

Project Development Agreement – South- West REZ

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)

[Note: This agreement assumes the Project does not have an LTESA. If Access Right Holder does hold an LTESA, amendments will be required.]

Project Development Agreement – South-West REZ

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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 tendered for an Access Right to the South-West Access Rights Network.
	B	To support the grant of an Access Right, Access Right Holder will enter into this agreement with EnergyCo.
	C	This agreement governs Access Right Holder's:
	(a)	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 SFV on or around the date of this agreement. The Access Payment Deed will, among other things, provide for the payment of access fees by Access Right Holder to SFV and the provision of security by Access Right Holder to SFV.

Reference Details

Item		Details															
Project Details																	
1.	Project	The '[insert project name]', to be connected to the Access Rights Network at the Connection Point and with the Project Characteristics.															
2.	Maximum Capacity	The maximum capacity (as defined in the Access Scheme Declaration) for the Connection Point that is recorded in the Access Rights Register at the relevant date.															
3.	Project Characteristics	The project characteristics (as defined in the Access Scheme Declaration) for the Project recorded in the Access Rights Register from time to time. The Project Characteristics for the Project as at the date of this agreement are set out in Schedule 3 ("Project Characteristics").															
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>Target date for Access Right Holder achieving Financial Close</td><td>[insert (bid variable)] (FC Target Date)</td></tr> <tr> <td>(b)</td><td>Sunset date for Access Right Holder achieving Financial Close</td><td>18 months after the initial FC Target Date (FC Sunset Date)</td></tr> <tr> <td>(c)</td><td>Target date for Access Right Holder achieving First Commissioning</td><td>[insert (bid variable)] (First Commissioning Target Date)</td></tr> <tr> <td>(d)</td><td>Sunset date for Access Right Holder achieving First Commissioning</td><td>18 months after the initial First Commissioning Target Date (First Commissioning Sunset Date)</td></tr> </tbody> </table> [Drafting Note: The initial Milestone Dates at (a) and (c) are bid variables.]		Milestone	Milestone Date	(a)	Target date for Access Right Holder achieving Financial Close	[insert (bid variable)] (FC Target Date)	(b)	Sunset date for Access Right Holder achieving Financial Close	18 months after the initial FC Target Date (FC Sunset Date)	(c)	Target date for Access Right Holder achieving First Commissioning	[insert (bid variable)] (First Commissioning Target Date)	(d)	Sunset date for Access Right Holder achieving First Commissioning	18 months after the initial First Commissioning Target Date (First Commissioning Sunset Date)
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(c)	Target date for Access Right Holder achieving First Commissioning	[insert (bid variable)] (First Commissioning Target Date)															
(d)	Sunset date for Access Right Holder achieving First Commissioning	18 months after the initial First Commissioning Target Date (First Commissioning Sunset Date)															

Item		Details
Network information		
5.	Expected Network Readiness Date	[to be inserted]
Other terms		
6.	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 S&P Global (previously known as Standard & Poor's) or A3 by Moody's or, if both of those agencies cease to operate or give ratings of the kind referred to above, an equivalent rating from another reputable ratings agency acceptable to EnergyCo (acting reasonably).

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

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

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

Access Payment Deed means the access payment deed entered into between Access Right Holder and SFV in relation to 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 relation to the South-West REZ made by the Minister under section 24 of the EII Act dated 4 April 2024 and gazetted on 12 April 2024 as amended from time to time.

AEMO means 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.

Alternative Cash Payment means a cash payment provided in accordance with clause 14.5.

Approved Cure Plan has the meaning given in clause 18.1(f).

ARH Variation Event means a “Variation Event” as defined in the Access Fee Determination and described as “Access Right Holder initiated”.

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 each of 1 January, 1 April, 1 July and 1 October.

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 applies in New South Wales in relation to connecting a project to the Access Rights Network; or
- (c) 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:

- (d) change in the NER as it will apply in New South Wales which is consistent with the scope of proposed amendments notified to Access Right Holder prior to the Signing Date;
- (e) change in the NER made, but not yet commenced at the Signing Date; and

- (f) change to the NER which as at the Signing Date was disclosed on the Australian Energy Market Commission website as a final determination for a proposed rule change.

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) Transgrid 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.

Commonwealth means the Commonwealth of Australia.

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

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

Connection Point means the "connection point" (as defined in the NER) on the Access Rights Network for the Project, as specified in Schedule 3 ("Project Characteristics").

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 25 ("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).

Cumulative Impacts means the cumulative impacts the Project and other generation and storage infrastructure projects and the Access Rights Network may have in the South-West REZ, including those impacts identified in clause 15.1(a).

Cumulative Impacts Obligation has the meaning given in clause 15.1(b).

DCCEEW means the New South Wales Department of Climate Change, Energy, the Environment and Water.

Delay Event has the meaning given in clause 8.1(a).

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

Dispute has the meaning given in clause 23.1.

Dispute Notice has the meaning given in clause 23.3.

Draft Cure Plan has the meaning given in clause 18.1(a).

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

Electranet means ElectraNet Pty Ltd (ABN 41 094 482 416) trading as ElectraNet.

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).

Expected Network Readiness Date means the expected date for Network Readiness and is the date specified in item 5 ("Expected Network Readiness Date") of the Reference Details, as amended from time to time.

Extension Notice has the meaning given in clause 16.7.

FC Sunset Date means the date specified in item 4(b) of the Reference Details, as extended in accordance with clauses 8.2, 8.5 or 18.1(f)(iii).

FC Target Date means the date specified in item 4(a) of the Reference Details, as extended in accordance with clauses 8.2, 8.5 or 18.1(f)(iii).

Financial Close occurs when Access Right Holder:

- (a) has secured the equity and/or external debt financing required to fund the construction and commissioning of the Project, all conditions precedent to the first equity contribution being made and/or the first draw down under that financing have been satisfied or waived (as applicable) and that first draw down is made available to Access Right Holder; and
- (b) 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 when the Energisation Conditions for the Project are satisfied or waived by EnergyCo in accordance with clause 7 ("Energisation Conditions").

First Commissioning Date means the date when First Commissioning is achieved.

First Commissioning Sunset Date means the date specified in item 4(d) of the Reference Details, as extended in accordance with clauses 8.2 or 18.1(f)(iii).

First Commissioning Target Date means the date specified in item 4(c) of the Reference Details, as extended in accordance with clauses 8.2 or 18.1(f)(iii).

Good Industry Practice means the practices, procedures, methods, specifications and standards which are:

- (a) 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) 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)).

Independent Expert has the meaning given in clause 23.6.

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 and all taxes or charges, including income, capital gains, stamp, payroll, land, council or transaction duty, tax or charge, or any taxes or charges analogous to such taxes or charges.

Insolvency Event means, in relation to a person:

- (a) it is (or states that it is) 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 party 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 relation to any of the things described in paragraphs (a), (b) or (c);
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other 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 person under the law of any jurisdiction.

Insurance Policies has the meaning given in clause 11 (“Insurance”).

IP Variation Event means a “Variation Event”, as defined in the Access Fee Determination and described as “Infrastructure Planner initiated”.

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).

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, as extended in accordance with clauses 8.2, 8.5 or 18.1(f)(iii).

Model Access Right Holder Commitment means the commitments set out in Schedule 4 (“Model Access Right Holder Commitment”).

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

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

National Heavy Vehicle Regulator means the statutory authority and regulator for heavy vehicles which administers the *Heavy Vehicle National Law 2013* (NSW).

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 Readiness means inter-network testing for Project EnergyConnect is completed.

Network Readiness Date means the date that Network Readiness is achieved.

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 under clauses 18.1(a)(i)-(iii), a Financial Default or where Access Right Holder is the subject of an Insolvency Event).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Project has the meaning given in item 1 ("Project") of the Reference Details.

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

Project EnergyConnect means the energy interconnector project constructed by Transgrid and Electranet between the electricity transmission networks of South Australia and New South Wales.

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').

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 as amended under clause 14.3.

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

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

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.

Tender Date means the date on which Access Right Holder submitted its tender response for the Access Right to Consumer Trustee.

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

Term Expiry Date has the meaning given in clause 18.3(b).

Transfer has the meaning given in clause 19.1(b).

Transferee has the meaning given in clause 19.1(b)(i)(A).

Transgrid means NSW Electricity Networks Operations Pty Limited (ACN 609 169 959) as trustee for NSW Electricity Networks Operations Trust (ABN 70 250 995 390), trading as Transgrid.

Transgrid Activity has the meaning given in clause 4(a).

Transgrid Works means any connection works required to be carried out by Transgrid under the Connection Agreement.

[Trust means **insert]**.

Trust Deed means the trust deed establishing the Trust.

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

[Drafting Note: to be included if Access Right Holder is trustee of a trust. Note, name of the trust (if applicable) to be inserted in the definition of 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

Unless the contrary intention appears, in this agreement:

- (a) headings are for convenience only and do not affect interpretation;
- (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 NER 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 exercising its rights and 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 relation to or in connection with some or all of EnergyCo's rights or obligations under this agreement. Nothing in this clause 1.5 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:

- (a) this agreement is terminated in accordance with clause 18 ("Default and termination"); or
 - (b) the Access Right expires,
- (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 Transgrid activities

- (a) The parties acknowledge that Transgrid will undertake various activities required for the development of the Project, including:
 - (i) developing the Access Rights Network; and
 - (ii) developing the Transgrid Works,(each a **Transgrid Activity** and together, the **Transgrid Activities**).
- (b) Subject to clauses 5.1, 6.1 and 8 ("Delay Event"), EnergyCo will not have any obligations to Access Right Holder regarding the Transgrid Activities, or the manner or time in which they are undertaken.

5 Cooperation obligations

5.1 Access Right Holder obligations

Access Right Holder:

- (a) must provide all information reasonably requested by EnergyCo or Transgrid regarding the development, construction, operation and maintenance of the Project;
- (b) subject to paragraph (c), must reasonably cooperate with EnergyCo and Transgrid, other access right holder(s) for the Access Rights Network and relevant stakeholders, in connection with the development of the Access Rights Network, the Project and the Cumulative Impacts Obligation, including by:
 - (i) attending coordination meetings with relevant stakeholders at the request of EnergyCo or Transgrid;
 - (ii) providing information to relevant stakeholders, subject to any reasonable confidentiality or commercial-in-confidence requirements; and
 - (iii) developing stakeholder coordination plans; and
- (c) acknowledges its obligations under this clause 5.1 are subject to complying with its obligations under the *Competition and Consumer Act 2010* (Cth). Access Right Holder must notify EnergyCo if compliance with any of its obligations under this clause 5.1 conflict with its obligations under the *Competition and Consumer Act 2010* (Cth).

5.2 EnergyCo obligations

EnergyCo must:

- (a) reasonably cooperate with Access Right Holder in connection with development of the Project; and
- (b) register the Access Right for the Project on the Access Rights Register as soon as reasonably practicable after Access Right Holder has entered into the Access Payment Deed with SFV.

6 Notifications

6.1 Network Readiness

- (a) As soon as practical after the date it occurs, EnergyCo must notify Access Right Holder of:
 - (i) any amendment to the Expected Network Readiness Date;
 - (ii) any forecast or actual delay in Transgrid achieving Network Readiness by the Expected Network Readiness Date (as amended, if applicable); and
 - (iii) Transgrid achieving Network Readiness.

6.2 Satisfaction of Milestones and Energisation Conditions

- (a) Access Right Holder must notify EnergyCo within 5 Business Days after satisfying a Milestone or Energisation Condition.
- (b) Access Right Holder must accompany a notice under paragraph (a) with a copy of:
 - (i) any 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; and
 - (ii) certification by a director or senior representative of Access Right Holder acceptable to EnergyCo (acting reasonably) that the information contained in the relevant notice from Access Right Holder to EnergyCo under paragraph (a) is true and correct.

6.3 Commercial Operations

- (a) Access Right Holder must notify EnergyCo within 10 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 or senior representative of Access Right Holder acceptable to EnergyCo (acting reasonably) that the information contained in the relevant notice from Access Right Holder to EnergyCo under paragraph (a) is true and correct.

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 sufficiently completed to enable the Project to be connected to and energised from the Connection Point, and for commissioning of the Project to commence, safely and in compliance with applicable Law and Good Industry Practice;
- (b) Access Right Holder (or its intermediary) has been registered as a “Generator” or “Integrated Resource Provider” (each as defined in the NER) with AEMO in relation to 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 required prior to First Commissioning,

(each an **Energisation Condition**).

7.2 Satisfaction of Energisation Conditions

The Energisation Conditions are for the benefit of EnergyCo and may only be waived by EnergyCo in writing.

7.3 Achievement of First Commissioning

Access Right Holder will not achieve First Commissioning for the purposes of this agreement unless and until Access Right Holder has delivered to EnergyCo a certificate under clause 6.2(b)(ii).

8 Delay Event

8.1 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 Transgrid to satisfactorily perform any Transgrid Activity, including failure by Transgrid to achieve Network Readiness by the Expected Network Readiness Date;
 - (iv) delay in Transgrid performing any Transgrid 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) 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;
 - (ii) a failure by Access Right Holder to hold sufficient stock of spares, except to the extent it is itself caused by a Delay Event;
 - (iii) 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; and
 - (iv) strikes, industrial disputes or other industrial actions or disruption that only affect Access Right Holder.

8.2 Extension for Delay Event

- (a) If Access Right Holder is or 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 becoming aware of, or after it should reasonably have become aware of, the Delay Event) and submit a written claim to EnergyCo for an extension of time giving reasonable details of:
 - (A) the date on which the Delay Event commenced;
 - (B) the Delay Event, including its expected duration;
 - (C) the Milestone which is delayed or expected to be delayed by the Delay Event; and
 - (D) subject to paragraph (e), 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 8.4, use best endeavours to overcome and mitigate the impact of the Delay Event.

- (b) Within 15 Business Days of receiving Access Right Holder's notice under subparagraph (a)(i), EnergyCo may request any further information from Access Right Holder that EnergyCo reasonably requires to assess the impact of the Delay Event on Access Right Holder's achievement of the Milestone (as relevant).
- (c) Access Right Holder must, within 15 Business Days of receiving EnergyCo's request under paragraph (b), provide EnergyCo with the information requested.
- (d) Subject to paragraphs (e) and (f), EnergyCo must (acting reasonably) 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:
 - (i) 20 Business Days after receiving Access Right Holder's notice under subparagraph (a)(i); and
 - (ii) 20 Business Days after receiving any further information that EnergyCo has requested from Access Right Holder under paragraph (b).
- (e) Subject to clause 8.5 and paragraph (f), for the purposes of determining an extension to a relevant Milestone Date, if Access Right Holder is or will be prevented or delayed in achieving:
 - (i) Financial Close by the FC Target Date due to a Delay Event, then the FC Target Date and the FC Sunset Date will both be extended by one day for each day of delay;
 - (ii) Financial Close by the FC Sunset Date due to a Delay Event occurring after the FC Target Date, then the FC Sunset Date will 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 and the First Commissioning Sunset Date will be extended by one day for each day of delay; and
 - (iv) the Energisation Conditions by the First Commissioning Sunset Date due to a Delay Event occurring after the First Commissioning Target Date, then the First Commissioning Sunset Date will be extended by one day for each day of delay.
- (f) In relation to each claim for an extension of time under subparagraph (a)(i)(D), Access Right Holder's entitlement to an extension of time will be reduced to the extent that:
 - (i) Access Right Holder caused or contributed to the delay or Delay Event (including any failure by Access Right Holder to comply with this agreement);
 - (ii) the delay or Delay Event was within Access Right Holder's reasonable control; or
 - (iii) Access Right Holder failed to take reasonably practicable steps to preclude the cause of the delay or Delay Event or avoid or minimise the consequences of the delay or Delay Event.

8.3 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 under 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.

8.4 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.

8.5 Extension of FC Sunset Date

- (a) The FC Sunset Date may not be extended under this agreement:
 - (i) to a date that is more than 24 months from the FC Sunset Date as at the date of this agreement (as specified in item 4(b) of the Reference Details); and
 - (ii) if EnergyCo is not satisfied (acting reasonably) that Access Right Holder can achieve Financial Close by the FC Sunset Date (as extended).
- (b) Any extension to the FC Sunset Date under this agreement is subject to any relevant requirements or limitations on EnergyCo in the exercise of its functions related to access schemes under the EII Act.
- (c) For the avoidance of doubt, the FC Target Date may not be extended beyond the FC Sunset Date.
- (d) Access Right Holder acknowledges that EnergyCo may publish on its website any extension to the FC Sunset Date under this agreement and the reasons for the extension as required under the EII Act.
- (e) EnergyCo acknowledges that it must:
 - (i) consult with Access Right Holder to determine commercially sensitive information before publishing information under paragraph (d); and
 - (ii) not publish information under paragraph (d) that it determines contains commercially sensitive information.

9 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 is achieved:
 - (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 is achieved:
 - (A) any material occupational health and safety incidents in relation to the Project;
 - (B) formal written complaints of a material nature received or legal proceedings in relation to the Project;
 - (C) any material notices or fines issued by a Government Authority (including but not limited to, an environmental Government Authority) in relation to the Project; 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 relation to the Project.
- (b) A report provided under paragraph (a) must:
 - (i) be in the form set out at Annexure B (Form of Report) or as otherwise specified by EnergyCo from time to time;
 - (ii) identify any information within the report which Access Right Holder considers in its reasonable opinion is confidential or commercially sensitive; and
 - (iii) be certified by a director or senior representative of Access Right Holder acceptable to EnergyCo (acting reasonably) 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;

- (ii) within 5 Business Days of the receipt of any breach notices or formal written complaints of a material nature about the Project from any Government Authority or other person;
 - (iii) within 5 Business Days of Access Right Holder becoming aware of any breach of Access Right Holder's material obligations under this agreement; and
 - (iv) 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 9 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 24 ("Confidentiality"), Access Right Holder agrees that EnergyCo may share any report or other information provided by Access Right Holder under this clause 9 to Consumer Trustee, SFV, Transgrid and DCCEEW, subject to the redaction of any confidential or commercially sensitive information identified by Access Right Holder under subparagraph 9(b)(ii).

10 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 10 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 relation to site safety, occupational health and safety and other applicable site rules.

11 Insurance

- (a) On and from Financial Close, 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, including coverage for material and equipment in transit, which is to be maintained until Commercial Operations and may be held by:
 - (A) Access Right Holder; or
 - (B) an appropriate subcontractor (provided Access Right Holder is listed as a named insured for that policy);

- (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 11(b) 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

12 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.

13 Project undertakings

Access Right Holder must:

- (a) develop, construct, operate and maintain the Project in accordance with the Social Licence Commitments, the Model Access Right Holder Commitment, Good Industry Practice and all applicable Laws and authorisations;
- (b) ensure that the Project complies with the Project Characteristics in all material respects;
- (c) ensure that each Milestone is achieved by the relevant Milestone Date; and
- (d) report on the development, construction and operation of the Project in accordance with clauses 9, 14.2 and 15.3.

14 Social Licence Commitments

14.1 Performance

Subject to clause 14.5, during the Term, Access Right Holder must perform the Social Licence Commitments.

14.2 Reporting

- (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;
 - (ii) on and from Commercial Operations, within 20 Business Days after the end of each calendar year; and
 - (iii) at any other frequency reasonably requested by EnergyCo,a report demonstrating Access Right Holder's compliance with the Social Licence Commitments.
- (b) A report provided under paragraph (a) must:
 - (i) be in a reporting format specified by EnergyCo from time to time;
 - (ii) identify any information within the report which Access Right Holder considers in its reasonable opinion is confidential or commercially sensitive; and

- (iii) be certified by a director or senior representative of Access Right Holder acceptable to EnergyCo (acting reasonably) to be true and correct.

14.3 Alternative proposals

- (a) If a report provided under clause 14.2(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 20 Business Days after receiving Access Right Holder's proposal under paragraph (a), EnergyCo must:
 - (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 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 20 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 proposal submitted by Access Right Holder under paragraph (e).
- (g) For the avoidance of doubt, if Access Right Holder identifies in a report provided under clause 14.2(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.

14.4 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 a second audit 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 14.2 are materially inaccurate, then Access Right Holder will bear Access Right Holder's costs of the second audit.

14.5 Alternative Cash Payment

- (a) At EnergyCo's discretion, EnergyCo may agree to accept a cash payment from Access Right Holder under clause 18.1(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 14.3(b)(i) (**Alternative Cash Payment**).
- (b) If Access Right Holder pays EnergyCo an Alternative Cash Payment under paragraph (a) in relation to a Social Licence Commitment, then Access Right Holder is not required to perform the relevant Social Licence Commitment to the extent compensated by the Alternative Cash Payment.

15 Cumulative impacts of Project

15.1 Acknowledgement

- (a) Access Right Holder acknowledges the development, construction and operation of the Project at the same time as the development, construction and operation of other generation and storage infrastructure

projects and the Access Rights Network may have Cumulative Impacts within the South-West REZ, including in the following areas:

- (i) workforce accommodation;
 - (ii) environmental infrastructure, including waste, water, sewer and other public infrastructure;
 - (iii) transportation and logistics, including local roads, state roads and port infrastructure;
 - (iv) social services, including health care, education, justice and emergency services; and
 - (v) community development and engagement and economic participation.
- (b) Access Right Holder acknowledges and agrees that it must reasonably minimise the contribution of the Project to Cumulative Impacts, including by complying with its obligations under clauses 5.1 and 15.3(c) (**Cumulative Impacts Obligation**).

15.2 Model Access Right Holder Commitment

Access Right Holder must act in a manner consistent with the Model Access Right Holder Commitment in performing its obligations under this agreement.

15.3 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;
 - (ii) on and from Commercial Operations, within 20 Business Days after the end of each calendar year; and
 - (iii) at any other frequency reasonably requested by EnergyCo,
- a report in relation to the Cumulative Impacts Obligation and Model Access Right Holder Commitment during the relevant period (as applicable).
- (b) A report provided under paragraph (a) must:
- (i) be in the form set out at Annexure B (Form of Report) or as otherwise specified by EnergyCo from time to time;
 - (ii) identify any information within the report which Access Right Holder considers in its reasonable opinion is confidential or commercially sensitive; and
 - (iii) be certified by a director or senior representative of Access Right Holder acceptable to EnergyCo (acting reasonably) to be true and correct.
- (c) Access Right Holder must provide the following information to EnergyCo:
- (i) as soon as practicable (but in any event within no more than 10 Business Days) after submission to the relevant Government Authority, copies of any management plans and sub-plans

required to be submitted to a Government Authority in accordance with the Project planning approval(s);

- (ii) prior to the commencement of construction and otherwise as soon as practicable (but in any event within no more than 10 Business Days) following a request from EnergyCo, information about proposed transport routes and timeframes for the transport of oversized and over mass loads for the Project;
- (iii) within 10 Business Days of submission by Access Right Holder, a copy of any permit application for the Project submitted to the National Heavy Vehicle Regulator;
- (iv) within 10 Business Days of receipt, a copy of any approved permit for the Project from the National Heavy Vehicle Regulator; and
- (v) as soon as practicable (but in any event at least 1 Business Day) prior to release to the public, any public communications materials prepared for the purposes of engagement with local stakeholders in connection with the Project, including in relation to the Cumulative Impacts.

16 Access Scheme

16.1 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 the date that First Commissioning is achieved:
 - (A) the Project is not capable of exporting electrical energy through the Connection Point up to the Maximum Capacity, other than where such limitation is solely due to:
 - (aa) temporary AEMO hold point requirements for commissioning or any staging of the Project development by Access Right Holder; or
 - (ab) temporary conditions affecting the Access Rights Network that are not caused by the 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,

provided that any reduction in Maximum Capacity under this subparagraph (b)(ii) 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) at its 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 clauses 16.1(b)(ii) and 16.1(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 Access Right Holder, Consumer Trustee, SFV and Transgrid for the purposes of making a determination under clause 16.1(b)(iii).
- (d) Any change to the Maximum Capacity under clause 16.1(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.

16.2 Changes to Project Characteristics

- (a) Access Right Holder acknowledges that:
 - (i) the Access Right has been granted on the basis that the Project complies with the Project Characteristics in all material respects on and from First Commissioning; and
 - (ii) any material change to the Project Characteristics must be approved by EnergyCo at its discretion, in accordance with clause 12(6) of the Access Scheme Declaration.
- (b) 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.
- (c) 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.

16.3 Adjustments to Access Fees

The parties acknowledge that any changes to Maximum Capacity under clause 16.1 or changes to Project Characteristics under clause 16.2 may result in adjustments to the Access Fees in accordance with the Access Fee Determination.

16.4 Variations to Access Fees

- (a) Within 20 Business Days of an ARH Variation Event occurring, Access Right Holder must, and having regard to any relevant guidelines issued by Consumer Trustee, request that Consumer Trustee vary the Access Fees in accordance with the terms of the Access Fee Determination.
- (b) Within 20 Business Days of an IP Variation Event occurring, EnergyCo must, and having regard to any relevant guidelines issued by Consumer Trustee, request that Consumer Trustee vary the Access Fees in accordance with the terms of the Access Fee Determination.
- (c) If a party fails to notify Consumer Trustee of a variation event in accordance with paragraph (a) or (b), then the other party may notify Consumer Trustee of the occurrence of the variation event.
- (d) Each party must provide the other party with a copy of a request promptly after it has been made to Consumer Trustee.
- (e) A variation request under paragraph (a), (b) or (c) must include:
 - (i) details of the relevant ARH Variation Event or IP Variation Event, including documentation evidencing the relevant change;
 - (ii) the date the relevant ARH Variation Event or IP Variation Event occurred;
 - (iii) changes to the relevant Access Fee referred to for that variation event in the Access Fee Determination; and
 - (iv) changes to the relevant input variables to the Access Fee Calculator (as defined in the Access Fee Determination) as referred to for that variation event in the Access Fee Determination.
- (f) The parties must cooperate with Consumer Trustee in varying the Access Fees pursuant to a request, or on self-initiation by Consumer Trustee (whether pursuant to paragraph (c) or otherwise), including providing any further information or confirmations reasonably required by Consumer Trustee.
- (g) Each party must keep the other party updated on the progress of a request and notify the other when Consumer Trustee has processed the variation request under the Access Fee Determination, including, if applicable, providing the new Access Fee Schedule to the other party.

16.5 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).

16.6 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 16.1(b)(iii).

16.7 Extension of Access Scheme term

If EnergyCo proposes to extend the “term” (as defined in the Access Scheme Declaration), EnergyCo must provide written notice to Access Right Holder (an **Extension Notice**) prior to notifying Access Right Holder of the extended “term” in accordance with clause 13(4) of the Access Scheme Declaration.

17 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) subject to clause 8.5, consider and negotiate in good faith any specific amendment to this agreement requested by a party to preserve the operation of this agreement and the commercial positions of each party under this agreement as 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 to the extent permissible by Law.

Part 5 Other terms

18 Default and termination

18.1 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 or achieve First Commissioning by the First Commissioning Sunset Date;
 - (ii) **(failure to achieve a Milestone)** has failed to achieve a Milestone by the relevant Milestone Date;
 - (iii) **(failure to comply with the Social Licence Commitments)** has failed to comply with the Social Licence Commitments in a material respect (including complying with any alternative Social Licence Commitments or paying any Alternative Cash Payment agreed by EnergyCo); or
 - (iv) **(Non-Financial Default)** has committed a Non-Financial Default,
- 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):
 - (A) if Access Right Holder considers the failure is caused by any act or omission of Transgrid; and
 - (B) 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, acting reasonably.
- (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) and (f) but not paragraph (g), will apply to the amended Draft Cure Plan submitted by Access Right Holder under subparagraph (g)(ii).
- (i) The exercise of EnergyCo's rights and obligations under this clause 18.1 are subject to clause 8.5.

18.2 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.

18.3 Termination by Access Right Holder

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

- (i) 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; or
 - (ii) Access Right Holder terminates the Connection Agreement due to Transgrid default or insolvency event under the Connection Agreement.
- (b) If EnergyCo gives an Extension Notice to Access Right Holder, Access Right Holder may terminate this agreement with effect upon expiry of the “term” (as defined in the Access Scheme Declaration) current as at the date of the Extension Notice (**Term Expiry Date**) by notice in writing to EnergyCo within 40 Business Days after the date of the Extension Notice.

18.4 Termination by EnergyCo

- (a) EnergyCo must terminate this agreement with immediate effect by notice in writing to Access Right Holder if Access Right Holder has failed to achieve Financial Close by the FC Sunset Date.
- (b) EnergyCo may terminate this agreement with immediate effect by notice in writing to Access Right Holder:
 - (i) if:
 - (A) **(failure to achieve First Commissioning)** Access Right Holder has failed to achieve First Commissioning by the First Commissioning Sunset Date;
 - (B) **(failure to comply with the Social Licence Commitments)** Access Right Holder has failed to comply with the Social Licence Commitments in a material respect (including complying with any alternative Social Licence Commitments or paying any Alternative Cash Payment agreed by EnergyCo); or
 - (C) **(Non-Financial Default)** Access Right Holder has committed a Non-Financial Default,

and Access Right Holder fails to comply with and implement any relevant Approved Cure Plan (or otherwise diligently pursue the remediation of the default) which is the subject of the Approved Cure Plan, except in a minor respect;
 - (ii) **(Financial Default)** if 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;
 - (iii) **(termination or expiry of Connection Agreement)** if the Connection Agreement is terminated (other than under clause 18.3(a)(ii)) or expires after the date that First Commissioning is achieved and is not replaced; or
 - (iv) **(insolvency)** if 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.

18.5 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.

18.6 Exclusion of rights

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

18.7 Survival

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

- (a) this clause 18 ("Default and termination") and clauses 20 ("Liability"), [22.4,] 23 ("Dispute Resolution"), 24 ("Confidentiality") and 27 ("General"); **[Drafting Note: reference to clause 22.4 to be included if Access Right Holder is trustee of a trust.]**
- (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.

19 Assignment and Change in Control

19.1 Assignment by Access Right Holder

- (a) Access Right Holder must not assign, novate or otherwise transfer its rights or obligations under this agreement or the Project other than in accordance with this clause 19.1.
- (b) Access Right Holder may assign, novate or otherwise transfer its rights and obligations under 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 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 and the Connection Agreement;
 - (B) will also be transferred all of 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 in this clause 19.1, the parties agree that Access Right Holder may grant a Security Interest in relation to 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 19.1 will apply to any assignment, novation or transfer of Access Right Holder's rights and obligations under this agreement following the enforcement of a Security Interest granted by Access Right Holder in accordance with paragraph (c).

19.2 Assignment by EnergyCo

- (a) EnergyCo must not assign, novate or otherwise transfer its rights or obligations under this agreement other than in accordance with this clause 19.2.
- (b) Subject to paragraph (c), EnergyCo may assign, novate or otherwise transfer its rights and obligations under 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 this agreement without Access Right Holder's consent to any Government Entity.

19.3 Release

If a party assigns, novates or otherwise transfers its rights and obligations under this agreement in accordance with this clause 19, 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.

19.4 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 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.
- (c) On request from Access Right Holder, EnergyCo agrees to give reasons for withholding its consent to a Change in Control under this clause 19.4.

19.5 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 reasonable amendments agreed by the parties to the tripartite.

20 Liability

20.1 Excluded Loss

Subject to clause 20.3, and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this 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 directors, officers, employees, subcontractors or agents, and whether or not foreseeable at the Signing Date.

20.2 Limitation of liability

To the extent permissible by Law and subject to clause 20.3:

- (a) EnergyCo's liability to Access Right Holder under or in connection with this agreement is limited to:
 - (i) \$1,000,000 in relation to any single event; and
 - (ii) \$2,000,000 in aggregate in relation to all events occurring within any 12 months; and
- (b) subject to paragraph (c), Access Right Holder's liability to EnergyCo under or in connection with this agreement is limited to:
 - (i) \$1,000,000 in relation to any single event; and
 - (ii) \$2,000,000 in aggregate in relation to all events occurring within any 12 months.
- (c) Access Right Holder's liability to EnergyCo under or in connection with the indemnity under clause 20.4(b) is limited to:
 - (i) \$5,000,000 in relation to any single event; and
 - (ii) \$10,000,000 in aggregate in relation to all events occurring within any 12 months.

20.3 No exclusion

Clauses 20.1 and 20.2 do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this agreement or any other agreement in connection with the Project;
- (b) to pay under any indemnity given under this agreement, except for the indemnity under clause 20.4(b);

- (c) arising from any criminal or fraudulent act or omission, wilful misconduct, wilful breach or gross negligence of a party, or its directors, officers, employees, subcontractors or agents; or
- (d) in respect of any amount which is recovered or which would have been recoverable but for Access Right Holder's vitiating act or omission under any insurance required to be maintained pursuant to clause 11 ("Insurance"), up to the minimum coverage required in respect of the relevant insurance policy as set out in clause 11 ("Insurance").

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

in each case, in connection with the Project.
- (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 directors, officers, employees, subcontractors or agents in relation to the Project.
- (c) The amounts payable under this clause 20.4 include any Loss and any costs of the kind referred to in this indemnity which are incurred by EnergyCo's directors, officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 20.4 are reduced to the extent that EnergyCo's Loss is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct, wilful breach, or gross negligence of EnergyCo, its directors, officers, employees, subcontractors or agents.

20.5 Mitigation of Loss

Each party shall take all reasonable steps to mitigate any Loss suffered in connection with this agreement.

21 Representations and warranties

21.1 Representations and warranties

Each party represents and warrants that:

- (a) **(corporate existence)** it is duly registered and validly existing under the laws of its place of incorporation and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power and authority)** it has full power and authority to enter into and perform its obligations under this agreement and carry out the transactions contemplated by this agreement;
- (c) **(execution authorised)** it has taken all necessary action to authorise the execution, delivery and the performance of this agreement;
- (d) **(no breach)** the execution, delivery and performance of this agreement does not and will not violate, breach or result in a contravention of:
 - (i) any Law by which it is bound;
 - (ii) any authorisation, ruling, judgment, order or decree of any Government Authority;
 - (iii) the constitutional documents of that party; or
 - (iv) any Security Interest by which it is bound;
- (e) **(binding nature)** this agreement constitutes its legal, valid and binding obligations, enforceable in accordance with its terms; and
- (f) **(no insolvency)** it is not subject to an Insolvency Event.

21.2 Anti-bribery and anti-corruption

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

21.3 Access Right tender

Access Right Holder represents and warrants that:

- (a) all materials and information provided by Access Right Holder to EnergyCo in connection with Access Right Holder's tender for the Access Right (other than forecasts or projections) were 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 EnergyCo in connection with Access Right Holder's tender 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.

21.4 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.

22 [Trustee provisions]

22.1 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 relation to 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.

22.2 Trustee undertakings

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

22.3 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 relation to 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.

22.4 Trustee limitation of liability

- (a) This clause 22.4 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 subparagraphs (c)(i) and (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.]

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

23 Dispute Resolution

23.1 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 under this clause 23.

23.2 No proceedings

Subject to clause 23.9 ("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 23.

23.3 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).

23.4 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 23.5;
 - (ii) second, referral of the Dispute for determination by an Independent Expert under clause 23.6 (if applicable); and
 - (iii) third, determination of the Dispute in a court of competent jurisdiction.

23.5 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 under 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, or in connection with a Social Licence Commitment, commence proceedings in a court of competent jurisdiction.

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

23.7 Other relief

The Dispute resolution procedures in this clause 23 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).

23.8 Continued performance following a Dispute

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

23.9 Interim relief

Nothing in this clause 23 prevents either party from seeking urgent injunctive or declaratory relief.

24 Confidentiality

24.1 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 24);
- (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 directors, officers, employees, agents, contractors, legal and other advisers and auditors of the party;
- (d) to:
 - (i) investors and shareholders of the party;
 - (ii) 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;
 - (iii) any person who is proposing to acquire a direct or indirect interest in the party (and its professional advisers advising in connection with that potential acquisition); or
 - (iv) any Related Body Corporate of a party to this agreement,provided the recipient agrees to act consistently with this clause 24;
- (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, including any requirement on EnergyCo to publish the contents of this agreement;
- (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 South-West REZ;
- (vi) Transgrid;
- (vii) any government department, agency, authority, instrumentality, Minister or officer of the State or Commonwealth or to Cabinet, Parliament or a Parliamentary committee of the State or Commonwealth; 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.

24.2 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 relation to 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.
- (c) Access Right Holder must provide all reasonable assistance to EnergyCo to allow EnergyCo to respond to media enquiries, ministerial enquiries, or other requests for information relating to the subject matter of this agreement.

25 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 relation to 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 26 (“Notices”).

26 Notices

26.1 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.

26.2 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.

26.3 When effective

Communications take effect from the time they are received or taken to be received under clause 26.4 (whichever happens first) unless a later time is specified in the communication.

26.4 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.

26.5 Receipt outside business hours

Despite anything else in this clause 26, if communications are received or taken to be received under clause 26.4 after 5.00pm on a Business Day or on a non-Business Day, then they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause 26.5, 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.

27 General

27.1 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.

27.2 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.

27.3 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 at its discretion (including by imposing conditions).

27.4 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.

27.5 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.

27.6 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.

27.7 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.

27.8 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.

27.9 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.

27.10 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.

27.11 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.

27.12 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.

27.13 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 27.13 has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

27.14 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.

27.15 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.

27.16 Access Scheme rights and obligations

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

Schedule 1 Community Engagement Plan

1.1 Social Licence Binding Commitments

In accordance with clause 14.1, the Access Right Holder will fund benefits to the local community in the following amounts by the relevant date of deliverable.

Table 1 – Shared benefits and land use considerations

Shared benefit initiative	Value to beneficiary (\$/year)	Timing of delivery	Duration of initiative (years)

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 1 of the Merit Criteria 4 Returnable Schedule.]

1.2 Other Social Licence Commitments

[Note: Delete if not applicable.]

In accordance with clause 14, the Access Right Holder will implement the following strategies and approaches to delivering on shared benefits for the local community, including initiative objectives, roles and responsibilities, governance arrangement, issues management strategy, monitoring and reporting as further described below.

Table 2 – Contributions to other initiatives that benefit the community and region

Specific commitment	Value to beneficiary	Timing of Delivery	Duration of Initiative

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 2 of the Merit Criteria 4 Returnable Schedule.]

1.3 Reporting

Access Right Holder will report against the above strategies and approaches in its report to EnergyCo under clause 14.2.

Schedule 2 Industry and Aboriginal Participation Plan

[Note: To the extent certain template sections provided for below are not mandatory or applicable, those sections can be deleted.]

1.1 Definitions

Apprentice means a person undertaking an approved structured employment-based training program (apprenticeship) under a registered training contract that leads to a nationally recognised qualification who is working on the Project.

First Nations Businesses means a business that is at least 50 per cent Aboriginal and/or Torres Strait Islander owned and is recognised as an Aboriginal business through an appropriate organisation, such as Supply Nation or the NSW Indigenous Chamber of Commerce.

Full-time Equivalent (FTE) means the estimated FTE number for a group which is calculated as (estimated working hours of a group / Working days x 7.6 hours).

Learning Worker means a worker without qualifications or who has undertaken or is undertaking Training to update their qualifications or skills to meet the needs of the infrastructure project. This includes:

- (b) trainees and Apprentices;
- (c) non-construction workers;
- (d) managers, engineers, finance team, environmental team, safety team, construction employees consisting of supervisors, those in leadership roles, tradespeople and operators who contribute to the Project; and
- (e) people who undertake training organised by the contractor prior to employment but only if they are employed on the Project.

Once defined as a learning worker, the worker maintains this status for the duration of the Project.

Local means Australia and New Zealand

Local Content means goods, services and labour procured from Australia and New Zealand.

Total Project Contract Value means the sum of all the costs that the Applicant has to pay to deliver the Project, exclusive of GST, calculated as follows:

$$TPCV = A + B$$

Where:

TPCV = Total Project Contract Value

A = Total capital expenditure (**CAPEX**)

B = Total operational expenditure (**OPEX**)

which as at the Signing Date is estimated to be \$[insert Total Project Contract Value], which will be updated from time to time under this Schedule 2.

Total Project Workforce means the total working hours that the Applicant will engage to deliver the Project calculated as follows:

Where:

- TPW = Total Project Workforce in hours over the Term
- A = number of FTE days that the Applicant will engage to deliver the Project until Commercial Operations
- B = 7.6 hours

$$TPW = A \times B$$

which as at the Signing Date is estimated to be [insert Total Project Workforce] hours, which will be updated from time to time under this Schedule 2.

Training means undertaking an accredited vocational education and training (VET) or nationally recognised professional qualifications that meet the needs of the Project and can be full or part qualifications (such as one or more units of competency). It may be subsidised by government funding or through a fee-for-service arrangement and includes participating in the NSW Government Trade Pathways Program.

Steel means all steel intensive components, such as anchor cages, wind turbine tower sections, racking and mounting for solar, transmission towers, piling, and civil and structural works for substations, but excludes steel components integral to a component not available locally at the time of the application, such as steel inside a solar module, and miscellaneous small hardware items such as nails and bolts.

1.2 Social Licence Binding Commitments

For the purposes of this Schedule 2, Access Right Holder will provide an updated estimate for the Total Project Contract Value (including the CAPEX and OPEX amounts), Total Project Workforce and the total trades positions, and total Steel required in each of Access Right Holder's annual reports to EnergyCo under clause 14.2 and provide reasonable supporting information for the updated estimate. Without limiting EnergyCo's rights under clause 14, if there is any material decrease in the estimated Total Project Contract Value or Total Project Workforce as compared to the estimates provided by Access Right Holder as at the Signing Date, then EnergyCo may (among other things) request further information pursuant to clause 14.3(b)(ii), reject Access Right Holder's report pursuant to clause 14.3(b)(iii) or request an audit of Access Right Holder's compliance pursuant to clause 14.4.

(a) Local supply chain commitments

In accordance with clause 14.1, the Access Right Holder will purchase Local Content with a value equal to or greater than the percentages specified below for the relevant phase of the Project.

Table 1 – Local supply chain commitments

Local Content commitments	% of total CAPEX	Cost in real AU\$
Before Commercial Operations – development and construction phase		
Local Content commitments	% of total OPEX	Cost in real AU\$
After Commercial Operations – operation and maintenance phase		
Local Content commitments	% of total Steel	Cost in real AU\$
Local steel		

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 1 of the Merit Criteria 7 Returnable Schedule.]

(b) Investment and innovation commitments

In accordance with clause 14.1, the Access Right Holder will invest in, or acquire goods and services, from Local supply chains or Local innovators in at least the following amounts, and in each case by the date specified.

Table 2 – Local supply chain investment and innovation

Local Content commitment	Date of deliverable	Cost in real AU\$

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 2 of the Merit Criteria 7 Returnable Schedule.]

(c) Employment and workforce commitments

In accordance with clause 14.1, the Access Right Holder will employ a number of Learning Workers and Apprentices for a number of hours equal to or greater than the percentage of the Total Project Workforce specified in the table below.

Table 3 – Employment and workforce commitments

Workforce category	Date/Duration of deliverable	% of Total Project Workforce
Workforce category	Date/Duration of deliverable	% of Total Trades Positions

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 3 of the Merit Criteria 7 Returnable Schedule.]

(d) First Nations participation

In accordance with clause 14.1, the Access Right Holder will:

- (i) subcontract work related to the Project to First Nations Businesses with an aggregate contract value equal to or greater than the percentage of the Total Project Contract Value specified in the second row of Table 4;
- (ii) employ a number of people from a First Nations background for a number of hours equal to or greater than the percentage of the Total Project Workforce specified in the fourth row of Table 4; and
- (iii) make First Nations economic participation commitments equal to or greater than the amount specified in the sixth row of Table 4.

Table 4 – First Nations participation

First Nations economic participation commitments	Date of deliverable	% of Total Project Contract Value
First Nations economic participation commitments	Date of deliverable	% of Total Project Workforce
First Nations economic participation commitments	Date of deliverable	Cost in real AU\$

[Note: Commitments should be consistent with, or no less, than commitments outlined in Table 4 of the Merit Criteria 7 Returnable Schedule.]

1.3 Other Social Licence Commitments

[Note: Delete if not applicable.]

(a) Local supply chain commitments, investment and innovation, employment and workforce commitments

In accordance with clause 14.1, the Access Right Holder will undertake to implement the following strategies and approaches to achieve Local procurement, Local supply chain targets, employment and workforce targets.

- [insert project-specific commitments]

(b) First Nations participation

In accordance with clause 14.1, the Access Right Holder will undertake the following strategies and approaches to achieve First Nations targets, economic participation, general engagement, reporting, monitoring and compliance.

- [insert project-specific commitments]

(c) Environmentally sustainable procurement throughout supply chain

In accordance with clause 14.1, the Access Right Holder will undertake to implement the following strategies and approaches to promote environmentally sustainable procurement throughout the supply chain.

- [insert project-specific commitments]

1.4 Reporting

Access Right Holder will report against the above strategies and approaches in its report to EnergyCo under clause 14.2.

Schedule 3 Project Characteristics

Item			
1	Location	Co-ordinates of Project substation connecting to Connection Point	
2		Boundary extent	
3	Technical Overview	Market facing Primary Technology (Solar, Wind, BESS)	
4		[Note: Insert additional rows for other technologies if applicable.]	
5		Maximum installed capacity (MW) [Note: This is applicable for hybrid generators (i.e., combined multiple technologies) where the connection applicant nominates its “max. operational power capacity” lower than its combined “max. (aggregate) installed power capacity”.]	
6		Maximum Capacity (MWac) at Connection Point (same as Access Rights sought and same as the AEMO registered capacity)	
7	Proposed Original Equipment Manufacturer (OEM) for market facing Primary Technology	Proposed individual unit OEM and model	
8		Number of individual units (inverters, turbines)	
9		Nameplate rating (MWac) per unit	
10		Nameplate capacity (MWh) per unit (if BESS)	
11		Online inverter controller type (e.g. grid following or grid forming)	
12	Proposed Original	Proposed individual unit OEM and model	

13	Equipment Manufacturer (OEM) for other Technology (if applicable)	Number of individual units (inverters, turbines)	
14		Nameplate rating (MWac) per unit	
15		Nameplate capacity (MWh) per unit (if BESS)	
16		Online inverter controller type (e.g. grid following or grid forming)	
17	Proposed Original	Proposed individual unit OEM and model	
18	Equipment Manufacturer (OEM)	Number of individual units (Inverters)	
19	Hybrid/behind the meter	Nameplate rating (MWac) per unit	
20	BESS (if applicable)	Nameplate capacity (MWh) per unit	
21		Online inverter controller type (e.g. grid following or grid forming)	
22		Configuration (e.g. AC-coupled or DC-coupled)	

Schedule 4 Model Access Right Holder Commitment

Area	Access Right Holder Commitment
Engagement	Access Right Holder endeavours to employ best practice engagement principles and facilitate meaningful, respectful and effective engagement throughout the development of the Project. This includes a commitment to: • establish and maintain positive relationships with communities and key stakeholders; • present clear, accurate and objective information regarding the Project; • utilise different engagement measures including face to face, formal correspondence and community groups; • facilitate solution orientated engagement, actively seeking feedback and illustrating how feedback has been considered; • adopt a place-based, best practice First Nations engagement strategy; and • co-ordinate engagement activities with EnergyCo across the South-West REZ.
Benefit Sharing	Access Right Holder endeavours to foster genuine benefits for all stakeholders in the South-West REZ, showing consideration of current NSW Government policy through the development of the Project. This includes a commitment to: • create local employment opportunities for local workers, communities and First Nations people; • create local investment opportunities for local businesses by prioritising local procurement and supply chain opportunities; • create and maintain positive, lasting and meaningful community benefit sharing strategies, informed by consultation and tailored to the local context; and • co-ordinate benefit sharing initiatives with EnergyCo across the South-West REZ.

Environmental, Social and Governance (ESG)	Access Right Holder endeavours to implement best practice ESG principles through the development of the Project. This includes a commitment to: • implement best practice environmental protection, sustainability and resilience measures throughout the entire lifecycle of the Project; • manage resources and waste through efficient and sustainable methods when feasible throughout the entire Project lifecycle; and • promote a diverse and inclusive workforce, building on local skills, strengths, and diversity.
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Signing page

EnergyCo

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Name of director/company secretary*
(block letters)
*delete whichever is not applicable

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Name of director/company secretary*
(block letters)
*delete whichever is not applicable

Annexure A Form of Tripartite

[Note: to be inserted.]

Annexure B Form of Report

[Note: to be inserted.]