

Publication Version: July 2023

Long-Term Energy Service Agreement

Long-duration storage

[Project name]

Dated

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

[insert] (“**LTES Operator**”)

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	As a condition of the award of this Agreement, LTES Operator has agreed to develop and construct the Project in accordance with the requirements and milestones set out in the PDA.
	C	LTES Operator will own and operate the Project in accordance with the requirements set out in this agreement.
	D	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	The ' <i>[insert project name]</i> ', which will be a <i>[insert resource type e.g. pumped hydro project]</i> located at <i>[insert location]</i> with a Registered Capacity that is equal to the Maximum Capacity and an energy storage capacity that is equal to the Storage Capacity.
2.	Maximum Capacity	<i>[insert]</i> MW
3.	Storage Capacity	<i>[insert]</i> MWh
4.	Contract Representative	Name: <i>[insert]</i> Email: <i>[insert]</i> Telephone: <i>[insert]</i>
Term		
5.	Final Annuity Product End Date	The date that is <i>[insert]</i> years after the First Option Date. [Note: <i>The permitted value for this bid variable is up to a maximum of 40 years (noting shorter bids are preferred against MC1 assessment criteria).</i>]
6.	Excluded Annuity Product Start Date	<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> Each of the following Annuity Product Start Dates: (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 (b) <i>[insert further as necessary]</i> . <i>[End option 1.]</i> <i>[Option 2: for bids where each Financial Year is eligible for an Annuity Product.]</i> Not applicable. <i>[End option 2.]</i>

	Item	Details												
Annuity Product terms														
7.	Annual Net Revenue Threshold	<p data-bbox="671 297 1390 360"><i>[Option 1: Annual Net Revenue Threshold is a fixed number, subject to escalation, throughout the term.]</i></p> <p data-bbox="671 389 1426 421">\$[insert], adjusted in accordance with clause 1.7 (“Adjustment”).</p> <p data-bbox="671 454 842 486"><i>[End option 1.]</i></p> <p data-bbox="671 517 1390 580"><i>[Option 2: Annual Net Revenue Threshold varies throughout the term (also subject to escalation).]</i></p> <table border="1" data-bbox="671 618 1426 1301"> <thead> <tr> <th data-bbox="671 618 1123 815">Financial Year commencing on:</th> <th data-bbox="1123 618 1426 815">Annual Net Revenue Threshold (\$) [, adjusted in accordance with clause 1.7 (“Adjustment”)]</th> </tr> </thead> <tbody> <tr> <td data-bbox="671 815 1123 869">First Option Date</td> <td data-bbox="1123 815 1426 869">[insert]</td> </tr> <tr> <td data-bbox="671 869 1123 913">1 year after the First Option Date</td> <td data-bbox="1123 869 1426 913">[insert]</td> </tr> <tr> <td data-bbox="671 913 1123 958">2 years after the First Option Date</td> <td data-bbox="1123 913 1426 958">[insert]</td> </tr> <tr> <td data-bbox="671 958 1123 1003">3 years after the First Option Date</td> <td data-bbox="1123 958 1426 1003">[insert]</td> </tr> <tr> <td colspan="2" data-bbox="671 1003 1426 1301"> <p data-bbox="671 1021 1086 1292"><i>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</i></p> </td> </tr> </tbody> </table> <p data-bbox="671 1323 842 1355"><i>[End option 2.]</i></p> <p data-bbox="671 1386 1422 1538"><i>[Note: the amount payable by SFV under an Annuity Product is reduced if and to the extent the Net Operational Revenue received by LTES Operator, when aggregated with the annuity, would exceed the Annual Net Revenue Threshold.]</i></p>	Financial Year commencing on:	Annual Net Revenue Threshold (\$) [, adjusted in accordance with clause 1.7 (“Adjustment”)]	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 data-bbox="671 1021 1086 1292"><i>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</i></p>	
Financial Year commencing on:	Annual Net Revenue Threshold (\$) [, adjusted in accordance with clause 1.7 (“Adjustment”)]													
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 data-bbox="671 1021 1086 1292"><i>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</i></p>														
8.	Annuity Cap	<p data-bbox="671 1568 1422 1630"><i>[Option 1: Annuity Cap is a fixed number, subject to escalation, throughout the term.]</i></p> <p data-bbox="671 1664 1426 1695">\$[insert], adjusted in accordance with clause 1.7 (“Adjustment”).</p> <p data-bbox="671 1729 842 1760"><i>[End option 1.]</i></p> <p data-bbox="671 1792 1422 1854"><i>[Option 2: Annuity Cap varies throughout the term (also subject to escalation).]</i></p>												

	Item	Details												
		<table border="1" data-bbox="671 241 1426 898"> <tr> <td data-bbox="671 241 1123 412">Financial Year commencing on:</td> <td data-bbox="1123 241 1426 412">Annuity Cap (\$), adjusted in accordance with clause 1.7 (“Adjustment”)</td> </tr> <tr> <td data-bbox="671 412 1123 461">First Option Date</td> <td data-bbox="1123 412 1426 461">[insert]</td> </tr> <tr> <td data-bbox="671 461 1123 510">1 year after the First Option Date</td> <td data-bbox="1123 461 1426 510">[insert]</td> </tr> <tr> <td data-bbox="671 510 1123 560">2 years after the First Option Date</td> <td data-bbox="1123 510 1426 560">[insert]</td> </tr> <tr> <td data-bbox="671 560 1123 609">3 years after the First Option Date</td> <td data-bbox="1123 560 1426 609">[insert]</td> </tr> <tr> <td colspan="2" data-bbox="671 609 1426 898"> <p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</p> </td> </tr> </table> <p data-bbox="671 913 842 947">[End option 2.]</p> <p data-bbox="671 976 1385 1010">[Note: this is the maximum amount payable in any year.]</p>	Financial Year commencing on:	Annuity Cap (\$), adjusted in accordance with clause 1.7 (“Adjustment”)	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 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</p>	
Financial Year commencing on:	Annuity Cap (\$), adjusted in accordance with clause 1.7 (“Adjustment”)													
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1 year after the First Option Date	[insert]													
2 years after the First Option Date	[insert]													
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<p>[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state “39 years after the First Option Date”.]</p>														
9.	Equivalent Availability Threshold	<p data-bbox="671 1043 703 1077">97</p> <p data-bbox="671 1106 1385 1200">[Note: for the purposes of the availability abatement mechanism, it is assumed that the Project will have 97% availability.]</p>												
Other terms														
10.	Cost Change Threshold	<p data-bbox="671 1294 1257 1357">\$500,000, adjusted in accordance with clause 1.7 (“Adjustment”).</p>												
11.	Early Termination Amount	<p data-bbox="671 1391 810 1424">The sum of:</p> <p data-bbox="671 1453 1426 1516">(a) \$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000; and</p> <p data-bbox="671 1545 911 1579">(b) the greater of:</p> <p data-bbox="746 1608 1305 1641">(i) 90% of the Historical Net Payments; and</p> <p data-bbox="746 1671 879 1704">(ii) zero,</p> <p data-bbox="746 1733 1362 1767">calculated as at the date of the relevant termination.</p> <p data-bbox="671 1796 1385 2007">[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. It is not intended that a termination payment will be payable by LTES Operator under each of the LTESA and the PDA in respect of the same termination event.]</p>												

	Item	Details
12.	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><i>[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).]</i></p>
13.	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:

Access Fee means a transmission access fee determined by the Consumer Trustee under section 26(1) of the EII Act that is payable by LTES Operator to SFV for transmission access rights granted to the Project under an “access scheme” (as defined in the EII Act).

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 5.1(a) (“Annual Maintenance Program”).

Annual Reconciliation Payment has the meaning given in item Schedule 21.3 of Schedule 2 (“Annuity Product terms”).

Annual Revenue Report has the meaning given in clause 9.3(a) (“Revenue reports”).

Annuity Period has the meaning given in clause 13.1 (“Annuity Period”).

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

Annuity Product Financial Year means a Financial Year that forms all or part of an Annuity Period.

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).

Approved Reinstatement Plan has the meaning given in clause 20.2(b)(i) (“Reinstatement plan”).

Approved Remedy Plan has the meaning given in clause 21.2(b)(i) (“Remedy plan”).

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

Audit means an audit conducted in accordance with clause 10 (“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.

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

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 to the owner or operator of a generating facility that is attributable to the capacity or availability of the Project, 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 development, construction, operation or decommissioning of the Project (including any native title or cultural heritage costs); and
- (b) change in the NER which, as at the Tender Date, is the subject of a final determination of the Australian Energy Market Commission or the Energy Security Board.

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

Commercial Operations Date has the meaning given in the PDA.

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

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

Contract Representative means the person appointed by LTES Operator as Contract Representative in accordance with clause 31 (“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 22.6 (“Cost Change Principles”).

Declared REZ means a renewable energy zone declared by the NSW Minister for Energy and Environment under the EII Act.

Deemed Availability Period has the meaning given in item 5.5(b) of Schedule 2 (“Annuity Product terms”).

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

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

Dispute has the meaning given in clause 28.1 (“Dispute mechanism”).

Dispute Notice has the meaning given in clause 28.3 (“Disputes”).

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

Election to Reinstate has the meaning given in clause 20.1 (“Major Casualty Event”).

Election to Remedy has the meaning given in clause 21.1 (“Prolonged Unavailability Event”).

Equivalent Availability Factor has the meaning given in item 5.5 of Schedule 2 (“Annuity Product terms”).

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 14 years after the First Option Date then ‘13th’ 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 2.2 (“First Option Date”).

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 18.3 (“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 14.2 (“Calculation of Historical Net Payments”).

Independent Expert has the meaning given in clause 28.6 (“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.

Insolvency Event means, in respect of a party:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a “controller” (as defined in the Corporations Act) appointed to all or substantially all of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium or compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 10 Business Days), resolution passed, proposal put forward or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c) or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that party under the law of any jurisdiction.

Invoice has the meaning given in clause 16.1 (“Billing”).

Invoiced Sum has the meaning given in clause 16.1 (“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.

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

Major Casualty Event means an event or circumstance that results in the loss, destruction or material damage to at least:

- (a) 50% of the Registered Capacity of the Project (in MW); and/or
- (b) 50% of the energy storage capacity of the Project (in MWh).

Marginal Loss Factor means the “intra-regional loss factor” (as defined in the NER) applicable to the Connection Point.

[Note: if the Project is connected to a distribution network, the definition for Marginal Loss Factor will be replaced with “the product of the intra-regional loss factor (as defined in the NER) as published by AEMO and applicable to the Connection Point for the relevant period and the distribution loss factor (as defined under the NER) applicable to the Connection Point.”]

Material Alteration means:

- (a) an alteration to the Registered Capacity or energy storage capacity of the Project; or
- (b) the installation of a new generating system, energy storage system or load behind the Connection Point,

to avoid doubt, excluding:

- (c) the repair of the Project; and
- (d) the replacement of battery cells for the purpose of ensuring continued compliance with clause 4.1(b)(ii).

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 14.1 (“Repayment”).

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

- (a) electricity imported and/or exported by the Project;
- (b) Ancillary Services provided by the Project; and
- (c) the Rated Capacity or Registered Capacity of the Project; and/or
- (d) the energy storage capacity of the Project.

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

- (a) a purchase contract;
- (b) subject to clause 4.3 (“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.

Operating Requirements means the requirements in clauses 4.2 (“Registration”), 4.3 (“Operation, bidding and dispatch”) and 5 (“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) performance or availability liquidated damages received by LTES Operator under a contract for the design, procurement, construction, commissioning, operation and/or maintenance in respect of the Project;
- (g) amounts received under or in connection with an insurance policy.

Option has the meaning given in clause 12.1 (“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 long-duration storage infrastructure, other than this agreement.

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

PDA means the project development agreement entered into on or about the Signing Date between LTES Operator and SFV with respect to the Project.

Peak Period means the period from 1 December to 31 March, as may be adjusted in accordance with clause 5.3 ("Adjustment to Peak Periods").

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 in relation to the import of electricity from the Network, including any costs incurred on arm's length terms on account of Green Products required by Law (or required to avoid a shortfall charge imposed by Law) to be acquired or surrendered in respect of such electricity;
- (b) the costs incurred by the Project in respect of any Ancillary Services;
- (c) any other amounts payable by LTES Operator under the NER;
- (d) any payments under any Offtake Contract, provided that an Offtake Contract will not qualify under this paragraph (d) 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
- (e) any other costs and expenses LTES Operator and SFV agree are Permitted Costs,

but excluding:

- (f) operating costs (other than those listed in paragraph (a) and (b) above), maintenance costs and other capital costs;
- (g) any Ineligible Tax;
- (h) any fines or penalties (including fines or penalties under the NER);
- (i) any liquidated damages, warranty payments or payments related to non-performance under an Offtake Contract; and
- (j) 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 29.1 ("Referral of Pooled Disputes").

Pooled Dispute Panel means a panel constituted in accordance with clause 29.2 ("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 29.3 (“Bilateral resolution”).

Project Force Majeure Event has the meaning given in clause 19.1 (“Definition of Project Force Majeure Event”).

Project Report means a report provided by LTES Operator pursuant to clause 9.2 (“Operating reports”) or 9.3 (“Revenue reports”).

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:

- (a) is not available for dispatch (as forecast in the “short term PASA”, as defined in the NER) for a cumulative period of 12 months across of period of four consecutive Financial Years during the Term; or
- (b) has an Equivalent Availability Factor of less than 50 for a period of two consecutive Financial Years during the Term,

in each case other than as a result of:

- (c) a Project Force Majeure Event; or
- (d) a Major Casualty Event, provided that LTES Operator has provided SFV with an Election to Reinstate in respect of that Major Casualty Event.

Proposed Reinstatement Plan has the meaning given in clause 20.1(a) (“Major Casualty Event”).

Proposed Remedy Plan has the meaning given in clause 21.1(a) (“Remedy plan”).

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 Schedule 21.3 of Schedule 2 (“Annuity Product terms”).

Rated Capacity means the actual instantaneous export capability of the Project from time to time.

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

Registered Capacity has the meaning given to that term in Part 6 of the EII Act.

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:

- (a) constructing and commissioning the Project;
- (b) operating the Project; or
- (c) storing and exporting electricity,

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 14.3 ("Calculation of Repayment Amount").

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.

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

Social Licence Commitments has the meaning given in the PDA.

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.

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.

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 2 (“Term”).

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

[**Trust** means **[insert]**].

Trust Deed means the trust deed establishing the Trust.

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

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

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

1.2 Interpretation Provisions

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

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to 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 Inconsistency

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

1.4 NEM definition change

If:

- (a) a term used in this agreement (including as a result of a prior application of this clause 1.4) has the meaning given to it in the NER; and
- (b) 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.

1.5 SFV, Consumer Trustee and Infrastructure Planner interaction

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

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

1.6 Appointment of agent

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.

1.7 Adjustment

- (a) On each Adjustment Date, each of the Annual Net Revenue Threshold, Annuity Cap and Cost Change Threshold for the Financial Year commencing on the Adjustment Date and each subsequent Financial Year (but not any Annual Net Revenue Threshold, Annuity Cap or 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 = the Escalation Factor for the Adjustment Date.

(b) The “**Escalation Factor**” for an Adjustment Date is:

(i) for each of the Annual Net Revenue Threshold and the Annuity Cap, the lesser of:

(A) 1.03; and

(B) an amount calculated as follows:

$$\frac{CPI_n}{CPI_b}$$

where:

CPI_n = the Consumer Price Index (All Groups) last published before that Adjustment Date; and

CPI_b = the Consumer Price Index (All Groups) last published before the Adjustment Date preceding that Adjustment Date except that, in the case of the first Adjustment Date, CPI_b = the Consumer Price Index (All Groups) published at the Tender Date; and

(ii) for the Cost Change Threshold, 1.025.

(c) If the Consumer Price Index (All Groups) is suspended, discontinued or the make-up or means of formulation of such index is altered, the parties will negotiate in good faith to agree on a replacement published index. If the parties cannot agree on a replacement index, then either party may refer the matter for determination by an Independent Expert under clause 28.6 (“Independent Expert”).

1.8 Regulatory disclosure

The LTES Operator acknowledges and agrees that:

(a) as SFV does not hold an Australian financial services licence, SFV has appointed the Financial Trustee (AFSL number: 240975) as intermediary under section 911A(2)(b) of the Corporations Act authorising the Financial Trustee to make offers to the LTES Operator to arrange dealings in derivatives (within the meaning of the Corporations Act) by SFV under this agreement (including under any Option or Annuity Product); and

(b) to the maximum extent permitted by law, the LTES Operator releases the Financial Trustee from any liability (whether in contract, tort or

otherwise) to the LTES Operator in connection with the offer under paragraph (a).

SFV holds the rights under this clause 1.8 on trust for the Financial Trustee.

Part 2 Term

2 Term

2.1 Term

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

2.2 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" (as defined in the PDA); 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 12 ("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.
- (e) Any agreement between the parties in respect of a Requested Date is without prejudice to SFV's rights of termination under clause 8.4 ("Failure to meet the COD Sunset Date") of the PDA.

Part 3 Construction and operation of the Project

3 Construction

LTES Operator must construct the Project in accordance with the PDA.

4 Operation

4.1 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; and
 - (ii) all applicable Authorisations.
- (b) During an Annuity Period, LTES Operator must:
 - (i) operate and maintain the Project:
 - (A) as a reasonable and prudent operator;
 - (B) in accordance with Good Industry Practice;
 - (C) in a manner that will extend and preserve the asset life of the Project to the end of the Term; and
 - (D) in accordance with the Operating Requirements; and
 - (ii) ensure that the Project can be dispatched at its Registered Capacity continuously for at least 8 hours.

[Note: if a Project will be impacted by degradation, LTES Operator will need to compensate to ensure it can still meet this requirement.]

- (c) During any Annuity Period, if required by SFV, LTES Operator must demonstrate to SFV that the Project can be dispatched at its Registered Capacity continuously for at least 8 hours.
- (d) 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 development 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.

4.2 Registration

- (a) LTES Operator must, at all times during the Term, ensure that it (or an intermediary) is registered with AEMO for the Project to enable it to provide the following services:
 - (i) electricity import and dispatch capability;
 - (ii) “market ancillary services” (as defined in the NER); and
 - (iii) subject to paragraph (b), any other services for which the Project could earn revenue in the NEM.
- (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 Consumer Trustee.

4.3 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) in respect of each Annuity Period, 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 4.3(a) and otherwise in accordance with market signals for a storage project of its nature as if it were a stand-alone project and not operated as part of a portfolio of assets;
 - (iv) in respect of a Non-Exercise Period 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 4.3(a); and

- (v) use best endeavours to minimise the amount of any payments payable by SFV under an Annuity Product.
- (b) In this clause 4.3, “**Good Faith**” means to act honestly, reasonably and with fair dealing having regard to the purpose set out in clause 4.1(d) (“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.]

4.4 LTES Operator is a single purpose vehicle

LTES Operator must:

- (a) be a single purpose entity established for the sole purpose of carrying on the Project and the business and activities contemplated by this agreement; and
- (b) not carry on, or have previously carried on, any other business or activity other than the Project or the business and activities contemplated by this agreement.

[Note: This single purpose vehicle requirement applies to the Project as a whole, including any Project that contracts a certain percentage of capacity of the asset.]

5 Maintenance

5.1 Annual Maintenance Program

- (a) At least 20 Business Days prior to the start of any Annuity Product Financial Year, LTES Operator must provide SFV with an annual maintenance program that complies with LTES Operator’s obligations under clause 5.2(a) (“**Annual Maintenance Program**”).
- (b) Within 20 Business Days after receipt of an Annual Maintenance Program, SFV may request any changes that it considers (acting reasonably) are in the best long-term financial interests of electricity customers in New South Wales.
- (c) If SFV requests a change to an Annual Maintenance Program in accordance with paragraph (b), then LTES Operator must:
 - (i) consider (acting reasonably and in good faith) the requested changes; and
 - (ii) resubmit or confirm (as applicable) the Annual Maintenance Program,

within 20 Business Days after SFV’s request.

5.2 Maintenance

- (a) Unless otherwise consented to by SFV, during any Annuity Periods LTES Operator must use its best endeavours to schedule and undertake planned maintenance that is reasonably likely to affect the:

- (i) available Rated Capacity; and/or
 - (ii) available storage capacity of the Project,
- by more than 10% at times outside of the Peak Period.
- (b) Nothing in this clause 5.2 prevents LTES Operator 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.

5.3 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 3 years prior notice to LTES Operator, make such adjustment, provided that the duration of the Peak Period cannot exceed 4 months in a year.

6 Insurance

- (a) On and from the Commercial Operations Date, 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 completed Project property;
 - (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.
- (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.

7 Alterations to the Project

7.1 Material Alterations

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.

7.2 SFV consent to a Material Alteration

SFV must not unreasonably withhold or delay its consent to a Material Alteration if:

- (a) LTES Operator has provided SFV with details of:
 - (i) the proposed Material Alteration;
 - (ii) any change to the Rated Capacity, Registered Capacity, energy storage capacity, availability or import/export profile (as applicable) of the Project that would result from the Material Alteration;
 - (iii) any outages that would result from the Material Alteration; and
 - (iv) any impact of the proposed Material Alteration on LTES Operator's ability to carry out its obligations under this agreement;
- (b) SFV determines (acting reasonably) that the Material Alteration will not:
 - (i) materially and adversely impact:
 - (A) SFV's rights and obligations in relation to this agreement, including SFV's expected financial outcomes under this agreement and any financial product it has entered into with a third party in relation to this agreement;
 - (B) the long-term financial interests of electricity customers in New South Wales; or
 - (C) LTES Operator's performance of the Social Licence Commitments; or
 - (ii) result in the Project:
 - (A) no longer being capable of dispatching at its Registered Capacity continuously for at least 8 hours; or
 - (B) no longer being infrastructure to which Part 6 of the EII Act applies; and
- (c) where the Project is located in a Declared REZ, LTES Operator has obtained all consents to the Material Alteration required under any connection arrangement or access scheme in respect of that Declared REZ.

8 Social Licence Commitments

During the Term, LTES Operator must comply with the obligations in clause 14 ("Social Licence Commitments") of the PDA.

9 Reporting

9.1 Operating Strategy

- (a) At least 60 Business Days before the start of each Annuity Product Financial Year, LTES Operator must provide its operating strategy to SFV (“**Operating Strategy**”).
- (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 Product Financial Year 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 4 (“Operation”).

9.2 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 Product Financial Year setting out:
 - (i) the actual performance of the Project against the Operating Strategy;
 - (ii) any changes to the Operating Strategy during the Annuity Product Financial Year; and
 - (iii) an explanation of any material deviations from the Operating Strategy; and
- (b) within 20 Business Days after the end of each Annuity Product Financial Year, an “**Availability Report**” setting out:
 - (i) a summary of all Deemed Availability Periods that occurred during that Annuity Product Financial Year;
 - (ii) the Equivalent Availability Factor for the Project for that Annuity Product Financial Year;
 - (iii) the Availability Rebate Percentage for that Annuity Product Financial Year; and
 - (iv) the Availability Rebate (if any) payable in respect of that Annuity Product Financial Year;
- (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.

9.3 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.

9.4 Capacity Products and Green Product reporting

- (a) If:
 - (ii) at the end of an Annuity Period, where LTES Operator has not exercised an Option for the Financial Year following that Annuity Period; or
 - (iii) on the expiry or early termination of this agreement,

LTES Operator holds Capacity Products or Green Products which were created, or referable to electricity generated or capacity available from the Project, during an Annuity Period, then the Net Operational Revenue for the Annuity Period or Non-Exercise Year (as applicable) will be deemed to include an amount equal to the number of each of those Capacity Products and Green Products multiplied by the market price for such products.

- (b) Unless otherwise agreed by the parties, the market price for such products will be determined as the average of the quotations (stated on a GST exclusive basis) 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 9.4(b), then the matter will be referred to an Independent Expert for determination under clause 28.6 (“Independent Expert”).

9.5 Foreign Acquisitions and Takeovers Act reporting

- (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).

9.6 Assurances

- (a) Each Project Report, each report issued under clause 9.4 ("Capacity Products and Green Product reporting") and, if requested by SFV, any further information provided by LTES Operator pursuant to clause 9.7 ("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 each report issued under clause 9.4 ("Capacity Products 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 9 is a breach of LTES Operator's obligations under this agreement and may constitute an offence under section 74 of the EII Act.

9.7 Provision of further information

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

10 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.

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.
- (f) LTES Operator will bear the costs of any Audit.

11 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 11 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 30 ("Confidentiality").
- (d) SFV may disclose information received pursuant to this clause 11 that is marked by LTES Operator as 'confidential information' to the public on an aggregated and anonymised basis.
- (e) This clause 11 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 4 Annuity Products and payment terms

12 Grant and exercise of an Option

12.1 Option to exercise an Annuity Product

- (a) Subject to the remainder of this clause 12, SFV grants LTES Operator [20] 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 12). 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 overlapping with the Annuity Period of any other Annuity Product in respect of which LTES Operator has already exercised an Option;
 - (ii) the Annuity Period in respect of that Annuity Product commencing on an Excluded Annuity Product Start Date; or
 - (iii) 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), (ii) or (iii) is void and has no force and effect.

12.2 Exercise Notice

Subject to clause 12.3 (“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 12;
- (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 12 within the time period prescribed in clause 12.2(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 12, 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 13.1 (“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.

12.3 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 the terms of the PDA; or
 - (B) SFV has accepted a request made by LTES Operator under clause 2.2(b) (“First Option Date”);
 - (ii) any amount due and payable by LTES Operator to SFV under this agreement or the PDA 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 12.3 is void and has no force and effect.

13 Annuity Product terms

13.1 Annuity Period

- (a) 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 2 years after that Annuity Product Start Date.
- (b) If an Annuity Period extends beyond the Final Annuity Product End Date, then the Annuity Product is taken to have ended on the Final Annuity Product End Date.

13.2 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 12 (“Grant and exercise of an Option”).

14 Repayment mechanism

14.1 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 28.5 (“Negotiation”); and
 - (ii) if the parties are unable to resolve the Dispute in accordance with clause 28.5 (“Negotiation”), then the matter will be referred to an Independent Expert for determination under clause 28.6 (“Independent Expert”).

14.2 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), Availability Rebates and Repayment Amounts paid by LTES Operator to SFV prior to that time.

14.3 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.

14.4 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.

15 Repayment of Access Fee

[Note: this clause is intended to provide comfort to a project connecting to existing infrastructure in a REZ which subsequently becomes subject to an access scheme declaration that it will not become subject to access fees, but if it does they will be repaid by the SFV under the LTESA.]

15.1 Repayment

If:

- (a) SFV is satisfied (acting reasonably) that, at the Tender Date, LTES Operator reasonably expected that it would not be required to pay Access Fees; and
- (b) due to a Change in Law that occurs after the Tender Date, LTES Operator is required to pay Access Fees to SFV in any calendar month during the Term,

then SFV will repay to LTES Operator any amount that it receives from LTES Operator on account of Access Fees within 30 Business Days after receipt of such amount by LTES Operator.

15.2 Netting

If requested by LTES Operator, SFV will use reasonable endeavours to agree and implement a netting arrangement in respect of the payment of Access Fees by LTES Operator and the repayment of such Access Fees by SFV pursuant to this clause 15.

16 Billing and payment

16.1 Billing

- (a) For each Quarter during an Annuity Period, LTES Operator must issue 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 16.4 ("**Adjustments**");
 - (iii) any other amounts payable by either party under this agreement in respect of the Quarter;
 - (iv) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
 - (v) 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.

16.2 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 16 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.

16.3 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 28.6 (“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.

16.4 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.

16.5 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.

17 Taxes

Subject to clause 18 (“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.

18 GST

18.1 Definitions and interpretation

For the purposes of this clause 18:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 18, 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.

18.2 GST exclusive

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

18.3 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.

18.4 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.

18.5 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 18.3 (“Payment of GST”) applies to the reduced payment.

Part 5 Material events

19 Force Majeure

19.1 Definition of Project Force Majeure Event

Subject to clause 19.2 (“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,

including:

- (c) a Major Casualty Event; and
- (d) any curtailment or congestion affecting the availability of the Network,

that satisfies the above criteria.

19.2 Exclusions

For the purposes of clause 19.1 (“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; or

- (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.

19.3 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.

19.4 Suspension of obligations

If a Project Force Majeure Event occurs and LTES Operator notifies SFV of its occurrence in accordance with clause 19.3 ("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.

19.5 Accrued rights and obligations

Any suspension of obligations pursuant to clause 19.4 ("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.

19.6 Extension of time

Without limiting clause 19.4 ("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 19.3 ("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.

19.7 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.

20 Major Casualty Event

20.1 Major Casualty Event

If a Major Casualty Event occurs, then LTES Operator must provide SFV with either:

- (a) a notice that LTES Operator elects to reinstate the Project ("**Election to Reinstatement**"), including LTES Operator's proposed plan to reinstate the Project as soon as reasonably practicable ("**Proposed Reinstatement Plan**"); or
- (b) a notice that LTES Operator elects to not reinstate the Project,

provided that if LTES Operator does not provide an Election to Reinstatement by the date that is 6 months after the occurrence of the Major Casualty Event (or any such longer period agreed by both parties, acting reasonably), then LTES Operator will be taken to have elected to not reinstate the Project.

20.2 Reinstatement plan

- (a) If SFV receives an Election to Reinstatement, then:
 - (i) SFV must either:
 - (A) request any changes to the Proposed Reinstatement Plan that it considers (acting reasonably) are in the best long-term financial interests of electricity customers in New South Wales; or
 - (B) approve the Proposed Reinstatement Plan,provided that if SFV does not request any changes to the Proposed Reinstatement Plan within 60 Business Days after receipt of the Election to Reinstatement, then SFV will be taken to have approved the Proposed Reinstatement Plan; and
 - (ii) if SFV requests any changes to the Proposed Reinstatement Plan in accordance with clause 20.2(a)(i)(A) ("Reinstatement plan"), then:
 - (A) within 20 Business Days after SFV's request, LTES Operator must provide an amended Proposed Reinstatement Plan to SFV; and
 - (B) within 20 Business Days after receipt of LTES Operator's amended Proposed Reinstatement Plan, SFV must (acting reasonably) approve or reject the amended Proposed Reinstatement Plan.

- (b) If SFV approves a Proposed Reinstatement Plan, then:
 - (i) that Proposed Reinstatement Plan will become an “**Approved Reinstatement Plan**”; and
 - (ii) LTES Operator must, at its sole cost, comply with that Approved Reinstatement Plan in all material respects.

20.3 Consequences of failing to reinstate

If, following a Major Casualty Event:

- (a) LTES Operator elects to not reinstate the Project;
- (b) LTES Operator does not provide an amended Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(A) (“Reinstatement plan”);
- (c) SFV rejects a Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(B) (“Reinstatement plan”); or
- (d) LTES Operator:
 - (i) fails to comply with an Approved Reinstatement Plan in all material respects; and
 - (ii) does not cure that failure within 2 months after being notified of that failure by SFV,

then SFV may terminate this agreement in accordance with clause 23.3 (“Termination by SFV”).

21 Prolonged Unavailability Event

21.1 Prolonged Unavailability Event

If a Prolonged Unavailability Event occurs, then LTES Operator must provide SFV with a notice:

- (a) that LTES Operator elects to remedy the underlying cause of the Prolonged Unavailability Event (“**Election to Remedy**”), including LTES Operator’s proposed plan to remedy the underlying cause as soon as reasonably practicable and in any event within 12 months (“**Proposed Remedy Plan**”); or
- (b) a notice that LTES Operator elects to not remedy the underlying cause of the Prolonged Unavailability Event,

provided that if LTES Operator does not provide an Election to Remedy by the date that is 20 Business Days after the occurrence of the Prolonged Unavailability Event (or as such longer period agreed by both parties, acting reasonably), then LTES Operator will be taken to have elected to not remedy the cause of the Prolonged Unavailability Event.

21.2 Remedy plan

- (a) If SFV receives an Election to Remedy, then:
 - (i) SFV must either:
 - (A) request any changes to the Proposed Remedy Plan that it considers (acting reasonably) are in the best long-term financial interests of electricity customers in New South Wales; or
 - (B) approve the Proposed Remedy Plan,

provided that if SFV does not request any changes to the Proposed Remedy Plan within 60 Business Days after receipt of the Election to Remedy, then SFV will be taken to have approved the Proposed Remedy Plan; and
 - (ii) if SFV requests any changes to the Proposed Remedy Plan in accordance with clause 21.2(a)(i)(A), then:
 - (A) within 20 Business Days after SFV's request, LTES Operator must provide an amended Proposed Remedy Plan to SFV; and
 - (B) within 20 Business Days after receipt of LTES Operator's amended Proposed Remedy Plan, SFV must (acting reasonably) approve or reject the amended Proposed Remedy Plan.
- (b) If SFV approves a Proposed Remedy Plan, then:
 - (i) that Proposed Remedy Plan will become an “**Approved Remedy Plan**”; and
 - (ii) LTES Operator must, at its sole cost, comply with that Approved Remedy Plan in all material respects.

21.3 Consequences of failing to remedy

If, following a Prolonged Unavailability Event:

- (a) LTES Operator elects to not remedy the underlying cause of the Prolonged Unavailability Event;
- (b) LTES Operator does not provide an amended Proposed Remedy Plan in accordance with clause 21.2(a)(ii)(A);
- (c) SFV rejects a Proposed Remedy Plan in accordance with clause 21.2(a)(ii)(B); or
- (d) LTES Operator:
 - (i) fails to comply with an Approved Remedy Plan in all material respects; and
 - (ii) does not cure that failure within 2 months after being notified of that failure by SFV,

then SFV may terminate this agreement in accordance with clause 23.3 (“Termination by SFV”).

22 Change in Law

22.1 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 22.1(a)(ii), then this agreement will continue to operate in accordance with its terms.
- (c) This clause 22.1 may operate in conjunction with clause 22.2 (“Relevant Cost Change”) but is intended to address amendments to the agreement other than those relating to the Annuity Cap.

22.2 Relevant Cost Change

Subject to clause 17 (“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.

22.3 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 22.3 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 22.3 in respect of that Relevant Cost Change.
- (b) The net impact of a Relevant Cost Change pursuant to this clause 22.3 is to be calculated on the basis that LTES Operator complies with its obligations under clause 22.2 (“Relevant Cost Change”).
- (c) A notice given by LTES Operator pursuant to this clause 22.3 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 22.2 (“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.

22.4 Adjustment to Annuity Cap and Annual Net Revenue Threshold

If LTES Operator gives notice to SFV in accordance with clause 22.3 (“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.

22.5 Dispute resolution

- (a) If the parties fail to agree the required adjustment under clause 22.4 (“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 22.3 (“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 28.6 (“Independent Expert”).

- (b) If a Dispute is referred to an Independent Expert under this clause 22.5, then that Independent Expert must base its recommendation or decision on the Cost Change Principles.

22.6 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 22.1(a)(i) (“Change in Law”);
- (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 12.1(b) (“Option to exercise an Annuity Product”));

- (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); and
- (g) 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 6 Other terms

23 Default and Termination

23.1 Automatic termination

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

23.2 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:
 - (i) 50% of the Registered Capacity of the Project (in MW); and/or
 - (ii) 50% of the storage capacity of the Project (in MWh),is subsisting for a period of three consecutive Financial Years during the Term.

23.3 Termination by SFV

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

- (a) **(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;

- (b) **(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);
- (c) **(misrepresentation)**
 - (i) an express representation made by LTES Operator under this agreement (other than under clause 26.3 ("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));
- (d) **(tender misrepresentation)**
 - (i) an express representation made by LTES Operator under clause 26.3 ("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));
- (e) **(fraudulent Project Reports)**
 - (i) LTES Operator fraudulently, recklessly or knowingly provides:
 - (A) a Project Report;

- (B) a report issued under clause 9.4 ("Capacity Products and Green Product reporting"); or
- (C) any further information provided by LTES Operator pursuant to clause 9.7 ("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;
- (f) **(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;
- (g) **(Prolonged Unavailability Event)** a Prolonged Unavailability Event occurs and:
 - (i) LTES Operator elects not to remedy that Prolonged Unavailability Event;
 - (ii) LTES Operator does not provide an amended Proposed Remedy Plan in accordance with clause 21.2(a)(ii)(A);
 - (iii) SFV rejects a Proposed Remedy Plan in accordance with clause 21.2(a)(ii)(B); or
 - (iv) LTES Operator fails to comply with an Approved Remedy Plan and does not remedy that failure within 2 months after receiving notice from SFV of that failure;
- (h) **(prolonged force majeure)** a Project Force Majeure Event impacting at least:
 - (i) 50% of the Registered Capacity of the Project; and/or
 - (ii) 50% of the storage capacity of the Project,

is subsisting for a period of three consecutive Financial Years during the Term;

- (i) **(Major Casualty Event)** a Major Casualty Event occurs and:
 - (i) LTES Operator elects to not reinstate the Project;
 - (ii) LTES Operator does not provide an amended Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(A) (“Reinstatement plan”);
 - (iii) SFV rejects a Proposed Reinstatement Plan in accordance with clause 20.2(a)(ii)(B) (“Reinstatement plan”); or
 - (iv) LTES Operator fails to comply with an Approved Reinstatement Plan and does not remedy that failure within 2 months after receiving notice from SFV of that failure; or
- (j) **(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.

23.4 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 23.4 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.

23.5 Termination payments

- (a) If this agreement is terminated:
 - (i) in accordance with clause 23.1 (“Automatic termination”), then:
 - (A) if that termination is a result of SFV exercising its right to terminate the PDA under clause 15.3 (“Termination by SFV”) of the PDA on or after the Commercial Operations Date, then LTES Operator must pay the Early Termination Amount to SFV; or
 - (B) if that termination is a result of a termination of the PDA other than as contemplated under paragraph (A), then no Termination Payment is payable under this agreement;
 - (ii) by LTES Operator in accordance with:
 - (A) clause 23.2(a) (“payment default”);
 - (B) clause 23.2(b) (“breach”);
 - (C) clause 23.2(c) (“misrepresentation”); or
 - (D) clause 23.2(d) (“insolvency”),

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

(iii) by SFV in accordance with:

- (A) clause 23.3(a) (“payment default”);
- (B) clause 23.3(b) (“breach”);
- (C) clause 23.3(c)(ii) (“misrepresentation”);
- (D) clause 23.3(d)(iv) (“tender misrepresentation”);
- (E) clause 23.3(e) (“fraudulent Project Reports”);
- (F) clause 23.3(f) (“insolvency”); or
- (G) clause 23.3(g) (“Prolonged Unavailability Event”),

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

(iv) by a party in accordance with clause 23.2(e) or 23.3(h) (“prolonged force majeure”), then no Termination Payment is payable under this agreement;

(v) by SFV in accordance with clause 23.3(i) (“Major Casualty Event”), then:

(A) subject to paragraph (B), no Termination Payment is payable under this agreement; or

(B) if:

(aa) the relevant Major Casualty Event was not a Project Force Majeure Event; or

(ab) LTES Operator or a Related Body Corporate of LTES Operator subsequently reinstates the Project within 5 years after the Major Casualty Event occurred,

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

(vi) by SFV in accordance with:

- (A) clause 23.3(j) (“amendment or repeal of EII Act”); or
- (B) clause 23.4 (“Termination for convenience by SFV”),

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

(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 23 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 becomes payable by LTES Operator under the terms of this agreement; and
 - (ii) that Early Termination Amount is found to be a penalty or LTES Operator's obligation to pay the Early Termination Amount pursuant to this clause 23.5 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.

23.6 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).

23.7 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.

23.8 Exclusion of rights

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

23.9 Survival

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

- (a) this clause 23 and clauses 25 ("Liability"), 28 ("Dispute Resolution") and 30 ("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.

24 Assignment and Change in Control

24.1 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 24.1.
- (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:
 - (i) its rights and obligations under, title to or interest in and its obligations under this agreement and the PDA; and
 - (ii) the Project,to the same person.
- (d) Notwithstanding anything else in this clause 24.1, 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 24.1 will apply to any assignment, novation or transfer of LTES Operator's rights and obligations under, title to and interest in this agreement following the enforcement of a Security Interest granted by LTES Operator in accordance with paragraph (d).

24.2 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 24.2.
- (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.

24.3 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 24 ("Assignment and Change in Control"), 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.

24.4 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.

24.5 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").

25 Liability

25.1 Excluded Loss

Subject to clauses 25.2 (“Limitation of liability”) and 25.3 (“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.

25.2 Limitation of liability

To the extent permissible by Law and subject to clause 25.3 (“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.

25.3 No exclusion

Clauses 25.1 (“Excluded Loss”) and 25.2 (“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 25.4(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.

25.4 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 25.4 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 25.4 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.

26 Representations and warranties

26.1 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.

26.2 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 Offtake Contract or other arrangement which would have been a breach of clause 4.3 (“Operation, bidding and dispatch”) if it had entered into that arrangement during the Term.

26.3 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.

26.4 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.

27 [Trustee provisions]

27.1 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.

27.2 Trustee undertakings

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

27.3 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.

27.4 Trustee limitation of liability

- (a) This clause 27.4 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 27.4(c)(i) and 27.4(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.]

28 Dispute Resolution

28.1 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 28.

28.2 No proceedings

Subject to clause 28.9 (“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 28 and, if applicable, clause 29 (“Pooled Disputes”).

28.3 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).

28.4 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 29 (“Pooled Disputes”), the procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 28.5 (“Negotiation”);
 - (ii) second, if permitted under clause 28.5(b) (“Negotiation”), referral of the Dispute for determination by an Independent Expert under clause 28.6 (“Independent Expert”); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

28.5 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) the Dispute is of a technical or engineering nature, 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.

28.6 Independent Expert

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

- (j) The costs of the Independent Expert will be borne equally between the parties.

28.7 Other Relief

The Dispute resolution procedures in this clause 28 or clause 29 (“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).

28.8 Continued performance following a Dispute

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

28.9 Interim relief

Nothing in this clause 28 or clause 29 (“Pooled Disputes”) prevents either party from seeking urgent injunctive or declaratory relief.

29 Pooled Disputes

29.1 Referral of Pooled Disputes

- (a) If in SFV’s opinion (acting reasonably):
 - (i) a Dispute in relation to clause 1.7 (“Adjustment”), 22 (“Change in Law”) or 23.3(j) (“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 29.2 (“Resolution by Pooled Dispute Panel”) (**“Pooled Dispute Referral”**).

29.2 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 29.3 (“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 28.6 (“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.

29.3 Bilateral resolution

- (a) If LTES Operator and SFV bilaterally resolve a Pooled Dispute as it applies to this agreement, then clause 29.2 (“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.

30 Confidentiality

30.1 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 30);
- (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 11(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.

30.2 Publicity

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

31 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 32 ("Notices").

32 Notices

32.1 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.

32.2 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.

32.3 When effective

Communications take effect from the time they are received or taken to be received under clause 32.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

32.4 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.

32.5 Receipt outside business hours

Despite anything else in this clause 32, if communications are received or taken to be received under clause 32.4 (“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.

33 General

33.1 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.

33.2 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.

33.3 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).

33.4 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.

33.5 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.

33.6 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.

33.7 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.

33.8 Supervening Law

Subject to clause 22 ("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.

33.9 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.

33.10 Entire agreement

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

33.11 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.

33.12 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.

33.13 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.

33.14 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.

33.15 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 (Long-duration storage) - [Project name] between [Name of LTES Operator] and SFV dated [insert date] (“LTESA”)

Under clause 12 (“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	Two years but noting that if the Annuity Product Start Date is on the Final Anniversary, it will be taken to have ended on the Final Annuity Product End Date.

LTES Operator confirms that this Exercise Notice constitutes a notice for the purposes of clause 12 (“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 12.3 (“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 12 (“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) subject to paragraph (b) below, a reference to “the Annuity Period” is a reference to the Annuity Period in respect of that Annuity Product; and
- (b) a reference to an “Annuity Product Financial Year” is a reference to an Annuity Product Financial Year which forms all or part of 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 Product Financial Year, the difference between the Annual Net Revenue Threshold for that Annuity Product Financial Year and the Annuity Cap for that Annuity Product Financial Year.

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

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) any Availability Rebate,
- to SFV,

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

[Note: two worked examples of the payments under this Schedule 2 are provided after the schedule.]

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 Product Financial Year, 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 Product Financial Year.

4 Annual Reconciliation Payment

4.1 Payment of Annual Reconciliation Payment

- (a) In respect of each Annuity Product Financial Year:
 - (i) if the Annual Reconciliation Payment for the Annuity Product Financial Year 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 Product Financial Year 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 Product Financial Year must be paid:
 - (i) subject to paragraph (ii), within 30 Business Days after the end of that relevant Annuity Product Financial Year; or
 - (ii) in the case of the Annuity Product Financial Year that commences on the Final Anniversary, within 20 Business Days

after the determination of the Availability Rebate for that Annuity Product Financial Year in accordance with item 5.1.

4.2 Calculation of Annual Reconciliation Payment

The “**Annual Reconciliation Payment**” for an Annuity Product Financial Year is calculated as follows:

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

where:

ARP_{FY} = the Annual Reconciliation Payment for the Annuity Product Financial Year;

AAA_{FY} = the Adjusted Annuity Amount for the Annuity Product Financial Year;

ARS_{FY} = the Annual Revenue Sharing Amount for the Annuity Product Financial Year; and

$\sum QAP_{FY}$ = the sum of the Quarterly Annuity Payments paid by SFV in respect of Quarters in the Annuity Product Financial Year.

4.3 Calculation of Adjusted Annuity Amount

The “**Adjusted Annuity Amount**” for an Annuity Product Financial Year is:

- (a) if the Net Operational Revenue for the Annuity Product Financial Year is less than or equal to the Annuity Reduction Threshold for the Annuity Product Financial Year, an amount that is equal to the Annuity Cap;
- (b) if the Net Operational Revenue for the Annuity Product Financial Year is greater than the Annuity Reduction Threshold for the Annuity Product Financial Year, 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 Product Financial Year;

AC_{FY} = the Annuity Cap;

NOR_{FY} = the Net Operational Revenue for the Annuity Product Financial Year; and

ART_{FY} = the Annuity Reduction Threshold for the Annuity Product Financial Year,

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 an Annuity Product Financial Year is calculated as follows:

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

where:

ARS_{FY} = the Annual Revenue Sharing Amount for the Annuity Product Financial Year;

NOR_{FY} = the Net Operational Revenue for the Annuity Product Financial Year;

AAA_{FY} = the Adjusted Annuity Amount for the Annuity Product Financial Year;
and

NRT_{FY} = the Annual Net Revenue Threshold for the Annuity Product Financial Year,

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

5 Availability Rebate

5.1 Determination of Availability Rebate

- (a) Within 40 Business Days after SFV receiving the Availability Report in respect of an Annuity Product Financial Year, SFV must:
- (i) notify LTES Operator that SFV agrees with the Availability Rebate set out in the Availability Report; or
 - (ii) notify LTES Operator that SFV disputes the Availability Rebate set out in the Availability Report.
- (b) If:
- (i) SFV notifies LTES Operator that SFV agrees with the Availability Rebate set out in the Availability Report; or
 - (ii) SFV does not provide any notice under paragraph (a) within the timeframe required by that paragraph,
- then the Availability Rebate set out in the Availability Report will be binding on the parties.
- (c) If SFV notifies LTES Operator that it disputes the Availability Rebate, then either party may refer the matter for determination by an Independent Expert under clause 28.6 ("Independent Expert").

5.2 Payment of Availability Rebate

- (a) LTES Operator must pay the Availability Rebate (if any) for an Annuity Product Financial Year within 20 Business Days after the determination of the Availability Rebate for that Annuity Product Financial Year in accordance with item 5.1.
- (b) Subject to clause 23 ("Default and Termination"), the payment of the Availability Rebate is SFV's sole remedy for LTES Operator's failure to achieve the Equivalent Availability Threshold in an Annuity Product Financial Year.

5.3 Calculation of Availability Rebate

The "Availability Rebate" for an Annuity Product Financial Year is calculated as follows:

$$ARF_{FY} = AAA_{FY} \times ASF_{FY}$$

where:

ARF_{FY} = the Availability Rebate for the Annuity Product Financial Year (in \$);

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

ASF_{FY} = the Availability Rebate Percentage for the Annuity Product Financial Year (expressed as a percentage).

5.4 Calculation of Availability Rebate Percentage

The “**Availability Rebate Percentage**” for an Annuity Product Financial Year is calculated as follows:

$$ASF_{FY} = 1\% \times (EAT - EAF_{FY})$$

ASF_{FY} = the Availability Rebate Percentage for the Annuity Product Financial Year (expressed as a percentage);

EAT = the Equivalent Availability Threshold; and

EAF_{FY} = the Equivalent Availability Factor for the Project for the Annuity Product Financial Year,

provided that:

- (a) if the Availability Rebate Percentage is less than 0% then it will be deemed to be 0%; and
- (b) if EAF_{FY} is less than 10, then ASF_{FY} will be deemed to be 100%.

5.5 Calculation of Project Equivalent Availability Factor

- (a) Subject to paragraph (b), the “**Equivalent Availability Factor**” for the Project for an Annuity Product Financial Year is to be calculated in accordance with the formula set out in paragraph 8.11 of IEEE 762-2006, provided that:

- (i) a reference to “generation” is taken to be a reference to “export capability”; and
- (ii) a reference to “generating unit” is a reference to the Project.

[Note: the Equivalent Availability Factor is expressed as a number (e.g. 95) and not a percentage (e.g. 95%).]

- (b) If the Rated Capacity is reduced during a period of time as a direct result of a direction or instruction given by AEMO under the NER that:
 - (i) relates to the condition of the transmission network; and
 - (ii) was not issued as a response to or as a result of any act or omission of LTES Operator or LTES Operator’s officers, employees, subcontractors or agents,

(a “**Deemed Availability Period**”), then that period of time will be disregarded for the purpose of calculating the Equivalent Availability Factor for the Project.

[Note: on the following pages are two worked examples of the payments under Schedule 2. These examples are provided as a guide to the template document only and will not be included in the final LTESA. In the event of any inconsistency with the terms of Schedule 2 bidders should give priority to Schedule 2. Note that in these examples, positive amounts are taken to be payments from SFV to LTES Operator and negative amounts are taken to be payments from LTES Operator to SFV.]

EXAMPLE 1

[Note: to be removed from the execution version of this agreement.]

Background

In Example 1, LTES Operator earns \$4 million in revenue through a contracted position and \$8 million through spot market exposure. LTES Operator has \$2 million in Permitted Costs. Accordingly, LTES Operator's Net Operational Revenue is the sum of these revenues *minus* the Permitted Costs: **\$10 million**. The Project's Equivalent Availability Factor for the year is 99.

The terms of its LTESA are as per the Reference Details below. All amounts are in \$ millions.

Payments

LTES Operator receives the \$1 million Quarterly Annuity Payment in each of the first 3 quarters of the year, and at the end of the year also receives a \$1 million Annual Reconciliation Payment. In total for the year, LTES Operator has received the full \$4 million Annuity Cap. There is no revenue sharing.

The Project's Equivalent Availability Factor for the year is above the Equivalent Availability Threshold and accordingly no Availability Rebate is payable.

Term	Value (\$ million)
Reference Details	
Annuity Cap (AC)	4
Net Revenue Threshold (NRT)	15
Equivalent Availability Threshold (EAT)	97
Annual amounts for example	
Net Operational Revenue (NOR), annual	10
Equivalent Availability Factor (EAF)	99
Net annual LTESA payments	4
Overall project revenues, being the net of Net Operational Revenues and LTESA payments.	$\text{NOR} + \sum \text{QAP} + \text{ARP} - \text{ARF}$ $= (2+3+2+3) + (1+1+1) + (1) - (0)$ $= 14$

Term	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Net Operational Revenue (NOR) per quarter	2	3	2	3
Quarterly Annuity Payment (QAP)	1	1	1	
Annual Reconciliation Amount (ARP)				$\text{AAA} - \text{ARS} - \sum \text{QAP}$ $= 4 - 0 - 3$ $\text{ARP} = 1$
Adjusted Annuity Amount (AAA)				<p>NOR is below NRT – AC, so AAA is equal to AC.</p> $\text{AAA} = \text{AC} = 4$
Annual Revenue Sharing Amount (ARS)				$50\% * (\text{NOR} + \text{AAA} - \text{NRT})$ $= 50\% * (10 + 4 - 15) = -0.5$ <p>As ARS is less than zero, it is deemed to be zero.</p>

				ARS = 0
Sum of Quarterly Annuity Payments ($\sum QAP$)				$\sum QAP = \text{sum of QAP in quarters 1, 2 and 3}$ = 3
Equivalent Availability Factor (EAF)				99 (annual)
Availability Rebate (ARF)				$AAA * ASF$ $= AAA * 1\% * (EAT - EAF)$ $= 4 * 1\% * (97 - 99)$ $= -8$ As ARF is less than zero, it is deemed to be zero. ARF = 0
Example project revenues (NOR+QAP+ARP-ARF)	NOR + QAP = 2 + 1 = 3	NOR + QAP = 3 + 1 = 4	NOR + QAP = 2 + 1 = 3	NOR + ARP – ARF = 3 + 1 – 0 = 4
Note: not a contractual concept and is for demonstrative purposes only.				

EXAMPLE 2

[Note: to be removed from the execution version of this agreement.]

Background

In Example 2, LTES Operator earns \$24 million in net revenue through a contracted position and has no other revenue or Permitted Costs. Accordingly, LTES Operator's Net Operational Revenue is equal to the net revenue under its contracted position: **\$24 million**. The Project's Equivalent Availability Factor for the year is 95.

The terms of its LTESA are as per the Reference Details below. All amounts are in \$ millions.

Payments

LTES Operator receives the \$1 million Quarterly Annuity Payment in each of the first 3 quarters of the year, but at the end of the year LTES Operator must pay a \$7.5 million Annual Reconciliation Payment to SFV.

The Project's Equivalent Availability Factor is below the Equivalent Availability Threshold. However, the net of annuity payments (i.e. not including any revenue share) is zero on an annual basis so this means that the Availability Rebate is also equal to zero.

Term	Value (\$ million)
Reference Details	
Annuity Cap (AC)	4
Net Revenue Threshold (NRT)	15
Equivalent Availability Threshold (EAT)	97
Annual amounts for example	
Net Operational Revenue (NOR), annual	24
Equivalent Availability Factor (EAF)	95
Net annual LTESA payments	-4.5 (Project makes repayments of up to the amount of Historical Net Payments)
Overall project revenues, being the net of Net Operational Revenues and LTESA payments	$NOR + \sum QAP + ARP - ARF$ $= (6+6+6+6) + (1+1+1) + (-7.5) - (0)$ $= 19.5$

Term	Quarter 1	Quarter 2	Quarter 3	Quarter 4
Net Operational Revenue (NOR)	6	6	6	6
Quarterly Annuity Payment (QAP)	1	1	1	
Annual Reconciliation Amount (ARP)				$AAA - ARS - \sum QAP$ $= 0 - 4.5 - 3$ $ARP = -7.5$, so LTES Operator must pay the SFV \$7.5 million. Note: ARS is lesser of the ARS calculated and Historical Net Payments. This example assumes Historical Net Payments is above \$7.5 million.

Adjusted Annuity Amount (AAA)					<p>NOR is above NRT so: AAA = AC - 75%*(NOR - ART) = 4 - 75%*(24-(15-4)) As AAA is less than zero, it is deemed to be zero. AAA = 0</p>
Annual Revenue Sharing Amount (ARS)					<p>50%*(NOR + AAA - NRT) = 50%*(24+0-15) = 4.5 ARS = lesser of 4.5 or Historical Net Payments from SFV to LTES Operator.</p>
Sum of Quarterly Annuity Payments (\sumQAP)					<p>\sumQAP = sum of QAP in quarters 1, 2 and 3 = 3</p>
Equivalent Availability Factor (EAF)					95 (annual)
Availability Rebate (ARF)					<p>AAA*1%*(EAT - EAF) = 0*1%*(97-95) = 0 ARF = 0</p>
Project Revenues (NOR+QAP+ARP-ARF)	NOR + QAP = 6 + 1 = 7	NOR + QAP = 6 + 1 = 7	NOR + QAP = 6 + 1 = 7	NOR + ARP - ARF = 6 + -7.5 - 0 = -1.5	
Note: not a contractual concept and is for demonstrative purposes only.					

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]
[Note: insert further rows as necessary to cover each Financial Year during the Term. For example, if the Term of the LTESA is 40 years then there should be 40 rows in total and the final row should state "39 years after the First Option Date".]	

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.

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.]