

Publication version: 31 August 2023

# Access Payment Deed

Project with an Access Right

[Project name]

Dated

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

[insert] (“**Access Right Holder**”)

# Access Payment Deed

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# Access Payment Deed

## Details

Parties		
SFV	Name	Scheme Financial Vehicle Pty Ltd
	ACN	662 496 479
	Address	Company Address: Level 4, 7-15 Macquarie Place, Sydney NSW 2000
		Mailing Address: GPO Box 2307, Melbourne VIC 3001
	Email	[insert]
	Attention	[insert]
Access Right Holder	Name	[insert]
	ACN	[insert]
	Address	[insert]
	Email	[insert]
	Attention	[insert]
Recitals	<b>A</b>	Access Right Holder has been recommended for the grant of an Access Right to the Central-West Orana Access Rights Network.
	<b>B</b>	To support the grant of an Access Right, Access Right Holder will enter into this document with SFV.
	<b>C</b>	This document governs Access Right Holder's:  (a) Access Fee payment obligations to SFV; and  (b) obligation to provide the Securities to SFV.
	<b>D</b>	Access Right Holder will enter into an Access PDA with Infrastructure Planner on or after the date of this document. The Access PDA will, among other things, address Access Right Holder's development and construction obligations, operation of the Project, compliance with the "Social Licence Commitments" (as defined in the Access PDA) and Access Right obligations.

# Access Payment Deed

## General terms

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### 1 Definitions and interpretation

#### 1.1 Defined terms

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

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

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

**Access Fee Determination** means the fees determined by Consumer Trustee under section 26 of the EII Act which are applicable to the Access Rights Network and Access Right Holder. As at the Signing Date, the Access Fee Determination is [insert].

**[Notes:**

- *Reference to Consumer Trustee's relevant project specific access fee determination will be inserted prior to signing.*
- *The Consumer Trustee is aware that Proponents will require clarity around when and how Access Fees may change, particularly the protections that will apply in relation to any increase in Access Fees after the Signing Date. It is proposed that the Access Fee Determination will set out certain situations in which the Access Fee may be varied (e.g. changes in MW requested by the Proponent). The Consumer Trustee is in the process of developing frameworks to provide certainty to the Proponents in relation to the making of Access Fee Determinations and will provide more information in due course.]*

**Access Fee Schedule** means [the schedule to the Access Fee Determination setting out the Access Fee and Quarterly Access Fees payable by the Access Right Holder]. A copy of the initial Access Fee Schedule as at the Signing Date is set out in Annexure A ("Initial Access Fee Schedule"). **[Note: description of Access Fee Schedule to be confirmed.]**

**Access Fee Security** means each Security other than the Initial Security.

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

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

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

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

**AEMO** has the meaning given in the Access PDA.

**[Base Fee]** has the meaning given in the Access Fee Determination.

**Breach Notice** has the meaning given in clause 7.2 ("Termination by SFV").

**Business Day** has the meaning given in the Access PDA.

**Calendar Quarter** has the meaning given in the Access PDA.

**Centralised System Strength Security** means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 ("Securities").

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

**Claim** has the meaning given in the Access PDA.

**Commercial Operations** has the meaning given in the Access PDA.

**Condition Precedent** has the meaning given in clause 2.2 ("Condition Precedent").

**Consumer Trustee** has the meaning given in the Access PDA.

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

**[CSS Fee]** has the meaning given in the Access Fee Determination.

**[C&E Fee]** means those amounts allocated to be used for "community purposes" or "employment purposes" (each as defined in the EII Act).

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

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

**Dispute** has the meaning given in clause 12.1 ("Dispute mechanism").

**Dispute Notice** has the meaning given in clause 12.3 ("Disputes").

**Disputed Amount** has the meaning given in clause 5.3 ("Disputed Invoice").

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

**ESCA** has the meaning given in the Access PDA.

**Financial Close** has the meaning given in the Access PDA.

**Financial Default** means a failure by Access Right Holder to:

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

**Financial Trustee** has the meaning given in the Access PDA.

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

**Government Authority** has the meaning given in the Access PDA.

**Government Entity** has the meaning given in the Access PDA.

**GST Amount** has the meaning given in clause 6.3 ("Payment of GST").

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

**H2P Assets** has the meaning given in the Access PDA.

**H2P Cancellation Security** means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 ("Securities").

**H2P Delivery Security** means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 ("Securities").

**H2P Energisation Security** means a Security with a face value of not less than the relevant Security Amount set out in Schedule 1 ("Securities").

**[H2P Fee]** has the meaning given in the Access Fee Determination.

**Independent Expert** has the meaning given in clause 12.6 ("Independent Expert").

**Infrastructure Completion Date** has the meaning given in the Access PDA.

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

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

**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 document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 10 Business Days), resolution passed, proposal put forward or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c) or any other action taken, in each case in connection with that person, in 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 document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in paragraphs (a) to (g) happens in connection with that party under the law of any jurisdiction.

**Invoice** has the meaning given in clause 5.1 (“Billing”).

**Invoiced Sum** has the meaning given in clause 5.1 (“Billing”).

**Law** has the meaning given in the Access PDA.

**Loss** has the meaning given in the Access PDA.

**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.

**LTESA Termination Amount** has the meaning given to the term “Termination Amount” in the LTESA PDA.

**Maximum Capacity** has the meaning given in the Access PDA.

**NEM** has the meaning given in the Access PDA.

**Network Operator** has the meaning given in the Access PDA.

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

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

**Payment Term** has the meaning given in clause 4 (“Access Fee”).

**Project** means [insert].

**Project Characteristics** has the meaning given in the Access PDA.

**Provision Date** means, for each Security, the date set out in Schedule 1 (“Securities”) in respect of that Security.

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

**Reimbursement Amount** means the amount calculated in accordance with item 2.3 (“Reimbursement Amount calculation”) of Schedule 2 (“Termination Amount and Reimbursement Amount”).

**Reimbursement Period** has the meaning given in item 2.2 (“Reimbursement Event”) of Schedule 2 (“Termination Amount and Reimbursement Amount”).

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

**Return Date** means, for each Security, the date set out in Schedule 1 ("Securities") in respect of that Security.

**Scheme Term** means the "term" of the "Central-West Orana REZ Access Scheme" (each as defined in the Access Scheme Declaration).

**Security** means a letter of credit or bank guarantee:

- (a) issued by an Australian branch of an authorised deposit taking institution with an Acceptable Credit Rating;
- (b) which can be drawn in Sydney; and
- (c) which is otherwise in a form reasonably satisfactory to SFV (acting reasonably).

**Security Amount** means, for each Security, the amount set out in Schedule 1 ("Securities") in respect of that Security.

**Security Interest** has the meaning given in the Access PDA.

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

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

**Tax Invoice** has the meaning given to that term by the GST Law.

**Taxable Supply** has the meaning given to that term by the GST Law.

**Term** has the meaning given in clause 2 ("Term").

**Termination Amount** means:

- (a) where termination occurs prior to Commercial Operations, the amount calculated in accordance with item 1.1 ("Termination prior to Commercial Operations") of Schedule 2 ("Termination Amount and Reimbursement Amount"); or
- (b) where termination occurs on or after Commercial Operations, the amount calculated in accordance with item 1.2 ("Termination on or after Commercial Operations") of Schedule 2.

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

**Trust Deed** means the trust deed establishing the Trust.

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

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

## **1.2 Interpretation Provisions**

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

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;

- (c) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (n) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, then it is taken to be done on the next Business Day;
- (o) if the day on which a party must do something under this document is not a Business Day, then the party must do it on the next Business Day; and
- (p) the Details, schedules and annexure to this document form part of this document.

### **1.3 SFV, Consumer Trustee and Infrastructure Planner interaction**

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

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

### **1.4 Appointment of agent**

Access Right Holder acknowledges that SFV may, in its sole discretion and from time to time, appoint one or more persons as SFV’s agent in respect of or in

connection with some or all of SFV's rights or obligations under this document. Nothing in this clause relieves SFV of its obligations under this document.

## 1.5 Access right agreement

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

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## 2 Term and Condition Precedent

### 2.1 Term

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

### 2.2 Condition Precedent

- (a) Clauses 3 ("Security"), 4 ("Access Fee") and 5 ("Payment of Access Fee") of this document have no legal force or effect until Access Right Holder enters into the Access PDA ("**Condition Precedent**").
- (b) If Access Right Holder does not satisfy the Condition Precedent by the date that is 6 months after the Signing Date, then SFV may terminate this document by notice to Access Right Holder with immediate effect.

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## 3 Security

### 3.1 Provision of Security

- (a) Access Right Holder must provide each Security set out in Schedule 1 ("Securities") to SFV on or before the applicable Provision Date or as otherwise agreed between the parties.
- (b) If Access Right Holder does not provide a Security where required under paragraph (a), then SFV may terminate this document by written notice to Access Right Holder with immediate effect.

### 3.2 Top up of Security

- (a) Subject to paragraph (b), if, after the Signing Date there is an increase in the Access Fee in accordance with the Access Fee Determination, and the relevant Security Amount increases as a result, then SFV may require Access Right Holder to provide additional top-up Security for an amount reflecting the increase in the relevant Security Amount.
- (b) If the only increase to the Access Fee is due to the annual escalation in accordance with the Access Fee Determination, then SFV may only require an additional top-up Security under paragraph (a) once every 4 years.

***[Note: if the Access Fee increases in accordance with the Access Fee Determination, then the relevant Security Amounts also increase to the extent relevant. Access Right Holder will be required to provide additional bonding for such increased amount. If the increase in Access Fee is only due to annual escalation, SFV***

***will only require that Access Right Holder provide additional bonding once every 4 years.]***

- (c) If SFV requires Access Right Holder to provide additional top-up Security under paragraph (a), then within 20 Business Days after SFV's request, Access Right Holder must provide to SFV an additional Security for the required amount.

***[Note: SFV is open to engaging with feedback on the practicalities of the timeframes contemplated in this document, e.g. is a 20 Business Day period to provide Security practically workable for the Proponent?]***

- (d) If Access Right Holder is required to provide:
- (i) an Access Fee Security ("**incoming Security**") to SFV on or before the Return Date of another Access Fee Security ("**outgoing Security**"), then:
    - (A) at least 20 Business Days before the Provision Date for the incoming Security, Access Right Holder may notify SFV that it will provide an additional Security as a top up in accordance with paragraph (d)(i)(B); and
    - (B) Access Right Holder must provide the additional Security on or before the Provision Date for the incoming Security,such that:
    - (C) the aggregate face value of all Securities provided by Access Right Holder, and held by SFV, under this document is not less than the total Security Amounts for all Access Fee Securities required to be provided by Access Right Holder, and held by SFV, at that time; and
    - (D) SFV will not be required to return the outgoing Security on the applicable Return Date; or
  - (ii) multiple Access Fee Securities to SFV at a time, then, on or before each relevant Provision Date, it may provide SFV with a replacement Security with a face value not less than the total Security Amounts for all Access Fee Securities required to be provided by Access Right Holder, and held by SFV, at that time.
- (e) If SFV draws on the Operations Security in accordance with clause 3.5(a)(i) ("Recourse to Security"), then Access Right Holder must, within 10 Business Days of such drawing, provide to SFV either:
- (i) an additional Operations Security as a top up, such that the aggregate face value of all Operations Securities provided by Access Right Holder, and held by SFV, under this document is not less than the applicable Security Amount; or
  - (ii) a replacement Operations Security with a face value not less than the applicable Security Amount.

### **3.3 Step down of Operations Security**

- (a) If, after the Signing Date, the Access Fee is decreased in accordance with the Access Fee Determination and the applicable Security Amount

for the Operations Security reduces as a result, then Access Right Holder may request SFV that it will provide a replacement Operations Security for the reduced Security Amount.

**[Note: the Operations Security, which secures 2 years of the Access Fee, is the only Security that can step down. There will be no step down in other Securities even where the Access Fee decreases.]**

- (b) Within 20 Business Days after receiving Access Right Holder's notice under paragraph (a), SFV must confirm the period of time in which Access Right Holder may provide the replacement Operations Security. Such period of time may commence up to 2 years after Access Right Holder's notice under paragraph (a).

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

- (c) Access Right Holder must provide to SFV the replacement Operations Security within the period of time specified by SFV under paragraph (b).

### 3.4 Replacement of Security

Access Right Holder must provide a replacement Security to SFV:

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

### 3.5 Recourse to Security

- (a) SFV may only draw on an Access Fee Security if Access Right Holder has failed to:
  - (i) pay any Access Fee in full within 20 Business Days after when they fall due in accordance with clause 5.2 ("Payment");
  - (ii) pay the Termination Amount in accordance with clause 7.3 ("Termination payment"); or
  - (iii) provide a replacement Security to SFV where required under clause 3.4 ("Replacement of Security").
- (b) SFV may only draw on the Initial Security if Access Right Holder has failed to:
  - (i) pay any LTESA Termination Amount in accordance with clause 15.4 ("Termination payment") of any LTESA PDA;

**[Note: where a Proponent has an Access Right and an LTESA, it is not intended that the Proponent is required to**

***provide additional security under the LTESA PDA, separate to the Securities required to be provided under this document. In that case, where the LTESA Termination Amount is payable under the LTESA PDA, SFV will be able to draw on the Initial Security provided by Access Right Holder to SFV under this document.***

- (ii) pay the Termination Amount in accordance with clause 7.3 ("Termination payment"); or
  - (iii) provide a replacement Security to SFV where required under clause 3.4 ("Replacement of Security").
- (c) If SFV draws on a Security in accordance with subparagraph (a)(iii) or (b)(iii), then SFV will:
  - (i) hold that amount on trust for Access Right Holder and SFV; and
  - (ii) promptly pay the amounts held on trust to Access Right Holder (including any interest) if Access Right Holder provides a replacement Security in accordance with clause 3.4 ("Replacement of Security") (disregarding any timing requirements in clause 3.4).
- (d) If SFV is holding an amount on trust pursuant to paragraph (c) and is entitled to draw on a Security in accordance with subparagraph (a)(i) or (a)(ii), then SFV may retain those funds (including any interest) to which it is entitled for its own benefit.

### **3.6 Return of Security**

Subject to clause 3.2(d)(i) ("Top up of Security"), SFV must return each Security on the earlier of:

- (a) the applicable Return Date; and
- (b) within 10 Business Days after receiving a replacement of that Security in accordance with clause 3.2 ("Top up of Security"), 3.3 ("Step down of Operations Security") or 3.4 ("Replacement of Security"),

to the extent not drawn in accordance with this document.

---

## **4 Access Fee**

- (a) The parties acknowledge that, at all times, the Access Fee payable by Access Right Holder under this document is determined by, and may be adjusted in accordance with, the Access Fee Determination.
- (b) Access Right Holder agrees to pay the Access Fee in accordance with this clause 4 and clause 5 ("Payment of Access Fee").
- (c) The Access Fee is payable from the date that is 60 Business Days after the Infrastructure Completion Date until the earlier of:
  - (i) the end of the Scheme Term; and
  - (ii) the date that this document is terminated in accordance with clause 7 ("Default and Termination"),

**("Payment Term").**

---

## 5 Payment of Access Fee

### 5.1 Billing

- (a) SFV must issue to Access Right Holder an invoice (which must be a Tax Invoice if GST is payable) ("**Invoice**") by the date that is:
- (i) in respect of the first Invoice, 10 Business Days after the Infrastructure Completion Date; and
  - (ii) in respect of subsequent Invoices, 20 Business Days before the start of the first Calendar Quarter in the next year during the Payment Term,

setting out:

- (iii) in respect of the first Invoice:
  - (A) the prorated Quarterly Access Fee payable for the Calendar Quarter in which the Payment Term commences; and
  - (B) the Quarterly Access Fees payable for the next three Calendar Quarters;
- (iv) in respect of subsequent Invoices, the Quarterly Access Fees payable for the next four Calendar Quarters;
- (v) the dates by which each of the Quarterly Access Fees must be paid by Access Right Holder;
- (vi) the amount of GST (if any) payable in relation to each Taxable Supply to which the Invoice relates; and
- (vii) the net amount of the above sums payable by Access Right Holder,

("Invoiced Sum").

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

then SFV may:

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



**[Note: SFV will provide an annual invoice setting out in advance the 4 Quarterly Access Fees payable for the next year and the date on which they are payable. Provided that there is no adjustment to the Access Fee during that period, Access Right Holder will be required to make the quarterly payments in accordance with the annual invoice. If there is an adjustment to the Access Fee in the course of that year which has been billed for in advance, then SFV may either issue a revised invoice or a separate one-off invoice, or include the adjustment amount into the next annual invoice.]**

## **5.2 Payment**

- (a) Access Right Holder must pay the Invoiced Sum on each date specified in the Invoice.
- (b) Unless otherwise agreed, all payments to be made under this document must be paid by depositing clear and available funds to the nominated bank account (which must be with an 'Authorised Deposit Taking Institution' registered with the Australian Prudential Regulatory Authority) of SFV.
- (c) SFV must nominate a bank account within 5 Business Days of the Signing Date and may change the nominated bank account on not less than 5 Business Days' notice.

## **5.3 Disputed Invoice**

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

## **5.4 Interest on late payments**

If an amount payable by Access Right Holder under this document (including an amount determined to be payable as the result of a Dispute) was not paid by the due date, then interest will accrue on the unpaid amount from day to day at the Default Interest Rate from (and including) the date the original payment was due to:

- (a) in the case of a Disputed Amount agreed or determined to be payable by Access Right Holder, the date of resolution of the Dispute (whether by agreement or determination by an Independent Expert) in respect of the Disputed Amount; or

- (b) otherwise, the date the unpaid amount is paid in full.

## **5.5 Acknowledgment by Access Right Holder**

Access Right Holder acknowledges and agrees that any Access Fee that Access Right Holder has paid to SFV under this document is not refundable or reimbursable by SFV in any circumstance (other than under clause 5.3(d) ("Disputed Invoice") or 7.5 ("Reimbursement of Termination Amount")), including but not limited to where:

- (a) the Access Rights Network (including the H2P Assets and the centralised system strength solution) do not, or cease to, operate as expected;
- (b) there is a change to the Project Characteristics;
- (c) Network Operator is in breach of the ESCA; and
- (d) the Project is unable to export electricity to the Access Rights Network for any reason.

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## **6 GST**

### **6.1 Definitions and interpretation**

For the purposes of this clause 6:

- (a) words and phrases which have a defined meaning in the GST Law have the same meaning when used in this clause 6, unless the contrary intention appears; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Law applies is to be treated as if it were a separate supply.

### **6.2 GST exclusive**

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

### **6.3 Payment of GST**

- (a) If GST is payable, or notionally payable, on a supply made in connection with this document, then the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply ("**GST Amount**").
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

## 6.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, then the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

## 6.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a Taxable Supply, then clause 6.3 ("Payment of GST") applies to the reduced payment.

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# 7 Default and Termination

## 7.1 Automatic termination

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

## 7.2 Termination by SFV

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

- (a) **(Condition Precedent)** in accordance with clause 2.2(b) ("Condition Precedent");
- (b) **(Security)** in accordance with clause 3.1(b) ("Provision of Security");
- (c) **(Financial Default)** a Financial Default occurs and Access Right Holder does not remedy that Financial Default within 10 Business Days after receiving notice from SFV of that default;
- (d) **(Non-Financial Default)** a Non-Financial Default occurs and:
  - (i) Access Right Holder does not commence remedying that Non-Financial Default within 20 Business Days after receiving notice from SFV of that default ("**Breach Notice**"); or
  - (ii) if Access Right Holder has commenced remedying that default within 20 Business Days after receiving the Breach Notice, Access Right Holder:
    - (A) does not pursue that remedy in a diligent manner; or
    - (B) does not remedy the relevant default within 40 Business Days after receiving the Breach Notice (or by any later date agreed by SFV acting reasonably); or
- (e) **(insolvency)** Access Right Holder is the subject of an Insolvency Event and Access Right Holder does not cure that Insolvency Event within 5 Business Days after receiving notice from SFV.

### **7.3 Termination payment**

- (a) If this document terminates under clause 7.1 (“Automatic termination”) or 7.2 (“Termination by SFV”) (other than under clause 7.2(a)), then:
  - (i) Access Right Holder must pay SFV the Termination Amount in accordance with clause 7.4 (“Invoice”); and
  - (ii) SFV must pay Access Right Holder any Reimbursement Amount in accordance with clause 7.5 (“Reimbursement of Termination Amount”).
- (b) Subject to paragraph (c), the parties acknowledge and agree that:
  - (i) SFV’s sole remedy arising out of or in connection with Access Right Holder’s failure to comply with its obligations under this document is SFV’s entitlement to the Termination Amount in accordance with paragraph (a); and
  - (ii) the Termination Amount is a genuine pre-estimate of SFV’s anticipated losses arising from the termination of this document.
- (c) If:
  - (i) the Termination Amount becomes payable by Access Right Holder under the terms of this document; and
  - (ii) that Termination Amount is found to be a penalty or Access Right Holder’s obligation to pay the Termination Amount pursuant to this clause 7.3 is found to be void or unenforceable for any reason (whether in whole or in part),

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

### **7.4 Invoice**

- (a) SFV must provide an invoice to Access Right Holder for the Termination Amount within 60 Business Days after the date of termination of this document.
- (b) Access Right Holder must pay the amount of any such Termination Amount within 30 Business Days after receipt of an invoice provided under paragraph (a).
- (c) If Access Right Holder does not pay the full amount of the Termination Amount within the period required under paragraph (b), then SFV may draw on and retain the full amount of the Securities.

### **7.5 Reimbursement of Termination Amount**

If SFV is required to pay to Access Right Holder a Reimbursement Amount in accordance with item 2 (“Reimbursement Amount”) of Schedule 2 (“Termination Amount and Reimbursement Amount”), then SFV must pay the Reimbursement Amount within 30 Business Days after the end of the Reimbursement Period.

***[Note: where Access Right Holder pays SFV the Termination Amount and SFV is subsequently able to recover some of its expected losses (e.g. there is a subsequent user of the HTP) during the Reimbursement Period, such that another person 'takes over' Access Right Holder's payment obligations under this document but for termination, then SFV will reimburse to Access Right Holder amounts 'overpaid' by Access Right Holder.]***

## **7.6 Preservation of rights**

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

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

## **7.7 Exclusion of rights**

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

## **7.8 Survival**

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

- (a) this clause 7, clauses 3 ("Security"), 5 ("Payment of Access Fee"), 9 ("Liability"), 12 ("Dispute Resolution") and 13 ("Confidentiality") and Schedule 2 ("Termination Amount and Reimbursement Amount");
- (b) any clause that is required to enable a party to exercise rights accrued prior to the expiry or termination of this document; and
- (c) any clause which by its nature is intended to survive the expiry or termination of this document.

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# **8 Assignment and Change in Control**

## **8.1 Assignment by Access Right Holder**

- (a) Access Right Holder must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this document unless it also assigns, novates or otherwise transfers its rights and obligations under, title to or interest in and its obligations under the Access PDA to the same person, in accordance with the Access PDA.

***[Note: there are no additional SFV consent rights to assignment or change of control affecting Access Right Holder under this document. It is intended that Access Right Holder seek and obtain Infrastructure Planner's consent under the Access PDA.]***

- (b) Notwithstanding anything else in this clause 8.1, the parties agree that Access Right Holder may grant a Security Interest in respect of its rights and obligations under this document in favour of a secured lender (or a trustee acting on its behalf) who is providing financial accommodation on secured terms to Access Right Holder (or to any of its Related Bodies Corporate) in connection with the Project.

- (c) The parties acknowledge and agree that the provisions of this clause 8.1 will apply to any assignment, novation or transfer of Access Right Holder's rights and obligations under, title to and interest in this document following the enforcement of a Security Interest granted by Access Right Holder in accordance with paragraph (b).

## **8.2 Assignment by SFV**

- (a) SFV must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this document other than in accordance with this clause 8.2.
- (b) Subject to paragraph (c), SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this document with Access Right Holder's prior written consent, such consent not to be unreasonably withheld or delayed.
- (c) SFV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this document without Access Right Holder's consent to:
  - (i) a Government Entity; or
  - (ii) any person who replaces SFV as the "scheme financial vehicle" under the EII Act, provided that such person is entitled under the EII Act to have recourse to amounts paid into the "electricity infrastructure fund" (as defined in the EII Act) by distribution network service providers in response to a "contribution order" under section 58 of the EII Act.

## **8.3 Release**

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

- (a) release the assigning party from its obligations under this document arising on and from the date of the assignment, novation or transfer to the extent that those obligations are assumed in writing by the assignee on terms reasonably acceptable to the non-assigning party; and
- (b) return any Security provided by the assigning party, provided the assignee first delivers a replacement credit support or security to the non-assigning party.

## **8.4 Change in Control**

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

## **8.5 Tripartite deed**

On request from Access Right Holder, SFV agrees to enter into a tripartite deed with financiers of Access Right Holder in the form attached in Annexure B ("Form of Tripartite").

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## 9 Liability

### 9.1 Excluded Loss

Subject to clauses 9.2 ("Limitation of liability") and 9.3 ("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 document for:

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

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

### 9.2 Limitation of liability

To the extent permissible by Law and subject to clause 9.3 ("No exclusion"):

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

***[Note: these liability caps are intended to be consistent across the suite of LTESA and Access Right documents.]***

### 9.3 No exclusion

Clauses 9.1 ("Excluded Loss") and 9.2 ("Limitation of liability") do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this document, including the Access Fee, any Termination Amount and any Reimbursement Amount;
- (b) to pay under any indemnity given under this document, except for the indemnity under clause 9.4(b) ("Indemnity by Access Right Holder"); 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.

## 9.4 Indemnity by Access Right Holder

- (a) Access Right Holder indemnifies SFV against, and agrees to reimburse and compensate it for, any liability or Loss:
  - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or 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 SFV against, and agrees to reimburse and compensate it for, any liability or Loss arising from, and any costs incurred in connection with, any Claim by a third party against SFV in relation to:
  - (i) the Project; or
  - (ii) any act or omission of Access Right Holder or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents.
- (c) The amounts payable under this clause 9.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by SFV's officers, employees, subcontractors or agents under this document.
- (d) The amounts referred to in this clause 9.4 are not payable to the extent that SFV's liability or Loss:
  - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or breach, or negligence of SFV, its officers, employees, subcontractors or agents; or
  - (ii) arises in respect of an electricity hedging arrangement entered into by SFV and a third party.

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## 10 Representations and warranties

### 10.1 Representations and warranties

Each party represents and warrants that:

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



- (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
- (iii) the constitutional documents of that party; or
- (iv) any Security Interest by which it is bound;
- (e) **(binding nature)** this document constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (f) **(no insolvency)** it is not subject to an Insolvency Event.

## 10.2 Anti-bribery and anti-corruption

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

## 10.3 No reliance

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

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# 11 [Trustee provisions]

## 11.1 Trustee representations and warranties

Access Right Holder represents and warrants to SFV that:

- (a) **(existence)** the Trust has been duly established and constituted;
- (b) **(sole trustee)** it is the only trustee of the Trust;
- (c) **(appointment and no removal)** it has been validly appointed as trustee of the Trust and no action has been taken or proposed to remove it as trustee of the Trust;
- (d) **(power)** it has power under the terms of the Trust to enter into this document and comply with its obligations under it;
- (e) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this document, perform obligations under it and allow it to be enforced (including any authorisation required under the Trust Deed and its constitution (if any));
- (f) **(indemnity)** it has a right to be fully indemnified out of the Trust Property in respect of obligations incurred by it under this document and there are no facts, matters or circumstances that would disentitle Access Right Holder from being so indemnified;
- (g) **(no default)** it is not, and never has been, in default under the Trust Deed;
- (h) **(no termination)** no action has been taken or proposed to terminate the Trust;

- (i) **(officers' compliance)** it and its directors and other officers have complied with their obligations in connection with the Trust;
- (j) **(exercise of powers)** it has not exercised its powers under the Trust Deed to release, abandon or restrict any power conferred on it by the Trust Deed; and
- (k) **(benefit)** entry into the documents to which it is a party is a valid exercise of its powers under the Trust Deed for the benefit of the Trust's beneficiaries.

## 11.2 Trustee undertakings

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

## 11.3 Restrictions on trustee

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

- (a) **(retirement, removal, replacement)** effects or facilitates the retirement, removal or replacement of Access Right Holder as trustee of the Trust;
- (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 document;
- (c) **(restrict or impair compliance)** could restrict or impair the ability of Access Right Holder to comply with its obligations under this document;
- (d) **(termination of trust)** effects or facilitates the termination of the Trust;
- (e) **(variation of Trust Deed)** effects or facilitates the variation of the Trust Deed; or
- (f) **(resettlement of Trust Property)** effects or facilitates the resettlement of the Trust Property.

## 11.4 Trustee limitation of liability

- (a) This clause 11.4 applies to Access Right Holder as trustee of the Trust to the extent that Access Right Holder is acting in that capacity.
- (b) Subject to paragraphs (c), (d) and (e), Access Right Holder's liability to any person in connection with this document (or any transaction in connection with it) is limited to the extent to which the liability is or can be satisfied out of the Trust Property by Access Right Holder exercising its right of indemnity out of the Trust Property.
- (c) Subject to clauses 11.4(c)(i) and 11.4(c)(ii), SFV may not seek to recover any amounts owing to it under this document by bringing proceedings against Access Right Holder in its personal capacity. However, SFV may:
  - (i) do anything necessary to enforce its rights in connection with the Trust Property; and
  - (ii) take proceedings to obtain either or both:

- (A) an injunction or other order to restrain any breach of this document by Access Right Holder; and
  - (B) declaratory relief or other similar judgment or order as to the obligations of Access Right Holder under this document.
- (d) The limitations and restrictions under paragraphs (b) and (c) do not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of Access Right Holder's indemnification out of the Trust Property either as a result of Access Right Holder's fraud, negligence or wilful default, or by operation of Law.
  - (e) The limitation of Access Right Holder's liability under paragraph (b) is to be disregarded for the purposes of determining whether Access Right Holder has failed to comply with or perform any obligation under this document because of a failure by Access Right Holder to pay an amount payable by it under this document.]

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

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## **12 Dispute Resolution**

### **12.1 Dispute mechanism**

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

### **12.2 No proceedings**

Subject to clause 12.9 ("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 12.

### **12.3 Disputes**

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

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

### **12.4 Procedure to resolve Disputes**

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) The procedure that is to be followed to resolve a Dispute is as follows:
  - (i) first, negotiation of the Dispute under clause 12.5 ("**Negotiation**");

- (ii) second, referral of the Dispute for determination by an Independent Expert under clause 12.6 ("Independent Expert") (if applicable); and
- (iii) third, determination of the Dispute in a court of competent jurisdiction.

## 12.5 Negotiation

- (a) Within 10 Business Days after the service of a Dispute Notice, a senior representative of each party must meet, negotiate and seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved within 20 Business Days after the negotiations between senior representatives commencing pursuant to paragraph (a), then either party may by written notice:
  - (i) where the Dispute relates to the determination of the Security Amount, Termination Amount or Reimbursement Amount, refer the Dispute for determination by an Independent Expert; and
  - (ii) where the Dispute is not related to the matters set out in subparagraph (i), commence proceedings in a court of competent jurisdiction.

## 12.6 Independent Expert

- (a) If this document provides that a Dispute is to be referred for determination by an independent expert, then the parties must appoint a person to which the Dispute will be referred for determination ("**Independent Expert**") by mutual agreement within 10 Business Days after a notice referring a Dispute to an Independent Expert being given (or such longer period the parties agree).
- (b) Failing agreement within the period specified in paragraph (a), either party may request the CEO of the Resolution Institute (or their independent nominee) to appoint an Independent Expert.
- (c) If an Independent Expert is not appointed within 20 Business Days after the date of the request being made under paragraph (b), then either party may commence proceedings in a court of competent jurisdiction in relation to the Dispute.
- (d) The Independent Expert appointed must have reasonable qualifications, and commercial and practical experience, in the area of the Dispute (including in the context of the NEM) and no interest or duty which conflicts or may conflict with their function as an Independent Expert.
- (e) The Independent Expert will act as an expert and not as an arbitrator.
- (f) The parties must comply with all reasonable requests by an Independent Expert for information relating to the Dispute.
- (g) The parties must ensure that the Independent Expert's terms of appointment include the following requirements:
  - (i) the Independent Expert must consult with the parties concerning the matters under Dispute;
  - (ii) the Independent Expert must make a draft report available to the parties within 30 Business Days after their appointment;

- (iii) the Independent Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;
  - (iv) the Independent Expert must keep information provided by or on behalf of the parties to the Independent Expert confidential;
  - (v) the Independent Expert may investigate the matters under Dispute and make inquiries in relation to them, and take the advice of any other person the Independent Expert deems appropriate; and
  - (vi) the Independent Expert will use their best endeavours to notify the parties of the Independent Expert's determination within 60 Business Days after the reference to the Independent Expert.
- (h) In the absence of fraud or manifest error, the parties agree that any decision or award made by an Independent Expert will be final and binding.
  - (i) Each party will bear its own costs in 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.

## **12.7 Other Relief**

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

## **12.8 Continued performance following a Dispute**

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

## **12.9 Interim relief**

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

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# **13 Confidentiality**

## **13.1 Disclosure of information**

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

- (a) information that is publicly available (other than through a breach of this clause 13);
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this document;
- (c) to 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 document,
 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 document;
- (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 SFV, to:
  - (i) Consumer Trustee;
  - (ii) Financial Trustee;
  - (iii) AEMO;
  - (iv) Infrastructure Planner;
  - (v) Network Operator;
  - (vi) any government department, agency, authority, instrumentality, Minister or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and
  - (vii) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (vi),
 provided that SFV uses reasonable endeavours to ensure that any such person does not disclose such information to a person to whom disclosure is not otherwise permitted under this document.

### **13.2 Publicity**

- (a) Unless required by Law, Access Right Holder must not make any public announcements relating to the subject matter of this document without SFV's prior written consent.
- (b) SFV and Consumer Trustee may make public announcements relating to the subject matter of this document without Access Right Holder's prior written consent, provided that SFV must (or must procure that Consumer Trustee, as applicable):

- (i) consult with Access Right Holder before making a public announcement that contains commercially sensitive information set out in this document; and
- (ii) reasonably consider any request from Access Right Holder to not include that commercially sensitive information, or to only include that commercially sensitive information on an aggregated basis, in the relevant public announcement.

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## **14 Notices**

### **14.1 Form**

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

### **14.2 Delivery**

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

### **14.3 When effective**

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

### **14.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); and
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or

- (ii) 4 hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message within that 4 hour period that the delivery failed,

whichever happens first.

#### **14.5 Receipt outside business hours**

Despite anything else in this clause 14, if communications are received or taken to be received under clause 14.4 (“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.

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### **15 General**

#### **15.1 Variation and waiver**

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

#### **15.2 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.

#### **15.3 Discretion in exercising rights**

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

#### **15.4 Partial exercising of rights**

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

#### **15.5 Conflict of interest**

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

#### **15.6 Remedies cumulative**

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



## **15.7 Indemnities and reimbursement obligations**

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

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

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

## **15.8 Supervening Law**

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

## **15.9 Counterparts**

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

## **15.10 Entire agreement**

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

## **15.11 No liability for loss**

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

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

## **15.13 Severability**

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

## **15.14 Governing Law and jurisdiction**

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

### **15.15 Electronic execution**

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

**EXECUTED** as a deed

# Access Payment Deed

## Schedule 1 Securities

**[Note: The general principle adopted is that H2P bonding is sized to cover any potential exposure to the SFV / consumers in the event that the Access Right Holder does not proceed with their project post Award and their H2P infrastructure does not proceed. EnergyCo is currently in the process of engaging with the First Ranked Network Operator on the specific construction cost exposure of each generator's H2P infrastructure to confirm (and optimise where possible) the quantum of the bonding required at the specified times as outlined below. EnergyCo will provide further guidance on any refinements to the bonding requirements as part of the Basis for Bid document to be released in Early October ahead of the commencement of the Q4 Tender.]**

Security	Security Amount	Provision Date	Return Date
<b>Initial Security</b>	<p>\$20,000 per MW multiplied by the Maximum Capacity, up to a maximum amount of \$4,000,000</p> <p>As at the Signing Date, this amount is <b>[insert]</b></p>	Within 20 Business Days after signing the Access PDA	<p>Earlier of:</p> <p>(a) within 10 Business Days after Commercial Operations;</p> <p>(b) the date Access Right Holder has paid the full LTESA Termination Amount to SFV; and</p> <p>(c) the date Access Right Holder has paid the full Termination Amount to SFV</p>
<b>Centralised System Strength Security</b>	<p>An amount equivalent to [3 years] of the CSS Fee</p> <p>As at the Signing Date, this amount is <b>[insert]</b></p>	<p><b>[insert]</b></p> <p><b>[Note: this is intended to be the date that is 22 months prior to the "First Commissioning Target Date" (as defined in the Access PDA).]</b></p>	<p>Earlier of:</p> <p>(a) within 10 Business Days after First Commissioning; and</p> <p>(b) the date Access Right Holder has paid the full Termination Amount to SFV</p>
<b>H2P Cancellation Security</b>	<p>An amount equivalent to [50%] of the total H2P Fee over the Payment Term</p> <p>As at the Signing Date, this amount is <b>[insert]</b></p>	<p>On or before [30 September 2024]</p> <p><b>[Note: the Provision Date is intended to align to the date of the Network Operator's financial close]</b></p>	<p>Earlier of:</p> <p>(a) within 10 Business Days after [30 June 2025]; and</p> <p>(b) the date Access Right Holder has paid the full Termination Amount to SFV</p>

Security	Security Amount	Provision Date	Return Date
		<i>under the CWO REZ project deed.</i>	
<b>H2P Delivery Security</b>	<p>An amount equivalent to [100%] of the total H2P Fee over the Payment Term</p> <p>As at the Signing Date, this amount is [insert]</p>	On or before the Return Date of the H2P Cancellation Security	<p>Earlier of:</p> <p>(a) within 10 Business Days after First Commissioning; and</p> <p>(b) the date Access Right Holder has paid the full Termination Amount to SFV</p>
<b>H2P Energisation Security</b>	<p>An amount equivalent to [50%] of the total H2P Fee over the Payment Term</p> <p>As at the Signing Date, this amount is [insert]</p>	On or before the Return Date of the H2P Delivery Security	<p>Earlier of:</p> <p>(a) within 10 Business Days after Commercial Operations; and</p> <p>(b) the date Access Right Holder has paid the full Termination Amount to SFV</p>
<b>Operations Security</b>	<p>An amount equivalent to [2 years] of the Access Fee</p> <p>As at the Signing Date, this amount is [insert]</p>	On or before the Return Date of the H2P Energisation Security	<p>Earlier of:</p> <p>(a) within 10 Business Days after full discharge of all of Access Right Holder's obligations under this document; and</p> <p>(b) the date Access Right Holder has paid the full Termination Amount to SFV</p>

# Access Payment Deed

## Schedule 2 Termination Amount and Reimbursement Amount

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### 1 Termination Amount

#### 1.1 Termination prior to Commercial Operations

If this document terminates under clause 7.1 ("Automatic termination") or 7.2 ("Termination by SFV") before Access Right Holder achieves Commercial Operations, then the "**Termination Amount**" is the total value of Securities held by SFV at the time of termination (or would be held by SFV had Access Right Holder complied with its obligations to provide Security under this document) plus any accrued amounts owing by Access Right Holder to SFV at the time of termination.

#### 1.2 Termination on or after Commercial Operations

- (a) If this document terminates under clause 7.1 ("Automatic termination") or 7.2 ("Termination by SFV") on or after Access Right Holder achieves Commercial Operations, then the "**Termination Amount**" is calculated as follows:

$$\text{Termination Amount} = \sum_{t=0}^n \frac{\text{Fees}_t}{(1+i)^t} + \text{Accrued Amounts}$$

where:

- |                 |   |   |
|-----------------|---|---|
| Fees            | = | for year <sub>t</sub> , subject to paragraph (b), the Access Fee (including annual escalation); |
| i               | = | [7%];   |
| n               | = | total calendar years (or part calendar years) in the Remaining Term;                            |
| t               | = | each calendar year (or part calendar year) in the Remaining Term; and                           |
| Accrued Amounts | = | any accrued amounts owing by Access Right Holder to SFV at the time of termination.             |

- (b) In calculating the Fees for a year for the purposes of paragraph (a):
- (i) any portion of the [Base Fees] which are [C&E Fees] are deemed to be 0 after the date of termination; and
  - (ii) for each calendar year (or part calendar year) in the Remaining Term after the expiry of the ESCA, the CSS Fees and Base Fees are each deemed to be 0.
- (c) In this Schedule 2, "**Remaining Term**" means the period (inclusive):
- (i) from the date immediately after the date of termination of this document; and

- (ii) until the end of the Scheme Term.

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## 2 Reimbursement Amount

### 2.1 Application of this item

This item 2 of this Schedule 2 ("Termination Amount and Reimbursement Amount") applies if this document terminates on or after Access Right Holder achieves Commercial Operations and has paid the Termination Amount calculated in accordance with item 1.2 ("Termination on or after Commercial Operations") of this Schedule 2.

### 2.2 Reimbursement Event

A "**Reimbursement Event**" occurs if, within 2 years after the date of termination ("**Reimbursement Period**"):

- (a) (**H2P Assets**) a person other than Access Right Holder ("**Incoming ARH**"):
    - (i) is granted an Access Right after the date of termination;
    - (ii) enters into or varies a connection agreement for that Access Right with the Network Operator involving a connection to the Access Rights Network utilising the H2P Assets;
    - (iii) enters into or has an access payment deed with SFV, and satisfies all conditions precedent to that access payment deed; and
    - (iv) pays or will pay access fees to SFV in respect of those H2P Assets under that access payment deed in respect of that Access Right; or
  - (b) (**centralised system strength or base fee**) an Incoming ARH:
    - (i) holds an Access Right at the date of termination and increases the "maximum capacity" (as defined in the Access Scheme Declaration) for that Access Right subsequent to the date of termination ("**Additional MW**"); or
    - (ii) is granted an Access Right subsequent to the date of termination ("**New MW**"),and in either case the Incoming ARH:
    - (iii) enters into or has an access payment deed with SFV, and satisfies all conditions precedent to that access payment deed; and
    - (iv) pays or will pay access fees to SFV in respect of the Additional MW or New MW (as relevant) under that access payment deed,
- (each a "**Reimbursement Event**").

## 2.3 Reimbursement Amount calculation

- (a) If either or both Reimbursement Events occur during the Reimbursement Period, then the “**Reimbursement Amount**” is calculated as follows:

$$\text{Reimbursement Amount} = \text{H2P RA} + \text{MW RA} - \text{AC}$$

where:

- H2P RA = the amount calculated in accordance with paragraph (b);
- MW RA = the amount calculated in accordance with paragraph (c); and
- AC = administrative costs reasonably incurred by SFV in connection with a Reimbursement Event (including negotiating and entering into any access payment deed with an Incoming ARH),

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

**[Note: either or both Reimbursement Events may occur during the Reimbursement Period, as provided for in the calculations below. In any event, the Reimbursement Amount will not exceed the Termination Amount paid by Access Right Holder.]**

- (b) The “**H2P RA**” is calculated as follows:
- (i) if the Reimbursement Event described in item 2.2(a) of this Schedule 2 (“Termination Amount and Reimbursement Amount”) has occurred, then the lesser of:
- (A) the H2P Fee paid by Access Right Holder as part of the Termination Amount; and
- (B) the amount (“**PV H2P**”) calculated as follows:

$$PV\ H2P = \sum_{t=0}^n \frac{H2P\ Fees_t}{(1+i)^t}$$

where:

- H2P Fees = for year<sub>t</sub>, the “[H2P fee]” component of access fees payable by Incoming ARH (including annual escalation);
- i = [7%];
- n = total calendar years (or part calendar years) in the Remaining Term; and
- t = each calendar year (or part calendar year) in the Remaining Term; or

- (ii) if the Reimbursement Event described in item 2.2(a) of this Schedule 2 has not occurred, then 0.

(c) The “**MW RA**” is calculated as follows:

(i) if the Reimbursement Event described in item 2.2(b) of this Schedule 2 (“Termination Amount and Reimbursement Amount”) has occurred, then the sum of:

(A) the lesser of:

- the CSS Fee paid by Access Right Holder as part of the Termination Amount; and
- the amount (“**PV CSS**”) calculated as follows:

$$PV\ CSS = \sum_{t=0}^n \frac{CSS\ Fees_t}{(1+i)^t}$$

where:

- CSS Fees = for year<sub>t</sub>, the “[CSS fee]” component of access fees payable by Incoming ARH (including annual escalation) in respect of the Additional MW or New MW (as relevant);
- i = [7%];
- n = total calendar years (or part calendar years) in the Remaining Term; and
- t = each calendar year (or part calendar year) in the Remaining Term; and

(B) the lesser of:

- the Base Fee paid by Access Right Holder as part of the Termination Amount; and
- the amount (“**PV BF**”) calculated as follows:

$$PV\ BF = \sum_{t=0}^n \frac{BF\ Fees_t}{(1+i)^t}$$

where:

- BF Fees = for year<sub>t</sub>, the “[base fee]” component of access fees payable by Incoming ARH (including annual escalation but excluding [C&E Fees]) in respect of the Additional MW or New MW (as relevant);
- i = [7%];
- n = total calendar years (or part calendar years) in the Remaining Term; and
- t = each calendar year (or part calendar year) in the Remaining Term; or

(ii) if the Reimbursement Event described in item 2.2(b) of this Schedule 2 has not occurred, then 0.



# Access Payment Deed

## Signing page

DATED: \_\_\_\_\_

### SFV

EXECUTED by **SCHEME FINANCIAL  
VEHICLE PTY LTD** in accordance with  
section 127(1) of the *Corporations Act  
2001* (Cth) by authority of its directors:

.....  
Signature of director

.....  
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

## Access Payment Deed

## Annexure A Initial Access Fee Schedule

Date	H2P Fee (\$)	CSS Fee (\$)	C&E Fee (\$)	Base Fee (excl C&E) (\$)	Total Access Fee for a year (\$)
[insert]	[insert]	[insert]	[insert]	[insert]	[insert]
Total Amount	[insert]	[insert]	[insert]	[insert]	[insert]

# **Access Payment Deed**

## **Annexure B    Form of Tripartite**

[To be inserted]