

Template Version – EnergyCo ~~comments 17 May~~ 9 August 2024 ~~+21~~
May 2024

Access Payment Deed

Project with a South West REZ Access Right

[Project name]

Dated

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

[insert] (~~“Access Right Holder”~~)

Access Payment Deed

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Details

Parties		
SFV	Name	Scheme Financial Vehicle Pty Ltd
	ACN	662 496 479
	Address	Company Address: Level 4, 7-15 Macquarie Place, Sydney NSW 2000 Mailing Address: GPO Box 2307, Melbourne VIC 3001
	Email	[insert]
	Attention	[insert]
Access Right Holder	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	Company Secretary
	Attention	Company Secretary
Recitals	A	Access Right Holder has applied for the grant of an Access Right to the South West Access Rights Network.
	B	To support the grant of an Access Right, Access Right Holder will enter into this document with SFV.
	C	This document governs Access Right Holder's: <ul style="list-style-type: none"> (a) Access Fee payment obligations to SFV; and (b) obligation to provide the Securities to SFV.
	D	Access Right Holder will enter into an Access PDA with Infrastructure Planner EnergyCo on or around the date of this document. The Access PDA will, among other things, address Access Right Holder's development and construction obligations, operation of the Project, compliance with the "Social Licence Commitments" (as defined in the Access PDA) and Access Right obligations.

General terms

1 Definitions

1.1 Defined terms

Capitalised terms in this document have the meaning set out below, unless the contrary intention appears:

Acceptable Credit Rating means a credit rating of at least A- by S&P Global (previously known as Standard & Poor's) or A3 by Moody's or, if both of those agencies cease to operate or give ratings of the kind referred to above, an equivalent rating from another reputable ratings agency acceptable to SFV (acting reasonably).

Access Fee means access fees payable by Access Right Holder determined by Consumer Trustee in accordance with the Access Fee Determination, as set out in the Access Fee Schedule.

Access Fee Determination means a determination made by Consumer Trustee under section 26 of the EII Act in relation to the fees which are applicable to the Access Rights Network, Access Right Holder and the Project.

~~**[Note: it is proposed that the Access Fee Determination will set out certain situations in which the Access Fee may be varied (e.g. changes in MW requested by the Proponent under the Access PDA). Please see the Consumer Trustee Access Fee Guidelines.]**~~

Access Fee Payment Date means the earlier of the:

- (a) First Commissioning Date; and
- (b) Network Readiness Date; ~~and~~.

Access Fee Schedule has the meaning given in the Access Fee Determination. A copy of the initial Access Fee Schedule as at the Signing Date is set out in Annexure A ("Access Fee Schedule") and may be replaced from time to time under clause 4(a)(ii)(B).

Access PDA means the project development agreement entered into on or around the ~~date~~assigdate of this document between ~~Infrastructure Planner~~EnergyCo and Access Right Holder with respect to the Project.

Access Right has the meaning given in the Access Scheme Declaration.

Access Rights Network has the meaning given in the Access Scheme Declaration.

Access Scheme Declaration has the meaning given in the Access PDA.

AEMO has the meaning given in the Access PDA.

AML/CTF Act means the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) or any regulations, rules or other instruments made

pursuant to that act, including any Laws imposing 'know your customer' or other identification checks or procedures, from time to time.

Breach Notice has the meaning given in clause 7.2(b).

Business Day has the meaning given in the Access PDA.

C&E Fee has the meaning given in the Access Fee Determination.

Calendar Quarter has the meaning given in the Access PDA.

Cash Deposit has the meaning given in clause 3.5(b)(i).

Cash Deposit Account has the meaning given in clause 3.5(b)(i).

Change in Control has the meaning given in the Access PDA.

Claim has the meaning given in the Access PDA.

Condition Precedent Commonwealth has the meaning given in [clause 2.2 the Access PDA](#).

Connection Agreement means an agreement or deed to be entered into between Access Right Holder and Transgrid in relation to the connection of the Project to the South West REZ Access Rights Network and constituting a "connection agreement" as defined in the NER.

Consumer Trustee has the meaning given in the Access PDA.

Corporations Act means the Corporations Act 2001 (Cth).

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

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

Dispute has the meaning given in clause 12.1.

Dispute Notice has the meaning given in clause 12.3.

Disputed Amount has the meaning given in clause 5.3.

EI Act means the Electricity Infrastructure Investment Act 2020 (NSW).

EnergyCo means [Energy Corporation of New South Wales \(ABN 13 495 767 706\)](#).

Financial Default means a failure by Access Right Holder to:

- (a) pay any amount due and payable to SFV under this document; or
- (b) provide or replace a Security in the amount or at the time specified in this document.

Financial Trustee has the meaning given in the Access PDA.

First Commissioning has the meaning given in the Access PDA.

First Commissioning Date has the meaning given in the Access PDA.

Government Authority has the meaning given in the Access PDA.

Government Entity has the meaning given in the Access PDA.

GST Amount has the meaning given in clause 6.3.

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

Independent Expert has the meaning given in clause ~~12.6~~[12.6\(a\)](#).

~~**Infrastructure Planner** means Energy Corporation of New South Wales (ABN 13-495 767 706).~~

Initial Security means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 (“Securities”) for the Initial Security.

Insolvency Event means, in relation to a ~~party~~[person](#):

- (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~~[party](#) to this document);
- (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 relation to 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~~[the other](#) party to this document 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~~[person](#) under the law of any jurisdiction.

Invoice has the meaning given in clause ~~5.15~~[5.1\(a\)](#).

Invoiced Sum has the meaning given in clause 5.1.

Law has the meaning given in the Access PDA.

Loss has the meaning given in the Access PDA.

Maximum Capacity has the meaning given in the Access PDA.

Modern Slavery means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, and other slavery-like exploitation as prohibited under all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2018 (Cth), the Criminal Code Act 1995 (Cth), sch 1, divisions 270 and 271 and Modern Slavery Act 2018 (NSW). For the avoidance of doubt, **Modern Slavery** includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes.

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 has the meaning given in the Access PDA.

NER means the National Electricity Rules made under the National Electricity Law, as it is applied in New South Wales (including any amendments to the application of the NER in NSW made under the EII Act or the Electricity Infrastructure Investment Regulation 2021 (NSW)).

Network Readiness Date has the meaning given in the Access PDA.

Non-Financial Default means a failure by Access Right Holder to comply in a material respect with an obligation under this document (other than a failure which constitutes a Financial Default).

Operations Security means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 ("Securities") for the Operations Security.

Payment Term has the meaning given in clause 4 (~~"Access Fee"~~).

Project has the meaning given in the Access PDA.

Project Characteristics has the meaning given in the Access PDA.

Provision Date means, for each Security, the date set out in Schedule 1 ("Securities") in relation to that Security.

Quarterly Access Fee means the Access Fee for a Calendar Quarter as set out in the Access Fee Schedule.

Related Body Corporate has the meaning given in the Access PDA.

Revised Security Amount has the meaning given in clause 3.2(a).

Return Date means, for each Security Requirement, the return date set out in Schedule 1 ("Securities") in relation to that Security Requirement.

Sanctions means all applicable economic or financial sanctions or trade embargoes imposed or enforced on the basis of law, regulations, executive order, restrictive measures or other related rules imposed or publicly notified by:

- (a) the United Nations;
- (b) Australia or New South Wales; or
- (c) the European Union, the United Kingdom or the United States of America, including those administered by the Office of Foreign Assets Control of the United States Department of the Treasury or His Majesty's Treasury of the United Kingdom.

Securities Schedule means the schedule set out in Schedule 1 ("Securities") as updated from time to time under clause 3.2(c) following Consumer Trustee issuing a revised Access Fee Schedule under the Access Fee Determination.

Security means a letter of credit or bank guarantee:

- (a) issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;
- (b) which can be drawn in Sydney;
- (c) with an expiry date of not less than 6 months after the applicable Return Date for the relevant Security; and
- (d) substantially in the form specified in Annexure C ("Form of Security") subject to any reasonable amendments proposed by the issuer and agreed to by SFV (acting reasonably).

Security Amount means, for each Security Requirement, the amount set out in Schedule 1 ("Securities") in relation to that Security Requirement.

Security Interest has the meaning given in the Access PDA.

Security of Critical Infrastructure Laws means the Security of Critical Infrastructure Act 2018 (Cth), and any regulations, rules or guidelines approved under that act, and all other Laws that apply to the security of critical infrastructure from time to time.

Security Requirement means each "Security Requirement" in Schedule 1 ("Securities").

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

South West REZ means the South West renewable energy zone declared under section 19(1) of the EII Act on 4 November 2022, as amended from time to time.

State means the Crown in right of the state of New South Wales.

Tax means:

- (a) any tax, levy, charge, impost, fee, deduction or similar charge that (in each case) is assessed, levied, imposed or collected by any Government Authority; and
- (b) any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above.

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.

Term has the meaning given in clause 2.1.

Termination Amount means an amount equal to:

- (a) ~~Termination Amount means the total value of Securities held by SFV at the time of termination (or prior to the Access Fee Payment Date, the value of the Initial Security (or, if applicable, the value of the Initial Security that would be held by SFV had Access Right Holder complied with its obligations to provide Security under this document) plus any accrued amounts owing by Access Right Holder to SFV at the time of termination;~~ or
- (b) on and from the Access Fee Payment Date, the value of the Operations Security (or, if applicable, the value of the Operations Security that would be held by SFV had Access Right Holder complied with its obligations to provide Security under this document),

plus any amounts accrued or owing by Access Right Holder to SFV at the time of termination.

Top-up Security has the meaning given in clause 3.2(d).

Transgrid has the meaning given in the Access PDA.

[**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 Access Right Holder is trustee of a trust.]

1.2 Interpretation Provisions

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

- (a) headings are for convenience only and do not affect interpretation;
- (b) ~~(a)~~ labels used for definitions are for convenience only and do not affect interpretation;
- (c) ~~(b)~~ the singular includes the plural and vice versa;
- (d) ~~(c)~~ the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) ~~(d)~~ a reference to a document also includes any variation, replacement or novation of it;
- (f) ~~(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;
- (g) ~~(f)~~ a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) ~~(g)~~ a reference to a time of day is a reference to Sydney time;
- (i) ~~(h)~~ a reference to dollars, \$ or A\$ is a reference to the currency of Australia;

- (j) ~~(j)~~ a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) ~~(j)~~ a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) ~~(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;
- (m) ~~(j)~~ a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) ~~(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;
- (o) ~~(n)~~ if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, then it is taken to be done on the next Business Day;
- (p) ~~(o)~~ if the day on which a party must do something under this document is not a Business Day, then the party must do it on the next Business Day; and
- (q) ~~(p)~~ the Details, schedules and annexure to this document form part of this document.

1.3 SFV, Consumer Trustee and ~~Infrastructure Planner~~ [EnergyCo](#) interaction

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

- (a) consult with Consumer Trustee and ~~Infrastructure Planner~~ [EnergyCo](#); and
- (b) consider Consumer Trustee’s and ~~Infrastructure Planner’s~~ [EnergyCo’s](#) advice in relation to those obligations (as relevant).

1.4 Appointment of agent

Access Right Holder acknowledges that SFV may, in its sole discretion and from time to time, appoint one or more persons as SFV’s agent in relation to or in connection with some or all of SFV’s rights or obligations under this document. Nothing in this clause relieves SFV of its obligations under this document.

1.5 Access right agreement

The parties acknowledge that this document is an “access right agreement” (as defined in the Access Scheme Declaration) for the purposes of the Access Scheme Declaration.

1.6 NER definition change

If:

- (a) a term used in this document (including as a result of a prior application of this clause 1.6) 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.

2 Term and Condition Precedent

2.1 Term

Subject to clause 2.2, this document commences on the Signing Date and ends on the date that this document is terminated in accordance with clause 7 (“Default and Termination”) (~~“Term”~~).

2.2 Condition Precedent

Clauses 3 (“Security”), 4 (“Access Fee”) and 5 (“Payment of Access Fee”) of this document have no legal force or effect until Access Right Holder enters into the Access PDA (~~“Condition Precedent”~~).

3 Security

3.1 Provision of Security

Access Right Holder must provide Security for each Security Requirement in an amount equal to the relevant Security Amount to SFV on or before the applicable Provision Date or as otherwise agreed between the parties.

3.2 Top up and replacement of Security

- (a) If, after the Signing Date, there is an increase in the Access Fee in accordance with the Access Fee Determination, the Security Amount for the Operations Security will increase as a result (~~“Revised Security Amount”~~).
- (b) SFV will calculate the Revised Security Amount, provided that SFV’s calculation of the Revised Security Amount must be consistent with the increase in the Access Fee determined by Consumer Trustee under the Access Fee Determination.
- (c) SFV must notify Access Right Holder of the Revised Security Amount and issue to Access Right Holder an updated Securities Schedule which sets out the Revised Security Amounts within 10 Business Days of the date of the Access Fee Determination.
- (d) Access Right Holder must, within 20 Business Days after SFV has issued an updated Securities Schedule to Access Right Holder under paragraph (c), provide replacement Security or additional top-up Security for such amount as is necessary to ensure that the amount of the relevant Security provided by Access Right Holder is equal to the Revised Security Amount (~~“Top-up Security”~~).
- (e) Notwithstanding any other provision of this clause 3.2, if the only increase to the Access Fee is due to annual escalation in accordance with the Access Fee Determination, then SFV may only require Access Right Holder to provide Top-up Security under paragraph (d) once every 42 years.

~~**Note: if the Access Fee increases in accordance with the Access Fee Determination, then the Operations Security Amounts also increase to the extent relevant. Access Right Holder will be required to provide additional**~~

~~**bonding for such increased amount. If the increase in Access Fee is only due to annual escalation, SFV will only require that Access Right Holder provide additional bonding once every 4 years.**~~

- (f) If Access Right Holder is required to provide a Security for a Security Requirement (~~“new Security Requirement”~~) to SFV on or before the Return Date of a Security for another Security Requirement (~~“existing Security”~~) pursuant to this clause 3.2 and:
- (i) the existing Security remains valid and will remain valid for at least 12 months from the Provision Date for the new Security Requirement; and
 - (ii) the Security Amount for the new Security Requirement is greater than the Security Amount of the existing Security, then:
 - (A) at least 20 Business Days before the Provision Date for the new Security Requirement, Access Right Holder may notify SFV that it will provide an additional Security as a top up to the existing Security (~~“additional Security”~~) in accordance with subparagraph (B); and
 - (B) Access Right Holder must provide the additional Security on or before the Provision Date for the new Security Requirement,

such that the aggregate face value of (x) the existing Security; and (y) the additional Security is not less than the Security Amount for the new Security Requirement, and the Return Date for both Securities is the Return Date for the new Security Requirement.

- (g) If SFV draws on the Operations Security in accordance with clause 3.5(a), then Access Right Holder must, within 10 Business Days of such drawing, provide to SFV either:
- (i) an additional Operations Security as a top up, such that the aggregate face value of all Operations Securities provided by Access Right Holder, and held by SFV, under this document is not less than the applicable Security Amount; or
 - (ii) a replacement Operations Security with a face value not less than the applicable Security Amount.

3.3 Step down of Security

- (a) If, after the Signing Date, there is a decrease in the Access Fee in accordance with the Access Fee Determination, and the Security Amount for a Security Requirement, in respect of the Operations Security would, if it were recalculated as at the date after such reduction, decrease as a result by ~~more than 10~~5%, then Access Right Holder may notify SFV:
- (i) where the terms of the relevant Security provide for the reduction of the face value of that Security by provision of a notice to the issuer, that it proposes to reduce the face value of the relevant Security to the Security Amount in accordance with the terms of the Security; or
 - (ii) otherwise, that it proposes to provide a replacement Security for the reduced Security Amount.

- (b) Within 20 Business Days after receiving Access Right Holder's notice under paragraph (a), SFV must confirm:
- (i) the date from which the Security Amount will be reduced; and
 - (ii) the date by which:
 - (A) in relation to a notice under subparagraph (a)(i), the face value of the existing Security may be reduced; or
 - (B) in relation to a notice under subparagraph (a)(ii), Access Right Holder may provide the replacement Security,
- which must not be greater than ~~2 years~~ 60 Business Days from the date of SFV's notice under this paragraph (b).

~~[Note: SFV will have in place 2 year bonding cycles for Operations Securities for Projects. Where the Security Amount for the Operations Security decreases within this 2 year bonding cycle, Access Right Holder will only be able to replace the Operations Security for the decreased Security Amount in the next 2 year bonding cycle so as to not disturb the current bonding cycle. This means that if the decrease occurs at the start of a 2 year bonding cycle, the replacement needs to be delayed for 2 years until the start of the next 2 year bonding cycle.]~~

- (c) If subparagraph (a)(ii) applies, Access Right Holder must provide to SFV the replacement Security within the period of time specified under paragraph (b)(ii).

3.4 Replacement of Security

Access Right Holder must provide a replacement Security to SFV for the same amount as the Security that it is to replace and which satisfies the requirements of this clause 3.4:

- (a) in the case of the issuer of a Security ceasing to hold an Acceptable Credit Rating, within 20 Business Days after the issuer ceases to hold an Acceptable Credit Rating; or
- (b) in the case of a Security having an expiry date, no later than 20 Business Days prior to the expiry date.

3.5 Recourse to Security

- (a) SFV may only draw on a Security if Access Right Holder has failed to:
 - (i) pay the relevant Access Fee in full within ~~20~~10 Business Days after when it falls due in accordance with clause 5.2, in which case in an amount equal to any outstanding amount owing to SFV;
 - (ii) pay the Termination Amount in full in accordance with clause 7.3, in which case in an amount equal to any outstanding amount owing to SFV; ~~or~~
 - (iii) provide a replacement Security to SFV where required under clause 3.4, in which case for the whole amount of the Security; or

- (iv) pay any amounts payable to SFV arising from the indemnity in clause 9.4(a), in which case for any payable amount under clause 9.4(a).
- (b) If SFV draws on a Security in accordance with ~~paragraph~~subparagraph (a)(iii), then SFV:
 - (i) will hold that amount as a cash deposit ("**Cash Deposit**") in a separate bank account in the name of SFV ("**Cash Deposit Account**");
 - (ii) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:
 - (A) in accordance with paragraph (a) as if the Cash Deposit were the amount secured by the relevant Security; and
 - (B) to pay all costs, charges, expenses and Taxes payable in connection with that Cash Deposit Account; and
 - (iii) must return the Cash Deposit held in the relevant Cash Deposit Account (less any amounts payable to or by SFV under subparagraph (b)(ii)) to Access Right Holder as soon as reasonably practicable following receipt of a replacement Security in accordance with clause 3.4 but disregarding any timing requirements in clause 3.4.

3.6 Return of Security

- (a) Subject to ~~clause~~clauses 3.6(b) and 3.7, SFV must return each Security ~~on~~by no later than the earlier of:
 - (i) ~~(a)~~ the applicable Return Date; and
 - (ii) ~~(b)~~ within 5 Business Days after receiving a replacement of that Security in accordance with clause 3.2, 3.3 ~~or~~, 3.4 or 8.1(a)(iii), to the extent not drawn in accordance with this document.
- (b) If this document terminates, the Return Date for each Security is:
 - (i) where Access Right Holder is, or will be, liable to pay a Termination Payment:
 - (A) the date Access Right Holder has paid the Termination Amount to SFV in full in accordance with clause 7.4; or
 - (B) where Access Right Holder has failed to pay the Termination Amount in full and the outstanding amount owing to SFV is less than the Security Amount available to be drawn, the date SFV has drawn on a Security in accordance with clause 3.5(a)(ii); or
 - (ii) where no Termination Amount is payable, within 10 Business Days of full discharge of all of Access Right Holder's obligations under this document for the Payment Term.

3.7 Retention of Security

Despite any other provision and notwithstanding any Return Date specified in Schedule 1 ("Securities"), SFV may continue to hold and draw on a Security

(where this document may otherwise require such Security to be returned or released) before or after the termination of this document:

(a) if SFV reasonably considers that it:

(i) ~~(a) if the SFV reasonably considers that it~~ has, or reasonably anticipates that it will have, a right to recourse to the Security under clause 3.5, at the time the obligation to return or release the Security arises; and

(ii) for so long as it continues to reasonably hold such view; or

(b) if replacement Security is to be provided, until such time as that replacement Security is received by SFV; ~~or~~

~~(c) until such time Access Right Holder has paid all amounts due and payable (or anticipated to be due and payable) to the SFV under this document to the reasonable satisfaction of the SFV.~~

4 Access Fee

(a) The parties acknowledge that:

(i) at all times, the Access Fee payable by Access Right Holder under this document is determined by Consumer Trustee, and may be adjusted by Consumer Trustee, in accordance with the Access Fee Determination; and

(ii) if the Access Fee has been adjusted by Consumer Trustee in accordance with the Access Fee Determination, then:

(A) a revised Access Fee Schedule issued by Consumer Trustee will set out the Access Fee payable by Access Rights Holder under this document; and

(B) the revised Access Fee Schedule will be deemed to replace the Access Fee Schedule annexed to this document at Annexure A ("Access Fee Schedule").

(b) Access Right Holder agrees to pay the Access Fee in accordance with this clause 4 ("Access Fee") and clause 5 ("Payment of Access Fee").

(c) The Access Fee is payable from the Access Fee Payment Date until the earlier of:

(i) the date the Access Right has expired; and

(ii) the date that this document is terminated in accordance with clause 7 ("Default and Termination"),

~~("Payment Term").~~

5 Payment of Access Fee

5.1 Billing

(a) SFV must issue to Access Right Holder an invoice (which must be a Tax Invoice if GST is payable) (~~"Invoice"~~) by the date that is:

- (i) in relation to the first Invoice, 10 Business Days after the Access Fee Payment Date; and
- (ii) in relation to subsequent Invoices, 20 Business Days before the start of the first Calendar Quarter in the next year during the Payment Term,

setting out:

- (iii) in relation to the first Invoice:
 - (A) the prorated Quarterly Access Fee payable for the Calendar Quarter in which the Payment Term commences; and
 - (B) the Quarterly Access Fees payable for the ~~next three~~ remaining Calendar Quarters in that year;
- (iv) in relation to subsequent Invoices (other than the final Invoice), the Quarterly Access Fees payable for the next four Calendar Quarters; or, if the period ending on the expiry of the Payment Term is not equal to four full Calendar Quarters, in relation to the final Invoice the Quarterly Access Fees payable until the end of the Payment Term (if applicable, prorated for the Calendar Quarter in which the Payment Term ends);
- (v) the dates by which each of the Quarterly Access Fees must be paid by Access Right Holder;
- (vi) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
- (vii) the net amount of the above sums payable by Access Right Holder,

(“Invoiced Sum”).

- (b) If:
 - (i) SFV has issued an Invoice for a year in accordance with paragraph (a); and
 - (ii) the Quarterly Access Fee for any Calendar Quarter included in that Invoice is subsequently adjusted in accordance with the Access Fee Determination,

then SFV must:

- (iii) issue a revised Invoice reflecting the adjusted Quarterly Access Fee;
- (iv) issue a separate one-off Invoice for the amount of the adjustments; or
- (v) include the amount of the adjustments in the next prepared Invoice.

~~[Note: SFV will provide an annual invoice setting out in advance the four Quarterly Access Fees payable for the next year and the date on which they are payable. Provided that there is no adjustment to the Access Fee during that period, Access Right Holder will be required to make the quarterly~~

~~payments in accordance with the annual invoice. If there is an adjustment to the Access Fee in the course of that year which has been billed for in advance, then SFV may either issue a revised invoice or a separate one-off invoice, or include the adjustment amount into the next annual invoice.~~

5.2 Payment

- (a) Access Right Holder must pay the Invoiced Sum on each date specified in the Invoice.
- (b) Unless otherwise agreed, all payments to be made under this document 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.
- (c) SFV must nominate a bank account within 5 Business Days of the Signing Date and may change the nominated bank account on not less than 5 Business Days' notice.

5.3 Disputed Invoice

- (a) If Access Right Holder reasonably believes the Invoice or any component of the Invoice to be incorrect, then:
 - (i) it must notify SFV of the disputed amount and provide a statement of its reasons for disputing the Invoice ("**Disputed Amount**"); and
 - (ii) it must pay the Invoiced Sum, including any Disputed Amount.
- (b) If Access Right Holder notifies SFV 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 relation to the Disputed Amount, then either party may refer the matter for determination by an Independent Expert~~-~~ in accordance with clause 12.5(c)(i).
- (d) If SFV is required to refund any Disputed Amount (whether by agreement or determination by an Independent Expert), then SFV must pay such amounts within 10 Business Days after the date of resolution of the dispute.

5.4 Interest on late payments

If an amount payable by Access Right Holder under this document (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 agreed or determined to be payable by Access Right Holder, the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in relation to the Disputed Amount; or
- (b) otherwise, the date the unpaid amount is paid in full.

5.5 Acknowledgment by Access Right Holder

Access Right Holder acknowledges and agrees that any Access Fee that Access Right Holder has paid to SFV under this document is not refundable or reimbursable by SFV in any circumstance (other than under clause 5.3(d)), including but not limited to where:

- (a) the Access Rights Network does not, or ceases to, operate as expected;
- (b) there is a change to the Project Characteristics;
- (c) Transgrid is in breach of the Connection Agreement; and
- (d) the Project is unable to export electricity to the Access Rights Network for any reason.

6 GST

6.1 Definitions and interpretation

For the purposes of this clause 6:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 6, 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.

6.2 GST exclusive

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

6.3 Payment of GST

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

6.4 Adjustment events

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

6.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an

amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a Taxable Supply, then clause 6.3 applies to the reduced payment.

7 Default and Termination

7.1 Automatic termination

If ~~either~~ the Access PDA is terminated ~~or Access Right Holder's Access Right expires~~, then this document will automatically terminate with immediate effect on the date the Access PDA is terminated ~~or the Access Right expires (as relevant)~~.

7.2 Termination by SFV

SFV may terminate this document with immediate effect by notice in writing to Access Right Holder if:

- (a) **(Financial Default)** a Financial Default occurs and Access Right Holder does not remedy that Financial Default within 10 Business Days after receiving notice from SFV of that default;
- (b) **(Non-Financial Default)** a Non-Financial Default occurs and:
 - (i) Access Right Holder does not commence remedying that Non-Financial Default within 20 Business Days after receiving notice from SFV of that default ("**Breach Notice**"); or
 - (ii) if Access Right Holder has commenced remedying that default within 20 Business Days after receiving the Breach Notice, Access Right Holder:
 - (A) does not pursue that remedy in a diligent manner; or
 - (B) does not remedy the relevant default within 40 Business Days after receiving the Breach Notice (or by any later date agreed by SFV acting reasonably); or
- (c) **(insolvency)** Access Right Holder is the subject of an Insolvency Event and Access Right Holder does not cure that Insolvency Event within 5 Business Days after receiving notice from SFV.

7.3 Termination payment

- (a) If this document terminates under:
 - ~~(i)~~ clause 7.1 and the cause for the Access PDA terminating ~~or Access Right expiring~~ was not due to:
 - ~~(A)~~ the valid exercise of Access Right Holder's right to terminate under clause 18.3 of the Access PDA; or
 - ~~(B) the automatic expiry of the Access Right under clause 16.6(a) of the Access PDA; or~~
 - (ii) clause 7.2,

then Access Right Holder must pay SFV the Termination Amount in accordance with clause 7.4.

- (b) Subject to paragraph (c), clause 7.4(c) and 7.5, the parties acknowledge and agree that:
- (i) SFV's sole remedy arising out of or in connection with Access Right Holder's failure to comply with its obligations under this document is SFV's entitlement to the Termination Amount in accordance with paragraph (a); and
 - (ii) the Termination Amount is a genuine pre-estimate of SFV's anticipated losses arising from the termination of this document.
- (c) If:
- (i) the Termination Amount becomes payable by Access Right Holder under the terms of this document; and
 - (ii) that Termination Amount is found to be a penalty or Access Right Holder's obligation to pay the Termination Amount pursuant to this clause 7.3 is found to be void or unenforceable for any reason (whether in whole or in part),

then Access Right Holder indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss (including in relation to loss of bargain) suffered by SFV or electricity customers in New South Wales arising from or in connection with the termination of this document and/or the loss of the Project, provided that Access Right Holder's aggregate liability under this paragraph (c) will not exceed an amount equal to the Termination Amount.

7.4 Invoice

- (a) SFV must provide an invoice to Access Right Holder for the Termination Amount within 60 Business Days after the date of termination of this document.
- (b) Access Right Holder must pay the amount of any such Termination Amount within 30 Business Days after receipt of an invoice provided under paragraph (a).
- (c) If Access Right Holder does not pay the full amount of the Termination Amount within the period required under paragraph (b), then SFV may draw on the Securities in accordance with clause 3.5 and Access Right Holder shall remain liable for any balance.
- (d) If Access Right Holder reasonably believes the Termination Amount invoiced to be incorrect, then it must notify SFV that the Termination Amount is a Disputed Amount and clause 5.3 applies.

7.5 Preservation of rights

Termination or expiry of this document 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 document that arose prior to the date of such termination or expiry.

7.6 Exclusion of rights

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

8 Assignment and Change in Control

8.1 Assignment by Access Right Holder

- (a) Access Right Holder must not assign, novate or otherwise transfer its rights or obligations under, ~~title to or interest in~~ this document unless it:
- (i) also assigns, novates or otherwise transfers its rights and ~~obligations under, title to or interest in and its~~ obligations under the Access PDA to the incoming access right holder, in accordance with the Access PDA;
 - (ii) pays all amounts Invoiced by SFV and due and payable as at the date of the proposed assignment, novation or transfer in full;
 - (iii) ensures that Securities remain in full force and effect following such assignment, novation or transfer or replacement Securities are issued which comply with the requirements of this document, and ~~the~~ Access Right Holder and incoming access right holder execute such subsequent documentation as may be reasonably required by SFV to give full effect to the novation or transfer and the maintenance or replacement of the Securities; and
 - (iv) obtains the prior written consent of SFV (such consent not to be unreasonably withheld or delayed).
- (b) It will not be unreasonable for the SFV to withhold its consent to an assignment, novation or transfer under subparagraph (a)(iv) if:
- (i) SFV is not reasonably satisfied that the proposed incoming access right holder has the financial standing or financial resources available to it to perform the obligations or satisfy the liabilities of the ~~access right holder~~ Access Right Holder under this document and/or the proposed incoming access right holder does not provide such additional security as is reasonably required by SFV as a condition to the approval of the assignment, novation or transfer;
 - (ii) SFV is not reasonably satisfied that the proposed incoming access right holder (or any of its Related Bodies Corporate) has not breached and will not in future breach or cause SFV to breach:
 - (A) the AML/CTF Act;
 - (B) Modern Slavery laws, regulations, statutes and codes;
 - (C) the Security of Critical Infrastructure Laws;
 - (D) laws having a similar effect to subparagraphs (A) to (C) in other jurisdictions; or
 - (E) SFV's policies and procedures relating to such Laws; or
 - (iii) the proposed incoming access right holder or any of its Related Bodies Corporate:
 - (A) is subject to any Sanction;

- (B) has facilitated or permitted Modern Slavery to occur in any of its supply chains; or
 - (C) SFV is not satisfied with the outcome 'of 'know your customer' or similar checks or procedures undertaken in relation to the proposed incoming access right holder.
- (c) Notwithstanding anything else in this clause 8.1, the parties agree that Access Right Holder may grant a Security Interest in relation to its rights and obligations under this document in favour of a secured lender (or a trustee acting on its behalf) who is providing financial accommodation on secured terms to Access Right Holder (or to any of its Related Bodies Corporate) in connection with the Project.
- (d) The parties acknowledge and agree that the provisions of this clause 8.1 will apply to any assignment, novation or transfer of Access Right Holder's rights and obligations under ~~title to and interest in~~ this document following the enforcement of a Security Interest granted by Access Right Holder.

8.2 Assignment by SFV

- (a) SFV must not assign, novate or otherwise transfer its rights or obligations under ~~title to or interest in~~ this document other than in accordance with this clause 8.2.
- (b) Subject to paragraph (c), SFV may assign, novate or otherwise transfer its rights and obligations under ~~title to or interest in~~ this document with Access Right Holder'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 document without Access Right Holder'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.

8.3 Release

If a party assigns, novates or otherwise transfers its rights and obligations under ~~title to or interest in~~ this document in accordance with this clause 8, then the non-assigning party agrees to:

- (a) release the assigning party from its obligations under this document 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; and
- (b) where the non-assigning party is SFV, return any Security provided by the assigning party ~~provided~~ as soon as reasonably practicable after the assignee ~~first~~ delivers a replacement credit support or security to the non-assigning party.

8.4 Change in Control

Access Right Holder must not undergo, or agree to undergo, a Change in Control other than in accordance with the Access PDA.

8.5 Tripartite deed

On request from Access Right Holder, SFV agrees to enter into a tripartite deed with financiers of Access Right Holder in the form attached in Annexure B ("Form of Tripartite"), subject to any reasonable amendments agreed by ~~SFV (acting reasonably)~~ the parties to the tripartite deed.

9 Liability

9.1 Excluded Loss

Subject to ~~clauses 9.2 and~~ clause 9.3, and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this document for:

- (a) any ~~cost, expense, loss or damage~~ Loss 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~~ 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 directors, officers, employees, subcontractors or agents, and whether or not foreseeable at the Signing Date.

9.2 Limitation of liability

To the extent permissible by Law and subject to clause 9.3:

- (a) SFV will not be liable to Access Right Holder under or in connection with this document; and
- (b) Access Right Holder's liability to SFV under or in connection with this document is limited to:
 - (i) \$5,000,000 in relation to any single event; and
 - (ii) \$10,000,000 in aggregate in relation to all events occurring within any 12 months.

9.3 No exclusion

Clauses 9.1 and 9.2 do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this document, including the Access Fee and any Termination Amount or any other agreement in connection with the Project;
- (b) to pay under any indemnity given under this document, except for the indemnity under clause 9.4(b); or

- (c) arising from any criminal or fraudulent act or omission, ~~or~~ wilful misconduct ~~or~~ wilful breach or gross negligence of a party, or its directors, officers, employees, subcontractors or agents.

9.4 Indemnity by Access Right Holder

- (a) Access Right Holder 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 gross negligence of Access Right Holder or its Related Bodies Corporate, or their respective directors, officers, employees, subcontractors or agents; or
- (ii) in relation to death or personal injury, caused by any act or omission of Access Right Holder or its Related Bodies Corporate, or their respective directors, officers, employees, subcontractors or agents,

~~arising from~~ in each case, in connection with the Project.

- (b) Without limiting paragraph (a), Access Right Holder 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 Access Right Holder or its Related Bodies Corporate, or their respective directors, officers, employees, subcontractors or agents ~~arising from~~ in relation to the Project.

- (c) The amounts payable under this clause 9.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by SFV's directors, officers, employees, subcontractors or agents under this document.

- (d) The amounts referred to in this clause 9.4 are ~~not payable~~ reduced 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 gross negligence of SFV, its directors, officers, employees, subcontractors or agents; or
- (ii) arises in relation to an electricity hedging arrangement entered into by SFV and a third party.

9.5 Mitigation of Loss

Each party shall take all reasonable steps to mitigate ~~and reduce~~ any ~~recoverable~~ Loss ~~resulting from any breach of~~ suffered in connection with this document ~~by the other party~~.

10 Representations and warranties

10.1 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 document and carry out the transactions contemplated by this document;
- (c) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this document;
- (d) **(no breach)** the execution, delivery and performance of this document does not and will not violate, breach or result in a contravention of:
 - (i) any Law by which it is bound;
 - (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
 - (iii) the constitutional documents of that party; or
 - (iv) any Security Interest by which it is bound;
- (e) **(binding nature)** this document constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (f) **(no insolvency)** it is not subject to an Insolvency Event.

10.2 Anti-bribery and anti-corruption

Access Right Holder represents and warrants that 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 Modern Slavery, anti-bribery, anti-corruption, anti-money laundering or counter-terrorism financing laws, regulations or rules in any applicable jurisdiction.

10.3 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 document other than those contained in this document.

11 [Trustee provisions

11.1 Trustee representations and warranties

Access Right Holder 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 document 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 document, 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 relation to obligations incurred by it under this document and there are no facts, matters or circumstances that would disentitle Access Right Holder 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.

11.2 Trustee undertakings

Access Right Holder undertakes to comply with its obligations as trustee of the Trust.

11.3 Restrictions on trustee

Without the consent of SFV, Access Right Holder 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 Access Right Holder as trustee of the Trust (other than as part of an assignment, novation or transfer to which SFV has consented under clause 8.1);
- (b) **(restriction on right of indemnity)** could restrict Access Right Holder's right of indemnity from the Trust Property in relation to obligations incurred by Access Right Holder under this document;
- (c) **(restrict or impair compliance)** could restrict or impair the ability of Access Right Holder to comply with its obligations under this document;
- (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.

11.4 Trustee limitation of liability

- (a) This clause 11.4 applies to Access Right Holder as trustee of the Trust to the extent that Access Right Holder is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), Access Right Holder's liability to any person in connection with this document (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 Access Right Holder exercising its right of indemnity out of the Trust Property.

- (c) Subject to subparagraphs (c)(i) and (c)(ii), SFV may not seek to recover any amounts owing to it under this document by bringing proceedings against Access Right Holder 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 document by Access Right Holder; and
 - (B) declaratory relief or other similar judgment or order as to the obligations of Access Right Holder under this document.
- (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 Access Right Holder's indemnification out of the Trust Property either as a result of Access Right Holder's fraud, negligence or wilful default, or by operation of Law.
- (e) The limitation of Access Right Holder's liability under paragraph (b) is to be disregarded for the purposes of determining whether Access Right Holder has failed to comply with or perform any obligation under this document because of a failure by Access Right Holder to pay an amount payable by it under this document.]

[Note: to be included if Access Right Holder is trustee of a trust.]

12 Dispute Resolution

12.1 Dispute mechanism

Any dispute or difference of any kind arising between the parties in connection with or arising out of this document, whether during or after the Term ("**Dispute**") must be resolved pursuant to this clause 12.

12.2 No proceedings

Subject to clause 12.9, 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 12.

12.3 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).

12.4 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) The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 12.5;
 - (ii) second, referral of the Dispute for determination by an Independent Expert under clause 12.6 (if applicable); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

12.5 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) A meeting under clause 5.3(b) will be deemed to be a meeting under paragraph (a).
- (c) 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 the Dispute relates to the determination of the Security Amount, Termination Amount, or a Disputed Amount, refer the Dispute for determination by an Independent Expert; and
 - (ii) where the Dispute is not related to the matters set out in subparagraph (i), commence proceedings in a court of competent jurisdiction.

12.6 Independent Expert

- (a) If this document 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 relation to or in connection with any determination by an Independent Expert.
- (j) The costs of the Independent Expert will be borne equally between the parties.

12.7 Other Relief

The Dispute resolution procedures in this clause 12 do not apply to impair, delay or otherwise prejudice the exercise by a party of its rights provided in this document (including any right of termination).

12.8 Continued performance following a Dispute

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

12.9 Interim relief

Nothing in this clause 12 prevents either party from seeking urgent injunctive or declaratory relief.

13 Confidentiality

13.1 Disclosure of information

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

- (a) information that is publicly available (other than through a breach of this clause 13);
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this document;
- (c) to directors, officers, employees, agents, contractors, legal and other advisers and auditors of the party, provided the recipient agrees to act consistently with this clause;
- (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 (and its professional advisers advising in connection with that potential acquisition); or
 - (iii) any Related Body Corporate of a party to this document,
 provided the recipient agrees to act consistently with this clause 13;
- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (f) where the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this document;
- (g) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
- (h) to a rating agency; or
- (i) ~~(h) to a rating agency; or~~ in the case of disclosure by SFV, to:
 - (i) Consumer Trustee;
 - (ii) Financial Trustee;
 - (iii) AEMO;
 - (iv) ~~Infrastructure Planner~~EnergyCo;
 - ~~(v) Transgrid;~~
 - (v) ~~(vi)~~ any government department, agency, authority, instrumentality, Minister or officer of the State or Commonwealth, or to Cabinet, Parliament or a Parliamentary committee of the State of Commonwealth; and
 - (vi) ~~(vii)~~ to directors, officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to ~~(vi)~~(v),
 provided that ~~the disclosing party~~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 document.

13.2 Publicity

- (a) Unless required by Law, Access Right Holder must not make any public announcements relating to the subject matter of this document without SFV's prior written consent.
- (b) SFV and Consumer Trustee may make public announcements relating to the subject matter of this document without Access Right Holder's prior written consent, provided that SFV must (or must procure that Consumer Trustee, as applicable):
 - (i) consult with Access Right Holder before making a public announcement that contains commercially sensitive information relating to the subject matter of this document; and
 - (ii) reasonably consider any request from Access Right Holder to not include that commercially sensitive information, or to only include that commercially sensitive information on an aggregated basis, in the relevant public announcement.

14 Notices

14.1 Form

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or a director, secretary or any other person nominated by a party to act as an authorised officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

14.2 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.

14.3 When effective

Communications take effect from the time they are received or taken to be received under clause 14.4 (whichever happens first) unless a later time is specified in the communication.

14.4 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.

14.5 Receipt outside business hours

Despite anything else in this clause 14, if communications are received or taken to be received under clause 14.4 after 5.00pm on a Business Day or on a non-Business Day, then they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause 14, 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.

15 General

15.1 Survival

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

- (a) clauses 3 ("Security") (except clause 3.2(g)), 5 ("Payment of Access Fee"), 7 ("Default and Termination"), 9 ("Liability"), 12 ("Dispute Resolution"), 13 ("Confidentiality") and this clause 15;
- (b) any clause that is required to enable a party to exercise rights accrued prior to the expiry or termination of this document; and
- (c) any clause which by its nature is intended to survive the expiry or termination of this document.

15.2 Variation and waiver

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

15.3 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.

15.4 Discretion in exercising rights

Unless this document 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 document at its discretion (including by imposing conditions).

15.5 Partial exercising of rights

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

15.6 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

15.7 Remedies cumulative

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

15.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this document:

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

15.9 Supervening Law

Any present or future Law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

15.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document.

15.11 Entire agreement

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

15.12 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

15.13 Rules of construction

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

15.14 Severability

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

15.15 Governing Law and jurisdiction

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

15.16 Electronic execution

- (a) A party may execute this document 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 document 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 document acknowledge and agree that:
 - (i) they consent to the use of the electronic signatures and the document proceeding by electronic means; and
 - (ii) they intend to be legally bound by the terms of the document on which the electronic signature(s) has been placed.

~~EXECUTED as a deed~~
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	)	Signature of director/company secretary*
	)	*delete whichever is not applicable
)	
.....)
Name of director (block letters)	)	Name of director/company secretary* (block letters)
	)	*delete whichever is not applicable

ACCESS RIGHT HOLDER

EXECUTED by [INSERT] in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:)	
)	
)	
)	
)	
.....)
Signature of director	)	Signature of director/company secretary*
	)	*delete whichever is not applicable
)	
.....)
Name of director (block letters)	)	Name of director/company secretary* (block letters)
	)	*delete whichever is not applicable

Schedule 1 Securities

[Note: EnergyCo will provide information on the Security Amounts for a Project to the person registered to participate in the Access Right Allocation Application Process in relation to that Project.]

Security Requirement	Security Amount	Provision Date	Return Date
<p>Initial Security</p>	<p>\$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000.</p> <p>As at the Signing Date, this amount is [insert].</p>	<p>Within 20 Business Days after signing the Access PDA.</p>	<p>Subject to the following paragraph, 10 Business Days after the Access Fee Payment Date.</p> <p>The Return Date will be no earlier than 5 <u>Subject to clause 3.6(b), 10</u> Business Days after the Operations Security has been provided to SFV in accordance with this document.</p>
<p>Operations Security</p>	<p>An amount equivalent to the aggregate of two years of the Access Fee (excluding any C&E Fee)</p> <p>As at the Signing Date, this amount is [insert].</p> <p>The amount may be adjusted by notice from SFV in accordance with clause 3.2 or clause 3.3.</p>	<p>Within 20 Business Days of the Access Fee Payment Date.</p>	<p>Subject to the following paragraph <u>clause 3.6(b)</u>, 10 Business Days after full discharge of all of Access Right Holder's obligations under this document in relation to the Payment Term.</p> <p>Where this document has terminated in circumstances in which the Access Right Holder is or will be liable to pay a Termination Payment, the Return Date will be no earlier than 5 Business Days after the date Access Right Holder has paid the Termination Amount to SFV in accordance with this document.</p>

EXECUTED as a deed

~~Schedule 2 Access Fee Payment Date~~

~~1 C&E Fee~~

~~[insert]~~

~~2 Administration Fee~~ Signing page

~~[insert]~~ DATED: _____

SFV

<u>EXECUTED by SCHEME FINANCIAL</u>)	
<u>VEHICLE PTY LTD in accordance with</u>)	
<u>section 127(1) of the Corporations Act</u>)	
<u>2001 (Cth) by authority of its directors:</u>)	
)	
)	
.....)
<u>Signature of director</u>	)	<u>Signature of director/company</u>
	)	<u>secretary*</u>
	)	<u>*delete whichever is not applicable</u>
)	
.....)
<u>Name of director (block letters)</u>	)	<u>Name of director/company secretary*</u>
	)	<u>(block letters)</u>
	)	<u>*delete whichever is not applicable</u>

ACCESS RIGHT HOLDER

<u>EXECUTED by [INSERT] in</u>)	
<u>accordance with section 127(1) of the</u>)	
<u>Corporations Act 2001 (Cth) by</u>)	
<u>authority of its directors:</u>)	
)	
)	
.....)
<u>Signature of director</u>	)	<u>Signature of director/company</u>
	)	<u>secretary*</u>
	)	<u>*delete whichever is not applicable</u>
)	
.....)
<u>Name of director (block letters)</u>	)	<u>Name of director/company secretary*</u>
	)	<u>(block letters)</u>
	)	<u>*delete whichever is not applicable</u>

Annexure A Access Fee Schedule

[To be inserted.]

Annexure B Form of Tripartite

[To be inserted.]

Annexure C Form of Security

1 Letter of credit

[insert address of Issuer]

TO: Scheme Financial Vehicle Pty Ltd (ACN 662 496 479) of Level 4, 7-15 Macquarie Place, SYDNEY NSW 2000

Dear Sirs/Mesdames

[insert Issuer name] of [insert address] (the **Issuer**) has pleasure in detailing the particulars of our letter of credit issued in your favour.

IRREVOCABLE STANDBY LETTER OF CREDIT NO. – [insert]

DATED – [insert]

On Account of: [Access Right Holder Name] (ABN [●]) of [Access Right Holder Address] ("**Access Right Holder**")

Beneficiary: Scheme Financial Vehicle Pty Ltd (ACN 662 496 479) of Level 4, 7-15 Macquarie Place, SYDNEY NSW 2000 ("**SFV**")

Guaranteed Sum: At any time a total aggregate sum of AUD\$[insert] [insert amount in words]

Expiry Date: 5:00pm (Sydney time) [insert date]

Available at: [insert Issuer name] and [physical address in Sydney]

By Drafts on: [insert Issuer name] and [physical address in Sydney]

Payable at: Sight

Enfaced: Drawn under Standby Letter of Credit No. [insert] dated [insert]

Presented to: [insert Issuer name] and [insert physical address in Sydney or Melbourne]

Issued in connection with: The document titled 'Access Payment Deed' dated [●] between the SFV and the Access Right Holder (the "**Access Payment Deed**").

At the request of Access Right Holder (and in consideration of SFV accepting this letter of credit in connection with the Access Payment Deed) the Issuer issues this irrevocable standby letter of credit in favour of the Beneficiary. The Issuer unconditionally and irrevocably undertakes and covenants to pay to SFV on demand any sum or sums not exceeding the Guaranteed Sum.

This letter of credit continues in full force and effect until the earlier of:

1. SFV provides written notice to the Issuer that this letter of credit is no longer required by SFV;

2. SFV returns this letter of credit to the Issuer at the address set out above;
3. payment to SFV by the Issuer under this letter of credit of the whole of the Guaranteed Sum; and
4. the Expiry Date.

Upon presentation, at the address set out above, of this letter of credit accompanied by a demand in writing, the Issuer unconditionally and irrevocably agrees to pay the Guaranteed Sum or any part of the Guaranteed Sum to the bank account nominated in the written demand:

1. without reference to, or right of set-off, counterclaim or deduction by, Access Right Holder or any other person, or to the Access Payment Deed or any other contract between SFV and Access Right Holder;
2. without any withholding (including in respect of any tax duties, present or future taxes, charges or otherwise whatsoever);
3. without enquiring into the performance or non-performance of the Access Payment Deed by Access Right Holder or SFV;
4. despite any notice by Access Right Holder or any other person to the Issuer not to pay the whole or any part of the Guaranteed Sum;
5. with no obligation on the Issuer to enquire as to the correctness or validity of any demand; and
6. despite anything which but for this provision may operate to release, prejudicially affect or discharge the liability of the Issuer under this letter of credit.

Where a demand and payment is made under this letter of credit for a sum that is less than the Guaranteed Sum, the Issuer will issue SFV with a replacement letter of credit for the balance of the Guaranteed Sum remaining, after such part payment or payments.

Any variation (with or without the knowledge or consent of the Issuer) to the terms of the Access Payment Deed or any extensions of time or any other forbearance by SFV or Access Right Holder will not impair, diminish or discharge (in part or in full) the Issuer's liability under this letter of credit.

The Issuer hereby irrevocably undertakes to make all payments under this letter of credit in full in Australian dollars for value on the same business day as receipt by the Issuer of a written demand, unless the demand is made after 12pm (Sydney time), in which case the payment must be made by 12pm (Sydney time) on the next business day. For the purposes of this letter of credit, 'business day' means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

The benefit of this letter of credit is not assignable by SFV without the prior written consent of the Issuer, which consent must not be unreasonably withheld or delayed.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (**UCP 600**). To the extent that the UCP 600 conflicts with the terms of this letter of credit, the terms of this letter of credit shall prevail. If this letter of credit would expire during the interruption of business for reasons referred to in the UCP 600, this letter of credit shall not expire until 30 days after the end of such interruption.

This letter of credit shall be governed by the laws of New South Wales, and the Issuer and SFV hereby submit to the jurisdiction of the courts of New South Wales and agree not to claim that such courts are not a convenient and proper forum.

Executed as a deed poll on [Date] this [Day] day of [Month] [Year]:

Signed, sealed and delivered by
[Issuer Name] pursuant to power of
attorney and I declare that I have not
received any notice of revocation of
that power

Signature of witness

Signature of attorney

Print Name

Print Name

2 Bank Guarantee

At the request of [Access Right Holder Name] (ABN [●]) of [Access Right Holder Address] (the “**Access Right Holder**”) and in consideration of Scheme Financial Vehicle Pty Ltd (ACN 662 496 479) of Level 4, 7-15 Macquarie Place, SYDNEY NSW 2000 (the “**SFV**”) accepting this bank guarantee in connection with the access payment deed dated [●] between the SFV and the Access Right Holder (the “**Access Payment Deed**”), [Issuer Name] (ABN [●]) of [Issuer Address] (the “**Issuer**”) unconditionally and irrevocably undertakes and covenants to pay to SFV on demand any sum or sums which may from time to time be demanded in writing by SFV to a maximum aggregate sum of \$[●] ([insert amount in words] Australian dollars) (“**Guaranteed Sum**”).

This bank guarantee continues in full force and effect until the earlier of:

1. SFV provides written notice to the Issuer that this bank guarantee is no longer required by SFV;
2. SFV returns this bank guarantee to the Issuer at the address set out above;
~~and~~
3. payment to SFV by the Issuer under this bank guarantee of the whole of the Guaranteed Sum;
~~;~~ and
4. [insert time]pm (Sydney time) on [insert date].

Upon presentation, at the address set out above, of this bank guarantee accompanied by a demand in writing, the Issuer unconditionally and irrevocably agrees to pay the Guaranteed Sum or any part of the Guaranteed Sum to the bank account nominated in the written demand:

1. without reference to, or right of set-off, counterclaim or deduction by, Access Right Holder or any other person, or to the Access Payment Deed or any other contract between SFV and Access Right Holder;
2. without any withholding (including in respect of any tax duties, present or future taxes, charges or otherwise whatsoever);
3. without enquiring into the performance or non-performance of the Access Payment Deed by Access Right Holder or SFV;
4. despite any notice by Access Right Holder or any other person to the Issuer not to pay the whole or any part of the Guaranteed Sum;
5. with no obligation on the Issuer to enquire as to the correctness or validity of any demand; and
6. despite anything which but for this provision may operate to release, prejudicially affect or discharge the liability of the Issuer under this bank guarantee.

Where a demand and payment is made under this bank guarantee for a sum that is less than the Guaranteed Sum, the Issuer will issue SFV with a replacement bank guarantee for the balance of the Guaranteed Sum remaining, after such part payment or payments.

Any variation (with or without the knowledge or consent of the Issuer) to the terms of the Access Payment Deed or any extensions of time or any other forbearance by SFV or Access Right Holder will not impair, diminish or discharge (in part or in full) the Issuer's liability under this bank guarantee.

The Issuer hereby irrevocably undertakes to make all payments under this bank guarantee in full in Australian dollars for value on the same business day as receipt by the Issuer of a written demand, unless the demand is made after 12pm (Sydney time), in which case the payment must be made by 12pm (Sydney time) on the next business day. For the purposes of this bank guarantee, 'business day' means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

The benefit of this bank guarantee is not assignable by SFV without the prior written consent of the Issuer, which consent must not be unreasonably withheld or delayed.

This bank guarantee shall be governed by the laws of New South Wales, and the Issuer and the SFV hereby submit to the jurisdiction of the courts of New South Wales and agree not to claim that such courts are not a convenient and proper forum.

Executed as a deed poll on [Date] this [Day] day of [Month] [Year]:

Signed, sealed and delivered by [Issuer
Name] pursuant to power of attorney and I
declare that I have not received any notice
of revocation of that power

Signature of witness

Signature of attorney

Print Name

Print Name