

DRAFT Version 4: 30 August

Project Development Agreement

Project with an Access Right

[Project name]

Dated

Energy Corporation of New South Wales (ABN 13 495 767 706)
("EnergyCo")

[insert] (ABN [insert]) ("Access Right Holder")

Project Development Agreement

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Details

Parties	EnergyCo and Access Right Holder	
EnergyCo	Name	Energy Corporation of New South Wales
	ABN	13 495 767 706
	Address	Level 19/20 Bond Street, Sydney NSW 2000
	Email	[insert]
	Attention	[insert]
Access Right Holder	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Recitals	A	Access Right Holder has been recommended for the grant of an Access Right to the Central-West Orana Access Rights Network.
	B	To support the grant of an Access Right, Access Right Holder will enter into this agreement with EnergyCo.
	C	This agreement governs Access Right Holder's: <ul style="list-style-type: none">(a) development and construction obligations to achieve Financial Close and First Commissioning;(b) operation of the Project after First Commissioning;(c) compliance with the Social Licence Commitments; and(d) Access Right obligations.
	D	Access Right Holder will enter into an Access Payment Deed with the SFV on or about the date of this agreement. The Access Payment Deed will, among other things, address the payment of access fees by Access Right Holder to the SFV and the provision of security by Access Right Holder to the SFV.

Reference Details

	Item	Details																		
Project Details																				
1.	Project	The '[insert project name]', which will be a [insert resource type e.g. wind farm / pumped hydro project] located at [insert location]																		
2.	Maximum Capacity	The Maximum Capacity for the Connection Point that is recorded in the Access Rights Register at the relevant date																		
3.	Project Characteristics	The Project Characteristics recorded in the Access Rights Register, as specified in Schedule 3 ("Project Characteristics") as at the date of this agreement																		
Milestone Dates																				
4.	Milestones and Milestone Date	<table border="1"> <thead> <tr> <th></th> <th>Milestone</th> <th>Milestone Date</th> </tr> </thead> <tbody> <tr> <td>(a)</td> <td>Access Right Holder submitting an application to connect for the Project to Network Operator</td> <td>The date that is [3] months after the date of this agreement</td> </tr> <tr> <td>(b)</td> <td>Target date for Access Right Holder achieving Financial Close in respect of the Project</td> <td>[insert] (FC Target Date)</td> </tr> <tr> <td>(c)</td> <td>Sunset date for Access Right Holder achieving Financial Close in respect of the Project</td> <td>[12-18] months after the FC Target Date (FC Sunset Date)</td> </tr> <tr> <td>(d)</td> <td>Target date for Access Right Holder achieving First Commissioning</td> <td>[insert] (First Commissioning Target Date)</td> </tr> <tr> <td>(e)</td> <td>Sunset date for Access Right Holder achieving First Commissioning</td> <td>[12-18] months after the First Commissioning Target Date (First Commissioning Sunset Date)</td> </tr> </tbody> </table> <p>A Milestone Date may be extended under clause 9.2.</p> <p>[Drafting note: Milestone Dates (as may be extended) are the dates by which the corresponding Milestone must be achieved. The initial Milestone Dates are bid variables.]</p>		Milestone	Milestone Date	(a)	Access Right Holder submitting an application to connect for the Project to Network Operator	The date that is [3] months after the date of this agreement	(b)	Target date for Access Right Holder achieving Financial Close in respect of the Project	[insert] (FC Target Date)	(c)	Sunset date for Access Right Holder achieving Financial Close in respect of the Project	[12-18] months after the FC Target Date (FC Sunset Date)	(d)	Target date for Access Right Holder achieving First Commissioning	[insert] (First Commissioning Target Date)	(e)	Sunset date for Access Right Holder achieving First Commissioning	[12-18] months after the First Commissioning Target Date (First Commissioning Sunset Date)
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(a)	Access Right Holder submitting an application to connect for the Project to Network Operator	The date that is [3] months after the date of this agreement																		
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(d)	Target date for Access Right Holder achieving First Commissioning	[insert] (First Commissioning Target Date)																		
(e)	Sunset date for Access Right Holder achieving First Commissioning	[12-18] months after the First Commissioning Target Date (First Commissioning Sunset Date)																		
Network information																				
5.	Network infrastructure	The REZ network infrastructure required to connect and energise the Project, as specified in Schedule 5 ("Network Infrastructure")																		

	Item	Details
6.	Target Infrastructure Completion Date	[insert from CWO REZ Project Deed]
Other terms		
7.	Contract Representative	Name: [insert] Email: [insert] Telephone: [insert]

General terms

Part 1 Interpretation

1 Definitions and interpretation

1.1 Defined terms

Capitalised terms in this agreement have the meaning set out below and in the Reference Details, unless the contrary intention appears:

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

Access Fee Determination has the meaning given to that term in the Access Payment Deed.

Access Fee has the meaning given to that term in the Access Payment Deed.

Access Payment Deed means the access payment deed entered into between Access Right holder and SFV in respect of the Project on or around the date of this agreement.

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

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

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

Access Scheme means the access scheme declared in the Access Scheme Declaration.

Access Scheme Declaration means the declaration in respect of the Central-West Orana REZ made by the Minister under section 24 of the EII Act on 23 December 2022 as amended from time to time.

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.

Approved Cure Plan has the meaning given in clause 20.1(f).

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

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).

Calendar Quarter means a period of three consecutive calendar months starting on one of 1 January, 1 April, 1 July or 1 October.

Central-West Orana REZ means the Central West Orana renewable energy zone declared under section 19 of the EII Act on 5 November 2021, as amended from time to time.

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), including 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) change in the NER as it will apply in New South Wales in respect of connecting a project to the Access Rights Network;
- (c) material change to the REZ Generator Guidelines; or
- (d) change to the Access Scheme Declaration made in accordance with:
 - (i) section 28(1) of the EII Act; and
 - (ii) if the amendment is made in accordance with section 28(1)(d) of the EII act, clause 18(2) of the Access Scheme Declaration,

but excluding any:

- (e) change in the NER as it will apply in NSW which is consistent with the scope of proposed amendments notified to Access Right Holder prior to the Signing Date;
- (f) change in the NER made, but not yet commenced at the Signing Date; and
- (g) proposed change in the NER set out on the Australian Energy Market Commission website at the Signing Date; and
- (h) ***[Drafting note: Other specific announced changes in law at the Signing Date to be included.]***

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 means the date on which:

- (a) the Project is capable of exporting electrical energy through the Connection Point at a level of output that is equal to or exceeding [95%] of the Maximum Capacity, subject to energy resource availability; and
- (b) the Network Operator or AEMO (as applicable) has confirmed that the Project is unconditionally released from a hold point that allows the Project to export a level of output equal to or exceeding [95%] of the Maximum Capacity.

[Drafting note: Where the Project has an LTESA, this definition will mirror the corresponding COD Conditions in the LTESA PDA. The certification requirement is satisfied if ARH complies with the corresponding obligation in the LTESA PDA.]

Community Engagement Plan means the community engagement plan set out in Schedule 1 (“Community Engagement Plan”).

Concurrent Processing Group means a group of parties holding Access Rights specified by the Network Operator and whose applications to connect to the Access Rights Network will be progressed concurrently by the Network Operator under the NER.

Connection Point means the “connection point” (as defined in the NER) on the Access Rights Network 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 Access Right Holder as Contract Representative in accordance with clause 27 (“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).

CWO REZ Project Deed means the project deed to be executed between EnergyCo and the Network Operator for the development, construction and operation of the Access Rights Network.

Delay Event has the meaning given in clause 9.1(a).

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

Dispute has the meaning given in clause 25.1 (“Dispute mechanism”).

Dispute Notice has the meaning given in clause 25.3 (“Disputes”).

DPE means the New South Wales Department of Planning and Environment.

Draft Cure Plan has the meaning given in clause 20.1(a).

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

Energisation Conditions has the meaning given in clause 7.1.

EnergyCo means the Energy Corporation of New South Wales, established under the *Energy & Utilities Administration Act 1987* (NSW).

ESCA means an agreement or deed to be entered into between Access Right Holder and the Network Operator in relation to the connection of the Project to the Access Rights Network and constituting a connection agreement as defined in the NER.

FC Sunset Date means the date specified in item 4(c) of the Reference Details.

FC Target Date means the date specified in item 4(b) of the Reference Details.

Financial Close occurs when:

- (a) Access Right Holder has secured the equity and/or external debt financing that is required to fund the construction and commissioning of the Project, and all conditions precedent to first draw down under that financing have been satisfied or waived and that first draw down is made available to Access Right Holder; and
- (b) Access Right Holder issues an unconditional notice to proceed for the full scope of work under the engineering, procurement and construction contract (or equivalent) for the Project.

Financial Default means a failure by Access Right Holder to pay any amount due and payable to EnergyCo under this agreement (other than an amount which is the subject of a bona fide dispute).

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

First Commissioning means the date on which the Energisation Conditions for the Project are satisfied or waived by EnergyCo in accordance with clause 7 (“Energisation Conditions”).

First Commissioning Sunset Date means the date specified in item 4(e) of the Reference Details.

First Commissioning Target Date means the date specified in item 4(d) of the Reference Details.

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 international standards and “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 EnergyCo, SFV, Consumer Trustee and Financial Trustee. It also includes a self-regulatory organisation established under statute or a securities exchange.

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.

GST has the meaning given to that term in the “GST law” (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth)).

H2P Assets means the network assets required to connect the Project to the designated hub on the Access Rights Network.

Independent Expert has the meaning given in clause 25.6 (“Independent Expert”).

Industry and Aboriginal Participation Plan means the industry and Aboriginal participation plan set out in Schedule 2 (“Industry and Aboriginal Participation Plan”).

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 Completion means when the H2P Assets are complete and comply with all of the requirements of the CWO REZ Project Deed (except for minor defects).

Infrastructure Completion Date means the date on which Infrastructure Completion occurs in accordance with the CWO REZ Project Deed.

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.

Insurance Policies has the meaning given in clause 13 (“Insurance”).

Key Project Equipment means the key project equipment specified in Schedule 4 (“Key Project Equipment”).

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament including State, Territory and Commonwealth laws and regulations and other instruments under them, and considerations of any of them) and includes the NER and the rules of any recognised securities exchange.

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

[LTESA means the long-term energy service agreement entered into on or about the date of this agreement between Access Right Holder and SFV with respect to the Project.] **[Drafting note: if applicable.]**

[LTESA PDA means any project development agreement entered into on or about the date of this document between Access Right Holder and SFV in connection with any long-term energy service agreement with respect to the Project.] **[Drafting note: if applicable.]**

Maximum Capacity has the meaning given in item 2 (“Maximum Capacity”) of the Reference Details.

Milestone means a milestone as described in item 4 (“Milestones and Milestone Date”) of the Reference Details.

Milestone Date means, for a Milestone, the date specified for that Milestone in item 4 (“Milestones and Milestone Date”) of the Reference Details.

National Electricity Law means the National Electricity Law set out in the schedule to the *National Electricity (South Australia) Act 1996* (SA) as it applies in New South Wales.

NEM means the National Electricity Market administered by AEMO in accordance with the NER.

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

Network Operator means the entity authorised under the EII Act to carry out the Access Rights Network.

Network Operator Financial Close means the date the Network Operator achieves financial close under the CWO REZ Project Deed.

NO Activity has the meaning given in clause 4(a).

NO Works means any connection works required to be carried out by the Network Operator under the ESCA.

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

Project Characteristics has the meaning given in item 3 (“Project Characteristics”) of the Reference Details.

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

Related Body Corporate has the meaning given in the Corporations Act, but on the basis that:

- (a) ‘subsidiary’ has the meaning given in this agreement; and
- (b) a trust may be a ‘related body corporate’ (for the purposes of which a unit or other beneficial interest may be regarded as a ‘share’).

REZ Generator Guidelines means guidelines issued by EnergyCo, and amended from time to time, setting out requirements for project delivery and development for the purpose of coordinating the development of the Central-West Orana REZ.

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.

SFV means the Scheme Financial Vehicle under the EII Act.

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

Social Licence Commitments means the Community Engagement Plan and the Industry and Aboriginal Participation Plan.

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.

Target Infrastructure Completion Date means the target date for Infrastructure Completion specified in item 6 of the Reference Details.

Tender Date means the date on which Access Right Holder submitted its “Financial Value Bid” to the Consumer Trustee in connection with its tender bid for the Access Right.

Term has the meaning given in clause 2 (“Term”).

Transferee has the meaning given in clause 21.1(b)(i)(A).

[**Trust** means [insert].

Trust Deed means the trust deed establishing the Trust.

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

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

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

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

- (h) a reference to a time of day is a reference to Sydney time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (o) 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;
- (p) 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
- (q) the Details, Reference Details, schedules and annexures to this agreement form part of this agreement.

1.3 NEM definition change

If:

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

1.4 EnergyCo, Consumer Trustee and SFV interaction

Notwithstanding anything else in this agreement, the parties acknowledge and agree that, in discharging its obligations under this agreement, EnergyCo may:

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

1.5 Appointment of agent

Access Right Holder acknowledges that EnergyCo may, in its sole discretion and from time to time, appoint one or more persons as EnergyCo’s agent in respect of or in connection with some or all of EnergyCo’s rights or obligations under this

agreement. Nothing in this clause relieves EnergyCo of its obligations under this agreement.

1.6 Access right agreement

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

Part 2 Term

2 Term

This agreement commences on the Signing Date and ends on the date that this agreement is terminated in accordance with clause 20 (“Default and termination”) or expiry of the Access Right (whichever is earlier) (“Term”).

Part 3 Development and construction of Project

3 Application of this Part

This Part 3 (“Development and construction of Project”) commences on the Signing Date and expires following the satisfaction of Access Right Holder’s obligations under clause 6.3(a).

4 Network Operator activities

- (a) The parties acknowledge that the Network Operator will undertake various activities required for the development of the Project, including:
 - (i) developing the Access Rights Network; and
 - (ii) developing the NO Works,(each an **NO Activity** and together, the **NO Activities**).
- (b) Subject to clause 9 (“Delay Event”), EnergyCo will not have any obligations to Access Right Holder regarding the NO Activities, or the manner or time in which they are undertaken.

5 Cooperation obligations

5.1 Access Right Holder obligations

Access Right Holder must:

- (a) provide all information reasonably requested by EnergyCo or the Network Operator regarding development, construction, operation and maintenance of the Project; and
- (b) reasonably cooperate with EnergyCo and the Network Operator, and other Access Right holders for the Access Rights Network, in connection with development of the Access Rights Network and implementation of the REZ Generator Guidelines, including by:
 - (i) attending coordination meetings with relevant stakeholders at the request of EnergyCo or the Network Operator; and
 - (ii) developing stakeholder coordination plans.

5.2 EnergyCo obligations

EnergyCo must:

- (a) provide all information reasonably requested by Access Right Holder regarding development, construction, operation and maintenance of the Access Rights Network; and
- (b) reasonably cooperate with Access Right Holder in connection with development of the Project.

6 Notifications

6.1 CWO REZ Project Deed

- (a) EnergyCo must notify Access Right Holder of:
 - (i) any amendments to the Target Infrastructure Completion Date under the CWO REZ Project Deed; and
 - (ii) any forecast or actual delay in the Network Operator achieving Infrastructure Completion by the Target Infrastructure Completion Date (as amended, if applicable).
- (b) EnergyCo must provide the Access Right Holder with regular (no less than each Calendar Quarter) updates regarding the Network Operator's progress developing the Access Rights Network and NO Works, including any forecast delays in the Network Operator achieving the program for undertaking the Access Rights Network and NO Works.

6.2 Satisfaction of Milestones

- (a) Access Right Holder must notify EnergyCo within 5 Business Days after satisfying a Milestone or Energisation Condition.
- (b) A notice under paragraph (a) must include evidence reasonably required to demonstrate that the relevant Milestone or Energisation Condition has been satisfied in accordance with this agreement, including a copy of any relevant approval, notification or other document.

6.3 Commercial Operations

- (a) Access Right Holder must notify EnergyCo within 5 Business Days after achieving Commercial Operations.
- (b) Access Right Holder must accompany the notice in paragraph (a) with a copy of:
 - (i) a report, which Access Right Holder has commissioned and received from an independent engineering firm nominated by Access Right Holder and approved by EnergyCo, and upon which EnergyCo may rely, confirming that Commercial Operations has been achieved; and
 - (ii) certification by a director of Access Right Holder that the information contained in the relevant notice from Access Right Holder to EnergyCo under paragraph (a) is true and correct.

[Drafting note: Where the Project has an LTESA, this clause should reflect the corresponding CO obligations in the LTESA PDA.]

7 Energisation Conditions

7.1 Energisation Conditions

On or before the First Commissioning Sunset Date, Access Right Holder must use its best endeavours to ensure that:

- (a) the Project is capable of exporting electrical energy through the Connection Point (subject to energy resource availability);
- (b) Access Right Holder (or its intermediary) has been registered as a ["Market Generator" / "Integrated Resource Provider"] (as defined in the NER) with AEMO in respect of the Project and each unit in the Project is classified as a "scheduled generating unit", "semi-scheduled generating unit", "scheduled load" and/or "scheduled bidirectional unit" (as relevant, each as defined in the NER); and
- (c) Access Right Holder has satisfied or delivered, all Social Licence Commitments and requirements of the REZ Generator Guidelines required prior to First Commissioning,

(each an "**Energisation Condition**").

7.2 Satisfaction of Energisation Conditions

- (a) The Energisation Conditions are for the benefit of EnergyCo and may only be waived by EnergyCo in writing.
- (b) Access Right Holder is taken to not achieve First Commissioning unless and until Access Right Holder delivers to EnergyCo certification by a director of Access Right Holder that the information contained in the relevant notice from Access Right Holder to EnergyCo under clause 6.2(a) is true and correct.

8 Changes to Key Project Equipment

- (a) Access Right Holder acknowledges that:
 - (i) the Access Rights Network has been designed and procured based, among other things, on Access Right Holder installing and using the Key Project Equipment at the Project;
 - (ii) changes to the Key Project Equipment may require changes to the Access Rights Network; and
 - (iii) change to the Access Rights Network will need to follow the change process under the CWO REZ Project Deed and may involve additional costs for the Network Operator.
- (b) Access Right Holder must notify EnergyCo and the Network Operator if it proposes any material change to the Key Project Equipment to be installed at the Project. Notice must be in writing and set out:
 - (i) the specific change or changes required to the Key Project Equipment and details of any revised or alternative Key Project Equipment; and
 - (ii) the reasons why it considers the change or changes the Key Project Equipment are required.

- (c) Within 20 Business Days of receiving a notice under paragraph (b), EnergyCo must request the Network Operator to provide a written response to EnergyCo and Access Right Holder setting out the changes (if any) required to the Access Rights Network under the CWO REZ Project Deed and, if any changes are required, the Network Operator's costs to undertake the required changes and any impacts on the Target Infrastructure Completion Date.
- (d) Within 20 Business Days of receiving the Network Operator's response under paragraph (c), EnergyCo must provide the Network Operator's response to Access Right Holder. Access Right Holder must notify Network Operator whether it wishes for EnergyCo to instruct the Network Operator to proceed with the required change.
- (e) If Access Right Holder notifies EnergyCo that it wishes for EnergyCo to instruct the Network Operator to proceed with the required change, EnergyCo will instruct the Network Operator to proceed with the required change under the CWO REZ Project Deed, and Access Right Holder agrees:
 - (i) that it will be liable for the Network Operator's costs of undertaking the required changes (to the extent that such costs are not recovered by amended Access Fees payable by Access Right Holder); and
 - (ii) it accepts the notified delay to the Target Infrastructure Completion Date and such delay will not constitute a Delay Event.

9 Delay Event

9.1 Definition of Delay Event

- (a) Subject to paragraph (b), a "**Delay Event**" is any:
 - (i) Change in Law;
 - (ii) failure by EnergyCo to comply with its obligations under this agreement;
 - (iii) failure by the Network Operator to perform any NO Activity, including failure by the Network Operator to achieve Infrastructure Completion by the Target Infrastructure Completion Date;
 - (iv) delay in the Network Operator performing any NO Activity; or
 - (v) other event or circumstance, or combination of events or circumstances, that are not within the reasonable control of Access Right Holder,

occurring after the Signing Date and that Access Right Holder could not have avoided through the exercise of reasonable care, compliance with its obligations under this agreement and Good Industry Practice, but only to the extent that such event actually delays Access Right Holder from achieving a Milestone.

- (b) For the purposes of paragraph (a), the following do not constitute a Delay Event:

- (i) any event to the extent caused or contributed to by Access Right Holder, including any failure by Access Right Holder to comply with this agreement (other than as a direct result of a Change in Law);
- (ii) lack of funds, financial hardship, failure or inability of any person to pay any sum due and payable, or the inability of Access Right Holder (or any of its Related Bodies Corporate) to obtain financing or insurance or to profit or achieve a satisfactory rate of return;
- (iii) a failure by Access Right Holder to hold sufficient stock of spares, except to the extent it is itself caused by a Delay Event;
- (iv) any event or circumstance arising due to a failure by Access Right Holder, 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;
- (v) strikes, industrial disputes or other industrial actions or disruption that only affect Access Right Holder; and
- (vi) any relegation by the Network Operator of Access Right Holder to a later Concurrent Processing Group in accordance with the NER.

9.2 Extension for Delay Event

- (a) If Access Right Holder is or reasonably expects that it will be prevented or delayed in achieving a Milestone by the relevant Milestone Date due to a Delay Event, then Access Right Holder must:
 - (i) notify EnergyCo of the occurrence of the Delay Event as soon as reasonably practicable (and no later than 10 Business Days after the commencement of the Delay Event) giving reasonable details of:
 - (A) the date on which the Delay Event commenced;
 - (B) the Delay Event, including its expected duration;
 - (C) the Milestone Date which is delayed or expected to be delayed by the Delay Event; and
 - (D) subject to paragraph (c), any proposed extensions to the relevant Milestone Date required to reflect the impact of the Delay Event on Access Right Holder's achievement of the relevant Milestone;
 - (ii) keep EnergyCo informed of any material changes or developments to the information provided to EnergyCo in the notice under subparagraph (i); and
 - (iii) subject to clause 9.4, use best endeavours to overcome and mitigate the impact of the Delay Event.
- (b) On receiving Access Right Holder's notice under subparagraph (a)(i), EnergyCo:

- (i) may request any further information from Access Right Holder that EnergyCo reasonably requires in order to assess the impact of the Delay Event on Access Right Holder's achievement of the Milestone (as relevant); and
- (ii) subject to paragraph (c), must confirm whether the proposed extension to the relevant Milestone Date requested by Access Right Holder under subparagraph (a)(i)(D) is granted by the later of:
 - (A) 20 Business Days after receiving Access Right Holder's notice under subparagraph (a)(i); and
 - (B) 20 Business Days after receiving any further information that EnergyCo has requested from Access Right Holder under subparagraph (b)(i).
- (c) If Access Right Holder is prevented or delayed in achieving:
 - (i) Financial Close by the FC Target Date due to a Delay Event, then the FC Target Date may be extended by one day for each day of delay (noting that a change in the FC Target Date will result in an automatic change in the FC Sunset Date);
 - (ii) Financial Close by the FC Sunset Date due to a Delay Event occurring after the FC Target Date, then the FC Sunset Date may be extended by one day for each day of delay;
 - (iii) the Energisation Conditions by the First Commissioning Target Date due to a Delay Event, then the First Commissioning Target Date may be extended by one day for each day of delay (noting that a change in the First Commissioning Target Date will result in an automatic change in the First Commissioning Sunset Date); and
 - (iv) the Energisation Conditions by the First Commissioning Sunset Date due to a Delay Event, then the First Commissioning Sunset Date may be extended by one day for each day of delay.

9.3 Suspension of obligations

- (a) The obligations of Access Right Holder under this agreement prior to First Commissioning (other than any 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 that the ability of Access Right Holder to perform such obligations is affected by a Delay Event.
- (b) Any suspension of obligations pursuant to paragraph (a) will not affect any obligations which may have accrued prior to the suspension or, if the Delay Event affects only some obligations, any other obligations of Access Right Holder.

9.4 Mitigation of Delay Event

If Access Right Holder is affected by a Delay Event, then Access Right Holder must use best endeavours (including by incurring reasonable costs) to mitigate the effect of that Delay Event and Access Right Holder's performance of its obligations under this agreement affected by the Delay Event as soon as is reasonably practicable.

10 Concurrent Processing Groups

- (a) Access Right Holder acknowledges that the Network Operator is responsible for allocating Access Right Holders to Concurrent Processing Groups and, subject to paragraph (c), EnergyCo has no obligations to Access Right Holder regarding the process for connecting the Project to the Access Rights Network.
- (b) If the Network Operator relegates Access Right Holder to a later Concurrent Processing Group, Access Right Holder must promptly notify EnergyCo in writing.
- (c) Notwithstanding clause 9.1(b)(vi) if EnergyCo receives a notice under paragraph (b), it may agree (in its absolute discretion) to extend any of the Milestone Dates following consultation with Access Right Holder.

11 Reporting

- (a) Access Right Holder must provide to EnergyCo, within 20 Business Days after the end of each Calendar Quarter, a report that sets out the following information with reasonable supporting details:
 - (i) until Financial Close, the progress of Access Right Holder in achieving Financial Close, including any matter which could cause Access Right Holder to not achieve Financial Close by the FC Target Date and/or FC Sunset Date (if relevant);
 - (ii) following Financial Close and until First Commissioning:
 - (A) the progress of construction and information about any events Access Right Holder considers may prevent Access Right Holder satisfying the Energisation Conditions by the First Commissioning Target Date and/or First Commissioning Sunset Date (if relevant); and
 - (B) Access Right Holder's progress in obtaining authorisations required for the construction and operation of the Project;
 - (iii) until First Commissioning:
 - (A) any material occupational health and safety incidents;
 - (B) complaints received or legal proceedings in relation to the Project;
 - (C) any notices or fines issued by a Government Authority (including but not limited to, an environmental Government Authority); and
 - (D) any other matter reasonably requested in writing by EnergyCo, which may include information that is:
 - (aa) reasonably necessary for EnergyCo to discharge its rights and obligations under this agreement or the EII Act; or

- (ab) as required by a Government Authority (and notified to EnergyCo or Access Right Holder) in respect of the Project.
- (b) A report provided under paragraph (a) must be:
 - (i) in a reporting format specified by EnergyCo from time to time; and
 - (ii) certified by a director of Access Right Holder to be true and correct.
- (c) Access Right Holder must notify EnergyCo:
 - (i) within 2 Business Days, of the occurrence of a death or serious injury related to the Project or of the receipt of any breach notices or complaints about the Project from any Government Authority or other person;
 - (ii) within 5 Business Days, of Access Right Holder becoming aware of any breach of Access Right Holder's material obligations under this agreement; and
 - (iii) within 10 Business Days, of the occurrence of a dangerous incident or a complaint made in relation to contamination, environmental harm or breach of any environmental law.
- (d) Access Right Holder acknowledges that the provision of any false or misleading information by it under this clause 11 is a breach of Access Right Holder's obligations under this agreement and may constitute an offence under section 74 of the EII Act.
- (e) Without limiting clause 26, Access Right Holder agrees that EnergyCo may share any report or other information provided by Access Right Holder under this clause 11 to the Consumer Trustee, SFV, Network Operator and DPE.

12 Inspection and access

- (a) EnergyCo may request access to the Project site from time to time for the purposes of undertaking a visual site inspection. EnergyCo may not request access to the Project site under this clause more than once in any Calendar Quarter.
- (b) EnergyCo must give Access Right Holder reasonable notice of EnergyCo's requested site inspection under paragraph (a), including details of preferred dates and times of it, and relevant personnel who will be present for it.
- (c) EnergyCo and Access Right Holder will agree (acting reasonably) a date and time for the site inspection during normal business hours on a Business Day.
- (d) During the site inspection, EnergyCo agrees to comply with Access Right Holder's reasonable requirements, including in respect of site safety, occupational health and safety and other applicable site rules.

13 Insurance

- (a) Access Right Holder 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 (as applicable):
- (i) contract works insurance for the replacement value of the Project, including coverage for material and equipment in transit;
 - (ii) public and product liability insurance for at least \$20 million per event;
 - (iii) workers' compensation insurance required by Law; and
 - (iv) motor vehicle liability insurance required by Law,
- ("Insurance Policies"). Each Insurance Policy must be taken out with an insurer that has an Acceptable Credit Rating.
- (b) EnergyCo 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. EnergyCo may not exercise its right under this clause more than once in any 12 month period.
- (c) Within 10 Business Days after receiving EnergyCo's request under paragraph (b), Access Right Holder must provide such certificates or other documentation requested by EnergyCo.

Part 4 Development, Construction and Operation of Project

14 Application of this part

This Part 4 ("Development, Construction and Operation of Project") commences on the Signing Date and continues until the end of the Term.

15 Project undertakings

Access Right Holder must:

- (a) develop, construct, operate and maintain the Project in accordance with the Social Licence Commitments, REZ Generator Guidelines, Good Industry Practice and all applicable Laws and authorisations;
- (b) ensure that the Project is and remains, following First Commissioning, consistent with the Project Characteristics in all material respects;
- (c) use best endeavours to achieve each Milestone by the relevant Milestone Date; and
- (d) report on the development, construction and operation of the Project in accordance with clauses 11, 16.2 and 17.3.

16 Social Licence Commitments

16.1 Performance

Subject to clause 16.5 (“Alternative cash payment”), during the Term, Access Right Holder must perform the Social Licence Commitments.

16.2 Reporting

- (a) Access Right Holder must provide to EnergyCo, within 20 Business Days after the end of each Calendar Quarter, a report demonstrating Access Right Holder’s compliance with the Social Licence Commitments.
- (b) A report provided under paragraph (a) must be:
 - (i) in a reporting format specified by EnergyCo from time to time; and
 - (ii) certified by a director of Access Right Holder to be true and correct.

16.3 Alternative proposals

- (a) If a report provided under clause 16.2(a) identifies that Access Right Holder is not able to, or expects it will not be able to, comply with the Social Licence Commitments, then Access Right Holder must propose:
 - (i) amendments to the Social Licence Commitments required to enable Access Right Holder to comply with the Social Licence Commitments; and/or
 - (ii) alternative Social Licence Commitments which are of equivalent or greater merit than the original Social Licence Commitments.
- (b) Within 40 Business Days after receiving Access Right Holder’s proposal under paragraph (a), EnergyCo may:
 - (i) accept Access Right Holder’s proposal to amend the Social Licence Commitments and/or provide alternative Social Licence Commitments, but only if, in the reasonable opinion of EnergyCo, the proposed amendments and alternatives are of equivalent or greater merit than the original Social Licence Commitments;
 - (ii) request any further information from Access Right Holder that EnergyCo reasonably requires in order to assess whether Access Right Holder’s proposal to amend the Social Licence Commitments and/or provide alternative Social Licence Commitments is reasonably acceptable to EnergyCo; or
 - (iii) reject Access Right Holder’s proposal.
- (c) If EnergyCo requests any further information from Access Right Holder under subparagraph (a)(ii), then:
 - (i) within 10 Business Days after EnergyCo’s request, Access Right Holder must provide the requested information; and
 - (ii) within 40 Business Days after receiving the requested information from Access Right Holder, EnergyCo must use

reasonable endeavours to either confirm or reject Access Right Holder's proposal under paragraph (a).

- (d) If Access Right Holder does not provide the requested information under paragraph (c) within the applicable period, then EnergyCo is deemed to have rejected Access Right Holder's proposal.
- (e) If EnergyCo rejects, or is deemed to reject, Access Right Holder's proposal, then:
 - (i) unless EnergyCo is deemed to reject Access Right Holder's proposal under paragraph (d), EnergyCo will provide reasonable details of its reasons; and
 - (ii) within 20 Business Days after Access Right Holder's proposal is rejected, Access Right Holder must amend and resubmit an updated proposal to EnergyCo.
- (f) Paragraphs (a), (c), (d) and (e), will apply to the updated report submitted by Access Right Holder pursuant to paragraph (e).
- (g) For the avoidance of doubt, if Access Right Holder identifies in a report provided under clause 16.2(a) that it is not able to, or expects it will not be able to, comply with the Social Licence Commitments, this will not of itself be treated as a failure to comply with the Social Licence Commitments.

16.4 Audit

- (a) EnergyCo may, at any time, but no more than twice in any calendar year, require an audit of Access Right Holder's compliance with its obligation to perform the Social Licence Commitments.
- (b) Access Right Holder will bear the costs associated with undertaking one audit under paragraph (a) in any calendar year.
- (c) Subject to paragraph (d), if EnergyCo requires an audit more than once in any calendar year, then EnergyCo will bear Access Right Holder's costs of the second audit.
- (d) If a second audit demonstrates that the certified statements and reports provided by Access Right Holder under clause 16.2 ("Reporting") are materially inaccurate, then Access Right Holder will bear Access Right Holder's costs of the second audit.

16.5 Alternative cash payment

- (a) At EnergyCo's absolute discretion, EnergyCo may agree to accept a cash payment from Access Right Holder under clause 20.1(c)(iv)(C) that is:
 - (i) commensurate with the value of the relevant Social Licence Commitment to EnergyCo and any other person that would have benefitted from that Social Licence Commitment; and
 - (ii) sufficient to allow EnergyCo to undertake:
 - (A) the Social Licence Commitment that Access Right Holder has failed or will fail to comply with; or

- (B) an alternative to the Social Licence Commitment that Access Right Holder has failed or will fail to comply with, which EnergyCo accepts under clause 16.3(b)(i).
- (b) If Access Right Holder pays EnergyCo an amount agreed under paragraph (a) in respect of a Social Licence Commitment, then Access Right Holder is not required to perform that Social Licence Commitment to the extent compensated by the relevant amount.

17 REZ Generator Guidelines

17.1 REZ Generator Guidelines

- (a) Access Right Holder must comply with the REZ Generator Guidelines in performing its obligations under this agreement and in developing and operating the Project.
- (b) The Access Right Holder's obligations under clause 17.1(a) are in addition to the Access Right Holder's other obligations under this agreement, in developing and operating the Project and at Law. In the event of any inconsistency between Access Right Holder's obligations under clause 17.1(a) and the other terms of this agreement, the other terms of this agreement will prevail to the extent of any such inconsistency.

17.2 Amendments to REZ Generator Guidelines

- (a) EnergyCo may amend the REZ Generator Guidelines from time to time.
- (b) If EnergyCo proposes to materially amend the REZ Generator Guidelines, it must act reasonably and:
 - (i) consider any additional costs to Access Right Holder that are likely to result from the proposed amendments;
 - (ii) at least 28 days prior to making the proposed amendments, publish reasonable details of its proposed amendments, and the reasons why it considers the amendments are required;
 - (iii) provide Access Right Holder with a reasonable opportunity to consider the proposed amendments to the REZ Generator Guidelines and make submissions to EnergyCo; and
 - (iv) consider any submissions received from Access Right Holder before finalising any amendments to the REZ Generator Guidelines.

17.3 Reporting and information

- (a) Access Right Holder must provide to EnergyCo:
 - (i) from the date of this agreement until Commercial Operations, within 20 Business Days after the end of each Calendar Quarter; and
 - (ii) on and from Commercial Operations, within 20 Business Days after the end of each calendar year; or
 - (iii) at any other frequency reasonably requested by EnergyCo,

a report demonstrating Access Right Holder's compliance with the REZ Generator Guidelines during the relevant period (as applicable).

- (b) A report provided under paragraph (a) must be:
 - (i) in a format specified by EnergyCo from time to time or as set out in the REZ Generator Guidelines; and
 - (ii) certified by a director of Access Right Holder to be true and correct.
- (c) For the purposes of the REZ Generator Guidelines, the Access Right Holder must provide the following information to EnergyCo:
 - (i) as soon as practicable following a request from EnergyCo, information about proposed transport routes and timeframes for the transport of oversized and over mass loads for the Project;
 - (ii) within 10 Business Days of submission by the Access Right Holder, a copy of any permit application for the Project submitted to the National Heavy Vehicle Regulator; and
 - (iii) within 10 Business Days of receipt, a copy of any approved permit for the Project from the National Heavy Vehicle Regulator.

18 Access Scheme

18.1 Changes to Maximum Capacity

- (a) Access Right Holder's right to export electricity from the Connection Point at any time is limited to the Maximum Capacity.
- (b) EnergyCo may:
 - (i) approve an increase to the Maximum Capacity in accordance with clause 12(2) of the Access Scheme Declaration; or
 - (ii) reduce the Maximum Capacity in accordance with clause 12(4) of the Access Scheme Declaration if, at any time following First Commissioning:
 - (A) the Project is not capable of exporting electrical energy through the Connection Point up to the Maximum Capacity (not including where the Project is not capable of exporting electrical energy through the Connection Point up to the Maximum Capacity solely due to any AEMO hold point requirements for commissioning or any staging of the Project development by Access Right Holder); and
 - (B) Access Right Holder is not using its best endeavours to ensure that the Project becomes capable of exporting electrical energy through the Connection Point up to the Maximum Capacity,

and provided that any reduction in Maximum Capacity must only be to the extent that EnergyCo considers, acting reasonably, that Access Right Holder will not utilise the reduction in Maximum Capacity; and

- (iii) in its absolute discretion, approve a reduction in the Maximum Capacity in accordance with clause 12(4) of the Access Scheme Declaration following a request from Access Right Holder.
- (c) When determining whether to exercise its discretion to approve a reduction to the Maximum Capacity under clause 18.1(b)(iii), EnergyCo will:
 - (i) consider matters including:
 - (A) whether the reduction in Maximum Capacity is required by the planning approval for the Project, or any other matter occurring after the Signing Date that Access Right Holder could not have avoided through the exercise of reasonable care, compliance with its obligations under this agreement and Good Industry Practice; and
 - (B) the objects of the EII Act; and
 - (ii) consult with the Consumer Trustee and SFV for the purposes of making a determination under clause 18.1(b)(iii).
- (d) Any change to the Maximum Capacity pursuant to clause 18.1(b) will only be effective on and from the date on which the Access Rights Register is updated by EnergyCo to reflect that change in accordance with clause 12(5) of the Access Scheme Declaration.

18.2 Changes to Project Characteristics

- (a) Access Right Holder must ensure that the Project complies with the Project Characteristics at all times on and from First Commissioning.
- (b) Access Right Holder acknowledges that:
 - (i) the Access Right has been granted on the basis that the Project will, from First Commissioning, comply with the Project Characteristics; and
 - (ii) any material change to the Project Characteristics must be approved by EnergyCo in its absolute discretion, in accordance with clause 12(6) of the Access Scheme Declaration.
- (c) All references under this agreement to the Project Characteristics will, at the relevant time, be read as the Project Characteristics recorded in the Access Rights Register at the relevant time.
- (d) Any change to the Project Characteristics proposed by Access Right Holder may only occur on and from the date on which the Access Rights Register is updated by EnergyCo to reflect the Project Characteristics in accordance with clause 12(10) of the Access Scheme Declaration.

18.3 Adjustments to Access Fees

The parties acknowledge that any changes to Maximum Capacity under clause 18.1 or changes to Project Characteristics under clause 18.2 may result in adjustments to the Access Fees in accordance with the Access Fee Determination.

18.4 Connection of Project

The connection of the Project to the Access Rights Network will be governed by the NER (as it applies in New South Wales).

18.5 Expiry of Access Right

The Access Right will automatically expire on the date any of the following events occur:

- (a) the Access Scheme expires;
- (b) this agreement is terminated for any reason; or
- (c) Access Right Holder reduces the Maximum Capacity under its Access Right to zero following approval by EnergyCo in accordance with clause 18.1(b)(iii).

19 Change in Law

- (a) If, at any time after the Signing 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 requested by a party to preserve 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, then this agreement will continue to operate in accordance with its terms.

Part 5 Other terms

20 Default and termination

20.1 Cure Plan

- (a) If EnergyCo determines (acting reasonably) that Access Right Holder:
- (i) **(forecast failure to achieve Financial Close or First Commissioning)** is not likely to achieve Financial Close by the FC Sunset Date (as extended under this agreement) or achieve First Commissioning by the First Commissioning Sunset Date (as extended under this agreement);
 - (ii) **(failure to achieve a Milestone)** has failed to achieve a Milestone by the relevant Milestone Date;
 - (iii) **(Non-Financial Default)** has committed a Non-Financial Default; or
 - (iv) **(failure to comply with the Social Licence Commitments)** has failed to comply with the Social Licence Commitments,

then EnergyCo must give a notice to Access Right Holder requiring Access Right Holder to submit a cure plan to EnergyCo, setting out how Access Right Holder will remedy the relevant failure or Non-Financial Default (**Draft Cure Plan**).

- (b) Within 30 Business Days after receiving notice from EnergyCo under paragraph (a) or such other period agreed between the parties, Access Right Holder must submit a Draft Cure Plan to EnergyCo.
- (c) A Draft Cure Plan must set out:
- (i) the steps taken and to be taken by Access Right Holder to satisfy the relevant obligation or address the relevant failure, and the remaining work that needs to be done (where applicable);
 - (ii) Access Right Holder's best estimate of how and when the relevant failure or Non-Financial Default will be remedied;
 - (iii) in the case of a failure to achieve a Milestone or a forecast failure to achieve Financial Close by the FC Sunset Date or First Commissioning by the First Commissioning Sunset Date (as applicable), any proposed extensions to any of the Milestone Dates to satisfy the relevant obligation or address the relevant failure; and
 - (iv) if Access Right Holder or EnergyCo considers that a failure to comply with the Social Licence Commitments cannot be remedied, a proposal for:
 - (A) amendments to the Social Licence Commitments required to enable Access Right Holder to comply with the Social Licence Commitments; and/or
 - (B) alternative Social Licence Commitments of equivalent or greater merit than the original Social Licence Commitments; and/or

- (C) an Alternative Cash Payment.
- (d) Within 40 Business Days after receiving a Draft Cure Plan, EnergyCo must either approve or reject the Draft Cure Plan.
- (e) EnergyCo may accept Access Right Holder's proposal under subparagraph (c)(iv), but only if, in the reasonable opinion of EnergyCo, the proposed amendments and alternatives are of equivalent or greater merit than the original Social Licence Commitments.
- (f) If EnergyCo approves a Draft Cure Plan under paragraph (d) (**Approved Cure Plan**), then:
 - (i) Access Right Holder must comply with the Approved Cure Plan;
 - (ii) within 10 Business Days after the end of each month, Access Right Holder must provide a monthly report that sets out Access Right Holder's progress in achieving the requirements of the Approved Cure Plan; and
 - (iii) any references to Milestone Dates are to the relevant Milestone Dates as extended by the Approved Cure Plan.
- (g) If EnergyCo rejects a Draft Cure Plan, then:
 - (i) EnergyCo will provide reasonable details of its reasons and may propose amendments to the Draft Cure Plan to Access Right Holder; and
 - (ii) within 20 Business Days after EnergyCo has provided its reasons to Access Right Holder for rejecting the Draft Cure Plan, Access Right Holder must amend and resubmit the Draft Cure Plan to EnergyCo for approval.
- (h) Paragraphs (d), (e), (f) but not paragraph (g), will apply to the amended Draft Cure Plan submitted by Access Right Holder.

20.2 Automatic termination

If the Access Payment Deed is terminated, then this document will automatically terminate with immediate effect on the date the Access Payment Deed is terminated.

20.3 Termination by Access Right Holder

Access Right Holder may terminate this agreement with immediate effect by notice in writing to EnergyCo if EnergyCo fails to comply in a material respect with an obligation under this agreement and EnergyCo does not remedy that failure within 60 Business Days after receiving notice from Access Right Holder of that failure.

20.4 Termination by EnergyCo

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

- (a) (**failure to achieve Financial Close**) Access Right Holder fails to achieve Financial Close by the FC Sunset Date (as extended under this agreement);

- (b) **(forecast failure to achieve First Commissioning)** in the reasonable opinion of EnergyCo, Access Right Holder is not likely to achieve First Commissioning by the First Commissioning Sunset Date (as extended under this agreement);
- (c) **(failure to achieve First Commissioning)** Access Right Holder does not achieve First Commissioning by the First Commissioning Sunset Date (as extended under this agreement);
- (d) **(failure to comply with the Social Licence Commitments)** Access Right Holder fails to comply with the Social Licence Commitments (including complying with any alternative Social Licence Commitments or paying any Alternative Cash Payment agreed by EnergyCo);
- (e) **(Financial Default)** a Financial Default occurs and Access Right Holder does not remedy that Financial Default within 10 Business Days after receiving notice from EnergyCo of that default;
- (f) **(Non-Financial Default)** a Non-Financial Default occurs and Access Right Holder does not remedy that Non-Financial Default within a reasonable period:
 - (i) after receiving notice from EnergyCo of that default; or
 - (ii) in accordance with an Approved Cure Plan;
- (g) **(termination or expiry of ESCA)** the ESCA is terminated or expires after First Commissioning and is not replaced;
- (h) **(tender misrepresentation)** prior to Financial Close:
 - (i) an express representation made by Access Right Holder under clause 23.3 (“Tender representations and warranties from Access Right Holder”) is found to be incorrect or misleading in any material respect when made;
 - (ii) EnergyCo reasonably forms the view that Consumer Trustee would not have recommended that EnergyCo award Access Right Holder the Access Right but for the materials and information which caused or contributed to that representation being materially incorrect or misleading;
 - (iii) EnergyCo notifies Access Right Holder of that incorrect or misleading representation in writing no later than Financial Close; and
 - (iv) Access Right Holder does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from EnergyCo of that incorrect or misleading representation; or
- (i) **(insolvency)** Access Right Holder is the subject of an Insolvency Event and Access Right Holder does not cure that Insolvency Event within 5 Business Days after receiving notice from EnergyCo.

20.5 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.

20.6 Exclusion of rights

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

20.7 Survival

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

- (a) this clause 20 and clauses 22 (“Liability”), 25 (“Dispute Resolution”) and 26 (“Confidentiality”); [***Drafting Note: Provisions to be updated prior to finalisation of this agreement.***]
- (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.

21 Assignment and Change in Control

21.1 Assignment by Access Right Holder

- (a) Access Right Holder must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Project other than in accordance with this clause 21.1.
- (b) Access Right Holder may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement (**Transfer**) with EnergyCo’s prior written consent, such consent not to be unreasonably withheld or delayed if:
 - (i) Access Right Holder provides notice to EnergyCo that sets out:
 - (A) details of the person to whom Access Right Holder proposes to transfer its Access Right or assign, novate or otherwise transfer its rights and obligations under, title to, or interest in this agreement (**Transferee**); and
 - (B) the nominated date for the Transfer; and
 - (ii) the Transferee:
 - (A) will also be transferred Access Right Holder’s rights and obligations under the Access Payment Deed, the ESCA and to the extent applicable, the LTESA and any LTESA related project development agreement;
 - (B) will also be transferred Access Right Holder’s interests in the Project; and
 - (C) has the legal, financial and technical capability to perform Access Right Holder’s obligations under this agreement.

- (c) Notwithstanding anything else in this clause 21.1, the parties agree that Access Right Holder 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 Access Right Holder (or to any of its Related Bodies Corporate) in connection with the Project.
- (d) The parties acknowledge and agree that the provisions of this clause 21.1 will apply to any assignment, novation or transfer of Access Right Holder's rights and obligations under, title to and interest in this agreement following the enforcement of a Security Interest granted by Access Right Holder in accordance with paragraph (c).

21.2 Assignment by EnergyCo

- (a) EnergyCo 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 21.2.
- (b) Subject to paragraph (c), EnergyCo may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with Access Right Holder's prior written consent, such consent not to be unreasonably withheld or delayed.
- (c) EnergyCo may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement without Access Right Holder's consent to any Government Entity.

21.3 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 21 ("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.

21.4 Change in Control

- (a) Access Right Holder must not undergo, or agree to undergo, a Change in Control without EnergyCo's prior written consent.
- (b) EnergyCo's consent to a Change in Control of Access Right Holder must not be unreasonably withheld or delayed where:
 - (i) Access Right Holder's legal, financial and technical capability to perform its obligations under this agreement will not be adversely affected by the Change in Control; and
 - (ii) in the case of a Change in Control that would occur prior to Commercial Operations, EnergyCo considers (in its absolute discretion) that the Consumer Trustee would not have recommended the grant of the Access Right to the Access Right Holder had the Change in Control occurred prior to the Consumer Trustee's recommendation of the grant of the Access Right to the Access Right Holder. EnergyCo may consult with the Consumer Trustee for the purposes of making this assessment.

21.5 Tripartite deed

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

22 Liability

22.1 Excluded Loss

Subject to clause 22.2 and 22.3 ("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 Loss of an indirect nature;
- (b) any loss of profits, loss of goodwill, loss of revenue or loss of use of property (whether direct or indirect);
- (c) any cost of business interruption; or
- (d) any other consequential loss, including Loss 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.

22.2 Limitation of liability

To the extent permissible by Law and subject to clause 22.3 ("No exclusion"):

- (a) EnergyCo's liability to Access Right Holder 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) Access Right Holder's liability to EnergyCo 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.

22.3 No exclusion

Clauses 22.1 ("Excluded Loss") and 22.2 ("Limitation of liability") do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this agreement;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 22.4(b) ("Indemnity by "); or

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

22.4 Indemnity by Access Right Holder

- (a) Access Right Holder indemnifies EnergyCo against, and agrees to reimburse and compensate it for, any Loss:
 - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or breach, or negligence of Access Right Holder or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents; or
 - (ii) in respect of death or personal injury.
- (b) Without limiting paragraph (a), Access Right Holder indemnifies EnergyCo against, and agrees to reimburse and compensate it for, any Loss arising from, and any costs incurred in connection with, any Claim by a third party against EnergyCo in relation to:
 - (i) the Project; or
 - (ii) any act or omission of Access Right Holder or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents.
- (c) The amounts payable under this clause 22.4 include any Loss and any costs of the kind referred to in this indemnity which are incurred by EnergyCo's officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 22.4 are not payable to the extent that EnergyCo's Loss:
 - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or breach, or negligence of EnergyCo, its officers, employees, subcontractors or agents; or
 - (ii) arises in respect of an electricity hedging arrangement entered into by EnergyCo and a third party.

23 Representations and warranties

23.1 Representations and warranties

- (a) Each party represents and warrants that:
- (b) **(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;
- (c) **(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;
- (d) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this agreement;

- (e) **(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;
- (f) **(binding nature)** this agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (g) **(no insolvency)** it is not subject to an Insolvency Event.

23.2 Anti-bribery and anti-corruption

Access Right Holder represents and warrants that neither it nor any of its Related Bodies Corporate have engaged in any activity or conduct in connection with the Project which would violate any applicable anti-bribery, anti-corruption or anti-money laundering laws, regulations or rules in any applicable jurisdiction.

23.3 Tender representations and warranties from Access Right Holder

Access Right Holder represents and warrants that:

- (a) all materials and information provided by Access Right Holder to Consumer Trustee in connection with Access Right Holder's tender bid for the Access Right (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 at the Tender Date; and
- (b) all forecasts and projections which were provided by Access Right Holder to Consumer Trustee in connection with Access Right Holder's tender bid for the Access Right were prepared using due care and skill based on assumptions which Access Right Holder believed, in good faith, were fair and reasonable assumptions as at the Tender Date.

23.4 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.

24 [Trustee provisions]

24.1 Trustee representations and warranties

Access Right Holder represents and warrants to EnergyCo 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 Access Right Holder from being so indemnified;
- (g) **(no default)** it is not, and never has been, in default under the Trust Deed;
- (h) **(no termination)** no action has been taken or proposed to terminate the Trust;
- (i) **(officers' compliance)** it and its directors and other officers have complied with their obligations in connection with the Trust;
- (j) **(exercise of powers)** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (k) **(benefit)** entry into the documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of the Trust's beneficiaries.

24.2 Trustee undertakings

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

24.3 Restrictions on trustee

Without the consent of EnergyCo, Access Right Holder may not, and may not agree, attempt or take any step to, do anything which:

- (a) **(retirement, removal, replacement)** effects or facilitates the retirement, removal or replacement of Access Right Holder as trustee of the Trust;
- (b) **(restriction on right of indemnity)** could restrict Access Right Holder's right of indemnity from the Trust Property in respect of obligations incurred by Access Right Holder under this agreement;
- (c) **(restrict or impair compliance)** could restrict or impair the ability of Access Right Holder 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.

24.4 Trustee limitation of liability

- (a) This clause 24.4 applies to Access Right Holder as trustee of the Trust to the extent that Access Right Holder is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), Access Right Holder's liability to any person in connection with this 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 Access Right Holder exercising its right of indemnity out of the Trust Property.
- (c) Subject to clauses 24.4(c)(i) and 24.4(c)(ii), EnergyCo may not seek to recover any amounts owing to it under this agreement by bringing proceedings against Access Right Holder in its personal capacity. However, EnergyCo 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 Access Right Holder; and
 - (B) declaratory relief or other similar judgment or order as to the obligations of Access Right Holder 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 Access Right Holder's indemnification out of the Trust Property either as a result of Access Right Holder's fraud, negligence or wilful default, or by operation of Law.
- (e) The limitation of Access Right Holder's liability under paragraph (b) is to be disregarded for the purposes of determining whether Access Right Holder has failed to comply with or perform any obligation under this agreement because of a failure by Access Right Holder to pay an amount payable by it under this agreement.]

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

25 Dispute Resolution

25.1 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 25.

25.2 No proceedings

Subject to clause 25.9 ("**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 25.

25.3 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).

25.4 Procedure to resolve Disputes

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) The procedure that is to be followed to resolve a Dispute is as follows:
 - (i) first, negotiation of the Dispute under clause 25.5 (“Negotiation”);
 - (ii) second, referral of the Dispute for determination by an Independent Expert under clause 25.6 (“Independent Expert”) (if applicable); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

25.5 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 the Dispute is of a technical or engineering nature, or in connection with a Social Licence Commitment, refer the Dispute for determination by an Independent Expert; and
 - (ii) where the Dispute is not of a technical or engineering nature, commence proceedings in a court of competent jurisdiction.

25.6 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.

25.7 Other Relief

The Dispute resolution procedures in this clause 25 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).

25.8 Continued performance following a Dispute

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

25.9 Interim relief

Nothing in this clause 25 prevents either party from seeking urgent injunctive or declaratory relief.

26 Confidentiality

26.1 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 26);
- (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,
 - (iv) 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) 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;
- (g) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
- (h) to a rating agency; or
- (i) in the case of disclosure by EnergyCo, to:
 - (i) Consumer Trustee
 - (ii) SFV;
 - (iii) Financial Trustee;
 - (iv) AEMO;
 - (v) a local council in Central West Orana REZ;
 - (vi) the Network Operator;
 - (vii) any government department, agency, authority, instrumentality, Minister or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and

- (viii) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (vii),

provided that EnergyCo 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.

26.2 Publicity

- (a) Unless required by Law, Access Right Holder must not make any public announcements relating to the subject matter of this agreement without EnergyCo's prior written consent.
- (b) EnergyCo may make public announcements relating to the subject matter of this agreement (including in respect of the Project's expected import and export of electricity and Access Right Holder's Social Licence Commitments) without Access Right Holder's prior written consent, provided that EnergyCo must:
 - (i) consult with Access Right Holder before making a public announcement that contains commercially sensitive information set out in this agreement; and
 - (ii) reasonably consider any request from Access Right Holder to not include that commercially sensitive information, or to only include that commercially sensitive information on an aggregated basis, in the relevant public announcement.

27 Contract Representative

- (a) At all times, Access Right Holder 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) Access Right Holder must ensure that it notifies EnergyCo 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) EnergyCo 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 EnergyCo is required to give under this agreement will be given to Access Right Holder in accordance with clause 28 ("Notices").

28 Notices

28.1 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.

28.2 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.

28.3 When effective

Communications take effect from the time they are received or taken to be received under clause 28.4 (“When taken to be received”) (whichever happens first) unless a later time is specified in the communication.

28.4 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.

28.5 Receipt outside business hours

Despite anything else in this clause 28, if communications are received or taken to be received under clause 28.4 (“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.

29 General

29.1 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.

29.2 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.

29.3 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).

29.4 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.

29.5 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.

29.6 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.

29.7 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.

29.8 Supervening Law

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

29.9 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.

29.10 Entire agreement

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

29.11 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.

29.12 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.

29.13 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.

29.14 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.

29.15 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.

29.16 Access Scheme rights and obligations

Nothing in this agreement limits or otherwise affects the parties' rights and obligations under the Access Scheme.

EXECUTED as an agreement.

Schedule 1 Community Engagement Plan

[Note: to be included.]

Schedule 2 Industry and Aboriginal Participation Plan

[Note: to be included.]

Schedule 3 Project Characteristics

[Note: to be included.]

Schedule 3 – Project Characteristics

[Connection Point Name]

Item			
1	Location	Co-ordinates of Project substation connecting to Connection Point	[To be part of tender returnable]
2		Boundary extent	Refer Attachment 1
3	Technical Overview	Market facing Primary Technology (Solar, Wind, BESS)	[To be part of tender returnable]
4		Hybrid/behind the meter BESS (Yes/No) (if applicable)	[To be part of tender returnable]
5		Maximum Capacity (MWac) at Connection Point (same as Access Rights sought)	[To be part of tender returnable]
6		Individual unit OEM and model	[To be part of tender returnable]
7	Original Equipment Manufacturer (OEM) for market facing Primary Technology	Number of individual units (Inverters, turbines)	[To be part of tender returnable]
8		Nameplate rating (MWac) per unit	[To be part of tender returnable]
9		Nameplate capacity (MWh) per unit (if item 3 above is BESS)	[To be part of tender returnable]
10		Online inverter controller type (eg grid following, grid forming)	[To be part of tender returnable]
11		Individual unit OEM and model	[To be part of tender returnable]
12	Original Equipment Manufacturer (OEM) Hybrid/behind the meter BESS (if applicable)	Number of individual units (Inverters)	[To be part of tender returnable]
13		Nameplate rating (MWac) per unit	[To be part of tender returnable]
14		Nameplate capacity (MWh) per unit	[To be part of tender returnable]
15		Online inverter controller type (eg grid following, grid forming)	[To be part of tender returnable]
16		Configuration (AC-coupled, DC-coupled)	[To be part of tender returnable]

Attachment 1 - Project Boundary Extent

[To be provided as a tender returnable schedule. Required to consider EnergyCo's property acquisition boundary provided as basis of bid]

Schedule 4 Key Project Equipment

[Note: to be included.]

Schedule 4 – Key Project Equipment (KPE)

[Connection Point Name]

Item			
1	330kV/33kV connection infrastructure	Single Line Diagram and General Arrangement drawings	Attachment 1
2		Power Transformer rating (MVA)	[To be part of tender returnable]
3		Power Transformer impedance (%)	[To be part of tender returnable]
4		33kV switchgear details (if known)	[To be part of tender returnable]
5		MV overhead reticulation (if known)	[To be part of tender returnable]
6		MV underground reticulation (if known)	[To be part of tender returnable]
7		Reactive Plant (if known)	[To be part of tender returnable]
8	Access to H2P Switching Station	N/A	Attachment 2
9	Auxiliary Supply for H2P Switching Station	N/A	Attachment 3

Attachment 1 - Single Line Diagram for 330kV/33kV connection infrastructure
 [To be provided as a tender returnable schedule]

Attachment 2 - Sketch of road access to NO switching station
 [Tenderer to provide a sketch detailing how road access will be provided to NO Switching Station through Proponent project]

Attachment 3 - Auxiliary Supply for H2P Switching Station - Sketches of Single Line Diagram and General Arrangement
 [Tenderer to provide sketches of Single Line Diagram and General Arrangement for Auxiliary AC supply per section 5.3 of NO Functional Requirements]

Schedule 5 Network Infrastructure

[Note: to be included.]

Schedule 5 – Network Infrastructure

[Connection Point Name]

Access Rights Network			
1	Designated Energy Hub	Name	[To be provided as part of Basis of bid]
2		Location (address)	[To be provided as part of Basis of bid]
3	Hub to Project (H2P) Infrastructure	Connection voltage	330kV
4		Switching station name	[To be provided as part of Basis of bid]
5		Connection Point Easting	[To be provided as part of Basis of bid]
6		Connection Point Northing	[To be provided as part of Basis of bid]
7		Limit of single credible contingency event (MW)/ Connection Point	700MW
8	CWO REZ overall single line diagram	N/A	Exhibit 1 [To be provided as part of Basis of bid]
9	Hub to Project (H2P) Switching station general arrangement drawing	N/A	Exhibit 2 [To be provided as part of Basis of bid]
10	Hub to Project (H2P) Switching station single line diagram	N/A	Exhibit 3 [To be provided as part of Basis of bid]
11	Hub to Project (H2P) Switching station interface to Access Right Holder	N/A	Exhibit 4 [To be provided as part of Basis of bid]
12	Hub to Project (H2P) Switching station protection control drawing	N/A	Exhibit 5 [To be provided as part of Basis of bid]
13	Hub to Project (H2P) Switching station auxiliary supply drawing	N/A	Exhibit 6 [To be provided as part of Basis of bid]
14	Hub to Project (H2P) Switching station communications drawing	N/A	Exhibit 7 [To be provided as part of Basis of bid]

Exhibit 1 - CWO REZ overall single line diagram

[To be provided as part of Basis of bid]

Exhibit 2 - Hub to Project (H2P) Switching station general arrangement drawing

[To be provided as part of Basis of bid]

Exhibit 3 - Hub to Project (H2P) Switching station single line diagram

[To be provided as part of Basis of bid]

Exhibit 4 - Hub to Project (H2P) Switching station interface to Access Right Holder

[To be provided as part of Basis of bid]

Exhibit 5 - Hub to Project (H2P) Switching station protection control drawing

[To be provided as part of Basis of bid]

Exhibit 6 - Hub to Project (H2P) Switching station auxiliary supply drawing

[To be provided as part of Basis of bid]

Exhibit 7 - Hub to Project (H2P) Switching station communications drawing

[To be provided as part of Basis of bid]

Signing page

DATED: _____

EnergyCo

EXECUTED by Energy Corporation of
New South Wales 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

Access Right Holder

EXECUTED by [INSERT] in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by
authority of its directors:

.....
Signature of director

.....
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.]

