										
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	Item	Details										
		<table border="1"> <tr> <td>First Option Date</td> <td>[insert]</td> </tr> <tr> <td>1 year after the First Option Date</td> <td>[insert]</td> </tr> <tr> <td>2 years after the First Option Date</td> <td>[insert]</td> </tr> <tr> <td>3 years after the First Option Date</td> <td>[insert]</td> </tr> <tr> <td colspan="2"> <p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state "9 years after the First Option Date".]</p> </td> </tr> </table> <p>[End option 2.]</p> <p>[Note: this is the maximum amount payable in any year.]</p>	First Option Date	[insert]	1 year after the First Option Date	[insert]	2 years after the First Option Date	[insert]	3 years after the First Option Date	[insert]	<p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state "9 years after the First Option Date".]</p>	
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1 year after the First Option Date	[insert]											
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Other terms												
8.	Cost Change Threshold	\$500,000, adjusted in accordance with clause 1.6 ("Adjustment").										
9.	Early Termination Amount	<p>The sum of:</p> <p>(a) \$20,000 per MW multiplied by the Guaranteed Capacity, up to a maximum amount of \$4,000,000; and</p> <p>(b) the greater of:</p> <p>(i) 90% of the Historical Net Payments; and</p> <p>(ii) zero,</p> <p>calculated as at the date of the relevant termination.</p> <p>[Note: the Early Termination Amount is the termination payment payable by LTES Operator to SFV following termination of the LTESA for, among other termination triggers, LTES Operator default or insolvency.]</p>										
10.	Fixed Termination Amount	<p>The amount set out in the second column of the table in Schedule 3 ("Fixed Termination Amount") for the Financial Year in which this agreement is terminated.</p> <p>[Note: the Fixed Termination Amount is the termination payment payable by SFV to LTES Operator following termination of the LTESA for SFV default or insolvency or if SFV terminates the LTESA for convenience or in the circumstances contemplated in clause 22.3(h).]</p>										
11.	Initial Security Amount	\$20,000 per MW multiplied by the Guaranteed Capacity, up to a maximum amount of \$4,000,000. [Note: the Initial Security Amount is the amount of the security that LTES Operator must provide in accordance with this agreement]										

	Item	Details
12.	COD Termination Amount	The Initial Security Amount. [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.]
13.	COD Target Date	[insert] , as may be extended under clauses 4.5 (“COD Target Date cure plan”) and 4.4 (“Extension of COD Target Date for Project Force Majeure Event”) provided it may not extend beyond the earlier of the date that is 6 months after the date set out in this item 13 and the COD Sunset Date. [Note: the COD Target Date is the target date (as may be extended) for LTES Operator to achieve commercial operations for the Project. The initial COD Target Date is a bid variable]
14.	COD Sunset Date	[insert] . [Note: the COD Sunset Date is the last date by which LTES Operator must achieve commercial operations for the Project, following which SFV may be entitled to terminate this agreement. This date cannot be later than 1 December 2026.]
15.	LTES Operator nominated bank account	[insert]

Long-Term Energy Service Agreement

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).

Actual LOR Event means AEMO has declared that an 'Actual LOR1', 'Actual LOR2' or 'LOR Load Shedding' ('Actual LOR3') in the New South Wales region of the NEM as a result of a shortfall of available capacity reserves in accordance with the Reserve Level Declaration Guidelines and the NER.

Actual LOR Period means, in respect of a Performance Event, the period commencing on the declaration of an Actual LOR Event and ending on the earlier of:

- (a) the Project being dispatched at the Guaranteed Capacity (in MWh); and
- (b) the completion or cancellation of the corresponding Forecast LOR Declaration or the applicable Actual LOR Event.

Adjustment Date means each 1 July following [the closing date of the financial bid stage of the tender for this agreement]. [**Note: for clarity, this closing date will be hardcoded into the execution version of the agreement.**]

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.

Ancillary Services has the meaning given in the NER.

Annual Maintenance Program has the meaning given in clause 7.1(a) ("Annual Maintenance Program").

Annual Reconciliation Payment has the meaning given in item 1.3 of Schedule 2 ("Annuity Product terms").

Annual Revenue Report has the meaning given in clause 11.3(a) ("Revenue reports").

Annuity Period has the meaning given in clause 15.1 ("Annuity Period").

Annuity Product means a derivative arrangement on the terms outlined in Schedule 2 ("Annuity Product terms").

Annuity Product Start Date means each of:

- (a) the First Option Date; or
- (b) any anniversary of the First Option Date (up to and including the Final Anniversary).

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

Audit means an audit conducted in accordance with clause 12 ("Audit").

Authorisation means any consent, licence, approval, permit, registration, accreditation or other authorisation that is required to be granted by any Government Authority, regulatory body, instrumentality, minister, agency or other authority for the purposes of allowing a party to perform its obligations under this agreement and, in relation to LTES Operator, to operate and maintain the Project.

Bid means a 'wholesale demand response dispatch bid' (as defined in the NER) made in accordance with this agreement and the NER in respect of the Project.

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).

Capacity Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which becomes available in respect of Wholesale Demand Response from a WDRU comprising the Project, including Peak Reduction Certificates, but not including any Green Products or any Ancillary Services.

Change in Control occurs in relation to a party where:

- (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 Construction 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.

Commercial Operations Date means the date on which the Service Conditions for the Project are satisfied or waived by SFV in accordance with clause 4 (“Service Conditions”).

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

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.

Construct and **Construction** means the activities to design, develop, implement and commission Wholesale Demand Response from one or more WDRUs including applying for and obtaining baseline methodologies and installing control, telemetry and communications equipment and software as applicable to enable the Project to provide Wholesale Demand Response in accordance with the NER of at least the Guaranteed Capacity.

Contract Representative means the person appointed by LTES Operator as Contract Representative in accordance with clause 30 (“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 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) above), 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).

Cost Change Principles has the meaning given in clause 21.6 (“Cost Change Principles”).

Default Interest Rate means the rate which is 2% above the Reserve Bank of Australia Cash Rate Target.

Demand Response Service Provider has the meaning given to that term in the NER.

Details means the section of this agreement headed “Details”.

Dispute has the meaning given in clause 27.1 (“Dispute mechanism”).

Dispute Notice has the meaning given in clause 27.3 (“Disputes”).

Draft TD Cure Plan has the meaning given in clause 4.5(a) (“COD Target Date cure plan”).

Draft Performance Cure Plan has the meaning given in clause 6.6(a).

Draft SLC Cure Plan has the meaning given in the item 1.6 of Schedule 6 (“Social Licence Commitments”).

DUID means a dispatchable unit identified as defined in the NER.

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

Exercise Notice means a notice in the form set out in, and completed in accordance with, Schedule 1 (“Exercise Notice”).

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Final Anniversary means the [insert] anniversary of the First Option Date.

[Note: to be updated to reflect the final year of the Term. For example, if the End Date is 7 years after the First Option Date then ‘6th’ will be inserted.]

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

Financial Year means the period from 1 July to 30 June.

First Option Date has the meaning given in clause 5.2 (“First Option Date”).

Forecast LOR Declaration means a declaration by AEMO of a ‘forecast LOR1’, ‘forecast LOR2’ or a ‘forecast LOR3’ (as defined in each case in the Reserve Level Declaration Guidelines) in the New South Wales region of the NEM in accordance with the Reserve Level Declaration Guidelines and the NER.

Forecast LOR Period means in respect of a Forecast LOR Declaration, the period for which a lack of reserve is specified in that declaration.

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 “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, a securities exchange and, in respect of Green Products, an organisation that sets standards for Green Product creation.

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.

Green Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which may be created in respect of, or relate to, the regulation or reduction of greenhouse gas emissions.

GST Amount has the meaning given in clause 19.3 (“Payment of GST”).

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

Historical Net Payments has the meaning given in clause 16.2 (“Calculation of Historical Net Payments”).

Independent Expert has the meaning given in clause 27.6 (“Independent Expert”).

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.

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) which is otherwise in a form reasonably satisfactory to SFV (acting reasonably).

Insolvency Event means, in respect of a party:

- (a) it is (or states that it is) 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.

Invoice has the meaning given in clause 17.1 (“Billing”).

Invoiced Sum has the meaning given in clause 17.1 (“Billing”).

Knowledge Sharing Deliverables means the deliverables set out in the table in Schedule 4 (“Knowledge sharing plan”).

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.

Load Owner means the owner or operator of the facility consuming electricity which has been registered as a WDRU by LTES Operator.

LOR Reserve Level means an ‘LOR2’ or ‘LOR3’ (as defined in the Reserve Level Declaration Guidelines) as applicable.

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

Material Alteration means:

- (a) a removal of, or alteration to, a WDRU comprising part of the Project which means (after that removal or alteration) the Project would not equal or exceed the Guaranteed Capacity;
- (b) an alteration to the WDRU comprising part of the Project which means (after excluding that WDRU) the Project would not equal or exceed the Guaranteed Capacity;
- (c) the alteration of a WDRU comprising part of the Project such that the Connection Point for that WDRU is no longer located in the Sydney-Newcastle-Wollongong Sub-Region;

- (d) the addition of a WDRU to the Project which has a Connection Point outside of the Sydney-Newcastle-Wollongong Sub-Region; or [**Note: the Project can only contain WDRUs in the Sydney-Newcastle-Wollongong Sub-Region as the capacity provided from the Project needs to assist with the EST, ie a project can't meet its obligations by dispatching WDRUs outside the Sydney-Newcastle-Wollongong Sub-Region and the contract is based on the Project.**]
- (e) any activity taken by LTES Operator under paragraphs (a), (b), (c) or (d) that materially and adversely impacts LTES Operator's performance of the Social Licence Commitments.

Maximum Responsive Component or MRC has the meaning given to that term in the NER.

MW means megawatt, a measure of electrical power.

MWh means megawatt hour, a measure of electrical energy.

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.

Net Operational Revenue means, for a period, the Operational Revenue for that period less the Permitted Costs for that period.

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

Non-Exercise Year has the meaning given in clause 16.1 ("Repayment").

Offtake Contract means any contract, arrangement or understanding entered into by LTES Operator in relation to:

- (a) a Wholesale Demand Response Activity;
- (b) Ancillary Services;
- (c) the Maximum Response Component;
- (d) demand response, including the reduction in any electricity consumption or increasing the export of electricity; and/or
- (e) services in the wholesale energy market, capacity markets or Green Product markets related to Wholesale Demand Response,

provided by or related to the Project or a WDRU comprising the Project.

To avoid doubt, without limitation an Offtake Contract may take the form of:

- (a) a purchase contract;
- (b) subject to clause 6.3 ("Operation, bidding and dispatch"), a tolling contract, a lease or such other arrangement as gives a third party the economic benefit of the Project for a period of time;

- (c) an underwriting arrangement in respect of the profit or revenue of the Project or LTES Operator; and/or
- (d) a derivative, forward, option or any such combination where the consideration under it is derived by reference to electricity, Capacity Products or Green Products.
- (b) **Operating Requirements** means the requirements in clauses 6.2 (“Registration”), 6.3 (“Operation, bidding and dispatch”), 6.5 (Testing) and 7 (“Maintenance”).

Operational Revenue means, in respect of a period, the revenue received by LTES Operator in that period (without double counting), including amounts received:

- (a) from the sale of electricity, hedges, Capacity Products or Green Products;
- (b) from the supply of Ancillary Services or system services;
- (c) under an Offtake Contract; and
- (d) from AEMO in respect of the Project,

but excluding:

- (e) amounts paid by SFV to LTES Operator under this agreement;
- (f) charges received for the sale of electricity by LTES Operator to the Load Owner under an electricity supply contract;
- (g) amounts received under or in connection with an insurance policy.

Option has the meaning given in clause 14.1 (“Option to exercise an Annuity Product”).

Other Dispute means a Dispute between SFV and an Other LTESA Counterparty under an Other LTESA.

Other LTESA means a “long-term energy service agreement” (as defined under the EII Act) for Wholesale Demand Response, other than this agreement.

Other LTESA Counterparty means, in respect of an Other LTESA, SFV’s counterparty under that Other LTESA.

Peak Period means the period from 1 December to 31 March, as may be adjusted in accordance with clause 7.2 (“Adjustment to Peak Periods”).

Peak Reduction Certificate means a certificate as defined under Part 2 of Schedule 4A of the *Electricity Supply Act 1995* (NSW).

Performance Event has the meaning given in clause 6.4 (“LOR event”).

Performance Event Rebate has the meaning given in item 5.3 of Schedule 2 (“Annuity Product terms”).

Performance Event Report has the meaning given in clause 11.2(b) (“Operating reports”).

Permitted Costs means, in respect of a period, the following costs and expenses paid by LTES Operator in respect of the Project in that period (without double counting):

- (a) the costs incurred by the Project in respect of any Ancillary Services;
- (b) any other amounts payable by LTES Operator under the NER;
- (c) any payments under any Offtake Contract, provided that an Offtake Contract will not qualify under this paragraph (c) if the counterparty to the Offtake Contract is a Related Entity of LTES Operator and LTES Operator has not demonstrated to SFV's reasonable satisfaction that the arrangement is on arm's length terms; and
- (d) any other costs and expenses LTES Operator and SFV agree are Permitted Costs,

but excluding:

- (e) operating costs (other than those listed in paragraph (a) and (b) above), maintenance costs and other capital costs;
- (f) any Ineligible Tax;
- (g) any fines or penalties (including fines or penalties under the NER); and
- (h) any interest, margin, guarantee or letter of credit fees, line fees, commitment fees, establishment fees, underwriting fees, discount, rent under finance leases or hire purchase or other one-off or recurrent payments in the nature of the foregoing (including gross-ups and recurrent increased cost/reduced yield indemnity payments) payable by LTES Operator in relation to any debt financing for the Project.

Pooled Dispute has the meaning given in clause 28.1 ("Referral of Pooled Disputes").

Pooled Dispute Panel means a panel constituted in accordance with clause 28.2 ("Resolution by Pooled Dispute Panel").

Pooled Dispute Participant means, in respect of a Pooled Dispute:

- (a) SFV;
- (b) LTES Operator; and
- (c) each Other LTESA Counterparty that receives a Pooled Dispute Referral in respect of that Pooled Dispute from SFV,

but notwithstanding the foregoing does not include any person that ceases to be a Pooled Dispute Participant pursuant to clause 28.3 ("Bilateral resolution").

Project Force Majeure Event has the meaning given in clause 20.1 ("Definition of Project Force Majeure Event").

Project Report means a report provided by LTES Operator pursuant to clause 11.2 ("Operating reports") or 11.3 ("Revenue reports") but excludes a report under clause 11.4 ("Emission reduction reporting").

Project Service is a service for which LTES Operator is registered or entitled to provide in respect of the Project for the market in which that service is provided.

Prolonged Unavailability Event means the Project is not available for dispatch at the Guaranteed Capacity (as forecast in the “short term PASA”, as defined in the NER) for a cumulative period of 12 months across a period of four consecutive Financial Years during the Term, other than as a result of a Project Force Majeure Event.

Quarter means any one of:

- (a) the period from 1 January to 31 March;
- (b) the period from 1 April to 30 June;
- (c) the period from 1 July to 30 September; and
- (d) the period from 1 October to 31 December.

Quarterly Annuity Payment has the meaning given in item 1.3 of Schedule 2 (“Annuity Product terms”).

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’).

Related Entity has the meaning given in the Corporations Act.

Relevant Cost Change means a net increase or decrease in LTES Operator’s direct costs of operating the Project that arises as a result of a Change in Law that occurs after the Tender Date, but excluding any Permitted Costs.

Repayment Amount has the meaning given in clause 16.3 (“Calculation of Repayment Amount”).

Reserve Level Declaration Guidelines has the meaning given to the term in the NER.

Revalidation Test has the meaning given in clause 6.5(a)(ii).

Revised Statement means a “routine revised statement” or a “special revised statement” (each as defined in the NER).

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.

Service Conditions has the meaning given in clause 4.2.

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

Social Licence Commitments means social licence commitments set out in Schedule 6 (“Social Licence Commitments”).

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.

Sydney-Newcastle-Wollongong Sub-Region means the region described as the “Sydney Ring (Reinforcing Sydney, Newcastle, and Wollongong Supply)” in Appendix 5 “Network Investments” of the 2022 Integrated System Plan (ISP) (available at <https://aemo.com.au/en/energy-systems/major-publications/integrated-system-plan-isp>) (as updated from time to time) and as represented by AEMO as the “CNSW-SNW” Network.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

TD Cure Plan means the cure plan approved by SFV under clause 4.5(b).

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

Term has the meaning given in clause 5 (“Term”).

Termination Payment means a Fixed Termination Amount, COD Termination Amount or an Early Termination Amount.

Total MRC means the aggregate of the MRCs for the WDRUs comprising the Project from time to time.

Trading Interval has the meaning given to that term in the NER.

[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.

WDR Contract means the contracts, arrangements or understandings between LTES Operator and the Load Owner under which LTES Operator is entitled to provide Wholesale Demand Response from the WDRU.

WDR Schedule means a schedule containing the details for the WDRUs comprising the Project set out in Schedule 5 (“WDR Schedule”) as validly issued by LTES Operator under clause 4.2(a) and updated in accordance with clause 9 (“Alterations to the Project”), or as otherwise agreed by the parties, from time to time,

Wholesale Demand Response or **WDR** has the meaning given to that term in the NER.

Wholesale Demand Response Activity has the meaning given to that term in the NER.

Wholesale Demand Response Unit or **WDRU** has the meaning given to that term in the NER.

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 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) 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 NEM definition change

- (a) If:
 - (i) a term used in this agreement (including as a result of a prior application of this clause 1.3) has the meaning given to it in the NER; and
 - (ii) the term in the NER 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.

- (b) If there is a change to the NER or the Reserve Level Declaration Guidelines affecting the description, categorisation or thresholds of low reserve or LORs, then SFV may, acting reasonably, notify LTES Operator which low reserve descriptions, categorisations or thresholds apply for the purposes of the definition of Actual LOR Event and Forecast LOR Declarations.

1.4 SFV, Consumer Trustee and Infrastructure Planner interaction

Notwithstanding anything else in this agreement, the parties acknowledge and agree that, in 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).

1.5 Appointment of agent

LTES Operator acknowledges that SFV may, in its sole discretion and from time to time, appoint 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. Nothing in this clause relieves SFV of its obligations under this agreement.

1.6 Adjustment

On each Adjustment Date, the Cost Change Threshold for the Financial Year commencing on the Adjustment Date and each subsequent Financial Year (but not any Cost Change Threshold for a Financial Year ending prior to the Adjustment Date) will be adjusted in accordance with the following formula:

$$P_n = P_b \times EF$$

where:

P_n = the relevant amount on and from the Adjustment Date;

P_b = the relevant amount immediately before the Adjustment Date;
and

EF = 1.02.

Part 2 Construction of Project

2 Application of this Part

Other than clause 3.4 (“Return of Initial Security”), this Part 2 (“Construction of the Project”) commences on the Signing Date and expires on the Commercial Operations Date.

3 Initial Security

3.1 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.

3.2 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 ceasing 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.

3.3 Recourse to Initial Security

- (a) SFV may only draw on the Initial Security if LTES Operator has failed to:
 - (i) pay the COD Termination Amount in accordance with clause 22.4 (“Termination payments”); or
 - (ii) provide a replacement Initial Security to SFV where required under clause 3.2 (“Replacement of Initial Security”).
- (b) If SFV draws on the Initial Security in accordance with subparagraph (a)(ii), 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 in accordance with clause 3.2.
- (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.

3.4 Return of Initial Security

SFV must return the Initial Security, or any amount SFV is holding on trust pursuant to clause 3.3(b), to LTES Operator within 10 Business Days after the earlier of:

- (a) the Commercial Operations Date; and
- (b) the date on which LTES Operator has paid the full amount of the COD Termination Amount to SFV.

4 Service Conditions

4.1 Construction of the Project

LTES Operator must:

- (a) Construct the Project in accordance with the Social Licence Commitments, Good Industry Practice and all applicable Laws and Authorisations; and
- (b) use best endeavours to satisfy the Service Conditions by COD Target Date;
- (c) satisfy the Service Conditions by the COD Sunset Date; and
- (d) report on the Construction of the Project as set out in clause 11.1 ("Construction reporting").

4.2 Service conditions

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

- (a) LTES Operator has issued to SFV the WDR Schedule in final form where the WDRUs in that schedule:
 - (i) each have a Connection Point located in the Sydney-Newcastle-Wollongong Sub-Region; and
 - (ii) are in aggregate, equal to or exceed the Guaranteed Capacity;
- (b) LTES Operator has been registered as a Demand Response Provider for the Project, being the proposed WDRUs set out in the final form of the WDR Schedule;
- (c) SFV has confirmed to LTES Operator pursuant to item 1.4 of Schedule 6 ("Social Licence Commitments") that all Social Licence Commitments which are to be satisfied prior to the Commercial Operations Date have been satisfied;
- (d) LTES Operator has entered into WDR Contracts in respect of each WDRU in the final WDR Schedule; and
- (e) if SFV requests to receive the WDR Contracts within 10 Business Days of notification of the satisfaction of the Service Condition in paragraph (d), LTES Operator has provided certified copies of the WDR Contracts under paragraph (d) and SFV has confirmed under clause 4.3(d), acting reasonably, that it is satisfied that LTES Operator's rights and obligations under those contracts are consistent with the details in the WDR Schedule and the requirements of this agreement,

(each a “**Service Condition**”).

4.3 Approval of Service Conditions

- (a) The Service Conditions are for the benefit of SFV and may only be waived by SFV in writing.
- (b) LTES Operator must notify SFV within 5 Business Days after becoming aware of the satisfaction of each Service Condition. The notice must include evidence reasonably required to demonstrate that the Service Condition has been satisfied in accordance with this agreement.
- (c) LTES Operator is taken not to achieve the Service Conditions unless LTES Operator delivers to SFV 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 must accompany LTES Operator’s notice to SFV under paragraph (b).
- (d) If LTES Operator has provided the WDR Contracts under clause 4.2(e) SFV will use reasonable endeavours to provide its confirmation in respect of a WDR Contract under clause 4.2(e) within 20 Business Days of receipt of that contract or such other information as reasonably requested by SFV. If SFV fails to give a response in that time, it is deemed to have provided its confirmation.

4.4 Extension of COD Target Date for Project Force Majeure Event

- (a) If LTES Operator is or reasonably expects that it will be delayed in satisfying the Service Conditions by the COD Target Date as a result of a Project Force Majeure Event, then LTES Operator must:
 - (i) notify SFV of the occurrence of a Project Force Majeure Event as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Project Force Majeure Event) giving reasonable details of:
 - (A) the date on which the Project Force Majeure Event commenced;
 - (B) the Project Force Majeure Event, including its expected duration;
 - (C) any Service Conditions or the COD Target Date which are delayed or expected to be delayed by the Project Force Majeure Event; and
 - (D) subject to paragraph (c), any proposed extensions to the COD Target Date to reflect the impact of the Project Force Majeure Event on LTES Operator’s achievement of the Service Conditions;
 - (ii) keep SFV informed of any material changes or developments to the information provided to SFV in the notice under subparagraph (i); and
- (a) use best endeavours to overcome and mitigate the impact of the Project 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 Project Force Majeure Event on LTES Operator's achievement of the Service Conditions (as relevant); and
- (b) subject to paragraph (c), must confirm whether the proposed extension to the COD Target Date requested by LTES Operator under subparagraph (a)(i)(D) is granted by the later of:
 - (A) 20 Business Days after receiving LTES Operator's notice under subparagraph (a)(i); and
 - (B) 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 Target Date due to a Project Force Majeure Event, then the COD Target Date may be extended by one day for each day of delay, provided the COD Target Date may not be extended in the case of a Project Force Majeure Event, beyond the date that is the earlier of, the date that is 6 months after the COD Target Date (disregarding any extensions) and the COD Sunset Date.

4.5 COD Target Date cure plan

- (a) If the Service Conditions have not been satisfied on or before the COD Target Date or LTES Operator reasonably anticipates it will be delayed in achieving the Service Conditions before the COD Target Date (other than as a result of a Project Force Majeure Event), then within 20 Business Days of the COD Target Date, LTES Operator must submit a cure plan (**Draft TD Cure Plan**) that:
 - (i) includes information describing the reasons for the actual or potential delay and sets out the interim milestones it will implement to achieve the Service Conditions by the COD Sunset Date provided the COD Target Date may not be extended beyond the earlier of, the date that is 6 months after the date set out in item 13 of the Reference Details (disregarding any extensions) and the COD Sunset Date; and
 - (ii) demonstrates to SFV that LTES Operator is reasonably likely to achieve the Service Conditions by the COD Sunset Date.
- (b) Within 40 Business Days after receiving the Draft TD Cure Plan, SFV must use reasonable endeavours to either approve or reject the Draft TD Cure Plan.
- (c) If SFV approves the Draft TD Cure Plan under paragraph (b), then:
 - (i) LTES Operator must comply with the TD 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 TD Cure Plan; and
 - (iii) any references to the COD Target Date is to the COD Target Date as extended under the TD Cure Plan.
- (d) If SFV rejects a Draft TD Cure Plan, then:

- (i) SFV will provide reasonable details of its reasons and may suggest amendments to the Draft TD Cure Plan; and
 - (ii) within 20 Business Days after the Draft TD Cure Plan is rejected, LTES Operator must amend and resubmit Draft TD Cure Plan to SFV for approval.
- (e) Paragraphs (b) and (c), but not paragraph (d), will apply to the amended Draft TD Cure Plan submitted by LTES Operator pursuant to paragraph (d)(ii).

4.6 Failure to meet the COD Sunset Date

SFV may terminate this agreement by written notice to LTES Operator with immediate effect if LTES Operator does not satisfy the Service Conditions on or before the COD Sunset Date.

4.7 Construction reporting

- (a) LTES Operator must provide, within 20 Business Days after the end of each calendar quarter, a quarterly report that sets out the following information with reasonable supporting details:
- (i) the progress of Construction and information about events LTES Operator considers may prevent the satisfaction of the Service Conditions by the COD Sunset Date;
 - (ii) the progress in obtaining authorisations required for the Construction of the Project;
 - (iii) any proposed changes to the scope of the Project;
 - (iv) complaints received or legal proceedings in relation to the Project;
 - (v) any matter which constitutes a material breach, or could constitute a material breach, of LTES Operator's obligations under this agreement; and
 - (vi) 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
 - (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) A quarterly 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) 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
 - (iii) 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.
- (d) LTES Operator acknowledges that the provision of any false or misleading information by it under this clause 11.1 ("Construction reporting") is a breach of LTES Operator's obligations under this agreement and may constitute an offence under section 74 of the EII Act.

Part 3 Term

5 Term

5.1 Term

This agreement commences on the Signing Date and, unless terminated earlier, continues until the Final Annuity Product End Date ("**Term**").

5.2 First Option Date

- (a) The "**First Option Date**" is the earliest of:
- (i) the first 1 July occurring not less than 6 months after the Commercial Operations Date;
 - (ii) the first 1 July occurring not less than 6 months after the "COD Sunset Date"; and
 - (iii) any Requested Date that is agreed between the parties pursuant to paragraph (b).
- (b) SFV acknowledges that there may be a gap of up to 18 months between the Commercial Operations Date and the First Option Date under subparagraph (a)(i) if the Commercial Operations Date occurs less than 6 months before 1 July in a year or within 12 months after that 1 July. For example, if the Commercial Operations Date occurs on 1 January 2024, then the earliest First Option Date would be 1 July 2025. If LTES Operator considers that the Commercial Operations Date is likely to occur before, but less than 6 months before, a particular 1 July, then LTES Operator may request that SFV agree to the First Option Date occurring on that 1 July ("**Requested Date**"), provided that:
- (i) such request is made at least 6 months prior to the Requested Date; and
 - (ii) at least 6 months prior to the Requested Date, LTES Operator gives SFV an Exercise Notice of its proposal to exercise its Option to cause an Annuity Product commencing on the Requested Date to become effective. This Exercise Notice must comply with the requirements of clause 14 ("Grant and exercise of an Option").
- (c) Subject to paragraph (d), SFV must act reasonably in determining whether to accept a request under paragraph (b), having regard to the likelihood that the Commercial Operations Date will occur before the Requested Date.
- (d) It will be reasonable for SFV to condition its acceptance of a request under paragraph (b) on LTES Operator agreeing to an adjustment to the Annuity Product to provide for a pro-rata reduction in the payments under the Annuity Product if the Commercial Operations Date occurs after the Requested Date.

Part 4 Operation of the Project

6 Operation

6.1 Performance of obligations

- (a) During the Term, LTES Operator must operate and maintain the Project in accordance with, and otherwise comply with:
 - (i) all applicable Laws, including laws relating to critical infrastructure, foreign investment, the environment and occupational health and safety;
 - (ii) all applicable Authorisations; and
 - (iii) Part 12 of the *Electricity Infrastructure Investment Regulation 2021* (if applicable).
- (b) During an Annuity Period, LTES Operator must:
 - (i) make available, bid and dispatch the Project in the NEM in accordance with Good Industry Practice and the NER;
 - (ii) operate and maintain the Project:
 - (A) as a reasonable and prudent operator;
 - (B) in accordance with Good Industry Practice; and
 - (C) in accordance with the Operating Requirements.
- (c) LTES Operator acknowledges that:
 - (i) the purpose of the Annuity Product is to provide an option for a revenue top up during the Annuity Period to support the Construction of the Project and is not intended to distort the market signals that would otherwise apply to the Project; and
 - (ii) the Operating Requirements are to be interpreted and applied consistent with that purpose.

6.2 Registration

- (a) LTES Operator must, at all times during the Term, ensure that it is registered with AEMO for the Project to enable it to provide the following services:
 - (i) Wholesale Demand Response (i.e., as a “Demand Response Service Provider”, as defined in the NER); and
 - (ii) subject to paragraph (b), any other services for which the Project could earn revenue in the NEM),except that LTES Operator may, but is not obliged, to classify the Project as to provide “market ancillary services” (as defined in the NER).
- (b) If:

- (i) a new market is established in the NEM, or a market is established outside of the NEM, in which the Project is entitled to provide services; and
- (ii) it is consistent with industry practice for projects which are similar to the Project to provide those services,

LTES Operator must register or take such action as is required to entitle it to participate in that market unless there are reasonable technical, legal, commercial or financial reasons for not doing so.

- (c) If requested by SFV, LTES Operator must provide the reason why it has decided not to register or otherwise provide services in a particular market together with reasonable supporting details and evidence.
- (d) LTES Operator will provide any documentation and other information requested by SFV or Consumer Trustee in connection with applicable “know your customer” checks or similar identification procedures under all applicable Laws pursuant the Project, in circumstances where necessary information is not already available to SFV or the Consumer Trustee.

6.3 Operation, bidding and dispatch

- (a) LTES Operator must:
 - (i) not enter into any Offtake Contract, or any arrangement with respect to a Permitted Cost, unless the arrangement is on arm’s length terms;
 - (ii) not enter into any Offtake Contract or other arrangement with a Related Entity unless it has demonstrated to SFV’s reasonable satisfaction that the arrangement is on arm’s length terms;
 - (iii) operate, contract, bid and dispatch the Project in Good Faith, having regard to any Offtake Contract entered into by LTES Operator in accordance with this clause 6.3(a); and
 - (iv) use best endeavours to minimise the amount of any payments payable by SFV under an Annuity Product.
- (b) In this clause 6.3, “Good Faith” means to act honestly, reasonably and with fair dealing having regard to the purpose set out in clause 6.1(c) (“Performance of obligations”).

[Note: A reference to ‘arm’s length’ is to ensure LTES Operator enters into arrangements on terms reflecting the current market conditions, and is intended to prevent gaming of Operational Revenue and Permitted Costs by having more favourable financial contracts with Related Entities.]

6.4 LOR event

- (a) During an Annuity Period, if:
 - (i) an Actual LOR Event (excluding an ‘Actual LOR1’ as defined in the Reserve Level Declaration Guidelines) occurs;
 - (ii) the applicable Actual LOR Event has been preceded by a Forecast LOR Declaration (excluding a ‘forecast LOR1’ as defined in in the Reserve Level Declaration Guidelines) for the

corresponding LOR Reserve Level or a lower LOR Reserve Level; and

- (iii) that Forecast LOR Declaration has been declared by AEMO at least four hours prior to the start of the Actual LOR Event,

(a “**Performance Event**”), then LTES Operator must Bid at least the Guaranteed Capacity during the Actual LOR Period, but only in respect of the Trading Intervals that:

- (iv) overlap in the Forecast LOR Period and for the Actual LOR Event; and
 - (v) occur four hours after the Forecast LOR Declaration.
- (b) If the Actual LOR Period referred to in paragraph (a) is less than two hours, LTES Operator will be taken to have complied with this clause 6.4 if it has Bid at least the Guaranteed Capacity for each of the Trading Intervals in that Actual LOR Period.
 - (c) If, at any time AEMO declares a Forecast LOR Declaration or an Actual LOR Event occurs that does not constitute a Performance Event, then LTES Operator must use reasonable endeavours to Bid at least the Guaranteed Capacity for each Trading Interval in the Forecast LOR Period or Actual LOR Period (as applicable).
 - (d) If a Forecast LOR Declaration is cancelled, LTES Operator is no longer obliged to Bid at least the Guaranteed Capacity for the Forecast LOR Period.
 - (e) If LTES Operator is dispatched pursuant to paragraph (a) or (b), LTES Operator is not required to comply with paragraph (a) or (b) again for a period of 24 hours commencing from the end of the last Trading Interval for which the Project was dispatched.

6.5 Testing

- (a) Within two months of the end of an Annuity Period (or such other time as agreed between the parties), LTES Operator must:
 - (i) demonstrate to SFV by providing AEMO settlement and dispatch conformance data that the Project has been dispatched at the Guaranteed Capacity for two continuous hours in that Annuity Period; or
 - (ii) if sub-paragraph (a)(i) does not apply, arrange for the Project to be dispatched at the Guaranteed Capacity for two continuous hours (“**Revalidation Test**”) and demonstrate to SFV that the Revalidation Test has been passed by providing AEMO with the corresponding settlement and dispatch conformance data.
- (b) Paragraph (a) applies notwithstanding that a Project Force Majeure Event is subsisting during the two-month period.
- (c) LTES Operator must perform a Revalidation Test in accordance with Good Industry Practice and all applicable Laws and Approvals.

6.6 Performance Cure Plan

- (a) If the Project:

- (i) does not pass a Revalidation Test under clause 6.5(a)(ii); or
- (ii) does not meet the Guaranteed Capacity for a period of 20 continuous Business Days during an Annuity Period (other than as a result of a Project Force Majeure Event or in accordance with the Annual Maintenance Program),

then LTES Operator must submit a cure plan which demonstrates how the Project will be rectified to pass the Revalidation Test or to meet the Guaranteed Capacity ("**Draft Performance Cure Plan**"),

- (iii) in respect of clause 6.6(a)(i), within 20 Business Days after the two-month period; or
 - (iv) in respect of clause 6.6(a)(ii), within 20 Business Days after subparagraph (a)(ii) applies.
- (b) Within 40 Business Days after receiving the Draft Performance Cure Plan, SFV must use reasonable endeavours to either approve or reject the Draft Performance Cure Plan.
 - (c) If SFV approves the Draft Performance Cure Plan under paragraph (b), then LTES Operator must comply with the Performance Cure Plan.
 - (d) If SFV rejects a Draft Performance Cure Plan, then:
 - (i) SFV will provide reasonable details of its reasons and may suggest amendments to the Draft Performance Cure Plan; 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.
 - (e) Paragraphs (b) and (c), but not paragraph (d), will apply to the amended Draft Performance Cure Plan submitted by LTES Operator pursuant to clause 6.6(d)(ii).

6.7 Termination for failure to pass the Revalidation Test

- (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 a Draft Performance Cure Plan that is approved by SFV in accordance with clause 6.6(b);
 - (ii) commence and comply with the Performance Cure Plan in all material respects, and does not remedy that failure 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 Performance Cure Plan to SFV under clause 6.6(a) and SFV has not yet approved or rejected the Draft Performance Cure Plan under clause 6.6(b).

7 Maintenance

7.1 Annual Maintenance Program

- (a) At least 20 Business Days prior to the start of any Annuity Period, LTES Operator must provide SFV with an annual maintenance program that sets out:
- (i) planned outages that are reasonably likely to affect more than 10% of the Guaranteed Capacity; and
 - (ii) any planned unavailability of LTES Operator systems and equipment relating to the Project or this agreement,
- and complies with LTES Operator's obligations under clause 7.1(b) ("**Annual Maintenance Program**").
- (b) Unless otherwise consented to by SFV, prior to LTES Operator entering into the WDR Contract, LTES Operator must use reasonable endeavours to procure that the Load Owner schedules and undertakes planned maintenance that is reasonably likely to affect more than 10% of the Guaranteed Capacity at times outside of the Peak Period.
- (c) Within 20 Business Days after receipt of the Annual Maintenance Program, SFV may request changes that it considers (acting reasonably) are in the best long term-financial interests of electricity customers in New South Wales.
- (d) If SFV requests a change to an Annual Maintenance Program in accordance with paragraph (c), then LTES Operator must use reasonable endeavours to procure a change to the Annual Maintenance Program within 20 Business Days after SFV's request.
- (e) Nothing in this clause 7.1 prevents LTES Operator or Load Owner from undertaking emergency maintenance or repairs in accordance with Good Industry Practice that are:
- (i) necessary to prevent injury or damage to the environment or equipment; or
 - (ii) required to maintain manufacturer's warranties,
- and cannot reasonably be rescheduled or deferred.

7.2 Adjustment to Peak Periods

If SFV considers that an adjustment to the Peak Period is appropriate to reflect changes in electricity demand and peak "spot prices" (as defined in the NER) applicable in New South Wales, then SFV may, by giving at least 2 years prior notice to LTES Operator, make such adjustment, provided that the duration of the Peak Period cannot exceed 4 months in a year.

8 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:

- (i) all risks insurance for the replacement value of the Project property but, to avoid doubt, does not include the Load Owner's facilities contracted under a WDR Contract;
 - (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").**
- (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.

9 Alterations to the Project

9.1 Material Alterations

- (a) During the Term, LTES Operator must not, and must procure that its Related Bodies Corporate do not, commence, agree to or permit any Material Alteration of the Project without SFV's prior written consent.
- (b) SFV will use reasonable endeavours to respond to any request under clause 9.1(a) within 20 Business Days. If SFV fails to give a response in that time, it is deemed to have provided its consent.

9.2 Changes to WDRUs

In respect of any new, removed or modified WDRU comprising part of the Project which does not constitute a Material Alteration, LTES Operator must every six months on and from the Commercial Operations Date, provide SFV with:

- (a) an updated WDR Schedule;
- (b) confirmation that the Connection Point for the relevant WDRU is located in the Sydney-Newcastle-Wollongong Sub-Region;
- (c) confirmation that the Total MRC continues to be equal to or greater than the Guaranteed Capacity; and
- (d) a certified copy of the new or amended WDRU Contract for the relevant WDRU,

in each case detailing new, removed or modified WDRU (if any) in that previous six months.

10 Social Licence Commitments

During the Term, LTES Operator must comply with the obligations in Schedule 6, ("Social Licence Commitments") until the end of the Term.

11 Reporting

11.1 Operating Strategy

- (a) At least 60 Business Days before the start of the Annuity Period, LTES Operator must provide its operating strategy to SFV ("**Operating Strategy**"). [*Note: the Operating Strategy is not binding and is not subject to SFV's approval but provides a framework by which SFV may understand and assess the manner LTES Operator operates the Project*]
- (b) The Operating Strategy must demonstrate (including by providing reasonable supporting details and evidence) how the Project is intended to be operated and contracted by LTES Operator in the next Annuity Period to satisfy the Operating Requirements, including LTES Operator's commercial strategies in respect of the Project in relevant markets and any Offtake Contracts.
- (c) SFV may not use the Operating Strategy for any purpose other than determining whether LTES Operator has complied with clause 6 ("Operation").

11.2 Operating reports

LTES Operator must provide SFV each of the following reports, in the form prescribed by SFV:

- (a) within 20 Business Days after a request from SFV, a report in respect of a preceding Annuity Period setting out:
 - (i) the actual performance of the Project against the Operating Strategy;
 - (ii) any changes to the Operating Strategy during the Annuity Period; and
 - (iii) an explanation of any material deviations from the Operating Strategy; and
- (b) within 20 Business Days after the end of an Annuity Period, a "**Performance Event Report**" setting out for:
 - (i) the Project's response to a Forecast LOR Declaration, a Performance Event and an Actual LOR Events including its Bids for these events and the extent to which it was dispatched by AEMO during these periods;
 - (ii) any periods the Project did not meet the requirement to Bid at least Guaranteed Capacity during the year and reasons for the non-performance;
 - (iii) any non-conformance of an WDRU determined by AEMO in respect of the Project;
 - (iv) the Performance Event Rebate Percentage for that Annuity Period; and
 - (v) the Performance Event Rebate (if any) payable in respect of that Annuity Period; and

- (c) 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
 - (iii) 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.

11.3 Revenue reports

LTES Operator must provide SFV each of the following reports, in the form prescribed by SFV:

- (a) within 20 Business Days after the end of each Financial Year, an **"Annual Revenue Report"** setting out:
 - (i) the Net Operational Revenue (including each of its components) for that Financial Year; and
 - (ii) the Repayment Amount (if any) payable in respect of that Financial Year; and
- (b) within 20 Business Days after the end of each Quarter that forms part of an Annuity Period, a report setting out:
 - (i) the Net Operational Revenue (including each of its components) for that Quarter; and
 - (ii) each payment (if any) under the Annuity Product that is payable in respect of that Quarter.

11.4 Emission reduction reporting

- (a) LTES Operator must provide SFV the following report, in the form prescribed by SFV:
 - (i) within 20 Business Days after the end of each Financial Year, a report setting out:
 - (A) the steps taken, in respect of the Project or by LTES Operator, in the previous Financial Year to reduce scope 1 emissions of greenhouse gas in the New South Wales electricity sector; or
 - (B) any proposed steps to reduce scope 1 emissions of greenhouse gas in the New South Wales electricity sector in respect of the Project for the next Financial Year.
- (b) LTES Operator must use reasonable endeavours to include information on the steps taken by Load Owners and other suppliers to the Project to reduce scope 1 emissions of greenhouse gas in the New South Wales electricity sector.
- (c) LTES Operator must provide the regulator (as defined in the EII Act) with any information requested by the regulator to enable the regulator to

perform its roles and functions under the EII Act and other Laws. The information must be provided in the form and within the timeframe specified by the regulator.

11.5 Capacity Product and Green Product reporting

- (a) If LTES Operator holds Capacity Products or Green Products which were created, or referable to electricity exported or capacity available from the Project during an Annuity Period:
- (i) at the end of an Annuity Period, where LTES Operator has not exercised an Option for the Financial Year following that Annuity Period; or
 - (ii) on the expiry or early termination of this agreement,
- then the Operational Revenue for the Annuity Period or Non-Exercise Year (as applicable) will be deemed to include an amount that is equal to the relevant market price for such products multiplied by the Capacity Products or Green Products that LTES Operator holds.
- (b) Unless otherwise agreed by the parties, the market price for such products will be determined as the average of the quotations for the Annuity Period or Non-Exercise Year (as applicable), obtained from two independent and suitably qualified brokerage firms, one nominated by each of the parties.
- (c) If a market price can not be determined in accordance with clause 11.5(b), then the matter will be referred to an Independent Expert for determination under clause 27.6 ("Independent Expert").

11.6 Foreign Acquisitions and Takeovers Act

- (a) If:
- (i) LTES Operator receives a notice from or on behalf of the Treasurer of the Commonwealth of Australia under the FATA stating that the relevant Government Authority has approved an application made by LTES Operator in respect of the Project and that approval is subject to certain conditions that may apply to either LTES Operator or the Project; or
 - (ii) there is a change to, or satisfaction of such conditions referred to under paragraph (a),
- then LTES Operator must notify SFV within 5 Business Days of receiving such notice under paragraph (a)(i) or of such occurrence under paragraph (a)(ii).
- (b) LTES Operator must notify SFV within 5 Business Days of becoming aware of any breach of such conditions notified under paragraph (a).

11.7 Assurances

- (a) Each Project Report, each report issued under clause 11.5 ("Emission reduction reporting") and 11.6 ("Capacity Product and Green Product reporting") and, if reasonably requested by SFV, any further information provided by LTES Operator pursuant to clause 11.8 ("Provision of further information"), must be certified by a director of LTES Operator to be:
- (i) true and fair statements; and

- (ii) compliant with this agreement and any relevant accounting standards (as applicable).
- (b) LTES Operator undertakes that each Project Report and each report issued under clause 11.5 (“Emission reduction reporting”) and 11.6 (“Capacity Product and Green Product reporting”) is true and correct in all material respects.
- (c) LTES Operator acknowledges that the provision of any false or misleading information by it under this clause 11 is a breach of LTES Operator’s obligations under this agreement and may constitute an offence under section 74 of the EII Act.

11.8 Provision of further information

- (a) Each Project Report and each report issued under clause 9.4 (“Emission reduction reporting”) and 9.5 (“Capacity Product and Green Product reporting”) must include reasonable supporting details and evidence in respect of matters required to be included in the Project Report or each report issued under clause 11.5 (“Emission reduction reporting”) or 11.6 (“Capacity Product and Green Product reporting”).
- (b) If reasonably requested by SFV following receipt of a Project Report or a report issued under clause 9.4 (“Emission reduction reporting”) or 9.5 (“Capacity Product and Green Product reporting”), LTES Operator must promptly provide further supporting details and evidence in relation to such report or the operation, bidding and dispatch of the Project in the relevant Quarter or financial year (as applicable).

12 Audit

- (a) SFV may elect to commission an independent “**Auditor**” to audit the books and records of LTES Operator and, to the extent reasonably required by SFV, LTES Operator’s Related Bodies Corporate, for the purpose of verifying the accuracy of a Project Report and LTES Operator’s compliance with this agreement.
- (b) SFV may commission an Audit no more than once in 12 months, unless an Audit occurring in the preceding 12 months identified a material non-compliance with this agreement.
- (c) SFV must give LTES Operator at least 20 Business Days’ notice of any Audit.
- (d) LTES Operator must:
 - (i) subject to paragraph (e), allow the Auditor to access during business hours the records and books of account kept by LTES Operator and its Related Bodies Corporate and any premises, systems, equipment, personnel and information of LTES Operator and its Related Bodies Corporate relating to the Project or this agreement; and
 - (ii) provide reasonable co-operation, information and assistance to the Auditor;in connection with Audit.

- (e) The Auditor's access to any premises, systems, equipment and personnel will be subject to LTES Operator's reasonable instructions relating to site access and to physical and information security.
- (f) In absence of fraud or manifest error, a finding of the Auditor in respect of the content of a Project Report will be binding on the parties.
- (g) LTES Operator will bear the costs of any Audit.

13 Knowledge sharing

- (a) LTES Operator must provide the Knowledge Sharing Deliverables to SFV in accordance with Schedule 4 ("Knowledge sharing plan").
- (b) If LTES Operator receives funding for the Project from the Australian Renewable Energy Agency or another Government Authority, including under the NSW Pumped Hydro Recoverable Grants Program, then SFV will act reasonably in agreeing any amendments to the Knowledge Sharing Deliverables to align with any equivalent obligation on LTES Operator to provide knowledge sharing deliverables to those Government Authorities.
- (c) LTES Operator must, acting reasonably and in good faith, categorise the Knowledge Sharing Deliverables it provides to SFV pursuant to this clause 13 as follows:
 - (i) **public information:** information that may be shared freely within SFV, with industry participants and with the public in general; or
 - (ii) **confidential information:** information that may only be shared in accordance with paragraph (d) or clause 29 ("Confidentiality").
- (d) SFV may disclose information received pursuant to this clause 13 that is marked by LTES Operator as 'confidential information' to the public on an aggregated and anonymised basis.
- (e) This clause 13 ceases to apply if SFV ceases to be a scheme financial vehicle for the purposes of the EII Act and/or a Government Entity.

Part 5 Annuity Products and payment terms

14 Grant and exercise of an Option

14.1 Option to exercise an Annuity Product

- (a) Subject to the remainder of this clause 14, SFV grants LTES Operator [insert] options, each of which grants LTES Operator the right (but not the obligation) to cause an Annuity Product commencing on an Annuity Product Start Date in respect of which the option is exercised to become effective (each such option, an “Option”). ***[Note: the number of options may be less depending on the term bid and the number of Excluded Annuity Product Start Dates.]***
- (b) An Option is granted in respect of each Annuity Product Start Date and must be exercised in full. Each Option may be exercised independently of any other Option (but subject to the remainder of this clause 14). However, LTES Operator may not exercise an Option to cause an Annuity Product to become effective if that exercise would result in:
- (i) the Annuity Period in respect of that Annuity Product commencing on an Excluded Annuity Product Start Date; or
 - (ii) the Annuity Product Start Date for the Annuity Product occurring after the Final Annuity Product End Date,
- and any purported exercise of an Option in contravention of paragraphs (i) or (ii) is void and has no force and effect.

14.2 Exercise Notice

Subject to clause 14.3 (“Pre-conditions to the exercise of the Annuity Product”):

- (a) LTES Operator may exercise an Option to cause an Annuity Product to become effective by complying with the requirements of this clause 14;
- (b) if LTES Operator wishes to exercise an Option to cause an Annuity Product to become effective, it must notify SFV of its proposal to exercise the Option by delivering an Exercise Notice in respect of that Option and Annuity Product to which that Option relates to SFV during the period commencing on the date that is 12 months prior to the Annuity Product Start Date for the Annuity Product to which the Option relates and ending on the last Business Day that is at least 6 months prior to that Annuity Product Start Date. This notification, and delivery of the Exercise Notice, is irrevocable, and, once delivered to SFV, may not be withdrawn or altered;
- (c) if an Exercise Notice has been validly delivered to SFV in accordance with this clause 14 within the time period prescribed in clause 14.2(b), then the Option to which that Exercise Notice relates is deemed to be exercised on the Annuity Product Start Date in respect of that Option without any further action from either party; and
- (d) if an Option has been validly exercised in accordance with this clause 14, then an Annuity Product becomes effective which:
- (i) commences on the Annuity Product Start Date in respect of which that Option is exercised; and

- (ii) subject to the requirements of clause 15.1 (“Annuity Period”), has an Annuity Period specified in the Exercise Notice in respect of that Option.

Such an Annuity Product becomes effective without any further action from either party.

14.3 Pre-conditions to the exercise of the Annuity Product

- (a) LTES Operator may only deliver an Exercise Notice in respect of an Option if, at the time at which the Exercise Notice in respect of that Option is delivered to SFV:
 - (i) either:
 - (A) the Project has achieved the Commercial Operations Date in accordance with clause 4 (“Service Conditions”); or
 - (B) SFV has accepted a request made by LTES Operator under clause 5.2(b) (“First Option Date”);
 - (ii) any amount due and payable by LTES Operator to SFV under this agreement has been paid in full by LTES Operator;
 - (iii) LTES Operator is not subject of an Insolvency Event; and
 - (iv) the Annuity Product Start Date for the Annuity Product included in the Exercise Notice is before the Final Annuity Product End Date.
- (b) SFV may waive any of the requirements set out in paragraph (a) in its absolute discretion.
- (c) Any purported delivery of an Exercise Notice in contravention of this clause 14.3 is void and has no force and effect.

15 Annuity Product terms

15.1 Annuity Period

An “**Annuity Period**” in respect of an Annuity Product to which an Option relates is the period commencing on the Annuity Product Start Date for the Annuity Product in respect of which LTES Operator has exercised its Option and ending on the date that is 1 year after that Annuity Product Start Date.

15.2 Terms of Annuity Product

The terms contained in Schedule 2 (“Annuity Product terms”) will apply to each Annuity Product which has become effective due to a valid exercise of an Option in accordance with clause 14 (“Grant and exercise of an Option”).

16 Repayment mechanism

16.1 Repayment

- (a) If:

- (i) LTES Operator does not exercise an Option to cause an Annuity Product to become effective in respect of a particular Financial Year during the Term (“**Non-Exercise Year**”);
- (ii) the Net Operational Revenue for that Non-Exercise Year is above the Annual Net Revenue Threshold for that Non-Exercise Year; and
- (iii) at the end of the Non-Exercise Year, the Historical Net Payments is a positive number,

then within 60 Business Days after the later of:

- (iv) SFV receiving the Annual Revenue Report in respect of that Non-Exercise Year; and
- (v) the finding of any Audit conducted in respect of that Annual Revenue Report,

SFV must notify LTES Operator of whether or not it agrees with LTES Operator’s calculation of the Repayment Amount in respect of that Non-Exercise Year.

- (b) If SFV notifies LTES Operator that it agrees with LTES Operator’s calculation of the Repayment Amount, then LTES Operator must pay that Repayment Amount within 30 Business Days after that notification.
- (c) If SFV notifies LTES Operator that it does not agree with LTES Operator’s calculation of the Repayment Amount, then:
 - (i) the parties must attempt to resolve the Dispute in accordance with clause 27.5 (“Negotiation”); and
 - (ii) if the parties are unable to resolve the Dispute in accordance with clause 27.5 (“Negotiation”), then the matter will be referred to an Independent Expert for determination under clause 27.6 (“Independent Expert”).

16.2 Calculation of Historical Net Payments

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

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

where:

HNP_T = the Historical Net Payments at that time;

$\sum SP$ = the sum of the Quarterly Annuity Payments and Annual Reconciliation Payments paid by SFV to LTES Operator prior to that time; and

$\sum LP$ = the sum of Annual Reconciliation Payments (expressed as a positive number), Performance Event Rebate and Repayment Amounts paid by LTES Operator to SFV prior to that time.

16.3 Calculation of Repayment Amount

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

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

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

where:

NOR_{FY} = the Net Operational Revenue for the Non-Exercise Year;
and

NRT_{FY} = the Annual Net Revenue Threshold for the Non-Exercise Year,

provided that the Repayment Amount may not be less than zero.

16.4 Financial hardship

- (a) If LTES Operator is at risk of financial hardship due to a requirement to pay a Repayment Amount, then LTES Operator may request deferral of its liability to pay the Repayment Amount.
- (b) A request by LTES Operator under paragraph (a) must include sufficient supporting details and evidence to enable SFV to determine whether to grant a deferral.
- (c) SFV must consider any request it receives under paragraph (a) but may determine whether to grant such deferral at its absolute discretion.
- (d) Without limiting SFV's discretion under paragraph (c), the parties acknowledge that a deferral of LTES Operator's payment of a Repayment Amount will not be granted where SFV determines that the financial hardship is due to an action taken by LTES Operator or its debt or equity investors, including the incurrence of excessive indebtedness or the making of a dividend or other distribution.

17 Billing and payment

17.1 Billing

- (a) For each Quarter during an Annuity Period, LTES Operator must deliver to SFV an invoice (which must be a Tax Invoice if GST is payable) ("**Invoice**") by the tenth Business Day after the end of the Quarter setting out:
 - (i) each payment under the Annuity Product that is payable by either SFV or LTES Operator for the Quarter;
 - (ii) any adjustments to any previous Invoices under clause 17.4 ("**Adjustments**");
 - (iii) any payment under Part 12 of the *Electricity Infrastructure Investment Regulation 2021* that is payable by either LTES Operator or SFV for the Quarter;
 - (iv) any other amounts payable by either party under this agreement in respect of the Quarter;

- (v) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
- (vi) the net amount of the above sums payable by either SFV or LTES Operator,

("Invoiced Sum").

- (b) On request by SFV, LTES Operator must provide any information or other evidence reasonably required by SFV to verify an Invoice.

17.2 Payment

- (a) If an Invoiced Sum is payable by a party, then that party must pay the Invoiced Sum on the date which is 20 Business Days after the date of the Invoice.
- (b) Unless otherwise agreed, all payments to be made under this agreement must be paid by depositing clear and available funds to the nominated bank account (which must be with an "Authorised Deposit Taking Institution" registered with the Australian Prudential Regulatory Authority) of SFV or LTES Operator (as applicable).
- (c) The nominated bank account of LTES Operator is the bank account specified in item 15 of the Reference Details. SFV must nominate a bank account within 5 Business Days' of the Signing Date. A party may change the nominated bank account on not less than 5 Business Days' notice.

17.3 Disputed Invoice

- (a) If a party that is required to pay an amount under an Invoice reasonably believes the Invoice or any component of the Invoice to be incorrect, then:
 - (i) it must notify the other party of the "**Disputed Amount**" and provide a statement of its reasons for disputing the Invoice; and
 - (ii) if a party is required to pay an Invoiced Sum, then that party must pay that part of the Invoiced Sum which is not in dispute.
- (b) If a party notifies the other party of a Disputed Amount, then the parties must meet as soon as practicable, and in any event within 10 Business Days after the notice, to discuss the Disputed Amount.
- (c) If following the meeting described in paragraph (b) the parties have not agreed a resolution in respect of the Disputed Amount, then either party may refer the matter for determination by an Independent Expert under clause 27.6 ("Independent Expert").
- (d) A party must pay any Disputed Amounts within 10 Business Days after the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in respect of the Disputed Amount.

17.4 Adjustments

- (a) Subject to paragraph (c), LTES Operator will adjust an Invoice to the extent required to reflect any changes to the inputs that were used to determine that Invoice, including any change under a Revised Statement.

- (b) LTES Operator must include any adjustments in the next prepared Invoice.
- (c) Other than adjustments for Revised Statements, no adjustment will be made to an Invoice more than 3 years after the end of the Quarter that is the subject of the Invoice.

17.5 Interest on late payments

If an amount payable by a party under this agreement (including an amount determined to be payable as the result of a Dispute) was not paid by the due date, then interest will accrue on the unpaid amount from day to day at the Default Interest Rate from (and including) the date the original payment was due to:

- (a) in the case of a Disputed Amount, the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in respect of the Disputed Amount; or
- (b) otherwise, the date the unpaid amount is paid in full.

18 Taxes

Subject to clause 19 ("GST"), LTES Operator will be solely liable for payment of all taxes, duties and levies (including corporate taxes, personal income tax, fringe benefits tax, payroll tax, stamp duty, withholding tax, PAYG, turnover tax and excise and import duties, and any subcontractor's taxes) which may be imposed on LTES Operator in relation to any:

- (a) Annuity Product; or
 - (b) payments made to LTES Operator,
- under this agreement.

19 GST

19.1 Definitions and interpretation

For the purposes of this clause 19:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 19, 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.

19.2 GST exclusive

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

19.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made in connection with this agreement, 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.

19.4 Adjustment events

If an adjustment event arises for a supply made in connection with this agreement, 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.

19.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this agreement 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 19.3 ("Payment of GST") applies to the reduced payment.

Part 6 Material events

20 Force Majeure

20.1 Definition of Project Force Majeure Event

Subject to clause 20.2 (“Exclusions”), a **“Project Force Majeure Event”** is an event or circumstance, or combination of events or circumstances, occurring after the Signing Date that:

- (a) is not within the reasonable control of LTES Operator; and
- (b) LTES Operator could not have avoided through the exercise of reasonable care, compliance with its obligations under this agreement and Good Industry Practice

20.2 Exclusions

For the purposes of clause 20.1 (“Definition of Project Force Majeure Event”), the following do not constitute a Project Force Majeure Event:

- (a) 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;
- (b) 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;
- (c) a malfunction, temporary unavailability, breakdown or failure of LTES Operator’s equipment, property or assets caused by normal wear and tear;
- (d) any event or circumstance arising due to a failure by LTES Operator, any of its Related Bodies Corporate or any of their respective employees, agents or subcontractors to properly maintain any equipment, property or asset in accordance with Good Industry Practice;
- (e) strikes, industrial disputes or other industrial actions or disruption that only affect LTES Operator;
- (f) 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;
- (g) delay in obtaining any Authorisation required to be held by a party to perform its obligations under this agreement;
- (h) 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, other than a lack of available water resource that results from a binding direction of a Government Authority; or
- (i) any failure of LTES Operator to enter into a WDR Contract or any expiry or termination of a WDR Contract.

20.3 Notification of Project Force Majeure Event

If during an Annuity Period the capacity of the Project to operate is reduced as a result of a Project Force Majeure Event, then LTES Operator must:

- (a) notify SFV of the occurrence of a Project Force Majeure Event as soon as reasonably practicable (and no later than 5 Business Days after the commencement of the Project Force Majeure Event) giving reasonable details of:
 - (i) the circumstances constituting the Project Force Majeure Event;
 - (ii) the impact of the Project Force Majeure Event; and
 - (iii) if known, the likely duration of those circumstances and that impact; and
- (b) provide SFV with an update every two weeks, or such other frequency agreed between the parties, on the impact of the Project Force Majeure Event.

20.4 Suspension of obligations

If a Project Force Majeure Event occurs and LTES Operator notifies SFV of its occurrence in accordance with clause 20.3 (“Notification of Project Force Majeure Event”), then the rights and obligations of LTES Operator under this agreement (other than rights and obligations to pay or receive any amounts of money accrued or due and payable or which will become due and payable under this agreement) will be suspended to the extent the ability of LTES Operator to perform such obligations is affected by the Project Force Majeure Event.

20.5 Accrued rights and obligations

Any suspension of obligations pursuant to clause 20.4 (“Suspension of obligations”) will not affect any rights or obligations which may have accrued prior to the suspension or, if the Project Force Majeure Event affects only some obligations, any other rights or obligations of LTES Operator.

20.6 Extension of time

Without limiting clause 20.4 (“Suspension of obligations”), if this agreement requires an obligation to be performed or a thing to be achieved by a specified date, then the applicable date will be extended to the extent that the Project Force Majeure Event causes a critical path delay in that obligation being performed or thing being achieved, provided that at the time of providing notice pursuant to clause 20.3 (“Notification of Project Force Majeure Event”) LTES Operator has also provided details of any expected delays and its proposed corrective actions to overcome those delays.

20.7 Mitigation of Project Force Majeure Event

If LTES Operator is affected by a Project Force Majeure Event, LTES Operator must use best endeavours (including by incurring reasonable costs) to:

- (a) avoid or remove the circumstances constituting the Project Force Majeure Event; and
- (b) mitigate the effect of that Project Force Majeure Event upon the Project and LTES Operator’s performance of its obligations under this agreement,

in each case, as soon as is reasonably practicable.

21 Change in Law

21.1 Change in Law

- (a) If, at any time after the Tender Date, a Change in Law occurs that prevents or materially interferes with the operation of this agreement or any of the transactions contemplated by this agreement, then the parties will:
 - (i) use their best endeavours to mitigate the effect of the Change in Law; and
 - (ii) consider and negotiate in good faith any specific amendment to this agreement (other than the Annuity Cap) requested by a party so as to preserve the efficacy of the operation of this agreement in the manner originally intended at the Signing Date.
- (b) If the parties are unable to agree any changes to this agreement as contemplated under clause 21.1(a)(ii), then this agreement will continue to operate in accordance with its terms.
- (c) This clause 21.1 may operate in conjunction with clause 21.2 (“Relevant Cost Change”) but is intended to address amendments to the agreement other than those relating to the Annuity Cap.

21.2 Relevant Cost Change

Subject to clause 18 (“Taxes”), if LTES Operator incurs a Relevant Cost Change, then LTES Operator must use its best endeavours to mitigate any additional costs to be incurred and to maximise the extent of any reduction in costs, arising from the Relevant Cost Change.

21.3 Notice

- (a) If the net impact of a Relevant Cost Change on LTES Operator is likely to result in:
 - (i) a net increase in costs that exceeds the Cost Change Threshold, then LTES Operator may give SFV a notice under this clause 21.3 in respect of that Relevant Cost Change; or
 - (ii) a net reduction in costs that exceeds the Cost Change Threshold, then LTES Operator must give SFV a notice under this clause 21.3 in respect of that Relevant Cost Change.
- (b) The net impact of a Relevant Cost Change pursuant to this clause 21.3 is to be calculated on the basis that LTES Operator complies with its obligations under clause 21.2 (“Relevant Cost Change”).
- (c) A notice given by LTES Operator pursuant to this clause 21.3 must specify:
 - (i) reasonable details of the Relevant Cost Change and the circumstances that gave rise to it;
 - (ii) its best estimate of the amount of the Relevant Cost Change (together with reasonable supporting evidence);

- (iii) reasonable evidence demonstrating LTES Operator's steps taken to use best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clause 21.2 ("Relevant Cost Change"); and
- (iv) the increase or decrease in the Annuity Cap and/or Annual Net Revenue Threshold which LTES Operator considers is required to pass through 50% of the Relevant Cost Change to SFV in accordance with the Cost Change Principles.

21.4 Adjustment to Annuity Cap and Annual Net Revenue Threshold

If LTES Operator gives notice to SFV in accordance with clause 21.3 ("Notice"), then the parties will negotiate in good faith an adjustment to the Annuity Cap and/or Annual Net Revenue Threshold which the parties consider is required to pass through 50% of the Relevant Cost Change to SFV in accordance with the Cost Change Principles.

21.5 Dispute resolution

- (a) If the parties fail to agree the required adjustment under clause 21.4 ("Adjustment to Annuity Cap and Annual Net Revenue Threshold") by the later of the date that is:
 - (i) 60 Business Days after receipt of the notice under clause 21.3 ("Notice"); and
 - (ii) 120 Business Days after the commencement of the relevant Change in Law,

then either party may refer the Dispute to an Independent Expert for determination under clause 27.6 ("Independent Expert").

- (b) If a Dispute is referred to an Independent Expert under this clause 21.5, then that Independent Expert must base its recommendation or decision on the Cost Change Principles.

21.6 Cost Change Principles

The "**Cost Change Principles**" to be applied in determining an adjustment to the Annuity Cap and/or Annual Net Revenue Threshold are:

- (a) the cost or benefit passed through to SFV will not include the Cost Change Threshold amount;
- (b) any adjustment to the Annuity Cap and/or Annual Net Revenue Threshold will commence at the start of a Financial Year;
- (c) the adjusted Annuity Cap and/or Annual Net Revenue Threshold may vary throughout the remaining Term, provided that any such variation(s) occurs at the start of a Financial Year;
- (d) the adjustment will reflect the impact of the Change in Law on LTES Operator had LTES Operator used best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clause 21.1(a)(i) (which may include procuring replacement WDRUs);
- (e) it will be assumed that LTES Operator will exercise an Option in respect of all remaining Annuity Product Start Dates (subject to compliance with the requirements in clause 14.1(b));

- (f) any increase in LTES Operator's costs will be discounted for any related economic benefit to LTES Operator associated with the relevant Change in Law (including any tax benefits);
- (g) any costs incurred by LTES Operator under a WDR Contract as a result of a Change in Law will only be taken into account to the extent such costs are reasonable and consistent with Good Industry Practice; and
- (h) where the most efficient response to the Change in Law involves the incurring of capital expenditure by LTES Operator, the cost of that capital expenditure will be annualised and allocated on a proportional basis between the remaining Term and the expected useful economic life of the relevant capital item.

Part 7 Other terms

22 Default and Termination

22.1 Termination by LTES Operator

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

- (a) **(payment default)** SFV fails to pay any amount by the due date for that payment due to LTES Operator under this agreement (other than an amount which is the subject of a good faith dispute) and SFV does not pay that amount in full within 20 Business Days after receiving notice from LTES Operator of that failure;
- (b) **(breach)** SFV fails to comply in a material respect with an obligation under this agreement (other than an obligation to pay an amount due) and SFV does not remedy that failure within 60 Business Days after receiving notice from LTES Operator of that failure;
- (c) **(misrepresentation)** an express representation made by SFV under this agreement is incorrect or misleading in any material respect when made and SFV does not remedy the incorrect or misleading representation within 60 Business Days after receiving notice from LTES Operator of that incorrect or misleading representation;
- (d) **(insolvency)** SFV is the subject of an Insolvency Event; or
- (e) **(prolonged force majeure)** a Project Force Majeure Event impacting at least the Guaranteed Capacity of the Project is subsisting for a consecutive period of 18 months during the Term.

22.2 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 3.1(a) (“Provision of Initial Security”);
- (b) **(Commercial Operations Date)** in accordance with clause 4.6 (“Failure to meet the COD Sunset Date”);
- (c) **(payment default)** LTES Operator fails to pay any amount by the due date for that payment due to SFV under this agreement (other than an amount which is the subject of a good faith dispute) and LTES Operator does not pay that amount in full within 20 Business Days after receiving notice from SFV of that failure;
- (d) **(breach)** LTES Operator fails to comply in a material respect with an obligation under this agreement (other than an obligation to pay an amount due) and:
 - (i) LTES Operator does not commence remedying that failure within 20 Business Days after receiving notice from SFV of that failure (“**Breach Notice**”); or

- (ii) if LTES Operator has commenced remedying that failure 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 failure within 40 Business Days after receiving the Breach Notice (or by any later date agreed by SFV acting reasonably);
- (e) **(misrepresentation)**
 - (i) an express representation made by LTES Operator under this agreement (other than under clause 25.3 (“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));
- (f) **(tender misrepresentation)**
 - (i) an express representation made by LTES Operator under clause 25.3 (“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 this agreement 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));
- (g) **(fraudulent Project Reports)**
 - (i) LTES Operator fraudulently, recklessly or knowingly provides:
 - (A) a Project Report;
 - (B) a report issued under clauses 11.4 (“Emission reduction reporting”) or 11.5 (“Capacity Product and Green Product reporting”); or
 - (C) any further information provided by LTES Operator pursuant to clause 11.8 (“Provision of further information”),

that is incorrect or misleading in any material respect; and

- (ii) LTES Operator does not, within 60 Business Days after receiving notice from SFV of that incorrect or misleading representation:
 - (A) pay SFV compensation reasonably acceptable to SFV on account of loss suffered by it or by electricity customers in New South Wales (or both);
 - (B) ensure that the persons involved in the incorrect or misleading representation will have no future involvement in respect of the Project or this agreement;
 - (C) procure that an auditing firm approved by SFV conducts an audit of all previous Project Reports and provides SFV the results of such audit; and
 - (D) undertake to procure that an auditing firm approved by SFV conducts an annual audit of all Project Reports provided to SFV in respect of each future Financial Year and provide SFV the results of such audits within 40 Business Days after the end of that Financial Year;
- (h) **(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;
- (i) **(Prolonged Unavailability Event)** a Prolonged Unavailability Event occurs and LTES Operator does not pass a Revalidation Test within 20 Business Days' of a notice that SFV intends to terminate for a Prolonged Unavailability Event;
- (j) **(prolonged force majeure)** a Project Force Majeure Event impacting at least the Guaranteed Capacity of the Project is subsisting for a consecutive period of 18 months during the Term;
- (k) **(amendment or repeal of EII Act)** a Change in Law results in SFV being unable to recover amounts under "contribution determinations" (as defined in the EII Act) required for it to meet its liabilities as they fall due under this agreement and neither the Parliament of New South Wales or the Government of New South Wales have arranged or procured other sources of funds or funding mechanisms for SFV to meet its liabilities under this agreement; or
- (l) **(Social Licence Commitments)** in accordance with item 1.9 of Schedule 6 ("Termination for failure to comply with Social Licence Commitments"); or
- (m) **(Termination for failure to pass the Revalidation Test)** in accordance with clause 6.7 ("Termination for failure to pass the Revalidation Test").

22.3 Termination for convenience by SFV

- (a) Subject to paragraph (b), SFV may at its sole and absolute discretion at any time terminate this agreement by notice in writing to LTES Operator.
- (b) A termination of this agreement under this clause 22.3 will take effect at the date specified by SFV in the notice given pursuant to paragraph (a), provided that such date is no less than 6 months after the date the notice is given.

22.4 Termination payments

(a) If this agreement is terminated:

(i) by LTES Operator in accordance with:

- (A) clause 22.1(a) (“payment default”);
- (B) clause 22.1(b) (“breach”);
- (C) clause 22.1(c) (“misrepresentation”); or
- (D) clause 22.1(d) (“insolvency”),

then SFV must pay the Fixed Termination Amount to LTES Operator;

(ii) by SFV in accordance with:

- (A) clause 22.2(c) (“payment default”);
- (B) clause 22.2(d) (“breach”);
- (C) clause 22.2(e)(iii) (“misrepresentation”);
- (D) clause 22.2(f)(iv) (“tender misrepresentation”);
- (E) clause 22.2(g) (“fraudulent Project Reports”);
- (F) clause 22.2(h) (“insolvency”);
- (G) clause 22.2(i) (“Prolonged Unavailability Event”); or
- (H) clause 22.2(m) (“Revalidation Test”),

then LTES Operator must pay the Early Termination Amount to SFV;

(iii) by SFV in accordance with clause 22.2(a) (“Initial Security”) or clause 22.2(b) (“Commercial Operations Date”):

- (A) prior to the Commercial Operations Date, then LTES Operator must pay the COD Termination Amount to SFV; or
- (B) on or after the Commercial Operations Date, then LTES Operator must pay the Early Termination Amount to SFV;

(iv) by a party in accordance with clause 22.1(e) and 22.2(j) (“prolonged force majeure”), then no Termination Payment is payable under this agreement;

(v) by SFV in accordance with:

- (A) clause 22.2(k) (“amendment or repeal of EII Act”); or
- (B) clause 22.3 (“Termination for convenience by SFV”),

then SFV must pay the Fixed Termination Amount to LTES Operator; or

- (vi) by SFV in accordance with clause 22.2(l) (“Social Licence Commitments”):
 - (A) prior to the Commercial Operations Date, then LTES Operator must pay the COD Termination Amount to SFV; and
 - (B) on or after the Commercial Operations Date, then LTES Operator must pay SFV the Early Termination Amount.
- (b) Subject to paragraph (c), the parties acknowledge and agree that:
 - (i) each party’s sole remedy arising out of or in connection with a termination under this clause 22 is that party’s entitlement to a Termination Payment (if applicable) in accordance with paragraph (a) and SFV will not be required to make any future payments on account of an Annuity Product; and
 - (ii) each Termination Payment is a genuine pre-estimate of that party’s anticipated losses arising from the termination of this agreement prior to the end of the Term.
- (c) If:
 - (i) the Early Termination Amount or COD Termination Amount becomes payable by LTES Operator under the terms of this agreement; and
 - (ii) that Early Termination Amount or COD Termination Amount is found to be a penalty or LTES Operator’s obligation to pay the Early Termination Amount or COD Termination Amount pursuant to this clause 22.4 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 Early Termination Amount or COD Termination Amount (as applicable).

22.5 Invoice

- (a) The party entitled to be paid a Termination Payment must provide an invoice to the other party for the Termination Payment within 60 Business Days after termination of this agreement.
- (b) The party required to pay a Termination Payment must pay the amount of any such Termination Payment within 30 Business Days after receipt of an invoice provided under paragraph (a).

22.6 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.

22.7 Exclusion of rights

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

22.8 Survival

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

- (a) this clause 22 and clauses 24 (“Liability”), 27 (“Dispute Resolution”) and 29 (“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.

23 Assignment and Change in Control

23.1 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 23.1.
- (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 any obligation to pay a Repayment Amount that reflects Quarterly Annuity Payments and Annual Reconciliation Payments paid by SFV to LTES Operator prior to such assignment, novation or transfer; and
 - (ii) in the case of a proposed assignment, novation or transfer that would occur prior to the Commercial Operations Date, SFV considers (in its absolute 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.
- (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 the Project to the same person.

- (d) Notwithstanding anything else in this clause 23.1, 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 23.1 will apply to any assignment, novation or transfer of LTES Operators' 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).

23.2 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 23.2.
- (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; or
 - (ii) 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.

23.3 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 23, then the non-assigning party agrees to 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.

23.4 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 (in its absolute 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.

23.5 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").

24 Liability

24.1 Excluded Loss

Subject to clauses 24.2 ("Limitation of liability") and 24.3 ("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 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.

24.2 Limitation of liability

To the extent permissible by Law and subject to clause 24.3 ("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.

24.3 No exclusion

Clauses 24.1 ("Excluded Loss") and 24.2 ("Limitation of liability") do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this agreement, including a Termination Payment;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 24.4(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.

24.4 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.
- (c) The amounts payable under this clause 24.4 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 24.4 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 wilful 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.

25 Representations and warranties

25.1 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;
- (f) **(no insolvency)** it is not subject to an Insolvency Event;
- (g) **(AFSL)** to the extent required by Law, it holds, or is exempt from the requirement to hold, an Australian financial services licence under Division 2 of Part 7.6 of the Corporations Act; and
- (h) **(wholesale client)** it is a “wholesale client” within the meaning of section 761G of the Corporations Act.

25.2 Representations and warranties from LTES Operator

LTES Operator represents and warrants that:

- (a) **(anti-bribery and anti-corruption)** 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 anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction; and
- (b) **(arm’s length contracts)** it has not entered into any Demand Response Contract or other arrangement which would have been a breach of clause 6.3 (“Operation, bidding and dispatch”) if it had entered into that arrangement during the Term.

25.3 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 this agreement (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 this agreement 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.

25.4 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.

26 Trustee provisions

26.1 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.

26.2 Trustee undertakings

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

26.3 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.

26.4 Trustee limitation of liability

- (a) This clause 26.4 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 26.4(c)(i) and 26.4(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: This clause is to be included if LTES Operator is trustee of a trust.]

27 Dispute Resolution

27.1 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 27.

27.2 No proceedings

Subject to clause 27.9 (“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 27 and, if applicable, clause 28 (“Pooled Disputes”).

27.3 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).

27.4 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) Subject to clause 28 (“Pooled Disputes”), the procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 27.5 (“Negotiation”);
 - (ii) second, if permitted under clause 27.5(b) (“Negotiation”), referral of the Dispute for determination by an Independent Expert under clause 27.6 (“Independent Expert”); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

27.5 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; or

- (B) where the Dispute is of a technical or engineering nature or in connection with a Social Licence Commitment,

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.

27.6 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 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.

27.7 Other Relief

The Dispute resolution procedures in this clause 27 or clause 28 ("Pooled Disputes") 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).

27.8 Continued performance following a Dispute

Despite the existence of any Dispute, each party must continue to perform its obligations under this agreement.

27.9 Interim relief

Nothing in this clause 27 or clause 28 ("Pooled Disputes") prevents either party from seeking urgent injunctive or declaratory relief.

28 Pooled Disputes

28.1 Referral of Pooled Disputes

- (a) If in SFV's opinion (acting reasonably):
 - (i) a Dispute in relation to clause 1.6 ("Adjustment"), 21 ("Change in Law") or 22.2(k) ("amendment or repeal of EII Act") is identical or similar to an Other Dispute; or
 - (ii) the outcome of a Dispute or an Other Dispute could affect the entitlements and/or obligations of a party under this agreement or an Other LTESA (as relevant),

then that Dispute and/or Other Dispute (as applicable) is a "**Pooled Dispute**".

- (b) If SFV gives a Dispute Notice to or receives a Dispute Notice from:
 - (i) LTES Operator; or
 - (ii) an Other LTESA Counterparty,

relating to a Pooled Dispute, then SFV may refer the Pooled Dispute to a Pooled Dispute Panel for resolution in accordance with clause 28.2 ("Resolution by Pooled Dispute Panel") ("**Pooled Dispute Referral**").

28.2 Resolution by Pooled Dispute Panel

- (a) If SFV gives a Pooled Dispute Referral in respect of a Pooled Dispute, then:
 - (i) each Pooled Dispute Participant may appoint a person to represent it on the Pooled Dispute Panel; and
 - (ii) the Pooled Dispute Panel will meet within 1 month (or such other period as reasonably determined by SFV) from the Pooled Dispute Referral to resolve the Pooled Dispute.
- (b) The Pooled Dispute Panel will determine its own procedures for meeting, and unless the Pooled Dispute Panel otherwise determines, all meeting of the Pooled Dispute Panel will be held in Sydney with an option provided for participation via video conference.
- (c) If a party provides information or documents relevant to a Pooled Dispute to the other party, then it must use best endeavours to promptly provide the information and documents to each representative on the Pooled Dispute Panel.
- (d) Subject to clause 28.3 ("Bilateral resolution"), if the Pooled Dispute Panel unanimously resolves the Pooled Dispute, then that resolution will be binding on the parties to this agreement regardless of whether they participated in the Pooled Dispute Panel or not.
- (e) If the Pooled Dispute Panel does not unanimously resolve the Pooled Dispute within 3 months from the Pooled Dispute Referral, then SFV may refer the Pooled Dispute for resolution in accordance with clause 27.6 ("Independent Expert"), provided that:
 - (i) the Independent Expert will be appointed by the CEO of the Resolution Institute (or their independent nominee);
 - (ii) each Pooled Dispute Participant will be afforded equal treatment and equal opportunity to present its views and to reply to the comments and submissions presented by any other Pooled Dispute Participant;
 - (iii) 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 on all Pooled Dispute Participants; and
 - (iv) the costs of the Independent Expert will be borne equally between the Pooled Dispute Participants.

28.3 Bilateral resolution

- (a) If LTES Operator and SFV bilaterally resolve a Pooled Dispute as it applies to this agreement, then clause 28.2 ("Resolution by Pooled Dispute Panel") will cease to apply and LTES Operator will:
 - (i) cease to be a Pooled Dispute Participant in respect of that Pooled Dispute; and
 - (ii) not be required to participate in, and will not be bound by any resolution by, the Pooled Dispute Panel in respect of that Pooled Dispute.

- (b) If SFV notifies LTES Operator that an Other LTESA Counterparty has bilaterally resolved the Pooled Dispute with SFV, then that Other LTESA Counterparty will cease to be a Pooled Dispute Participant.

29 Confidentiality

29.1 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 29);
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the party;
- (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, provided the recipient agrees to act consistently with this clause;
- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (f) in the case of disclosure by SFV, Knowledge Sharing Deliverables that have been categorised by LTES Operator as 'public information' pursuant to clause 13(c) ("Knowledge sharing");
- (g) where 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;
- (h) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
- (i) to a rating agency; or
- (j) in the case of disclosure by SFV, to:
 - (i) Consumer Trustee;
 - (ii) Financial Trustee;
 - (iii) AEMO;

- (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.

29.2 Publicity

- (a) Unless required by Law, LTES Operator must not make any public announcements relating to the subject matter of this agreement (but excluding matters relating to individual WDRUs that are not connected to the Project) 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 WDR 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
 - (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 aggregated basis, in the relevant public announcement.

30 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 31 ("Notices").

31 Notices

31.1 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.

31.2 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.
- (b) If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

31.3 When effective

Communications take effect from the time they are received or taken to be received under clause 31.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

31.4 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.

31.5 Receipt outside business hours

Despite anything else in this clause 31, if communications are received or taken to be received under clause 31.4 (“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.

32 General

32.1 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.

32.2 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.

32.3 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 in its absolute discretion (including by imposing conditions).

32.4 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.

32.5 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.

32.6 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.

32.7 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.

32.8 Supervening Law

Subject to clause 21 ("Change in 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.

32.9 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.

32.10 Entire agreement

This agreement constitute the entire agreement of the parties on the subject matter and supersede all prior agreements, understandings and negotiations on that subject matter.

32.11 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.

32.12 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.

32.13 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.

32.14 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.

32.15 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.

EXECUTED as an agreement.

Schedule 1 Exercise Notice

To: [Name and address of SFV] (“SFV”)

Attention: [Insert]

[Date]

Exercise Notice - Long-Term Energy Service Agreement (Demand Response Model) - [Project name] between [Name of LTES Operator] and SFV dated [insert date] (“LTESA”)

Under clause 14 (“Grant and exercise of an Option”) of the LTESA, LTES Operator gives notice as follows:

Irrevocable proposal to exercise the Option

LTES Operator hereby gives SFV notice of its proposal to exercise its Option to cause an Annuity Product with the following details to become effective.

Annuity Product term	Detail
Annuity Product Start Date	1/7/[insert year]
Annuity Period	One year

LTES Operator confirms that this Exercise Notice constitutes a notice for the purposes of clause 14 (“Grant and exercise of an Option”) of the LTESA to exercise this Option, is irrevocable and may not be withdrawn or altered.

LTES Operator acknowledges that any inconsistency of this notice with the rest of the LTESA may cause this Exercise Notice to be deemed invalid.

Pre-conditions to the exercise of the Option

LTES Operator confirms that each of the pre-conditions set out in clause 14.3 (“Pre-conditions to the exercise of the Annuity Product”) of the LTESA are either satisfied as at the date of this Exercise Notice or have been expressly waived by SFV in writing.

Interpretation

Clause 1 (“Definitions and interpretation”) of the LTESA applies to this notice as if it was fully set out in this notice.

.....
[Name of person]¹ being
a [director/company secretary] of
[Name of LTES Operator]

Instructions for completion

1 Must be a director or company secretary of LTES Operator.

Schedule 2 Annuity Product terms

1 Application and interpretation

1.1 Application to an Annuity Product

The terms contained in this Schedule 2 apply to each Annuity Product which has become effective due to a valid exercise of an Option in accordance with clause 14 (“Grant and exercise of an Option”) separately. In interpreting this Schedule 2 (other than this item 1.1) in respect of such an Annuity Product, a reference to “the Annuity Period” is a reference to the Annuity Period in respect of that Annuity Product.

1.2 Schedule items

A reference in this Schedule 2 to an “item” is a reference to an item of this Schedule 2.

1.3 Defined terms

Capitalised terms in this Schedule 2 have the meaning set out below, in clause 1 and in the Reference Details, unless the contrary intention appears:

Adjusted Annuity Amount has the meaning given in item 4.3.

Annual Reconciliation Payment has the meaning given in item 4.2.

Annual Revenue Sharing Amount has the meaning given in item 4.4.

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

Quarterly Annuity Payment means, in respect of a Quarter of Annuity Period, an amount equal to 25% of the Annuity Cap for the relevant Annuity Period.

2 Annuity Product terms

In respect of the Annuity Period:

- (a) SFV agrees to pay:
 - (i) any Quarterly Annuity Payment; and
 - (ii) any positive Annual Reconciliation Payment,
to LTES Operator; and
- (b) LTES Operator agrees to pay:
 - (i) the lesser of the Historical Net Payments and the absolute value of any negative Annual Reconciliation Payment; and

- (ii) Performance Event Rebate,
to SFV,

in each case, on the terms and conditions contained in this agreement.

3 Quarterly Annuity Payment

3.1 SFV's payment of Quarterly Annuity Payment

Within 30 Business Days after the end of each of the first, second and third Quarters of each Annuity Period, SFV must pay the Quarterly Annuity Payment for the Quarter to LTES Operator.

3.2 No payment in fourth Quarter

No amount is payable on account of the Quarterly Annuity Payment in respect of the fourth Quarter of an Annuity Period.

4 Annual Reconciliation Payment

4.1 Payment of Annual Reconciliation Payment

(a) In respect of each Annuity Period:

- (i) if the Annual Reconciliation Payment for the Annuity Period is a positive amount, then SFV must pay that Annual Reconciliation Payment to LTES Operator; or
- (ii) if the Annual Reconciliation Payment for the Annuity Period is a negative amount, then LTES Operator must pay to SFV the lesser of:
 - (A) the Historical Net Payments at the time of the calculation of that Annual Reconciliation Payment; and
 - (B) the absolute value of that Annual Reconciliation Payment.

(b) Any amount that is payable by a party under paragraph (a) in respect of an Annuity Period must be paid:

- (i) subject to paragraph (ii), within 30 Business Days after the end of that relevant Annuity Period; or
- (ii) in the case of the Annuity Period that commences on the Final Anniversary, within 20 Business Days after the determination of the Performance Event Rebate for that Annuity Period in accordance with item 5 of this Schedule.

4.2 Calculation of Annual Reconciliation Payment

The "Annual Reconciliation Payment" for an Annuity Period is calculated as follows:

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

where:

- ARP_{FY} = the Annual Reconciliation Payment for an Annuity Period;
 AAA_{FY} = the Adjusted Annuity Amount for the Annuity Period;
 ARS_{FY} = the Annual Revenue Sharing Amount for the Annuity Period; and
 $\sum QAP_{FY}$ = the sum of the Quarterly Annuity Payments paid by SFV in respect of Quarters in the Annuity Period.

4.3 Calculation of Adjusted Annuity Amount

The “**Adjusted Annuity Amount**” for the Annuity Period is:

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

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

where:

AAA_{FY} = the Adjusted Annuity Amount for the Annuity Period;

AC_{FY} = the Annuity Cap;

NOR_{FY} = the Net Operational Revenue for the Annuity Period; and

ART_{FY} = the Annuity Reduction Threshold for the Annuity Period,

provided that if the Adjusted Annuity Amount is less than zero then it will be deemed to be zero.

4.4 Calculation of Annual Revenue Sharing Amount

The “**Annual Revenue Sharing Amount**” for the Annuity Period is calculated as follows:

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

where:

ARS_{FY} = the Annual Revenue Sharing Amount for the Annuity Period;

NOR_{FY} = the Net Operational Revenue for the Annuity Period;

AAA_{FY} = the Adjusted Annuity Amount for the Annuity Period; and

NRT_{FY} = the Annual Net Revenue Threshold for the Annuity Period,

provided that if the Annual Revenue Sharing Amount is less than zero then it will be deemed to be zero.

5 Performance Event Rebate

5.1 Determination of Performance Event Rebate

- (a) Within 40 Business Days after the end of the Annuity Period, SFV must
- (i) notify LTES Operator that SFV agrees with the Performance Event Rebate set out in the Performance Event Report; or
 - (ii) notify LTES Operator that SFV disputes the Performance Event Rebate set out in the Performance Event Report.
- (b) If:
- (i) SFV notifies LTES Operator that SFV agrees with the Performance Event Rebate set out in the Performance Event Report; or
 - (ii) SFV does not provide any notice under paragraph (a) within the timeframe required by that paragraph,
- then the Performance Event Rebate set out in the Performance Event Report will be binding on the parties.
- (c) If SFV notifies LTES Operator that it disputes the Performance Event Rebate, then either party may refer the matter for determination by an Independent Expert under clause 27.6 (“Independent Expert”).

5.2 Payment of Performance Event Rebate

- (a) LTES Operator must pay the Performance Event Rebate (if any) for the Annuity Period within 20 Business Days after the determination of the Performance Event Rebate for that Annuity Period in accordance with item 5.1.
- (b) Subject to clause 22 (“Default and Termination”), the payment of the Performance Event Rebate is SFV’s sole remedy for LTES Operator’s failure to respond to a Performance Event in the Annuity Period in accordance with this agreement.

5.3 Calculation of Performance Event Rebate

The “**Performance Event Rebate**” for the Annuity Period is calculated as follows:

$$PRF_{FY} = AAA_{FY} \times PPF_{FY}$$

where:

PRF_{FY} = the Performance Event Rebate for the Annuity Period (in \$);

AAA_{FY} = the Adjusted Annuity Amount for the Annuity Period (in \$); and

PPF_{FY} = the Performance Event Rebate Percentage for each Performance Event during the Annuity Period (expressed as a percentage),

provided that the Performance Event Rebate for the Financial Year will be capped at 120% Annuity Cap for that Financial Year.

5.4 Calculation of Performance Event Rebate Percentage

- (a) The “**Performance Event Rebate Percentage**” is calculated as follows for each Performance Event during the Annuity Period:

$$PPF_{FY} = (1 - (PCTR \times PCCR))$$

PPF_{FY} = the Performance Event Rebate Percentage (expressed as a percentage) for a Performance Event;

PCTR = the Performance Coverage Time Ratio, being the total WDRUTI for the Project minus the total NCBTI for the Project divided by the total number of Trading Intervals during the Actual LOR Period;

WDRUTI = the WDRU Trading Intervals, being the number of Trading Intervals Bid by a single WDRU during the Actual LOR Period;

NCBT = the non-conforming bid Trading Intervals, being the number of Trading Intervals bid by a single WDRU during the Actual LOR Period in respect of which a WDRU non-conformance flag is raised by AEMO; and

PCCR = the Performance Coverage Capacity Ratio, being the average capacity (MW) Bid during the Actual LOR Period divided by [insert the Guaranteed Capacity] (MW),

provided that,

- (i) PCTR and PCCR calculations will have no regard to any relief afforded under a Project Force Majeure Event, regardless of whether a Project Force Majeure Event is subsisting; and
- (ii) if the PPF_{FY} is less than zero, it will be deemed to be zero.

Schedule 3 Fixed Termination Amount

[Note: bidders will bid in a LTESA value (which will be used for the first row in the below table i.e. the Fixed Termination Amount payable in the event of termination in a Financial Year commencing at any date on or prior to the First Option Date). This bid amount will be amortised on a straight-line basis to complete the rest of the table.]

Financial Year commencing on:	Fixed Termination Amount
Any date on or prior to the First Option Date	\$(insert)
1 year after the First Option Date	\$(insert)
2 years after the First Option Date	\$(insert)
3 years after the First Option Date	\$(insert)
<p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 10 years then there should be 10 rows in total and the final row should state “9 years after the First Option Date”.]</p>	

Schedule 4 Knowledge sharing plan

1 Knowledge sharing context

1.1 Objects

Under the EII Act, SFV must exercise its functions in a way that is consistent with the objects of the EII Act, including to co-ordinate investment in new generation, storage, network and related infrastructure.

1.2 Use of Knowledge Sharing Deliverables

SFV will use the Knowledge Sharing Deliverables for the purposes of:

- (a) performing SFV's obligations under the LTESA and the EII Act; and/or
- (b) monitoring and evaluating the LTESA program against the objectives of the EII Act.

2 Knowledge Sharing Deliverables

All deliverables are to be prepared to a standard acceptable to SFV and, where relevant, reflect any guidelines provided by SFV relating to the preparation and delivery of Knowledge Sharing Deliverables.

No.	Knowledge Sharing Deliverable	Purpose	Frequency	When?	Accessibility (public information or confidential information)	Content and delivery
1.	15-minute Project survey	Efficient qualitative and quantitative data gathering. SFV may use this	Yearly	From the Signing Date to 12 months following the Final Annuity Product End Date	Confidential Information	SFV to provide a link to the survey each year.

No.	Knowledge Sharing Deliverable	Purpose	Frequency	When?	Accessibility (public information or confidential information)	Content and delivery
		information in anonymised portfolio analysis and reporting.				
2.	Requirements of EII Act	Compliance with requirements of the EII Act and any regulations under it, including requirements under section 50(2) of the EII Act and clause [31A] of Electricity Infrastructure Investment Regulation 2021.	As reasonably required by SFV	From the Signing Date to 12 months following the Final Annuity Product End Date	As reasonably required by SFV	As reasonably required by SFV
3.	Site visit by SFV or its nominee	On ground experience with key stakeholders and demonstration of facilities.	Once	As agreed with SFV	Agreed at time of visit	Site visit to Project location or a virtual tour delivered online as agreed by SFV.

Schedule 5 WDR Schedule

[Note:

- 1** *Proponents may, but are not required to, complete this table for the purposes of a submitting a bid. If a Proponent does not complete this schedule, it may instead present the methodology for developing a load portfolio with a capacity at least equal to the Guaranteed Capacity by at least 1 December 2026. The methodology must include (i) interim milestones for achieving a compliant load portfolio (ii) timeline for the overall delivery of a compliant load portfolio and (iii) guiding principles and strategies for the procurement process. Prior to the Commercial Operations Date being achieved, the Proponent will submit a completed WDR Schedule.*
- 2** *The table assumes there is one project made up of one or more WDRUs. If there are aggregated WDRUs, then Proponents should specify but noting a set of aggregated WDRUs nominated under this agreement cannot include any other WDRUs with connection points outside the Sydney-Newcastle-Wollongong Sub-Region.*
- 3** *The WDRUs above must all be located in the Sydney-Newcastle-Wollongong Sub-Region.*
- 4** *The WDRUs comprising the Project may change in accordance with clause 9. In summary, a change to the WDRUs is permitted provided the Guaranteed Capacity is maintained or exceeded and any new WDRUs are located in the Sydney-Newcastle-Wollongong Sub-Region.]*

WDRU Name	Load Owner	Description of load / facility comprising WDRU	Location of Connection Point / WDRU address	WDRU DUID	MRC (MW)
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
Total MRC					[insert]

--	--

WDRU Name	Limitations on dispatch
[insert]	[inset any material limitations on dispatch, eg maximum time for load reduction or load increase, minimum periods between dispatch etc]
[insert]	[insert]
[insert]	[insert]

Schedule 6 Social Licence Commitments

1 Social Licence Commitments

1.1 Emission reduction commitments

[Note: Emission reduction commitments to be included]

1.2 [Other social licence commitments]

[Note: commitments relating to the community engagement Plan, the industry and aboriginal participation plan to be included]

1.3 Performance

Subject to item 1.8 of this Schedule 6, during the Term, LTES Operator must perform the Social Licence Commitments.

1.4 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 financial year, 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 item 1.4(a) of this Schedule 6 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.

(e) Within 40 Business Days after receiving LTES Operator's report under item 1.4(a)(i) of this Schedule 6, SFV must use reasonable endeavours to:

- (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.

- (c) If SFV requests any further information from LTES Operator under item 1.4(e)(ii) of this Schedule 6, 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 item 1.4(a)(i) of this Schedule 6.
- (d) If LTES Operator does not provide the requested information under item 1.4(c) of this Schedule 6 within the applicable period, then SFV is deemed to have rejected LTES Operator's report.
- (e) 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 item 1.4(d) of this Schedule 6, 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.
- (f) Items 1.4(e), (c), (d) and (e) of this Schedule 6, will apply to the updated report submitted by LTES Operator pursuant to item 1.4(e) of this Schedule 6.

1.5 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 item 1.5(a) of this Schedule 6, except where SFV has requested an audit more than once in any 12 month period.
- (c) Subject to item 1.5(d) of this Schedule 6, 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 item 1.5(a) of this Schedule 6 (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 item 1.4 of this Schedule 6 are materially inaccurate, then LTES Operator will bear all the costs of that audit.

1.6 Notice of non-compliance

If following:

- (a) the receipt of LTES Operator's report and any additional information requested by SFV under item 1.4 of this Schedule 6;
- (b) the expiry of the 10 Business Day period in which LTES Operator must provide any additional information requested by SFV under item 1.4 of this Schedule 6; or

- (c) the completion of an audit of LTES Operator's performance of its Social Licence Commitments in accordance with item 1.5 of this of this Schedule 6,

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.

1.7 Cure

- (a) Within 20 Business Days after receiving a notice under item 1.6 of this Schedule 6, 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 item 1.8(a) of this Schedule 6; 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 item 1.8 of this Schedule 6 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 item 1.7(b)(iii) of this Schedule 6; 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.
- (g) Items 1.7(d) and (e), but not paragraph (f), will apply to the amended Draft SLC Cure Plan submitted by LTES Operator pursuant to item 1.7(f)(ii) of this Schedule 6.
- (h) If SFV approves a Draft SLC Cure Plan under item 1.7(e), then LTES Operator must comply with the SLC Cure Plan.

1.8 Alternative cash payment

- (a) At SFV's absolute discretion, SFV may agree to accept a cash payment from LTES Operator proposed under item 1.7(b)(iii) of this Schedule 6 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 items 1.7(b)(iii) and 1.7(d) of this Schedule 6.
- (b) If LTES Operator pays SFV an amount agreed under item 1.7(a) in respect of a Social Licence Commitment, then LTES Operator is not required to perform that Social Licence Commitment.

1.9 Termination for failure to comply with Social Licence Commitments

- (a) Subject to item (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 item 1.7 of this Schedule 6;
 - (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 item 1.8(a) of this Schedule 6 within 10 Business Days after notice from SFV.
- (b) SFV must not terminate this agreement pursuant to item 1.7(a) if LTES Operator has submitted a Draft SLC Cure Plan to SFV under item 1.7(a) of this Schedule 6 and SFV has not yet approved or rejected the Draft SLC Cure Plan under item 1.7(e) of this Schedule 6.

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.]