

Publication version: 31 August 2023

Long-Term Energy Service Agreement

Generation [without / with] an Access Right

[Note: for bids where LTES Operator seeks only an LTESA and not an Access Right, the subtitle should read “Generation without an Access Right”. For bids where LTES Operator seeks both an LTESA and an Access Right, the subtitle should read “Generation with an Access Right”.]

[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. 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 [and Access PDA]. [Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.]
	B	LTES Operator will own and operate the Project in accordance with the requirements set out in this agreement.
	C	If LTES Operator exercises an Option to enter into a derivative arrangement under this agreement, then the parties will enter into a Swap in respect of the Swap Percentage of Sent Out Generation.
	D	Under each such Swap, SFV will take the benefit of the Capacity Product Entitlement and the Green Product Entitlement.

Reference Details

	Item	Details
Project details		
1.	Project	The '[insert project name]', which will be a [insert resource type e.g. wind farm] located at [insert location] with a Registered Capacity that is equal to the Maximum Capacity.
2.	Maximum Capacity	[insert] MW
3.	Contract Representative	Name: [insert] Email: [insert] Telephone: [insert]
Term		
4.	Final Swap End Date	The date that is [20] years after the First Option Date. [Note: The permitted value for this bid variable is up to a maximum of 20 years (noting shorter bids are preferred against MC1 assessment criteria).]
5.	Excluded Swap Start Date	<p>[Option 1: for bids where LTES Operator commits to not exercise its Option in respect of the Swap in certain Financial Years during the Term.]</p> <p>Each of the following Swap Start Dates:</p> <p>(a) [insert by reference to the First Option Date e.g. "the First Option Date" or "the second anniversary of the First Option Date"]; and</p> <p>(b) [insert further as necessary].</p> <p>[End option 1.]</p> <p>[Option 2: for bids where each Financial Year is eligible for a Swap.]</p> <p>Not applicable.</p> <p>[End option 2.]</p>
Swap terms		
6.	Contracted Percentage	<p>[insert]%</p> <p>[Note: an LTESA may relate to some or all of the capacity of the Project. Projects with a lower contacted percentage will be favourably assessed under MC1.]</p>

	Item	Details																										
		<i>In addition to this flexibility in the LTESA, the LTES Operator may also partially exercise a Swap in 25% increments (as a percentage of the Contracted Percentage), noting the repayment mechanism in clause 12 will apply to the un-exercised portion of the Contracted Percentage.]</i>																										
7.	Fixed Price	<p>\$(insert)/MWh.</p> <p>[Note: the Fixed Price is a flat nominal price paid by SFV for electricity and its entitlement to Green Products and Capacity Products.]</p>																										
8.	Minimum Generation	<p>[Note: bidders will be expected to bid a Minimum Generation that reflects at least 75% of forecast P90 for the whole Project. This bid Minimum Generation is then adjusted for each Swap Period to reflect the relevant Swap Percentage.]</p> <p><i>[Option 1: project without a degradation profile.]</i></p> <p>insert MWh, multiplied by the Swap Percentage for that Swap Period.</p> <p><i>[End option 1.]</i></p> <p><i>[Option 2: project with a degradation profile.]</i></p> <p>The average of the amounts set out in the table below for each Financial Year constituting that Swap Period, multiplied by the Swap Percentage for that Swap Period.</p> <p>[Note: the table below is intended to account for degradation of the Project and is expected to be reducing year-by-year.]</p> <table><tr><th>Financial Year commencing on:</th><th>Minimum Generation (MWh)</th></tr><tr><td>First Option Date</td><td>insert</td></tr><tr><td>1 year after the First Option Date</td><td>insert</td></tr><tr><td>2 years after the First Option Date</td><td>insert</td></tr><tr><td>3 years after the First Option Date</td><td>insert</td></tr><tr><td>4 years after the First Option Date</td><td>insert</td></tr><tr><td>5 years after the First Option Date</td><td>insert</td></tr><tr><td>6 years after the First Option Date</td><td>insert</td></tr><tr><td>7 years after the First Option Date</td><td>insert</td></tr><tr><td>8 years after the First Option Date</td><td>insert</td></tr><tr><td>9 years after the First Option Date</td><td>insert</td></tr><tr><td>10 years after the First Option Date</td><td>insert</td></tr><tr><td>11 years after the First Option Date</td><td>insert</td></tr></table>	Financial Year commencing on:	Minimum Generation (MWh)	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	4 years after the First Option Date	insert	5 years after the First Option Date	insert	6 years after the First Option Date	insert	7 years after the First Option Date	insert	8 years after the First Option Date	insert	9 years after the First Option Date	insert	10 years after the First Option Date	insert	11 years after the First Option Date	insert
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9 years after the First Option Date	insert																											
10 years after the First Option Date	insert																											
11 years after the First Option Date	insert																											

	Item	Details	
		12 years after the First Option Date	[insert]
		13 years after the First Option Date	[insert]
		14 years after the First Option Date	[insert]
		15 years after the First Option Date	[insert]
		16 years after the First Option Date	[insert]
		17 years after the First Option Date	[insert]
		18 years after the First Option Date	[insert]
		19 years after the First Option Date	[insert]
		[End option 2.]	
9.	Annual Payment Cap	\$(insert) [Note: there is a dollar cap on annual payments by SFV to LTES Operator under a Swap. The Annual Payment Cap is to be calculated as Fixed Price x Contracted Percentage x 110% x forecast P10 annual generation as submitted by LTES Operator with its tender.]	
Other terms			
10.	Repayment Threshold Price	\$(insert)/MWh [Note: the EII Act requires the LTESA to provide for the repayment of amounts paid by SFV because of the exercise of an Option. LTES Operator can be required to make repayments in Financial Years where it has not exercised the Option if the dispatch weighted average spot price for those Financial Years exceeds the Repayment Threshold Price.]	
11.	Cost Change Threshold	\$500,000, adjusted in accordance with clause 1.7 (“Adjustment”).	
12.	Early Termination Amount	The sum of: (a) \$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000; and (b) the greater of: (i) 90% of the Historical Net Payments; and (ii) zero, calculated as at the date of the relevant termination. [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.]	

	Item	Details
13.	Fixed Termination Amount	<p>The amount set out in the second column of the table in Schedule 4 ("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 in the circumstances contemplated in clause 22.3(h).]</i></p>
14.	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:

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

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).

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

Access Payment Deed means the access payment deed entered into on or about the Signing Date between SFV and LTES Operator with respect to the Project.

Access PDA means the project development agreement entered into on or after the Signing Date between Infrastructure Planner and LTES Operator with respect to the Project.

[End option 2.]

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

Approved Cure Plan has the meaning given in item 6.2(d)(i) of Schedule 2 (“Swap terms”).

Approved Reinstatement Plan has the meaning given in clause 18.2(b)(i) (“Reinstatement plan”).

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

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.

Billing Period means each calendar month in the Swap Period.

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.

Capacity Product Entitlement means, in respect of a Swap Period, the Swap Percentage of the Nominated Capacity Products created by, or able to be created by, LTES Operator in respect of the Project in relation to the Swap Period, as adjusted pursuant to item 3.4 of Schedule 2 ("Swap terms").

Capacity Product Scheme means any scheme, Law, policy or arrangement established or regulated by a Government Authority, and that provides for the creation and transfer of Capacity Products.

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);
- (b) LMP Event;

- (c) Market Disruption Event; and
- (d) 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 30 (“Contract Representative”), which at the Signing Date is the person specified in the Reference Details.

Control has the meaning given in section 50AA of the Corporations Act, except that:

- (a) the application of section 50AA(4) will be disregarded;
- (b) in the case of a body corporate, it includes the direct or indirect right to exercise more than 50% of the votes exercisable at a general meeting of that body corporate and the direct or indirect right to appoint more than 50% of its directors;
- (c) in the case of a trust, it includes the direct or indirect right to exercise more than 50% of the votes exercisable by the beneficiaries of that trust in their capacity as beneficiaries and the ability to appoint or remove the trustee of the trust;
- (d) in the case of any other person, it includes the direct or indirect right to exercise more than 50% of the voting rights in the person; and
- (e) in the case of any person (including those listed in paragraphs (b) to (d) above), it includes the direct or indirect capacity to determine the outcome of decisions about the person’s financial and operating policies,

and **Controlled** has a corresponding meaning.

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

Cost Change Principles has the meaning given in clause 19.6 (“Cost Change Principles”).

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

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”.

Dispatch Weighted Floating Price means, in respect of a period, the average Floating Price across each Trading Interval in that period, weighted based on the amount of Sent Out Generation during each such Trading Interval and provided that if the Floating Price is negative in a Trading Interval then for the purposes of this definition the Floating Price will be deemed to be zero for that Trading Interval.

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

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

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

Election to Reinstate has the meaning given in clause 18.1 (“Major Casualty Event”).

Eligible Contract means, in respect of a Repayment Year, any contract (other than this agreement) that:

- (a) is directly related to the purchase or sale, or price for the purchase or sale of, electricity from the wholesale electricity market in that Repayment Year;
- (b) has been entered into by LTES Operator to manage its exposure to the volatility of the Floating Price in that Repayment Year; and
- (c) has a contract tenor of at least 1 year,

provided that a contract will not be an Eligible Contract if:

- (d) the counterparty to the Eligible Contract is a “Related Entity” (as defined in the Corporations Act) of LTES Operator and LTES Operator has not demonstrated to SFV’s reasonable satisfaction that the contract is on arm’s length terms; or
- (e) SFV considers (acting reasonably) that the contract:
 - (i) is not on reasonable commercial terms; or
 - (ii) does not have the net effect of reducing the exposure of LTES Operator to the volatility of the Floating Price in that Repayment Year.

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).

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”).

Floating Price means, for a Trading Interval, the Spot Price (in \$/MWh) set by AEMO for that Trading Interval at the Regional Reference Node.

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.

Green Product Entitlement means the Nominated Green Products created by, or able to be created by, LTES Operator in respect of the Notional Quantity, as adjusted pursuant to item 3.4 of Schedule 2 (“Swap terms”).

Green Product Scheme means any scheme, Law, policy or arrangement established or regulated by a Government Authority, and that provides for the creation and transfer of Green Products.

GreenPower Accreditation means an approval by the GreenPower Program Manager of an electricity generator as a ‘GreenPower Generator’ under the GreenPower Program.

GreenPower Program means the National GreenPower Accreditation Program as set out in the National GreenPower Accreditation Program: Program Rules, Version 10.2, 2021, as may be amended from time to time, or any successor scheme.

GreenPower Program Manager means the body which is responsible for accreditation of ‘GreenPower Generators’ under the GreenPower Program.

GST Amount has the meaning given in clause 16.3 (“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 12.2 (“Calculation of Historical Net Payments”).

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

Ineligible Tax means any income, capital gains, stamp, payroll, land, council or transaction duty, tax or charge, or any taxes or charges analogous to such taxes or charges.

Infrastructure Planner means any person appointed under a declaration under section 19 of the EII Act as the infrastructure planner for a renewable energy zone.

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 14.1 (“Billing”).

Invoiced Sum has the meaning given in clause 14.1 (“Billing”).

Knowledge Sharing Deliverables means the deliverables set out in the table in Schedule 3 (“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.

LGC means a large-scale generation certificate created under Division 4 of Part 2 of the RE Act, excluding wood-waste LGCs.

LMP Event has the meaning given in clause 21.1 (“LMP Event”).

LMP Event Amendment Principles has the meaning given in clause 21.6 (“LMP Event Amendment Principles”).

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

Lost Generation has the meaning given in item 6.3 of Schedule 2 (“Swap terms”).

Major Casualty Event means an event or circumstance that results in the loss, destruction or material damage to at least 50% of the Registered Capacity (in MW).

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.”]

Market Disruption Event has the meaning given in clause 20.1 (“Market Disruption Event”).

Material Alteration means:

- (a) an alteration to the Project’s generating system that affects the Project’s capacity, availability or generation profile, but not including a repair of the Project; or
- (b) the installation of a new generating system, energy storage system or load behind the Connection Point.

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.

Negative Pricing Event means a Trading Interval in respect of which the Floating Price is less than \$0/MWh.

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 Monthly Amounts has the meaning given in item 3.1(a) of Schedule 2 (“Swap terms”).

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

Nominated Capacity Product means a Capacity Product that SFV has nominated in accordance with item 4.2 of Schedule 2 (“Swap terms”) to receive under this agreement.

Nominated Green Products means each Green Product that SFV has nominated in accordance with item 5.2 of Schedule 2 (“Swap terms”) to receive under this agreement.

Nominated Percentage means, in respect of a Swap, the percentage specified in the Exercise Notice in respect of the Option to which that Swap relates.

Notional Price for Capacity Products means an amount per Capacity Product nominated by SFV from time to time to reflect the market value of Capacity Products.

Notional Price for Green Products means an amount per Green Product nominated by SFV from time to time to reflect the market value of Green Products.

Notional Quantity has the meaning given in item 3.3 of Schedule 2 (“Swap terms”).

Option has the meaning given in clause 10.1 (“Option to exercise a Swap”).

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 generation 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 4.5 (“Adjustment to Peak Periods”).

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

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

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

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

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

Project Force Majeure Event has the meaning given in clause 17.1 (“Definition of Project Force Majeure Event”).

Proposed Cure Plan has the meaning given in item 6.1(a) of Schedule 2 (“Swap terms”).

Proposed Reinstatement Plan has the meaning given in clause 18.1(a) (“Major Casualty Event”).

RE Act means the *Renewable Energy (Electricity) Act 2000* (Cth).

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

Regional Reference Node means the Sydney West 330kV node.

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’).

Relevant Cost Change means a net increase or decrease in LTES Operator’s direct costs of:

- (a) constructing and commissioning the Project;
- (b) generating and exporting electricity; or
- (c) creating, selling, supplying, registering, or transferring Green Products and/or Capacity Products under this agreement,

that arises as a result of a Change in Law that occurs after the Tender Date, but excluding costs in relation to:

- (d) existing or new “Participant fees” (as defined in the NER);
- (e) existing or new Ancillary Services; and
- (f) any other amounts payable by LTES Operator under the NER.

Repayment Amount has the meaning given in clause 12.3 (“Calculation of Repayment Amount”).

Repayment Year has the meaning given in clause 12.1 (“Repayment”).

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.

Sent Out Generation means the “sent out generation” (as defined in the NER) for the Project.

Shortfall Electricity has the meaning given in item 6.5 of Schedule 2 (“Swap terms”).

Shortfall Sum means, for a Swap Period, the payment calculated in accordance with item 6.4 of Schedule 2 (“Swap terms”).

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

Social Licence Commitments has the meaning given in the [Access] PDA.
[Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.]

Spot Price has the meaning given in the NER.

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.

Swap means a cash settled swap contract on terms outlined in Schedule 2 ("Swap terms").

Swap Percentage means in respect of a Swap Period or a Repayment Year that forms part of a Swap Period, the Nominated Percentage for that Swap Period multiplied by the Contracted Percentage.

Swap Period has the meaning given in clause 11.1 ("Swap Period").

Swap Start Date means each of:

- (a) the First Option Date; and
- (b) any anniversary of the First Option Date (up to and including the [19th] anniversary of the First Option Date).

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.

Trading Interval has the meaning given in the NER.

Trading Interval Amount has the meaning given in item 3.2 of Schedule 2 ("Swap terms").

[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.]

UIGF means unconstrained intermittent generation forecast (as that term is defined in the NER).

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[, the Access Payment Deed] and the PDA, the terms of this agreement will prevail to the extent of any such inconsistency. [**Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.**]

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

On each Adjustment Date, the Cost Change Threshold will be adjusted in accordance with the following formula:

$$P_n = P_b \times 1.025$$

where:

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

P_b = the relevant amount immediately before the Adjustment Date.

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 Swap); 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 Swap 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 less than 6 months before, or less than 12 months after, 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 a Swap commencing on the Requested Date to become effective. This Exercise Notice must comply with the requirements of clause 10 ("Grant and exercise of an Option").
- (c) SFV must:
- (i) 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, or less than 12 months after, the Requested Date; and
 - (ii) accept a request under paragraph (b) unless SFV demonstrates that accepting the Requested Date:
 - (A) may cause administrative burden or financial risk for SFV that is materially greater than that which SFV would be subject to if the First Option Date had occurred after the Commercial Operations Date; or

- (B) would be inconsistent with the requirements of the EII Act.
- (d) 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 Access PDA and] the PDA. [**Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.**]

4 Operation and maintenance

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 a Swap Period, LTES Operator must operate and maintain the Project:
 - (i) as a reasonable and prudent operator; and
 - (ii) in accordance with Good Industry Practice.
- (c) During any Swap Period, LTES Operator must use best endeavours (including incurring reasonable costs) to maximise Sent Out Generation in any Trading Interval where the Floating Price is greater than the applicable Fixed Price.

4.2 Registration

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 Annual Maintenance Program

- (a) At least 20 Business Days prior to the start of any Financial Year that forms all or part of a Swap Period, LTES Operator must provide SFV with an annual maintenance program that complies with LTES Operator’s obligations under clause 4.4(a) (“Maintenance”) (“**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.

4.4 Maintenance

- (a) Unless otherwise consented to by SFV, during any Swap Period, LTES Operator must use its best endeavours to schedule and undertake planned maintenance that is reasonably likely to affect the available capacity of the Project by more than 10% at times outside of the Peak Period.
- (b) Nothing in this clause 4.4 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.

4.5 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 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.

5 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.

6 Alterations to the Project

6.1 Material Alterations

Subject to clause 6.3 ("New energy storage systems"), 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.

[Note: for bids where LTES Operator seeks both an LTESA and an Access Right, LTES Operator will need to comply with this clause 6 in respect of any changes to the "Maximum Capacity" or "Project Characteristics" (each as defined in the Access PDA) under the Access PDA to the extent such change is a Material Alteration under this agreement.]

6.2 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 capacity, availability or generation profile 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 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.

6.3 New energy storage systems

(a) Clause 6.1 ("Material Alterations") does not apply to a Material Alteration that:

- (i) is an installation of a new energy storage system behind the Connection Point that is separately metered to the Project;
- (ii) would not qualify under this agreement as a Material Alteration but for the installation of that new energy storage system; and
- (iii) will not result in the Project no longer being infrastructure to which Part 6 of the EII Act applies,

provided that LTES Operator notifies SFV in writing of that Material Alteration at least 3 months prior to commencing, agreeing to or permitting a Material Alteration.

(b) If LTES Operator or any of its Related Bodies Corporate commences, agrees to or permits a Material Alteration without SFV's consent pursuant to clause 6.3(a), then:

- (i) LTES Operator must provide SFV with all information and evidence reasonably requested by SFV in respect of that Material Alteration;
- (ii) LTES Operator must ensure that the Project and the new energy storage system are separately metered at all times;
- (iii) at any time, if SFV considers (acting reasonably) that the Material Alteration has had, or may have, a material impact on:
 - (A) the operation of this agreement; and/or
 - (B) SFV's expected financial outcomes under this agreement,

then LTES Operator must agree to any specific amendments to this agreement requested by SFV (acting reasonably) to mitigate that impact.

(c) If LTES Operator disputes an amendment requested by SFV under clause 6.3(b)(ii), then either party may refer the Dispute to an Independent Expert for determination under clause 27.6 ("Independent Expert").

7 Social Licence Commitments

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

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

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

- (a) During the Term, LTES Operator must comply with the obligations in clause [16] (“Social Licence Commitments”) of the Access PDA.
- (b) Subject to paragraph (c), SFV may terminate this agreement by written notice to LTES Operator with immediate effect if LTES Operator does not:
 - (i) submit or resubmit a “Draft Cure Plan” (as defined in the Access PDA) in respect of a failure to comply with the Social Licence Commitments that is approved by Infrastructure Planner in accordance with clause [20.1] of the Access PDA;
 - (ii) commence and comply with the “Approved Cure Plan” (as defined in the Access PDA) in respect of a failure to comply with the Social Licence Commitments in all material respects, and does not remedy that failure within 10 Business Days after notice from Infrastructure Planner; or
 - (iii) make the agreed cash payment pursuant to clause [16.5] or [20.1] of the Access PDA within 10 Business Days after notice from Infrastructure Planner.
- (c) SFV must not terminate this agreement pursuant to paragraph (b) if LTES Operator has submitted a “Draft Cure Plan” (as defined in the Access PDA) in respect of a failure to comply with the Social Licence Commitments to Infrastructure Planner under clause [20.1] of the Access PDA and Infrastructure Planner has not yet approved or rejected that “Draft Cure Plan” under clause [20.1] of the Access PDA.]

[End option 2.]

8 Reporting

8.1 Operating reports

- (a) Within 20 Business Days after the end of each Financial Year, LTES Operator must provide to SFV a report, in the form prescribed by SFV, setting out:
 - (i) the Sent Out Generation (in MWh) on a month-by-month basis during that Financial Year;
 - (ii) the loss factors that applied to the Project for that Financial Year; and
 - (iii) the quantity of Lost Generation (in MWh) during that Financial Year.
- (b) 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.

8.2 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 Knowledge sharing

- (a) LTES Operator must provide the Knowledge Sharing Deliverables to SFV in accordance with Schedule 3 ("Knowledge sharing plan").
- (b) If LTES Operator receives funding for the Project from the Australian Renewable Energy Agency or another Government Authority, 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 9 as follows:
 - (i) **public information:** information that may be shared freely within SFV, with industry participants and with the public in general; or
 - (ii) **confidential information:** information that may only be shared in accordance with paragraph (d) or clause 29 ("Confidentiality").
- (d) SFV may disclose information received pursuant to this clause 9 that is marked by LTES Operator as 'confidential information' to the public on an aggregated and anonymised basis.
- (e) This clause 9 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 Swaps and payment terms

10 Grant and exercise of an Option

10.1 Option to exercise a Swap

- (a) Subject to the remainder of this clause 10, SFV grants LTES Operator [ten] options, each of which grants LTES Operator the right (but not the obligation) to cause a Swap commencing on a Swap 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 Swap Start Dates.]***
- (b) An Option is granted in respect of each Swap Start Date. Each Option may be exercised independently of any other Option (but subject to the remainder of this clause 10). However, LTES Operator may not exercise an Option to cause a Swap to become effective if that exercise would result in:
- (i) the Swap Period in respect of that Swap overlapping with the Swap Period of any other Swap in respect of which LTES Operator has already exercised an Option;
 - (ii) the Swap Period in respect of that Swap commencing on an Excluded Swap Start Date;
 - (iii) a Nominated Percentage in respect of a Swap that is not 25%, 50%, 75% or 100%; or
 - (iv) the Swap Start Date for the Swap occurring after the Final Swap End Date,
- and any purported exercise of an Option in contravention of paragraphs (i), (ii), (iii) or (iv) is void and has no force and effect.

10.2 Exercise Notice

Subject to clause 10.3 (“Pre-conditions to the exercise of the Option”):

- (a) LTES Operator may exercise an Option to cause a Swap to become effective by complying with the requirements of this clause 10;
- (b) if LTES Operator wishes to exercise an Option to cause a Swap 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 Swap to which that Option relates to SFV during the period commencing on the date that is 12 months prior to the Swap Start Date for the Swap to which the Option relates and ending on the last Business Day that is at least 6 months prior to the Swap 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 10 within the time period prescribed in clause 10.2(b), then the Option to which that Exercise Notice relates is deemed to be exercised on the Swap Start Date in respect of that Option without any further action from either party; and

- (d) if an Option which has been validly exercised in accordance with this clause 10, a Swap becomes effective which:
 - (i) subject to clause 11.3 ("Commencement of Capacity Product and Green Product obligations"), commences on the Swap Start Date in respect of which that Option is exercised;
 - (ii) subject to the requirements of clause 11.1 ("Swap Period"), has a Swap Period specified in the Exercise Notice in respect of that Option; and
 - (iii) has the Nominated Percentage specified in the Exercise Notice in respect of that Option.

Such a Swap becomes effective without any further action from either party.

10.3 Pre-conditions to the exercise of the Option

- (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;
 - (iv) if a Project Force Majeure Event impacting at least 50% of the Project's capacity is subsisting (regardless of whether or not that Project Force Majeure Event has been notified by LTES Operator to SFV), SFV considers (acting reasonably) that the impact of that Project Force Majeure Event is likely to be remedied by the Swap Start Date for the Swap;
 - (v) if a Major Casualty Event has occurred, LTES Operator has successfully completed the reinstatement of the Project in accordance with an Approved Reinstatement Plan; and
 - (vi) the Swap Start Date for the Swap included in the Exercise Notice is before the Final Swap 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 10.3 is void and has no force and effect.

11 Swap terms

11.1 Swap Period

- (a) A “**Swap Period**” in respect of a Swap to which an Option relates is the period commencing on the Swap Start Date for the Swap in respect of which LTES Operator has exercised its Option and ending on the date that is two years after that Swap Start Date.
- (b) If a Swap Period extends beyond the Final Swap End Date, then the Swap is taken to have ended on the Final Swap End Date and the Minimum Generation will be reduced by 50% for that Swap Period.

11.2 Terms of Swap

The terms contained in Schedule 2 (“Swap terms”) will apply to each Swap which has become effective due to a valid exercise of an Option in accordance with clause 10 (“Grant and exercise of an Option”).

11.3 Commencement of Capacity Product and Green Product obligations

The parties agree that the parties’ rights and obligations under items 4 and 5 of Schedule 2 (“Swap terms”) in respect of a Swap apply prior to the Swap Start Date to the extent reasonably necessary to give SFV the benefit of the Capacity Product Entitlement and the Green Product Entitlement as contemplated in Schedule 2 (“Swap terms”).

12 Repayment mechanism

[Note: the repayment mechanism applies during each year of the Term. However, the intention is that output that is contracted under this LTESA or an Eligible Contract is excluded from the repayment mechanism. Note if LTES Operator exercises a Swap with a Nominated Percentage of 100% then the Repayment Amount calculated under clause 12.3 would always equal zero due to $LTESA_{TI}$ being equal to or greater than GEN_{TI} .]

12.1 Repayment

- (a) If:
 - (i) the Dispatch Weighted Floating Price for a particular Financial Year (the “**Repayment Year**”) is above the Repayment Threshold Price; and
 - (ii) at the end of the Repayment Year, the Historical Net Payments is a positive number,then:
 - (iii) within 10 Business Days after the end of the Repayment Year, LTES Operator must provide SFV with:
 - (A) reasonable details of any Eligible Contracts in respect of that Repayment Year (including sufficient supporting details and evidence for SFV to verify whether a contract qualifies as an Eligible Contract); and
 - (B) its calculation of any Repayment Amount that is payable by LTES Operator in respect of that Repayment Year,

including supporting details of each input to be used in the calculation of the Historical Net Payments as set out in clause 12.2 (“Calculation of Historical Net Payments”) and the Repayment Amount as set out in clause 12.3(b) (“Calculation of Repayment Amount”); and

- (iv) within 60 Business Days after receipt of the information described in paragraph (iii), SFV must notify LTES Operator of whether or not it agrees with LTES Operator’s calculation of the Repayment Amount in respect of that Repayment Year.
- (b) If SFV notifies LTES Operator that it agrees with LTES Operator’s calculation of the Repayment Amount, then LTES Operator must pay that Repayment Amount within 30 Business Days after that notification.
- (c) If SFV notifies LTES Operator that it does not agree with LTES Operator’s calculation of the Repayment Amount, then:
 - (i) the parties must attempt to resolve the Dispute in accordance with clause 27.5 (“Negotiation”); and
 - (ii) if the parties are unable to resolve the Dispute in accordance with clause 27.5 (“Negotiation”), then the matter will be referred to an Independent Expert for determination under clause 27.6 (“Independent Expert”).

12.2 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 Net Monthly Amounts paid by SFV to LTES Operator prior to that time; and

$\sum LP$ = the sum of Net Monthly Amounts, Repayment Amounts and Shortfall Sums paid by LTES Operator to SFV prior to that time.

12.3 Calculation of Repayment Amount

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

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

$$75\% \times (DWFP - RTP) \times CP \times \left(\sum GEN_{TI} - \left(\sum LTESA_{TI} + \sum EC_{TI} \right) \right)$$

where:

$DWFP$ = the Dispatch Weighted Floating Price for the Repayment Year (in \$/MWh);

- RTP = the Repayment Threshold Price (in \$/MWh);
- CP = the Contracted Percentage;
- $\sum \text{GEN}_{\text{TI}}$ = the sum of Sent Out Generation, multiplied by the applicable Marginal Loss Factor, for all Trading Intervals during the Repayment Year (in MWh);
- $\sum \text{LTESA}_{\text{TI}}$ = the sum of the Nominated Percentage of Sent Out Generation, multiplied by the applicable Marginal Loss Factor, for all Trading Intervals during the Repayment Year (in MWh); and
- $\sum \text{EC}_{\text{TI}}$ = subject to clause 12.5 ("Confirmation of hedged Sent Out Generation"), the sum of Sent Out Generation that has been hedged by LTES Operator under an Eligible Contract that has been notified to SFV in accordance with clause 12.4 ("Notification of Eligible Contracts"), multiplied by the applicable Marginal Loss Factor, for all Trading Intervals during the Repayment Year (in MWh),

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

12.4 Notification of Eligible Contracts

Within 10 Business Days after the execution of an Eligible Contract, LTES Operator must provide SFV a notice setting out:

- (a) the tenor of that Eligible Contract; and
- (b) LTES Operator's reasonable estimate of the quantity of Sent Out Generation that has been hedged by LTES Operator under that Eligible Contract.

12.5 Confirmation of hedged Sent Out Generation

- (a) During any Repayment Year, LTES Operator may:
 - (i) provide SFV with LTES Operator's reasonable estimate of $\sum \text{EC}_{\text{TI}}$ (expressed as a proportion of the Project's Sent Out Generation) under clause 12.3 ("Calculation of Repayment Amount") for that Repayment Year; and
 - (ii) request that SFV confirm the estimate provided by LTES Operator.
- (b) If LTES Operator makes a request under paragraph (a), LTES Operator must provide SFV with any information and evidence reasonably required by SFV to provide the confirmation.
- (c) For the purpose of determining the Repayment Amount for a particular Repayment Year, a confirmation given by SFV pursuant to this clause 12.5 for that Repayment Year will form the basis of the calculation of $\sum \text{EC}_{\text{TI}}$, provided that:
 - (i) the information and evidence provided to SFV under this clause 12.5 was not incorrect or misleading in any respect; and
 - (ii) there has been no change in circumstances, including an amendment to an Eligible Contract, that would impact the calculation of $\sum \text{EC}_{\text{TI}}$.

12.6 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.

13 [Repayment of Access Fee / Not used]

[Notes:

- *For bids where LTES Operator seeks only an LTESA and not an Access Right, 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. The heading for clause 13 should read "Repayment of Access Fee" and clauses 13.1 and 13.2 should be entirely retained.*
- *For bids where LTES Operator seeks both an LTESA and an Access Right, this clause 13 is not relevant. The heading for clause 13 should read "Not used" and clauses 13.1 and 13.2 should be entirely removed.]*

13.1 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.

13.2 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 13.

14 Billing and payment

14.1 Billing

- (a) For each Billing Period during the Swap 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 Billing Period setting out:
 - (i) the sum of the Notional Quantity for each Trading Interval in the Billing Period;
 - (ii) the Net Monthly Amount payable by either SFV or LTES Operator for the Billing Period;
 - (iii) any Capacity Products:
 - (A) required to be delivered to SFV in respect of the Billing Period, including a separate line setting out the Capacity Products that are deemed to have been delivered to SFV pursuant to item 4.6(c) of Schedule 2 ("Swap terms"); and
 - (B) held by LTES Operator on trust for SFV pursuant to item 4.5(a) of Schedule 2 ("Swap terms");
 - (iv) any Green Products:
 - (A) required to be delivered to SFV in respect of the Billing Period, including a separate line setting out the Green Products that are deemed to have been delivered to SFV pursuant to item 5.7(c) of Schedule 2 ("Swap terms"); and
 - (B) held by LTES Operator on trust for SFV pursuant to item 5.6(a) of Schedule 2 ("Swap terms");
 - (v) any adjustments to any previous Invoices under clause 14.4 ("Adjustments");
 - (vi) any other amounts payable by either party under this agreement in respect of the Billing Period;
 - (vii) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
 - (viii) 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:
 - (i) each relevant "final statement" (as defined in the NER) and Revised Statement provided by AEMO in respect of the Project; and
 - (ii) any other information or evidence reasonably required by SFV to verify an Invoice.

14.2 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.

14.3 Disputed Invoice

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

14.4 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 Billing Period that is the subject of the Invoice.

14.5 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.

15 Taxes

Subject to clause 16 ("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) sale of Green Products and/or Capacity Products;
- (b) Swap; or
- (c) payments made to LTES Operator,

under this agreement.

16 GST

16.1 Definitions and interpretation

For the purposes of this clause 16:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 16, 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.

16.2 GST exclusive

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

16.3 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.
- (d) If supply of a Green Product is subject to GST, then each Green Product is taken to have been supplied at the Notional Price for Green Products, which must for the purposes of this agreement be treated as a GST-inclusive amount.
- (e) If supply of a Capacity Product is subject to GST, then each Capacity Product is taken to have been supplied at the Notional Price for Capacity Products, which must for the purposes of this agreement be treated as a GST-inclusive amount.

16.4 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.

16.5 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 16.3 ("Payment of GST") applies to the reduced payment.

Part 5 Material events

17 Force Majeure

17.1 Definition of Project Force Majeure Event

Subject to clause 17.2 ("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.

17.2 Exclusions

For the purposes of clause 17.1 ("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.

17.3 Notification of Project Force Majeure Event

If during a Swap Period the Sent Out Generation 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.

17.4 Suspension of obligations

If a Project Force Majeure Event occurs and LTES Operator notifies SFV of its occurrence in accordance with clause 17.3 ("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.

17.5 Accrued rights and obligations

Any suspension of obligations pursuant to clause 17.4 ("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.

17.6 Extension of time

Without limiting clause 17.4 ("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 17.3 ("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.

17.7 Mitigation of Project Force Majeure Event

- (a) If LTES Operator is affected by a Project Force Majeure Event, LTES Operator must use best endeavours (including by incurring reasonable costs) to mitigate the effect of that Project Force Majeure Event upon the Project and LTES Operator's performance of its obligations under this agreement as soon as is reasonably practicable.

- (b) If, during any Swap Period, Sent Out Generation is reduced as a result of a Project Force Majeure Event, then LTES Operator must use best endeavours (including by incurring reasonable costs) to maximise Sent Out Generation (except during Negative Pricing Events).

18 Major Casualty Event

18.1 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 Reinstate**"), 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 Reinstate 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.

18.2 Reinstatement plan

- (a) If SFV receives an Election to Reinstate, 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 Reinstate, 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 18.2(a)(i)(A), 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.

18.3 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 18.2(a)(ii)(A) ("Reinstatement plan");
- (c) SFV rejects a Proposed Reinstatement Plan in accordance with clause 18.2(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 22.3(g) ("Termination by SFV").

19 Change in Law

19.1 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 Fixed Price) 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 19.1(a)(ii), then this agreement will continue to operate in accordance with its terms.
- (c) This clause 19.1 may operate in conjunction with clause 19.2 ("Relevant Cost Change") but is intended to address amendments to the agreement other than those relating to the Fixed Price.

19.2 Relevant Cost Change

Subject to clause 15 ("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.

19.3 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 19.3 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 19.3 in respect of that Relevant Cost Change.
- (b) The net impact of a Relevant Cost Change pursuant to this clause 19.3 is to be calculated on the basis that LTES Operator complies with its obligations under clause 19.2 ("Relevant Cost Change").
- (c) A notice given by LTES Operator pursuant to this clause 19.3 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 19.2; and
 - (iv) the increase or decrease in the Fixed Price which LTES Operator considers is required to pass through 50% of the Contracted Percentage of the Relevant Cost Change to SFV in accordance with the Cost Change Principles.

19.4 Adjustment to Fixed Price

If LTES Operator gives notice to SFV in accordance with clause 19.3 ("Notice"), then the parties will negotiate in good faith an adjustment to the Fixed Price which the parties consider is required to pass through 50% of the Contracted Percentage of the Relevant Cost Change to SFV in accordance with the Cost Change Principles.

19.5 Dispute resolution

- (a) If the parties fail to agree the required adjustment to the Fixed Price under clause 19.4 ("Adjustment to Fixed Price") by the later of the date that is:
 - (i) 60 Business Days after receipt of the notice under clause 19.3 ("Notice"); and
 - (ii) 120 Business Days after the commencement of the relevant Change in Law,

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

- (b) If a Dispute is referred to an Independent Expert under this clause 19.5, then that Independent Expert must base its recommendation or decision on the Cost Change Principles.

19.6 Cost Change Principles

The “**Cost Change Principles**” to be applied in determining an adjustment to the Fixed Price are:

- (a) the cost or benefit passed through to SFV will not include the Cost Change Threshold amount;
- (b) any adjustment to the Fixed Price will commence at the start of a Financial Year;
- (c) the adjusted Fixed Price 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 19.1(a)(i) (“Change in Law”);
- (e) it will be assumed that LTES Operator will exercise an Option in respect of all remaining Swap Start Dates (subject to compliance with the requirements in clause 10.1(b)), in each case with a Nominated Percentage of 100%;
- (f) any increase in LTES Operator’s costs will be discounted for any related economic benefit to LTES Operator associated with the relevant Change in Law (including any tax benefits);
- (g) 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; and
- (h) the assumed generation of the Project for the remainder of the Term is based on an energy yield assessment (with a probability of exceedance of 50%) that is undertaken by a reputable third-party consultant in respect of the Project for the purpose of determining the Relevant Cost Change.

19.7 No adjustment to the Fixed Price

Notwithstanding any other provision of this agreement, no adjustment will be made to the Fixed Price for or as a result of the commencement or cessation of any Capacity Product Scheme or Green Product Scheme.

20 Market Disruption Events

20.1 Market Disruption Event

Subject to clause 20.2 ("Exclusions"), a **"Market Disruption Event"** is any of the following events:

- (a) the failure of or delay by AEMO in announcing or publishing the Spot Price at the Regional Reference Node for a Trading Interval;
- (b) a temporary or permanent discontinuance of the Spot Price at the Regional Reference Node being announced or published;
- (c) a material change in the method by which the Spot Price at the Regional Reference Node is calculated;
- (d) a change in the location of the Regional Reference Node, the abolishment of the Regional Reference Node or a change in the boundaries or number of regional reference nodes in New South Wales; and
- (e) the temporary or permanent discontinuance of the NEM.

20.2 Exclusions

For the purposes of clause 20.1 ("Market Disruption Event"), the following do not constitute a Market Disruption Event:

- (a) an LMP Event;
- (b) a change in the "market floor price" or "market price cap" (each as defined in the NER);
- (c) a change to the "cumulative price threshold" (as defined in the NER);
- (d) the application of, or change to, an "administered floor price" or "administered price cap" (each as defined in the NER);
- (e) a change in the prudential requirements or in the methodology of determining the quantum or nature of the prudential requirements that must be satisfied by a party to participate in the NEM; and
- (f) a suspension of the "spot market" by AEMO pursuant to clause 3.14.3 of the NER where the "central dispatch" process is continuing and the Spot Price and the "ancillary service prices" continue to be determined or set during the period for which the "spot market" is suspended (each as defined in the NER).

20.3 Notice

A party may give written notice to the other party if a Market Disruption Event occurs.

20.4 Revision

If a party gives a notice under clause 20.3 ("Notice"), then the parties must meet to discuss and agree in good faith any changes that would need to be made to this agreement to:

- (a) take into account the impact of the Market Disruption Event upon the affected party or parties; and
- (b) as far as practicable, put the relevant party or parties in the same relative commercial position as contemplated by this agreement or, if that is not possible, to achieve an equitable allocation of risk between the parties in relation to the Market Disruption Event.

20.5 Dispute resolution

- (a) If the parties fail to reach agreement under clause 20.4 ("Revision") by the later of the date that is:
 - (i) 20 Business Days after receipt of a notice under clause 20.3 ("Notice"); and
 - (ii) 60 Business Days before the commencement of the Market Disruption Event subject to the notice under clause 20.3,
 then either party may refer the Dispute to an Independent Expert for determination under clause 27.6 ("Independent Expert").
- (b) Unless otherwise agreed by the parties, the Independent Expert must make a determination within 60 Business Days after its appointment.

21 Locational marginal pricing

21.1 LMP Event

An "**LMP Event**" is the introduction of a new Law, or the amendment or repeal of an existing Law, in each case occurring after the Tender Date, which:

- (a) results in a circumstance in which the price paid by AEMO (per MWh) for Sent Out Generation differs, or may differ, from the Spot Price at the Regional Reference Node (as it is calculated at the Signing Date), other than in circumstances where the difference is solely attributable to the Marginal Loss Factor; and
- (b) includes the introduction of reforms proposed (or having substantially the same effect as those proposed) in:
 - (i) the Australian Energy Market Commission's final report of 'Coordination of generation and transmission investment review' dated 21 December 2018 and subsequent discussion papers dated 14 October 2019;
 - (ii) the Energy Security Board's 'Post 2025 Market Design Options Paper' dated 30 April 2021 regarding the 'congestion management model' mechanism;
 - (iii) the Energy Security Board's project initiation paper of 'Transmission access reform' dated November 2021; or
 - (iv) the Energy Security Board's consultation paper of 'Transmission access reform' dated May 2022.

21.2 Notice

A party may give written notice to the other party if an LMP Event occurs.

21.3 Mitigation

If an LMP Event occurs then LTES Operator must take commercially reasonable steps to mitigate the negative impacts of the LMP Event on LTES Operator and SFV.

21.4 Change to agreement

If the aggregate net impact of a LMP Event on the Project, on the basis that LTES Operator complies with clause 21.3 ("Mitigation") is likely to exceed the Cost Change Threshold, then the parties will negotiate, in good faith and in accordance with the LMP Event Amendment Principles, any changes to this agreement that are reasonably necessary to take into account the LMP Event.

21.5 Dispute resolution

(a) If the parties fail to reach agreement under clause 21.4 ("Change to agreement") by the later of the date that is:

- (i) 20 Business Days after receipt of a notice under clause 21.2 ("Notice"); and
- (ii) 60 Business Days before the commencement of the relevant LMP Event,

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

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

21.6 LMP Event Amendment Principles

The "**LMP Event Amendment Principles**" to be applied in determining a change to this agreement are:

- (a) in respect of any current and future Swap Periods, as far as is practicable LTES Operator is to be put in the same commercial and risk allocation position under this agreement as it would have been had the LMP Event not occurred;
- (b) the amendments will reflect the impact of the LMP Event on a benchmark owner and operator of a facility of the same technology type as the Project that is located in:
 - (i) if the Project is located in a Declared REZ, that Declared REZ; or
 - (ii) if the Project is not located in a Declared REZ, the location of the Project,

that has taken and continues to take commercially reasonable steps to mitigate the negative impacts of the LMP Event; and

- (c) LTES Operator will continue to:
 - (i) receive the Fixed Price during the Swap Periods;

- (ii) account to SFV for all revenue receivable from AEMO in respect of the quantity of electricity generated and exported by the Project, or would have been generated and exported in the absence of any curtailment, including any congestion rebates but excluding revenue from Ancillary Services; and
- (iii) account to SFV for any other revenue or benefit received which is attributable to the Project arising out of or in connection with the LMP Event (including from any firm transmission rights),

in respect of the Notional Quantity.

Part 6 Other terms

22 Default and Termination

22.1 Automatic termination

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

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

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

If any of the LTESA, Access PDA or Access Payment Deed is terminated, then this agreement will automatically terminate with immediate effect on the date the PDA, the Access PDA or Access Payment Deed (as relevant) is terminated. To avoid doubt, if the PDA expires in accordance with its terms, the expiry of the PDA will not automatically terminate this agreement under this clause 22.1.

[End option 2.]

22.2 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; or
- (d) **(insolvency)** SFV is the subject of an Insolvency Event.

22.3 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 25.3 ("Tender representations and warranties from LTES Operator")) is incorrect or misleading in any material respect when made; and
 - (ii) LTES Operator does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from SFV of that incorrect or misleading representation (including by LTES Operator paying SFV compensation reasonably acceptable to SFV on account of loss suffered by it or by electricity customers in New South Wales (or both));
- (d) **(tender misrepresentation)** prior to Financial Close:
 - (i) an express representation made by LTES Operator under clause 25.3 ("Tender representations and warranties from LTES Operator") is incorrect or misleading in any material respect when made;
 - (ii) SFV reasonably forms the view that Consumer Trustee would 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 Financial Close; 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) **(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;

- (f) **(Minimum Generation)**
- (i) Sent Out Generation in a Swap Period (“**First Period**”) is less than the Minimum Generation for that First Period; and
 - (ii) Sent Out Generation in a Swap Period that is immediately following to the First Period (“**Second Period**”) is less than the Minimum Generation for that Second Period; and
 - (iii) SFV has not approved a Proposed Cure Plan in accordance with item 6.2 of Schedule 2 (“Swap terms”) within 60 Business Days after the end of that Second Period;
- (g) **(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 18.2(a)(ii)(A) (“Reinstatement plan”); or
 - (iii) SFV rejects a Proposed Reinstatement Plan in accordance with clause 18.2(a)(ii)(B) (“Reinstatement plan”);

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

- (h) **(failure to comply with approved plan)** LTES Operator:
- (i) fails to comply with an Approved Cure Plan; or
 - (ii) 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
- (i) **(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.

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

- (h) **(failure to comply with approved plan)** LTES Operator:
- (i) fails to comply with an Approved Cure Plan; or
 - (ii) 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;
- (i) **(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; and

- (j) **(Social Licence Commitments)** in accordance with clause 7(b) (“Social Licence Commitments”).

[End option 2.]

22.4 Termination payments

- (a) If this agreement is terminated:

- (i) in accordance with clause 22.1 (“Automatic termination”), then:

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

- (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;

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

- (A) if that termination is a result of SFV exercising its right to terminate the Access Payment Deed under clause 7.2 of the Access Payment Deed on or after the Commercial Operations Date, then LTES Operator must pay the Early Termination Amount to SFV;
 - (B) if that termination is a result of Infrastructure Planner exercising its right to terminate the Access PDA under clause 20.4 of the Access PDA on or after the Commercial Operations Date, then LTES Operator must pay the Early Termination Amount to SFV; or
 - (C) if that termination is a result of a termination of the PDA, Access Payment Deed or Access PDA other than as contemplated under paragraph (A) or (B), then no Termination Payment is payable under this agreement;

[End option 2.]

- (ii) by LTES Operator in accordance with clause 22.2 (“Termination by LTES Operator”), then SFV must pay the Fixed Termination Amount to LTES Operator;
 - (iii) by SFV in accordance with:
 - (A) clause 22.3(a) (“payment default”);

- (B) clause 22.3(b) (“breach”);
- (C) clause 22.3(c)(ii) (“misrepresentation”);
- (D) clause 22.3(d)(iv) (“tender misrepresentation”);
- (E) clause 22.3(e) (“insolvency”);

[Option 1: for bids where LTES Operator seeks only an LTESA and not an Access Right.]

- (F) clause 22.3(f) (“Minimum Generation”); or
- (G) clause 22.3(h) (“failure to comply with approved plan”),

[End option 1.]

[Option 2: for bids where LTES Operator seeks both an LTESA and an Access Right.]

- (F) clause 22.3(f) (“Minimum Generation”);
- (G) clause 22.3(h) (“failure to comply with approved plan”);
or
- (H) clause 22.3(j) (“Social Licence Commitments”),

[End option 2.]

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

- (iv) by SFV in accordance with clause 22.3(g) (“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

- (v) by SFV in accordance with clause 22.3(i) (“amendment or repeal of EII Act”), 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 22 is that party’s entitlement to a Termination Payment (if applicable) in accordance with paragraph (a); 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 22.4 is found to be void or unenforceable for any reason (whether in whole or in part),

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

22.5 Invoice

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

22.6 Preservation of rights

Termination or expiry of this agreement for any reason will not extinguish or otherwise affect any rights of either party against the other party that:

- (a) accrued before the time of such termination or expiry; or
- (b) otherwise relate to or may arise at any future time from any breach or non-observance of obligations under this agreement that arose prior to the date of such termination or expiry.

22.7 Exclusion of rights

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

22.8 Survival

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

- (a) this clause 22 and clauses 24 ("Liability"), 27 ("Dispute Resolution") and 29 ("Confidentiality");
- (b) any clause that is required to enable a party to exercise rights accrued prior to the expiry or termination of the agreement; and
- (c) any clause which by its nature is intended to survive the expiry or termination of this agreement.

23 Assignment and Change in Control

23.1 Assignment by LTES Operator

- (a) LTES Operator must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project other than in accordance with this clause 23.1.
- (b) Subject to paragraph (c), LTES Operator may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with SFV's prior written consent, such consent not to be unreasonably withheld or delayed if:
 - (i) the assignee, novatee or transferee:
 - (A) has the legal, financial and technical capability to perform LTES Operator's obligations under this agreement; and
 - (B) agrees to assume all obligations of LTES Operator under or in connection with this agreement, including any obligation to pay a Repayment Amount that reflects Net Monthly Amounts 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[, the Access PDA, the Access Payment Deed] and the PDA; and **[Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.]**
 - (ii) the Project,to the same person.
- (d) Notwithstanding anything else in this clause 23.1, the parties agree that LTES Operator may grant a Security Interest in respect of its rights and obligations under this agreement or the Project in favour of a secured lender (or a trustee acting on its behalf) who is providing financial accommodation on secured terms to LTES Operator (or to any of its Related Bodies Corporate) in connection with the Project.
- (e) The parties acknowledge and agree that the provisions of this clause 23.1 will apply to any assignment, novation or transfer of LTES 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).

23.2 Assignment by SFV

- (a) SFV must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement other than in accordance with this clause 23.2.
- (b) Subject to paragraph (c), SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with LTES Operator's prior written consent, such consent not to be unreasonably withheld or delayed.
- (c) SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement without LTES Operator's consent to:
 - (i) a Government Entity; or
 - (ii) any person who replaces SFV as the "scheme financial vehicle" under the EII Act, provided that such person is entitled under the EII Act to have recourse to amounts paid into the "electricity infrastructure fund" (as defined in the EII Act) by distribution network service providers in response to a "contribution order" under section 58 of the EII Act.

23.3 Release

If a party assigns, novates or otherwise transfers its rights and obligations under, title to or interest in this agreement in accordance with this clause 23 ("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.

23.4 Change in Control

- (a) LTES Operator must not undergo, or agree to undergo, a Change in Control without SFV's prior written consent.
- (b) SFV's consent to a Change in Control of LTES Operator must not be unreasonably withheld or delayed where:
 - (i) LTES Operator's legal, financial and technical capability to perform its obligations under this agreement will not be adversely affected; and
 - (ii) in the case of Change in Control that would occur prior to the Commercial Operations Date, SFV considers (in its absolute discretion) that LTES Operator would have achieved an equivalent or higher merit score from Consumer Trustee during the tender assessment conducted in connection with this agreement had the Change in Control occurred prior to the determination of LTES Operator's merit score.

23.5 Tripartite deed

On request from LTES Operator, SFV agrees to enter into a tripartite deed with financiers of LTES Operator in the form attached in Annexure A ("Form of Tripartite").

24 Liability

24.1 Excluded Loss

Subject to clauses 24.2 (“Limitation of liability”) and 24.3 (“No exclusion”), and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this agreement for:

- (a) any cost, expense, loss or damage of an indirect nature;
- (b) any loss of profits, loss of goodwill, loss of revenue or loss of use of property (whether direct or indirect);
- (c) any cost of business interruption; or
- (d) any other consequential loss, including loss which does not arise naturally, or in the usual course of things,

suffered by the other party however arising due to any causes including the default or sole or concurrent negligence of a party, or its officers, employees, subcontractors or agents, and whether or not foreseeable at the Signing Date.

24.2 Limitation of liability

To the extent permissible by Law and subject to clause 24.3 (“No exclusion”):

- (a) SFV’s liability to LTES Operator under or in connection with this agreement is limited to:
 - (i) \$1,000,000 in respect of any single event; and
 - (ii) \$2,000,000 in aggregate in respect of all events occurring within any 12 months; and
- (b) LTES Operator’s liability to SFV under or in connection with this agreement is limited to:
 - (i) \$5,000,000 in respect of any single event; and
 - (ii) \$10,000,000 in aggregate in respect of all events occurring within any 12 months.

24.3 No exclusion

Clauses 24.1 (“Excluded Loss”) and 24.2 (“Limitation of liability”) do not limit a party’s obligation:

- (a) to make any payments expressly required to be made under this agreement, including a Termination Payment;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 24.4(b) (“Indemnity by LTES Operator”); or
- (c) arising from any criminal or fraudulent act or omission, or wilful misconduct or wilful breach of a party, or its officers, employees, subcontractors or agents.

24.4 Indemnity by LTES Operator

- (a) LTES Operator indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss:
 - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of LTES Operator or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents; or
 - (ii) in respect of death or personal injury arising from the Project.
- (b) Without limiting paragraph (a), LTES Operator indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss arising from, and any costs incurred in connection with, any Claim by a third party against SFV in relation to:
 - (i) the Project; or
 - (ii) any act or omission of LTES Operator or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents.
- (c) The amounts payable under this clause 24.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by SFV's officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 24.4 are not payable to the extent that SFV's liability or Loss:
 - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of SFV, its officers, employees, subcontractors or agents; or
 - (ii) arises in respect of an electricity hedging arrangement entered into by SFV and a third party.

25 Representations and warranties

25.1 Representations and warranties

Each party represents and warrants that:

- (a) **(corporate existence)** it is duly registered and validly existing under the laws of its place of incorporation and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power and authority)** it has full power and authority to enter into and perform its obligations under this agreement and carry out the transactions contemplated by this agreement;
- (c) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this agreement;
- (d) **(no breach)** the execution, delivery and performance of this agreement does not and will not violate, breach or result in a contravention of:
 - (i) any Law by which it is bound;

- (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
- (iii) the constitutional documents of that party; or
- (iv) any Security Interest by which it is bound;
- (e) **(binding nature)** this agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms;
- (f) **(no insolvency)** it is not subject to an Insolvency Event;
- (g) **(AFSL)** to the extent required by Law, it holds, or is exempt from the requirement to hold, an Australian financial services licence under Division 2 of Part 7.6 of the Corporations Act; and
- (h) **(wholesale client)** it is a “wholesale client” within the meaning of section 761G of the Corporations Act.

25.2 Anti-bribery and anti-corruption

LTES Operator 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 anti-bribery, anti-corruption, anti-money laundering or counter-terrorism financing laws, regulations or rules in any applicable jurisdiction.

25.3 Tender representations and warranties from LTES Operator

LTES Operator represents and warrants that:

- (a) all materials and information provided by LTES Operator to Consumer Trustee in connection with LTES Operator’s tender bid for this agreement (other than forecasts or projections) was true, correct and not misleading in any material respect (whether by omission or otherwise) as at the Tender Date, taking into account the stage of the Project development as at the Tender Date; and
- (b) all forecasts and projections which were provided by LTES Operator to Consumer Trustee in connection with LTES Operator’s tender bid for this agreement were prepared using due care and skill based on assumptions which LTES Operator believed, in good faith, were fair and reasonable assumptions as at the Tender Date.

25.4 No reliance

Each party acknowledges that it has not relied on any representation or warranty (whether express or implied) about the subject matter of this agreement other than those contained in this agreement.

26 [Trustee provisions]

26.1 Trustee representations and warranties

LTES Operator represents and warrants to SFV that:

- (a) **(existence)** the Trust has been duly established and constituted;
- (b) **(sole trustee)** it is the only trustee of the Trust;

- (c) **(appointment and no removal)** it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust;
- (d) **(power)** it has power under the terms of the Trust to enter into this agreement and comply with its obligations under it;
- (e) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this agreement, perform obligations under it and allow it to be enforced (including any authorisation required under the Trust Deed and its constitution (if any));
- (f) **(indemnity)** it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under this agreement and there are no facts, matters or circumstances that would disentitle LTES Operator from being so indemnified;
- (g) **(no default)** it is not, and never has been, in default under the Trust Deed;
- (h) **(no termination)** no action has been taken or proposed to terminate the Trust;
- (i) **(officers' compliance)** it and its directors and other officers have complied with their obligations in connection with the Trust;
- (j) **(exercise of powers)** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (k) **(benefit)** entry into the documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of the Trust's beneficiaries.

26.2 Trustee undertakings

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

26.3 Restrictions on trustee

Without the consent of SFV, LTES Operator may not, and may not agree, attempt or take any step to, do anything which:

- (a) **(retirement, removal, replacement)** effects or facilitates the retirement, removal or replacement of LTES Operator as trustee of the Trust;
- (b) **(restriction on right of indemnity)** could restrict LTES Operator's right of indemnity from the Trust Property in respect of obligations incurred by LTES Operator under this agreement;
- (c) **(restrict or impair compliance)** could restrict or impair the ability of LTES Operator to comply with its obligations under this agreement;
- (d) **(termination of trust)** effects or facilitates the termination of the Trust;
- (e) **(variation of Trust Deed)** effects or facilitates the variation of the Trust Deed; or
- (f) **(resettlement of Trust Property)** effects or facilitates the resettlement of the Trust Property.

26.4 Trustee limitation of liability

- (a) This clause 26.4 applies to LTES Operator as trustee of the Trust to the extent that LTES Operator is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), LTES Operator's liability to any person in connection with this agreement (or any transaction in connection with it) is limited to the extent to which the liability is or can be satisfied out of the Trust Property by LTES Operator exercising its right of indemnity out of the Trust Property.
- (c) Subject to clauses 26.4(c)(i) and 26.4(c)(ii), SFV may not seek to recover any amounts owing to it under this agreement by bringing proceedings against LTES Operator in its personal capacity. However, SFV may:
 - (i) do anything necessary to enforce its rights in connection with the Trust Property; and
 - (ii) take proceedings to obtain either or both:
 - (A) an injunction or other order to restrain any breach of this agreement by LTES Operator; and
 - (B) declaratory relief or other similar judgment or order as to the obligations of LTES Operator under this agreement.
- (d) The limitations and restrictions under paragraphs (b) and (c) do not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of LTES Operator's indemnification out of the Trust Property either as a result of LTES Operator's fraud, negligence or wilful default, or by operation of Law.
- (e) The limitation of LTES Operator's liability under paragraph (b) is to be disregarded for the purposes of determining whether LTES Operator has failed to comply with or perform any obligation under this agreement because of a failure by LTES Operator to pay an amount payable by it under this agreement.]

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

27 Dispute Resolution

27.1 Dispute mechanism

Any dispute or difference of any kind arising between the parties in connection with or arising out of this agreement, whether during or after the Term ("**Dispute**") must be resolved pursuant to this clause 27.

27.2 No proceedings

Subject to clause 27.9 ("Interim relief"), a party must not commence or maintain a court action or proceedings in relation to a Dispute until the party has complied with this clause 27 and, if applicable, clause 28 ("Pooled Disputes").

27.3 Disputes

If a party wishes to raise a Dispute, then that party must deliver to the other party a notice of Dispute ("**Dispute Notice**") setting out the:

- (a) nature of the Dispute;

- (b) facts, matters and circumstances relied upon by the party serving the Dispute Notice; and
- (c) anticipated quantum of the Dispute (in money and, if applicable, in time).

27.4 Procedure to resolve Disputes

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) Subject to clause 28 ("Pooled Disputes"), the procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 27.5 ("Negotiation");
 - (ii) second, if permitted under clause 27.5(b) ("Negotiation"), referral of the Dispute for determination by an Independent Expert under clause 27.6 ("Independent Expert"); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

27.5 Negotiation

- (a) Within 10 Business Days after the service of a Dispute Notice, a senior representative of each party must meet, negotiate and seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved within 20 Business Days after the negotiations between senior representatives commencing pursuant to paragraph (a), then either party may by written notice:
 - (i) where:
 - (A) expressly provided for under this agreement; or
 - (B) 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.

27.6 Independent Expert

- (a) If this agreement provides that a Dispute is to be referred for determination by an independent expert, then the parties must appoint a person to which the Dispute will be referred for determination ("**Independent Expert**") by mutual agreement within 10 Business Days after a notice referring a Dispute to an Independent Expert being given (or such longer period the parties agree).
- (b) Failing agreement within the period specified in paragraph (a), either party may request the CEO of the Resolution Institute (or their independent nominee) to appoint an Independent Expert.
- (c) If an Independent Expert is not appointed within 20 Business Days after the date of the request being made under paragraph (b), then either

party may commence proceedings in a court of competent jurisdiction in relation to the Dispute.

- (d) The Independent Expert appointed must have reasonable qualifications, and commercial and practical experience, in the area of the Dispute (including in the context of the NEM) and no interest or duty which conflicts or may conflict with their function as an Independent Expert.
- (e) The Independent Expert will act as an expert and not as an arbitrator.
- (f) The parties must comply with all reasonable requests by an Independent Expert for information relating to the Dispute.
- (g) The parties must ensure that the Independent Expert's terms of appointment include the following requirements:
 - (i) the Independent Expert must consult with the parties concerning the matters under Dispute;
 - (ii) the Independent Expert must make a draft report available to the parties within 30 Business Days after their appointment;
 - (iii) the Independent Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
 - (iv) the Independent Expert must keep information provided by or on behalf of the parties to the Independent Expert confidential;
 - (v) the Independent Expert may investigate the matters under Dispute and make inquiries in relation to them, and take the advice of any other person the Independent Expert deems appropriate; and
 - (vi) the Independent Expert will use their best endeavours to notify the parties of the Independent Expert's determination within 60 Business Days after the reference to the Independent Expert.
- (h) In the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding.
- (i) Each party will bear its own costs 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.

27.7 Other Relief

The Dispute resolution procedures in this clause 27 or clause 28 ("Pooled Disputes") do not apply to impair, delay or otherwise prejudice the exercise by a party of its rights provided in this agreement (including any right of termination).

27.8 Continued performance following a Dispute

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

27.9 Interim relief

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

28 Pooled Disputes

28.1 Referral of Pooled Disputes

(a) If in SFV's opinion (acting reasonably):

- (i) a Dispute in relation to clause 19 ("Change in Law"), 20 ("Market Disruption Events"), 21 ("Locational marginal pricing") or 22.3(i) ("amendment or repeal of EII Act") is identical or similar to an Other Dispute; or
- (ii) the outcome of a Dispute or an Other Dispute could affect the entitlements and/or obligations of a party under this agreement or an Other LTESA (as relevant),

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

(b) If SFV gives a Dispute Notice to or receives a Dispute Notice from:

- (i) LTES Operator; or
- (ii) an Other LTESA Counterparty,

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

28.2 Resolution by Pooled Dispute Panel

(a) If SFV gives a Pooled Dispute Referral in respect of a Pooled Dispute, then:

- (i) each Pooled Dispute Participant may appoint a person to represent it on the Pooled Dispute Panel; and
- (ii) the Pooled Dispute Panel will meet within 1 month (or such other period as reasonably determined by SFV) from the Pooled Dispute Referral to resolve the Pooled Dispute.

(b) The Pooled Dispute Panel will determine its own procedures for meeting, and unless the Pooled Dispute Panel otherwise determines, all meeting of the Pooled Dispute Panel will be held in Sydney with an option provided for participation via video conference.

(c) If a party provides information or documents relevant to a Pooled Dispute to the other party, then it must use best endeavours to promptly provide the information and documents to each representative on the Pooled Dispute Panel.

(d) Subject to clause 28.3 ("Bilateral resolution"), if the Pooled Dispute Panel unanimously resolves the Pooled Dispute, then that resolution will be binding on the parties to this agreement regardless of whether they participated in the Pooled Dispute Panel or not.

- (e) If the Pooled Dispute Panel does not unanimously resolve the Pooled Dispute within 3 months from the Pooled Dispute Referral, then SFV may refer the Pooled Dispute for resolution in accordance with clause 27.6 ("Independent Expert"), provided that:
 - (i) the Independent Expert will be appointed by the CEO of the Resolution Institute (or their independent nominee);
 - (ii) each Pooled Dispute Participant will be afforded equal treatment and equal opportunity to present its views and to reply to the comments and submissions presented by any other Pooled Dispute Participant;
 - (iii) in the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding on all Pooled Dispute Participants; and
 - (iv) the costs of the Independent Expert will be borne equally between the Pooled Dispute Participants.

28.3 Bilateral resolution

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

29 Confidentiality

29.1 Disclosure of information

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

- (a) information that is publicly available (other than through a breach of this clause 29);
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the party;
- (d) to:
 - (i) a bank or other financial institution (and its professional advisers) in connection with any existing or proposed loan or other financial accommodation of, or sought to be arranged by, the recipient of the information;

- (ii) any person who is proposing to acquire a direct or indirect interest in the party; or
 - (iii) any Related Body Corporate of a party to this agreement,
- provided the recipient agrees to act consistently with this clause;
- (e) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
 - (f) in the case of disclosure by SFV, Knowledge Sharing Deliverables that have been categorised by LTES Operator as 'public information' pursuant to clause 9(c) ("Knowledge sharing");
 - (g) where the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this agreement;
 - (h) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
 - (i) to a rating agency; or
 - (j) in the case of disclosure by SFV, to:
 - (i) Consumer Trustee;
 - (ii) Financial Trustee;
 - (iii) AEMO;
 - (iv) Infrastructure Planner;
 - (v) any government department, agency, authority, instrumentality, Minister or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and
 - (vi) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (iv),

provided that SFV uses reasonable endeavours to ensure that any such person does not disclose such information to a person to whom disclosure is not otherwise permitted under this agreement.

29.2 Publicity

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

- (ii) reasonably consider any request from LTES Operator to not include that commercially sensitive information, or to only include that commercially sensitive information on an aggregated basis, in the relevant public announcement.

30 Contract Representative

- (a) At all times, LTES Operator must appoint and maintain the appointment of a natural person who is involved with the day-to-day operation and administration of the Project and this agreement as its Contract Representative.
- (b) LTES Operator must ensure that it notifies SFV as soon as reasonably practicable (and in any event within 5 Business Days) of any changes to the identity or contact details of the Contract Representative, including any temporary changes to the identity or contact details of the Contract Representatives.
- (c) SFV may contact the Contract Representative at all reasonable times in respect of any matter in connection with the day-to-day operation or administration of the Project or this agreement.
- (d) Despite paragraph (c), any notices and other communications that SFV is required to give under this agreement will be given to LTES Operator in accordance with clause 31 ("Notices").

31 Notices

31.1 Form

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

31.2 Delivery

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

31.3 When effective

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

31.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); and
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message within that 4 hour period that the delivery failed,

whichever happens first.

31.5 Receipt outside business hours

Despite anything else in this clause 31, if communications are received or taken to be received under clause 31.4 (“When taken to be received”) after 5.00pm on a Business Day or on a non-Business Day, then they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

32 General

32.1 Variation and waiver

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

32.2 Consents, approvals or waivers

By giving any consent, approval or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

32.3 Discretion in exercising rights

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

32.4 Partial exercising of rights

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

32.5 Conflict of interest

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

32.6 Remedies cumulative

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

32.7 Indemnities and reimbursement obligations

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

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

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this agreement.

32.8 Supervening Law

Subject to clauses 19 ("Change in Law"), 20 ("Market Disruption Events") and 21 ("Locational marginal pricing"), any present or future Law which operates to vary the obligations of a party in connection with this agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

32.9 Counterparts

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

32.10 Entire agreement

This agreement[, the Access PDA, the Access Payment Deed] 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. **[Note: include for bids where LTES Operator seeks both an LTESA and an Access Right.]**

32.11 No liability for loss

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

32.12 Rules of construction

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

32.13 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction, then it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

32.14 Governing Law and jurisdiction

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

32.15 Electronic execution

- (a) A party may execute this agreement as well as modifications to it by electronic means (including by electronic signature or by email of a signed document in PDF or scanned format).
- (b) The parties agree and intend that such signature by electronic means or by email in PDF or scanned format will bind the party so signing with the same effect as though the signature were an original signature.
- (c) This agreement may be executed as set out above in two or more counterparts, each of which will be deemed an original, but all of which, taken together, will constitute one and the same document.
- (d) The parties to this agreement acknowledge and agree that:
 - (i) they consent to the use of the electronic signatures and the agreement proceeding by electronic means; and
 - (ii) they intend to be legally bound by the terms of the agreement on which the electronic signature(s) has been placed.

EXECUTED as an agreement.

Schedule 1 Exercise Notice

To: [Name and address of SFV] ("SFV")

Attention: [Insert]

[Date]

Exercise Notice - Long-Term Energy Service Agreement (Generation) - [Project name] between [Name of LTES Operator] and SFV dated [insert date] ("LTESA")

Under clause 10 ("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 a Swap with the following details to become effective.

Swap term	Detail
Swap Start Date	1/7/[insert year]
Swap Period	Two years but noting that if the Swap Start Date is on the [19th] anniversary of the First Option Date; it will be taken to have ended on the Final Swap End Date.
Nominated Percentage for the Swap	[25/50/75/100]%

LTES Operator confirms that this Exercise Notice constitutes a notice for the purposes of clause 10 ("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 10.3 ("Pre-conditions to the exercise of the Option") 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 Swap terms

1 Application and interpretation

1.1 Application to a Swap

The terms contained in this Schedule 2 apply to each Swap which has become effective due to a valid exercise of an Option in accordance with clause 10 ("Grant and exercise of an Option") separately. In interpreting this Schedule 2 in respect of such a Swap, a reference to "the Swap Period" is a reference to the Swap Period in respect of that Swap.

1.2 Schedule items

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

2 Swap terms

In respect of the Swap Period:

- (a) subject to item 3.4(a), SFV agrees to pay any positive Net Monthly Amounts to LTES Operator;
- (b) LTES Operator agrees to pay:
 - (i) the absolute value of any negative Net Monthly Amounts; and
 - (ii) any Shortfall Sum,to SFV; and
- (c) subject to item 3.4(b), LTES Operator agrees to sell, and SFV agrees to buy, the Green Product Entitlement and the Capacity Product Entitlement,

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

3 Net Monthly Amount

3.1 Calculation of Net Monthly Amount

- (a) The "Net Monthly Amount" payable in respect of a Billing Period is calculated as follows:

$$NMA_{BP} = \sum NNA_{TI} + \sum PNA_{TI}$$

where:

NMA_{BP} = the Net Monthly Amount for the Billing Period;

ΣNNA_{TI} = the sum of the negative Trading Interval Amounts (calculated in accordance with item 3.2 (“Calculation of Trading Interval Amounts”)) for the Trading Intervals that occur during the Billing Period (for clarity, expressed as a negative number); and

ΣPNA_{TI} = the sum of the positive Trading Interval Amounts (calculated in accordance with item 3.2 (“Calculation of Trading Interval Amounts”)) for the Trading Intervals that occur during the Billing Period.

- (b) Subject to item 3.4(a), a positive Net Monthly Amount must be paid by SFV to LTES Operator.
- (c) A negative Net Monthly Amount must be paid by LTES Operator to SFV.
- (d) A liability only arises (and can only arise) under paragraph (b) or (c) in respect of all Trading Intervals for the applicable Billing Period. A liability does not arise (and cannot arise) under paragraph (b) or (c) in respect of any individual Trading Intervals in that Billing Period.

3.2 Calculation of Trading Interval Amounts

The “**Trading Interval Amount**” in respect of a Trading Interval is calculated as follows:

$$TIA_{TI} = NQ_{TI} \times (FXP_{TI} - FP_{TI})$$

where:

TIA_{TI} = the Trading Interval Amount for the Trading Interval;

NQ_{TI} = the Notional Quantity for the Trading Interval calculated in accordance with item 3.3 (“Calculation of Notional Quantity”);

FXP_{TI} = the Fixed Price (in \$/MWh) for the Trading Interval; and

FP_{TI} = subject to item 3.5, the Floating Price (in \$/MWh) for the Trading Interval.

3.3 Calculation of Notional Quantity

Subject to item 7, the “**Notional Quantity**” for a Trading Interval is calculated as follows:

$$NQ_{TI} = SP_{SP} \times SOG_{TI} \times MLF_{TI}$$

where:

NQ_{TI} = the Notional Quantity for the Trading Interval (in MWh);

SP_{SP} = the Swap Percentage for the Swap Period in which the Trading Interval occurs;

SOG_{TI} = Sent Out Generation for the Trading Interval (in MWh); and

MLF_{TI} = the Marginal Loss Factor for the Trading Interval.

3.4 Cap on Net Monthly Amounts

- (a) SFV will not be required to pay a Net Monthly Amount to the extent that the sum of the Net Monthly Amounts in respect of Billing Periods in a Financial Year is greater than the Nominated Percentage of the Annual Payment Cap.
- (b) If the Net Monthly Amounts payable by SFV in respect of a Billing Period is reduced pursuant to paragraph (a), then each of the Capacity Product Entitlement and the Green Product Entitlement in respect of that Billing Period will be adjusted as follows:

$$PE_C = PE_U \times \frac{NMA_C}{NMA_U}$$

where:

- PE_C = the adjusted Capacity Product Entitlement or Green Product Entitlement (as applicable) in respect of that Billing Period;
- PE_U = the Capacity Product Entitlement or Green Product Entitlement (as applicable) in respect of that Billing Period but for the application of this paragraph (b);
- NMA_C = the Net Monthly Amount payable by SFV in respect of that Billing Period after the application of paragraph (a); and
- NMA_U = the Net Monthly Amount that would have been payable by SFV in respect of that Billing Period but for the application of paragraph (a).

3.5 Impact of Negative Pricing Events

If a Negative Pricing Event occurs, then:

- (a) LTES Operator may, but is not required to, continue to generate and export electricity from the Project during that Negative Pricing Event; and
- (b) for the purposes of item 3.2 ("Calculation of Trading Interval Amounts"), the Floating Price for that Negative Pricing Event is \$0/MWh.

4 Capacity Products

4.1 Benefit of Capacity Products

- (a) LTES Operator must ensure that:
 - (i) subject to paragraph (d), SFV receives the benefit of the Capacity Product Entitlement;
 - (ii) any compliance obligations imposed on LTES Operator or the Project in respect of the Capacity Product Entitlement under the relevant Capacity Product Scheme are satisfied; and
 - (iii) the Capacity Product Entitlement meets all creation, registration, eligibility or validity requirements imposed by the relevant Capacity Product Scheme.

- (b) Without limiting the remainder of this item 4, LTES Operator must act reasonably to maximise the benefit received by SFV under this item 4.
- (c) SFV must do everything reasonably required of SFV under relevant Laws to take the benefit of (and, if applicable, perfect the transfer of) the Capacity Product Entitlement.
- (d) SFV may, with at least 10 Business Days' written notice, nominate another person to receive the benefit of the Capacity Product Entitlement in accordance with item 4.4. Any such nomination may be revoked by SFV with at least 10 Business Days' written notice.

4.2 Nominated Capacity Products

- (a) If LTES Operator becomes eligible, or is likely to become eligible, to create or register Capacity Products under an applicable Capacity Product Scheme at any time during the Swap Period, then:
 - (i) subject to paragraph (ii), SFV may, with at least 60 Business Days' written notice, nominate that Capacity Product as a Nominated Capacity Product; and
 - (ii) if a Capacity Product ("**Replacement NCP**") can only be created or registered in substitution for or in replacement of an existing Nominated Capacity Product ("**Existing NCP**"), then SFV may only nominate that Replacement NCP as a Nominated Capacity Product if it revokes its nomination of the Existing NCP as a Nominated Capacity Product.
- (b) SFV may give nominations under paragraph (a) prior to or during the relevant Swap Period.
- (c) If, at any time during the Term, a Change in Law prevents LTES Operator from being entitled to create or register or transfer a Nominated Capacity Product in respect of the Project ("**Repealed CP**"), then SFV is deemed to have revoked its nomination of that Repealed CP as a Nominated Capacity Product.

4.3 Registration for Capacity Products

- (a) Subject to paragraph (b), during the Swap Period, LTES Operator must at its cost ensure that it obtains and maintains at all relevant times any registration, accreditation or Authorisation required under a Capacity Product Scheme to enable the creation, registration and transfer of the Capacity Product Entitlement.
- (b) SFV is responsible for the Contracted Percentage of LTES Operator's incremental costs of any registration, accreditation or Authorisation contemplated by paragraph (a) that are associated with a Nominated Capacity Product.

4.4 Creation, registration and transfer of Capacity Products

- (a) Subject to paragraphs (b) and (c) and items 4.5 ("Inability to transfer a Capacity Product") and 4.6 ("Monetisation of Capacity Products"), LTES Operator must within 20 Business Days after the end of each Billing Period:
 - (i) create and register, or procure the creation and registration of, the Capacity Product Entitlement that can be created and registered in relation to that Billing Period; and

- (ii) at its own cost:
 - (A) deliver (and register if applicable) the Capacity Product Entitlement to SFV free and clear of any Security Interests;
 - (B) execute and deliver a copy of any instruments required to evidence the transfer and registration of the Capacity Product Entitlement to SFV (which must include any identification code required for each Capacity Product to be transferred); and
 - (C) take all reasonable actions required under applicable Laws to cause and permit the Capacity Product Entitlement to be transferred to and registered in SFV's name.
- (b) If any part of the Capacity Product Entitlement cannot be created, registered or transferred within the time period required under paragraph (a), then LTES Operator must create, register and transfer those Nominated Capacity Products as soon as is reasonably practicable.
- (c) Title to any Nominated Capacity Products will vest in SFV at the time of transfer to SFV.

4.5 Inability to transfer a Capacity Product

If LTES Operator is unable to register or transfer a Nominated Capacity Product to SFV (or SFV's nominee, as applicable), then LTES Operator must:

- (a) hold that Nominated Capacity Product on trust for SFV;
- (b) appoint SFV as its agent to sell, transfer, surrender or otherwise deal with the Nominated Capacity Product on its behalf or, if the foregoing is not practicable, only sell, transfer, surrender or otherwise deal with that Nominated Capacity Product in accordance with the prior written instructions of SFV; and
- (c) pay to SFV an amount equal to each payment or benefit received by LTES Operator from that sale, transfer, surrender or other dealing with that Nominated Capacity Product, less any reasonable external costs directly incurred in effecting that sale, transfer, surrender or dealing. LTES Operator must pay that amount to SFV within 10 Business Days after receiving the relevant payment or benefit.

4.6 Monetisation of Capacity Products

- (a) SFV may (at its absolute discretion), by written notice at least four weeks' prior to the relevant Billing Period, require LTES Operator to:
 - (i) to the extent that the Capacity Product Entitlement has not been transferred to SFV at the time of the notice, sell all (or a specified part) of the Capacity Product Entitlement in respect of that Billing Period to a third party in accordance with SFV's reasonable directions; and
 - (ii) provide SFV with the cash equivalent value of the Nominated Capacity Products that LTES Operator is required to sell pursuant to paragraph (i).

- (b) SFV may by written notice at least four weeks' prior to the relevant Billing Period revoke any notice given under this item 4.6.
- (c) If SFV receives the cash equivalent value for a quantity of Nominated Capacity Products pursuant to paragraph (a), then LTES Operator will be deemed to have delivered that quantity of Nominated Capacity Products to SFV for the purpose of item 4.4 ("Creation, registration and transfer of Capacity Products").
- (d) Any failure of the parties to agree the cash equivalent value for Nominated Capacity Products under this item 4.6 within 20 Business Days after the notice under paragraph (a) may be referred by either party to an Independent Expert for determination under clause 27.6 ("Independent Expert").

4.7 Tender for Capacity Products if a Nominated Capacity Product

- (a) If and to the extent LTES Operator may only create, register and/or transfer a Nominated Capacity Product as a result of it participating in an auction or tender, then:
 - (i) LTES Operator must participate in that auction or tender;
 - (ii) in participating in that auction or tender, LTES Operator must act reasonably to maximise the benefit received by LTES Operator from that auction or tender; and
 - (iii) LTES Operator must pay to SFV an amount equal to each payment or benefit received by LTES Operator from that sale, transfer, surrender of or other dealing with that Nominated Capacity Product, less any reasonable external costs directly incurred in effecting that sale, transfer, surrender or dealing. LTES Operator must pay that amount to SFV within 10 Business Days after receiving the relevant payment or benefit.
- (b) If SFV receives the cash equivalent value for a quantity of Nominated Capacity Products pursuant to paragraph (a), then LTES Operator will be deemed to have delivered that quantity of Nominated Capacity Products to SFV for the purpose of item 4.4 ("Creation, registration and transfer of Capacity Products").

5 Green Products

5.1 Benefit of Green Products

- (a) LTES Operator must ensure that:
 - (i) subject to paragraph (d), SFV receives the benefit of the Green Product Entitlement;
 - (ii) any compliance obligations imposed on LTES Operator or the Project in respect of the Green Product Entitlement under the relevant Green Product Scheme are satisfied; and
 - (iii) the Green Product Entitlement meets all creation, registration, eligibility or validity requirements imposed by the relevant Green Product Scheme.
- (b) Without limiting the remainder of this item 5, LTES Operator must act reasonably to maximise the benefit received by SFV under this item 5.

- (c) SFV must do everything reasonably required of SFV under relevant Laws to take the benefit of (and, if applicable, perfect the transfer of) the Green Product Entitlement.
- (d) SFV may, with at least 10 Business Days' written notice, nominate another person to receive the benefit of the Green Product Entitlement in accordance with item 5.5. Any such nomination may be revoked by SFV with at least 10 Business Days' written notice.
- (e) If any part of the Green Product Entitlement can be attributed with a time of generation ("**Timestamp**"), then if requested by SFV, LTES Operator will take all reasonable steps to Timestamp such part of the Green Product Entitlement.

5.2 Nominated Green Products

[Note: ASL may consider amendments to the Green Products nomination regime if a bidder considers that such amendments are required to resolve a conflict with equivalent obligations under foundational offtake agreements.]

- (a) If LTES Operator becomes eligible, or is likely to become eligible, to create or register a Green Product under an applicable Green Product Scheme at any time during the Swap Period, then:
 - (i) subject to paragraph (ii), SFV may, with at least 60 Business Days' written notice, nominate that Green Product as a Nominated Green Product;
 - (ii) if a Green Product ("**Replacement NGP**") can only be created or registered in substitution for or in replacement of an existing Nominated Green Product ("**Existing NGP**"), then SFV may only nominate that Replacement NGP as a Nominated Green Product if it revokes its nomination of the Existing NGP as a Nominated Green Product; and
 - (iii) if LTES Operator can register under more than one Green Product Scheme for the Project at the same time and allocate generation to each of those schemes (without double counting), then SFV may, to the extent it is reasonably practicable for LTES Operator, nominate to LTES Operator the share of its generation to be allocated to each scheme and during what periods.
- (b) SFV may give nominations under paragraph (a) prior to or during the relevant Swap Period.
- (c) At the Signing Date, SFV is deemed to have nominated LGCs as a Nominated Green Product.
- (d) If, at any time during the Term, a Change in Law prevents LTES Operator from being entitled to create or register or transfer a Nominated Green Product in respect of the Project ("**Repealed GP**"), then:
 - (i) SFV is deemed to have revoked its nomination of that Repealed GP as a Nominated Green Product; and
 - (ii) if the Repealed GP is LGCs, LTES Operator's obligations under item 5.4 ("LGCs and GreenPower Program") will no longer apply unless and until LGCs are renominated as a Nominated Green Product.

5.3 Registration for Green Products

- (a) Subject to paragraph (b), during the Swap Period, LTES Operator must at its cost ensure that it obtains and maintains at all relevant times any registration, accreditation or Authorisation required under a Green Product Scheme to enable the creation, registration and transfer of the Green Product Entitlement.
- (b) SFV is responsible for the Contracted Percentage of LTES Operator's incremental costs of any registration, accreditation or Authorisation contemplated by paragraph (a) that are associated with a Nominated Green Product (other than LGCs).

5.4 LGCs and GreenPower Program

Without limiting the remainder of this item 5, during any period in which LGCs are a Nominated Green Product, LTES Operator must:

- (a) procure that:
 - (i) LTES Operator is a registered person under the RE Act;
 - (ii) the Project is an "accredited power station" under the RE Act; and
 - (i) the Project has GreenPower Accreditation;
- (b) notify SFV if LTES Operator:
 - (i) becomes aware that the Project's GreenPower Accreditation has been revoked, cancelled or suspended; or
 - (ii) has received any notice from the GreenPower Program Manager that the Project's GreenPower Accreditation may be or is revoked, cancelled or suspended;
- (c) give all necessary consents and authorisations for the GreenPower Program Manager to provide to SFV from time to time independent confirmation that the Project's GreenPower Accreditation is in effect; and
- (d) ensure that SFV receives the benefit of the green power right under the GreenPower Program to claim eligible green power generation from the Project.

5.5 Creation, registration and transfer of Green Products

- (a) Subject to paragraph (b) and items 5.6 ("Inability to transfer a Green Product") and 5.7 ("Monetisation of Green Products"), LTES Operator must within 20 Business Days after the end of each Billing Period:
 - (i) create and register, or procure the creation and registration of, the Green Product Entitlement that can be created and registered in relation to that Billing Period; and
 - (ii) at its own cost:
 - (A) deliver (and register if applicable) the Green Product Entitlement to SFV free and clear of any Security Interests;

- (B) execute and deliver a copy of any instruments required to evidence the transfer and registration of the Green Product Entitlement to SFV (which must include any identification code for each Green Product to be transferred); and
 - (C) take all reasonable actions required under applicable Laws to cause and permit the Green Product Entitlement to be transferred to and registered in SFV's name.
- (b) If any part of the Green Product Entitlement cannot be created, registered or transferred within the time period required under paragraph (a), then LTES Operator must create, register and transfer those Nominated Green Products as soon as is reasonably practicable.
- (c) Title to any Nominated Green Products will vest in SFV:
 - (i) in respect of LGCs, at the time of registration of the LGCs in SFV's name in the "register of large-scale generation certificates" (as defined in the RE Act) or on transfer to SFV; and
 - (ii) in respect of Nominated Green Products other than LGCs, at the time of transfer to SFV.

5.6 Inability to transfer a Green Product

If LTES Operator is unable to register or transfer a Nominated Green Product to SFV (or SFV's nominee, as applicable), then LTES Operator must:

- (a) hold that Nominated Green Product on trust for SFV;
- (b) appoint SFV as its agent to sell, transfer, surrender or otherwise deal with the Nominated Green Product on its behalf or, if the foregoing is not practicable, only sell, transfer, surrender or otherwise deal with that Nominated Green Product in accordance with the prior written instructions of SFV; and
- (c) pay to SFV an amount equal to each payment or benefit received by LTES Operator from that sale, transfer, surrender or other dealing with that Nominated Green Product, less any reasonable external costs directly incurred in effecting that sale, transfer, surrender or dealing. LTES Operator must pay that amount to SFV within 10 Business Days after receiving the relevant payment or benefit.

5.7 Monetisation of Green Products

- (a) SFV may (at its absolute discretion), by written notice at least four weeks' prior to the relevant Billing Period, require LTES Operator to:
 - (i) to the extent that the Green Product Entitlement has not been transferred to SFV at the time of the notice, sell all (or a specified part) of the Green Product Entitlement in respect of that Billing Period to a third party in accordance with SFV's reasonable directions; and
 - (ii) provide SFV with the cash equivalent value of the Nominated Green Products that LTES Operator is required to sell pursuant to paragraph (i).

- (b) SFV may by written notice at least four weeks' prior to the relevant Billing Period revoke any notice given under this item 5.7.
- (c) If SFV receives the cash equivalent value for a quantity of Nominated Green Products pursuant to paragraph (a), then LTES Operator will be deemed to have delivered that quantity of Nominated Green Products to SFV for the purpose of item 5.5 ("Creation, registration and transfer of Green Products").
- (d) Any failure of the parties to agree the cash equivalent value for Nominated Green Products under this item 5.7 within 20 Business Days after the notice under paragraph (a) may be referred by either party to an Independent Expert for determination under clause 27.6 ("Independent Expert").

6 Minimum Generation

6.1 Minimum Generation

If Sent Out Generation in a Swap Period is less than the Minimum Generation for that Swap Period, then LTES Operator must:

- (a) within 20 Business Days after the end of that Swap Period, provide SFV with a report setting out:
 - (i) the amount of Shortfall Electricity; and
 - (ii) the reason for LTES Operator's failure to achieve the Minimum Generation for that Swap Period and reasonable supporting information in respect of that reason; and
- (b) pay the Shortfall Sum for that Swap Period within 20 Business Days of it being agreed or determined.

6.2 Cure Plan

- (a) If:
 - (i) Sent Out Generation in a Swap Period ("**First Period**") is less than the Minimum Generation for that First Period; and
 - (ii) Sent Out Generation in a Swap Period that is immediately following the First Period ("**Second Period**") is less than the Minimum Generation for that Second Period,

then LTES Operator must provide SFV a proposed cure plan that sets out how LTES Operator will achieve Minimum Generation in subsequent Swap Periods ("**Proposed Cure Plan**").

- (b) For the purpose of this item 6.2 and clause 22.3(f) ("Termination by SFV"), a Swap Period will be taken to be immediately following another Swap Period if there is no intervening Swap Period, notwithstanding that there is an intervening period in respect of which the Option has not been exercised. To avoid doubt, it is not necessary for the second Swap Period to commence the day after the first Swap Period ends.

- (c) If SFV receives a Proposed Cure Plan, then:
 - (i) SFV must either:
 - (A) request any changes to the Proposed Cure 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 Cure Plan,

provided that if SFV does not request any changes to the Proposed Cure Plan within 40 Business Days after receipt of the Proposed Cure Plan then SFV will be taken to have approved the Proposed Cure Plan;
 - (ii) if SFV requests any changes to the Proposed Cure Plan in accordance with item 6.2(c)(i)(A), then:
 - (A) within 20 Business Days after SFV's request, LTES Operator must provide an amended Proposed Cure Plan to SFV; and
 - (B) within 20 Business Days after receipt of LTES Operator's amended Proposed Cure Plan, SFV must (acting reasonably) approve or reject the amended Proposed Cure Plan. If SFV fails to either approve or reject the Proposed Cure Plan within that period, then SFV is deemed to have rejected the Proposed Cure Plan.
- (d) If SFV approves a Proposed Cure Plan, then:
 - (i) that Proposed Cure Plan will become an **"Approved Cure Plan"**; and
 - (ii) LTES Operator must, at its sole cost, comply with that Approved Cure Plan in all material respects.

6.3 Lost Generation

- (a) For the purposes of determining whether Sent Out Generation in a Swap Period is less than the Minimum Generation, the aggregate of any Lost Generation during any Trading Intervals in a Swap Period is to be added to the Sent Out Generation for that Swap Period.
- (b) The **"Lost Generation"** for a relevant Swap Period is an amount (in MWh) equal to Sent Out Generation that would have been exported during a Trading Interval in the Swap Period but for:
 - (i) a Project Force Majeure Event (and, for the purposes of this clause only, LTES Operator will not be taken to have caused any curtailment or congestion affecting the availability of the Network by virtue of the Project dispatching electricity to the Network); or
 - (ii) LTES Operator electing not to generate electricity from the Project during a Negative Pricing Event.

- (c) If AEMO has published the UIGF for the Project or equivalent measure, then LTES Operator will calculate Lost Generation for each Trading Interval using the following formula:

$$LG_{TI} = (UIGF_{TI} \times T) - SOG_{TI}$$

where:

LG_{TI} = Lost Generation for the Trading Interval (in MWh);

$UIGF_{TI}$ = the 5-minute Predispatch UIGF for the Project for the Trading Interval (in MW);

T = 1/12 (being the duration of a Trading Interval, in hours); and

SOG_{TI} = Sent Out Generation in the Trading Interval (in MWh).

- (d) LTES Operator must use all reasonable endeavours and Good Industry Practice to minimise, mitigate and resolve occurrences of Lost Generation.

6.4 Calculation of Shortfall Sum

- (a) The “**Shortfall Sum**” for a Swap Period is calculated as follows:

$$SS_{SP} = SE_{SP} \times (VWAP_{SP} + GP_{SP} - FP)$$

where:

SS_{SP} = the Shortfall Sum for the Swap Period;

SE_{SP} = the Shortfall Electricity for the Swap Period (in MWh);

$VWAP_{SP}$ = the volume weighted Floating Price for the Swap Period (in \$/MWh), provided that if VWAP is negative in a Trading Interval in that Swap Period, then it is deemed to be zero for that Trading Interval;

GP_{SP} = the market price for Nominated Green Products (in \$/MWh) in the Swap Period that is:

- (i) in the case of a LGC, calculated as the average of the quotations (stated on a GST inclusive basis) for LGCs for the Swap Period, obtained from two independent and suitably qualified LGC brokerage firms nominated in accordance with paragraph (b); and
- (ii) in the case of a Nominated Green Product that is not a LGC, an independently quoted or determined price which best reflects the market price of that Green Product in that Swap Period as agreed by the parties (acting reasonably),

or, in the absence of such quotations or agreement, as determined by an Independent Expert in accordance with clause 27 (“Dispute Resolution”); and

FP = the Fixed Price applicable during the Swap Period (in \$/MWh), provided that if two Fixed Prices are applicable during a Swap Period (including as a result of an

adjustment in accordance with clause 19 (“Change in Law”)), then the average of those two Fixed Prices will apply,

provided that if the Shortfall Sum is a negative amount, then it is deemed to be zero.

- (b) For the purposes of paragraph (a), each of LTES Operator and SFV must nominate one suitably qualified brokerage firm within 10 Business Days after LTES Operator provides a report under item 6.1.

6.5 Calculation of Shortfall Electricity

The “**Shortfall Electricity**” for a Swap Period is calculated as follows:

$$SE_{SP} = MG_{SP} - SP_{SP} \times \left(\sum SOG_{SP} + \sum LG_{SP} \right)$$

where:

- SE_{SP} = the Shortfall Electricity for the Swap Period (in MWh);
- MG_{SP} = the Minimum Generation for the Swap Period (in MWh);
- SP_{SP} = the Swap Percentage for the Swap Period;
- $\sum SOG_{SP}$ = the sum of Sent Out Generation for all Trading Intervals in the Swap Period (in MWh); and
- $\sum LG_{SP}$ = the sum of the Lost Generation for the Swap Period (in MWh),

provided that:

- (a) if the Shortfall Electricity for the Swap Period is an amount which is greater than 15% of the Minimum Generation for the Swap Period, then the Shortfall Electricity will be deemed to be an amount that is equal 15% of the Minimum Generation for the Swap Period; and
- (b) if the Shortfall Electricity is a negative amount, then it is deemed to be zero.

7 Operation prior to Commercial Operations Date

If the Swap Period commences on a Requested Date as a result of LTES Operator’s request under clause 2.2(b) “(First Option Date)”, then:

- (a) the Notional Quantity will be taken to be zero for all Trading Intervals in that Swap Period that occur prior to the first day of a calendar month occurring after the Commercial Operations Date;
- (b) the Capacity Product Entitlement for that Swap Period will exclude all Nominated Capacity Products created by, or able to be created by, LTES Operator in respect of the Project in relation to the period prior to the first day of a calendar month occurring after the Commercial Operations Date; and

the Minimum Generation for that Swap Period will be pro-rated to reflect the portion of the Swap Period that occurs on or after the first day of a calendar month occurring after the Commercial Operations Date.

Long-Term Energy Service Agreement

Schedule 3 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 information in anonymised portfolio analysis and reporting.	Yearly	From the Signing Date to 12 months following the Final Swap End Date	Confidential Information	SFV to provide a link to the survey each year.
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 Swap End Date	As reasonably required by SFV	As reasonably required by SFV
3.	Site visit by SFV or its nominee	On ground experience with key stakeholders and demonstration of facilities.	Once	As agreed with SFV	Agreed at time of visit	Site visit to Project location or a virtual tour delivered online as agreed by SFV.

Schedule 4 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]
4 years after the First Option Date	\$[insert]
5 years after the First Option Date	\$[insert]
6 years after the First Option Date	\$[insert]
7 years after the First Option Date	\$[insert]
8 years after the First Option Date	\$[insert]
9 years after the First Option Date	\$[insert]
10 years after the First Option Date	\$[insert]
11 years after the First Option Date	\$[insert]
12 years after the First Option Date	\$[insert]
13 years after the First Option Date	\$[insert]
14 years after the First Option Date	\$[insert]
15 years after the First Option Date	\$[insert]
16 years after the First Option Date	\$[insert]
17 years after the First Option Date	\$[insert]
18 years after the First Option Date	\$[insert]
19 years after the First Option Date	\$[insert]

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.]