

# Tripartite deed

Long-Term Energy Service Agreement  
(Demand response model)

[Project name]

Dated

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

[insert] (“**LTES Operator**”)

[insert] (“**Security Trustee**”)

# Tripartite deed

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# Tripartite deed

## Details

### Date

### Parties

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<b>SFV</b>	Name	Scheme Financial Vehicle Pty Ltd
	ACN	662 496 479
	Address	[insert]
	Attention	[insert]
	Email	[insert]

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<b>LTES Operator</b>	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Attention	[insert]
	Email	[insert]

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<b>Security Trustee</b>	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Attention	[insert]
	Email	[insert]

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### Recitals

- A** LTES Operator and SFV have entered into the LTESA in connection with the Project.
- B** LTES Operator has requested that the Beneficiaries provide financial accommodation to LTES Operator or its Related Bodies Corporate to enable it to carry out the Project.
- C** The provision of financial accommodation is conditional on, among other things:
- (a) LTES Operator granting Security to Security Trustee over its rights under the LTESA; and
  - (b) LTES Operator and SFV entering into this document with Security Trustee.

# Tripartite deed

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Beneficiary** has the meaning it has in the Security Trust Deed.

**Controller** has the meaning it has in the Corporations Act.

**Cure Period Start Date** means, for a Termination Event which SFV is relying on for the purposes of clause 4.4 (“Termination”), the date on which all of the following are satisfied:

- (a) the Termination Event which SFV is relying on has occurred; and
- (b) SFV has given Security Trustee:
  - (i) a copy of the Termination Event Notice (if any) it has given to LTES Operator which states that the Termination Event which SFV is relying on has occurred; or
  - (ii) if SFV has not given Security Trustee a Termination Event Notice which complies with paragraph (i) above, including for example because it was not required to give such a notice to LTES Operator under the LTESA, it has notified LTES Operator and Security Trustee of the Termination Event it is relying on (and the notice includes reasonable details of that event); and
- (c) all cure periods (if any) specified in, or agreed under, the LTESA for that Termination Event have expired or ended.

**Details** means the section of this document headed “Details”.

**Enforcing Party** means Security Trustee or any Controller or attorney appointed under any Security.

**LTESA** means the long-term energy service agreement dated [insert] between LTES Operator and SFV with respect to the Project.

**Security** means:

- (a) [insert]; and
- (b) any other Security Interest granted by or entered into by LTES Operator or any of its Related Bodies Corporate (whether alone or with other grantors) in favour of Security Trustee (in its capacity as trustee of the Security Trust).

**Security Trust** has the meaning it has in the Security Trust Deed.

**Security Trust Deed** means the security trust deed executed by Security Trustee before this document was signed and which relates to the Security.

**Security Trustee** has the meaning it has in the Details.

**Terminate** includes terminate, end, close out, determine, rescind, cancel, revoke, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance) or accept the termination, rescission or repudiation of the LTESA. It includes claiming that an obligation under the LTESA is void, voidable or unenforceable.

**Termination Event** means each of the events set out in clause [22.2] ("Termination by SFV") of the LTESA.

**Termination Event Notice** means any notice(s) given by SFV to LTES Operator notifying LTES Operator of the occurrence of a Termination Event, including any notice given by SFV under clause [22.2] ("Termination by SFV") of the LTESA.

**Transferee** has the meaning given in clause 5.1 ("Transfer").

## 1.2 Terms defined in the LTESA

Unless the contrary intention appears, a term which has a defined meaning in the LTESA has the same meaning when used in this document.

## 1.3 General interpretation

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

- (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 document 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 document is not a Business Day, then the party must do it on the next Business Day;
- (p) a reference to “**property**” or “**asset**” includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (q) a reference to cure includes any deemed cure contemplated or effected by clause 4.6 (“Deemed cure”);
- (r) a reference to remedy, rectify, cure or overcoming the effects of, or similar, includes a reference to any of them; and
- (s) a reference to “**cure period**” includes a reference to any cure, grace, notice or other period or requirement, or similar.

#### **1.4 Inconsistent documents**

If a provision of this document is inconsistent with a provision of the LTESA, the provisions of this document prevail to the extent of the inconsistency.

#### **1.5 Risk management contract**

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

#### **1.6 Capacity of Security Trustee**

- (a) Security Trustee enters into and performs this document and the transactions it contemplates only as the trustee of the Security Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this document or those transactions.
- (b) Under and in connection with this document and those transactions and conduct:
  - (i) Security Trustee’s liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Security Trust. Security Trustee need not pay any such liability out of other assets; and
  - (ii) another party may only do the following with respect to Security Trustee (but any resulting liability remains subject to the limitations in this clause):
    - (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of Security Trustee but only with respect to Security Trust assets;

- (B) exercise rights, powers and remedies with respect to Security Trust assets, including set-off;
- (C) enforce its security (if any) and exercise contractual rights; and
- (D) bring any proceedings against Security Trustee seeking relief or orders that are not inconsistent with the limitations in this clause,

and may not:

- (E) bring other proceedings against Security Trustee;
  - (F) take any steps to have Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or
  - (G) seek by any means (including set-off) to have a liability of Security Trustee to that party (including for negligence) satisfied out of any assets of Security Trustee other than Security Trust assets.
- (c) Clauses 1.6(a) and 1.6(b) apply despite any other provision in this document but do not apply with respect to any liability of Security Trustee to another party (including for negligence):
- (i) to the extent that Security Trustee has no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because Security Trustee's behaviour was beyond power or improper in relation to the Security Trust; or
  - (ii) under any provision which expressly binds Security Trustee other than as trustee of the Security Trust (whether or not it also binds it as trustee of the Security Trust).
- (d) The limitation in clause 1.6(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 1.6(b)(ii), and interpreting this document and any security for it, including determining the following:
- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under clause 1.6(b)(ii) been brought);
  - (ii) the calculation of amounts owing; or
  - (iii) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this clause.

## **1.7 Replacement of Security Trustee**

- (a) If Security Trustee is replaced as trustee under the Security Trust Deed, then:



- (i) Security Trustee may assign, transfer or novate (or do any combination of these things in respect of) its rights and obligations under this document to the replacement trustee; and
  - (ii) the other parties agree to co-operate and to execute such documents as are reasonably necessary to give effect to any such assignment, transfer or novation (or any combination of them).
- (b) LTES Operator must pay SFV's legal and other costs and expenses incurred in complying with this clause 1.7.

## 1.8 Consideration

Each party acknowledges entering into this document and incurring obligations and giving rights under this document for valuable consideration received from each other party.

## 1.9 Condition precedent

- (a) The provisions of this document (other than this clause 1 and clauses 6, 7, 8, 9 and 10) are of no force or effect unless and until Financial Close occurs.
- (b) The condition precedent in clause 1.9(a) is for the benefit of each party to this document and may only be waived by notice in writing given by each party.

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## 2 Representations and warranties

### 2.1 Mutual representations and warranties

Each party represents and warrants in respect of itself as follows:

- (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 document and carry out the transactions contemplated by this document;
- (c) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this document;
- (d) **(no breach)** the execution, delivery and performance of this document 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 document constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and

- (f) **(no insolvency)** it is not subject to an Insolvency Event.

## 2.2 Reliance

SFV acknowledges that the Beneficiaries may provide financial accommodation to LTES Operator or any of its Related Bodies Corporate in reliance on the representations and warranties made by LTES Operator in clause 2.1 (“Mutual representations and warranties”).

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## 3 Consents and undertakings

### 3.1 Consent by LTES Operator

LTES Operator:

- (a) consents to this document; and
- (b) agrees to be bound by and co-operate in the implementation of this document. This clause 3.1(b) is only for the benefit of Security Trustee.

### 3.2 Consent and undertakings by SFV

SFV gives the following:

- (a) **(consent)** It consents to the Security.
- (b) **(no default)** It agrees that none of:
  - (i) the creation or existence of the Security;
  - (ii) the entry into of this document by LTES Operator;
  - (iii) the appointment of any Enforcing Party to LTES Operator or a person who has Control over LTES Operator under the Security; or
  - (iv) the exercise by Security Trustee or any Enforcing Party of any rights, powers or remedies in connection with this document or the Security (in compliance with the applicable provisions of this document (including compliance with clause 5 (“Transfer following enforcement”) in effecting a sale of an ownership interest in a person who has Control over LTES Operator)),will, of itself:
  - (v) disentitle LTES Operator from delivering an “Exercise Notice” (as defined in the LTESA);
  - (vi) contravene or constitute a default or breach of the LTESA; or
  - (vii) entitle SFV to exercise any rights, powers or remedies to Terminate the LTESA.
- (c) **(enforcement)** It agrees that an Enforcing Party may, but need not, exercise all or any of the rights, powers and remedies, and perform all or any of the obligations of LTES Operator, in connection with the LTESA, as if it were LTES Operator to the exclusion of LTES Operator.

- (d) **(no assumption)** It agrees that an Enforcing Party will not be liable nor have any obligations, and will not be taken to have assumed any liability or obligations, in connection with the LTESA as a result of the entry into of the Security or this document or the exercise of any rights, powers or remedies by an Enforcing Party in connection with the Security or this document. However, this does not:
  - (i) apply to any obligation of LTES Operator under the LTESA expressly assumed by Security Trustee by written notice to SFV (with a copy to LTES Operator); or
  - (ii) affect any liability or obligation of LTES Operator for acts and omissions of an Enforcing Party where the Enforcing Party is acting as the agent of LTES Operator.
- (e) **(no consent to dealing)** It agrees to not consent to any assignment, transfer, novation or other dealing by LTES Operator of any of LTES Operator's rights or obligations under the LTESA without the prior consent of the Security Trustee.

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## 4 Termination Events – cure and termination

### 4.1 Termination Event Notices to Security Trustee

If a Termination Event occurs, SFV agrees to:

- (a) give Security Trustee a copy of any Termination Event Notice and all other documents issued by SFV to LTES Operator in connection with the Termination Event as soon as reasonably practicable after it gives any of them to LTES Operator; and
- (b) give the Enforcing Party any information it reasonably requests from time to time in connection with a Termination Event.

### 4.2 Cure rights

The parties agree that Security Trustee, or any other Enforcing Party, may but need not, take steps to cure, or procure the cure of, a Termination Event or (where relevant) prevent the occurrence of a Termination Event.

SFV agrees that a Termination Event no longer exists under or for the purposes of the LTESA once:

- (a) it is cured or procured to be cured by Security Trustee or any other Enforcing Party; or
- (b) it is taken to be cured in accordance with clause 4.6 (“Deemed cure”).

### 4.3 Restriction on Termination

- (a) SFV agrees that despite anything in the LTESA and any rights, powers or remedies it may otherwise have (including at Law), it can and will only:
  - (i) Terminate; or
  - (ii) give any notice which would (or with the expiration of time would) Terminate,

the LTESA only in reliance on a Termination Event and only as expressly permitted by clause 4.4 (“Termination”).

- (b) Any actual or purported Termination of the LTESA in breach of this clause 4.3 is ineffective.
- (c) Clause 4.2 (“Cure rights”) and the rest of this clause 4.3 do not apply to any Termination or notice in respect of clause [22.2(k)] (“amendment or repeal of EII Act”) [or clause 22.3 (“Termination for convenience by SFV”)] of the LTESA.

#### 4.4 Termination

SFV may terminate the LTESA:

- (a) **(payment default)** in reliance on a Termination Event under the LTESA which relates to a failure by LTES Operator to pay money due under the LTESA, if the failure has not been cured within 10 Business Days after the applicable Cure Period Start Date;
- (b) **(insolvency or Change in Control)** in reliance on a Termination Event under the LTESA which is or relates to an Insolvency Event or a Change in Control:
  - (i) if an Enforcing Party has not been appointed (or become a Controller) to or over:
    - (A) for only a Change in Control, shares in LTES Operator;  
or
    - (B) LTES Operator’s rights under the LTESA,  
  
within 15 Business Days after the applicable Cure Period Start Date; and
  - (ii) if having been so appointed, the Insolvency Event or Change in Control has not been cured within 365 days after the applicable Cure Period Start Date (or by any later date agreed to in writing by SFV in its absolute discretion);
- (c) **(fraudulent project reports)** in reliance on a Termination Event which is an event set out in clause [22.2] (“Termination by SFV”) of the LTESA, if an Enforcing Party has not satisfied, or procured the satisfaction of, all of the requirements in clause [22.2(g)(ii)(A) to (D)] of the LTESA within 20 Business Days after the applicable Cure Period Start Date;
- (d) **(other events)** in reliance on a Termination Event under the LTESA which is not described above, if:
  - (i) an Enforcing Party has not commenced remedying that Termination Event within 30 Business Days after the applicable Cure Period Start Date (or by any later date agreed to in writing by SFV in its absolute discretion); or
  - (ii) if the Enforcing Party has commenced remedying that Termination Event within 30 Business Days after the applicable

Cure Period Start Date (or by any later date agreed to in writing by SFV in its absolute discretion):

- (A) without prejudice to clause 4.4(d)(B), the Enforcing Party does not pursue that remedy in a diligent manner; or
  - (B) in any event, the Enforcing Party has not remedied the relevant Termination Event within 60 Business Days after the applicable Cure Period Start Date (or by any later date agreed to in writing by SFV, acting reasonably); and
- (e) **(no cure)** in reliance on a Termination Event under the LTESA or the PDA, if Security Trustee notifies SFV in writing that it does not intend to take any steps or further steps to cure that Termination Event,

by written notice to LTES Operator and Security Trustee (given after the applicable requirement above is satisfied), if SFV is still entitled under the LTESA to Terminate the LTESA in reliance on the relevant event and which event remains uncured.

#### **4.5 Rights and obligations not affected**

SFV agrees that if a Termination Event occurs, LTES Operator's rights, and SFV's obligations, under the LTESA are not, and will not be, affected while Security Trustee or any other Enforcing Party is able to or is exercising any right, power or remedy (including those described in this clause 4 or in connection with any Security) in connection with that Termination Event.

#### **4.6 Deemed cure**

SFV agrees that a Termination Event is taken to be cured under and for the purposes of the LTESA and this document (as applicable):

- (a) if it relates to a failure to pay money due under the LTESA, when an Enforcing Party has paid or procured the payment of the amount of that money to SFV;
- (b) if it relates to a failure to do anything under the LTESA, when an Enforcing Party has done, or procured to be done, that thing;
- (c) if it is or relates to a Change in Control or an Insolvency Event, when an Enforcing Party has procured:
  - (i) the assignment, transfer or novation of (or any combination of these things to be done in respect of) LTES Operator's rights and obligations under the LTESA to a Transferee; or
  - (ii) the transfer of the shares in LTES Operator to a Transferee,in each case, in accordance with clause 5.1 ("Transfer"); and
- (d) for any other Termination Event or if Security Trustee reasonably considers that the Termination Event is not able to be cured, or will not be or is unlikely to be cured by the end of any applicable cure period provided under the LTESA or this document, when an Enforcing Party makes arrangements (which may include the taking of steps to prevent a recurrence of the Termination Event or the payment of compensation to SFV on account of loss suffered by it or by NSW Electricity Customers (or both)) which are satisfactory to SFV (acting reasonably).

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## 5 Transfer following enforcement

### 5.1 Transfer

SFV agrees that after Security Trustee has commenced enforcing the Security in accordance with its terms, an Enforcing Party may:

- (a) transfer the shares in LTES Operator in accordance with clauses [23.1] (“Assignment by LTES Operator”) and [23.4] (“Change in Control”) of the LTESA; or
- (b) assign, transfer or novate (or do any combination of these things) in respect of LTES Operator’s rights and obligations under the LTESA in accordance with clause [23.1] (“Assignment by LTES Operator”) of the LTESA,

to any person (including Security Trustee) (“**Transferee**”), but not otherwise.

### 5.2 Transfer documentation

SFV and LTES Operator agree to co-operate with Security Trustee and to execute all documents as are reasonably necessary to give effect to any assignment, transfer or novation (or any combination of these things) under clause 5.1 (“Transfer”).

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## 6 GST

### 6.1 Definitions and interpretation

For the purposes of this clause 6:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 6, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156.5(1) of the GST Act applies is to be treated as if it were a separate supply.

### 6.2 GST exclusive

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

### 6.3 Payment of GST

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

#### **6.4 Adjustment events**

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

#### **6.5 Reimbursements**

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document 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, clause 6.3 ("Payment of GST") applies to the reduced payment.

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## **7 Confidentiality**

### **7.1 Disclosure of information**

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

- (a) information that is publicly available (other than through a breach of this clause 7);
- (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 document;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the party;
- (d) to 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;
- (e) to its Related Bodies Corporate, provided the recipient agrees to act consistently with this clause;
- (f) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (g) in the case of disclosure by SFV, Knowledge Sharing Deliverables that have been categorised by LTES Operator as 'public information' pursuant to clause [13] ("Knowledge sharing") of the LTESA;
- (h) 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 document;
- (i) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;

- (j) to a rating agency;
- (k) in the case of disclosure by Security Trustee, to the Beneficiaries from time to time; or
- (l) 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).

## 7.2 Publicity

Clause [29.2] ("Publicity") of the LTESA is incorporated into this document as if set out in full in this document, *mutatis mutandis*.

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# 8 Notices and other communications

## 8.1 Form

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

## 8.2 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.



### **8.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 8.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

### **8.4 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);
- (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.

### **8.5 Receipt outside business hours**

Despite anything else in this clause 8, if communications are received or taken to be received under clause 8.4 (“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 in the LTESA 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.

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## **9 General**

### **9.1 Duration of this document**

Security Trustee must give notice to SFV (copied to LTES Operator) if it has fully and finally discharged all of the Security. This document terminates (without prejudice to any accrued right or liability) upon the giving of the notice.

### **9.2 Variation and waiver**

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

### **9.3 Discretion in exercising rights**

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

#### **9.4 Partial exercising of rights**

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

#### **9.5 Conflict of interest**

A party may exercise its rights, power and remedies in connection with this document even if this involves a conflict of duty or the party has a personal interest in their exercise.

#### **9.6 Remedies cumulative**

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

#### **9.7 Supervening Law**

Any present or future Law which operates to vary the obligations of a party in connection with this document 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.

#### **9.8 Entire agreement**

This document and the LTESA together constitute the entire agreement of the parties about their subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

#### **9.9 Prompt performance**

Each party agrees to perform its obligations under this document promptly, unless a specific time for performance is expressly stated in this document. Time is of the essence in respect of an obligation to pay money.

#### **9.10 Costs**

LTES Operator agrees to pay SFV's legal and other costs and expenses (including any stamp duty) in connection with the negotiation, preparation, execution and completion of this document.

#### **9.11 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 document or any part of it.

#### **9.12 No liability for loss**

Unless this document 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 document.

### **9.13 Limitation of SFV liability**

Despite any other provision of this document, the parties acknowledge and agree that SFV's total aggregate liability in connection with this document and the LTESA at any time, will be no greater than SFV's total aggregate liability in connection with the LTESA at that time (assuming the LTESA is enforceable in accordance with its terms) and will be subject to the same limitations of liability set out in the LTESA.

### **9.14 Further steps**

LTES Operator and SFV agree, at LTES Operator's expense, to do anything another party reasonably asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) as may be necessary or desirable to:

- (a) give full effect to the provisions of this document and the transactions contemplated by it; and
- (b) without limiting paragraph (a), ensure any assignment, transfer or novation (or any combination of them) contemplated by clause 5 ("Transfer following enforcement"), and any document the subject or product of any such dealing, is in registerable form, enforceable and registered with the agreed priority.

### **9.15 Counterparts**

This document 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.

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## **10 Governing Law**

### **10.1 Governing Law and jurisdiction**

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

### **10.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 8.2 ("Delivery").

**EXECUTED** as a deed

# Tripartite deed

## Signing page

**[Note: Execution blocks to be inserted into execution version.]**