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Agreement

Execution version

LGC Offtake Agreement

Sydney Trains
(as **Buyer**)

Iberdrola Australia Energy Markets Pty Limited
(as **Seller**)



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LGC Offtake Agreement

Date ► 01 June 2022

Between the parties

Sydney Trains

ABN 38 284 779 682 of Ground Floor East 36-46 George Street,
Burwood NSW 2134

(Buyer)

Iberdrola Australia Energy Markets Pty Limited

ABN 47 128 696 097 of Level 17, 56 Pitt Street, Sydney NSW 2000

(Seller)

Recitals

- 1 The Seller carries on the business of the sale of electricity and LGCs in NSW.
 - 2 The Buyer has conducted a tender for the procurement of green products to assist it in complying with its green certification and carbon accounting requirements.
 - 3 The Seller submitted a proposal that was accepted by the Buyer.
 - 4 The Seller has agreed to sell to the Buyer, and the Buyer has agreed to buy from the Seller, the LGC Volume in accordance with this agreement.
-

The parties agree as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Acceptable Credit Rating	1 in relation to a bank, a Credit Rating of at least: • Standard & Poor's A-; or • Moody's A3, or, if both of those agencies cease to operate or give ratings of this kind, an equivalent rating from another Ratings Agency; and 2 in relation to any other person, a Credit Rating of at least: • Standard & Poor's BBB-; or • Moody's Baa3, or, if both of those agencies cease to operate or give ratings of this kind, an equivalent rating from another Ratings Agency.
Act	the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
Additional Green Products	has the meaning given to that term in clause 6.3(a).
Affected Party	has the meaning given to that term in clause 13.1(b).
Alternative Generator LGCs	has the meaning given to that term in clause 5.1(a).
Annual LGC Volume	in respect of a Flex Year, means: 1 where the Buyer gives a Volume Flex Notice in respect of that Flex Year in accordance with clause 2.1, the amount of LGCs nominated by the Buyer in that Volume Flex Notice; or 2 where the Buyer does not give a Volume Flex Notice in respect of that Flex Year in accordance with clause 2.1 (or at all), an amount of LGCs equal to the Base LGC Volume.



Term	Meaning
Approved Bank	1 the Australian branch of a bank licensed or authorised to carry on banking business in Australia and having an Acceptable Credit Rating; or [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Assessment Criteria	criteria relating to the Seller's reputational suitability as a commercial counterparty to Government, including without limitation the matters addressed in Sections B4, B5 and B6 of the Net Zero Emissions, Electricity – Stage 1 EOI No: WS3016984846 Part B: Expressions of Interest (EOI) Returnable Schedule.
Avonlie Project Company	Avonlie Solar Project Co Pty Ltd (ABN 84 636 108 597) which, as at the Award Date, is a Related Body Corporate of the Seller.
Award Date	means the date on which this agreement has been signed by the last party to sign.
Bank Guarantee	one or more unconditional and irrevocable bank guarantees or letters of credit in favour of the Seller to secure the Buyer's payment obligations to the Seller under this agreement: 1 with a face value at its time of issue (when aggregated with the then face value of any other Bank Guarantees provided by the Buyer to the Seller currently on issue) of not less than the Buyer Credit Support Amount at that time; 2 issued and executed by an Approved Bank; 3 which is presentable in Sydney or Melbourne; 4 which has an expiry date of not less than 12 months after the issue date, provided that any such bank guarantee or letter of credit issued within 11 months of the Expiry Date may have a validity period to the date that is 70 days after the Expiry Date; and 5 which is otherwise in a form acceptable to the Seller (acting reasonably) at its time of issue.
Base LGC Volume	the amount of LGCs set out opposite this term in Schedule 1 and where this term is used in this agreement it means the LGCs comprising that volume.



Term	Meaning
Bid Process	the Buyer's Net 0 Emissions, Electricity procurement process No: WS3016984846.
Business Day	a day other than a Saturday, Sunday, or a public holiday in New South Wales.
Buyer BG Requirements	the requirements set out in limbs 1 to 5 (inclusive) of the definition of Bank Guarantee.
Buyer Corporate Guarantee	means a guarantee in favour of the Seller: 1 issued or entered into by a guarantor that is a Related Body Corporate of the Buyer in circumstances where that guarantor has an Acceptable Credit Rating at the time of provision of that guarantee; 2 under which that guarantor guarantees the Buyer's payment obligations (and only its payment obligations) under this agreement; and 3 which is in a form acceptable to the Seller (acting reasonably) at the time of its provision.
Buyer Credit Support	a Bank Guarantee and/or Buyer Corporate Guarantee (as the context requires).
Buyer Credit Support Amount	at any point in time, the amount equal to the aggregate price payable by the Buyer under this agreement for [REDACTED]
Buyer Default	has the meaning given in clause 10.1.
Buyer Default Notice	has the meaning given in clause 10.2.
Buyer Financial Default	1 a Financial Default by the Buyer; or 2 a failure to provide Buyer Credit Support in accordance with clause 9.
Buyer Non-Financial Default	a Buyer Default other than a Financial Default.

Term	Meaning
Buyer Security Proceeds Account	has the meaning given to that term in clause 9.5(a)(2).
Change of Control	in relation to a party (in this definition referred to as the First Party), means a person or persons who do not Control the First Party (in this definition referred to as the Acquiring Party) as at: 1 the Award Date; or 2 where the First Party is a party to this agreement because of a transfer under clause 12.1, the date of completion of that transfer, (in this definition referred to as the Relevant Date), acquiring Control of the First Party, unless the Acquiring Party is itself Controlled directly or indirectly by a person who Controlled the First Party immediately prior to the Relevant Date. Notwithstanding the foregoing, a Change of Control will not occur as a result of the transfer, issue, redemption, buyback, cancellation, repurchase or reorganisation of marketable securities in an entity that is listed or, in connection with the relevant transaction, becomes listed on a recognised public stock exchange.
Change in Law	1 the repeal, amendment or enactment of any Green Product Scheme, including the RET Scheme; or 2 a change in the application of any Green Product Scheme, including the RET Scheme, resulting from a judicial decision or the decision of a Government Agency.
Claim	in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising.
Commencement Date	has the meaning given in Schedule 1.
Confidential Information	1 the terms of this agreement and the fact the parties have entered into it; and 2 all information provided by one party to another party in accordance with the provisions of this agreement to the extent that the information is marked as confidential or is by its nature inherently confidential.
Control	in respect of an entity, has the meaning given in section 50AA of the <i>Corporations Act 2001</i> (Cth).



Term	Meaning
Credit Rating	in respect of a person, the rating assigned by a Ratings Agency to the unsecured, senior, long term debt or deposit obligations of that person (unsupported by third party credit enhancement).
Cure Plan	has the meaning given to that term in clause 16.1(e).
Default Interest Rate	the rate of interest which is the average bid rate for bills having a tenor of 90 days which is displayed on the page of the Reuters Monitor System designated "BBSY" plus 2 per cent or such other interest rate agreed by the parties.
Dispute	any dispute, controversy or claim arising out of, in connection with or relating to this agreement or the breach, termination or claimed invalidity of this agreement, whether based on contract, tort, statute, regulation, equity or otherwise.
Due Date	has the meaning given to that term in clause 3.5(a).
Early Termination Payment	has the meaning given to that term in clause 11.3(a).
Expiry Date	has the meaning given in Schedule 1.
Extended Transfer Date	has the meaning given to that term in clause 3.2(a).
Facilities	1 the Primary Facility; and 2 each Secondary Facility, and Facility means any one of them.
Finance Arrangements	has the meaning given to that term in clause 12.4(a)(1).
Financial Default	a failure to pay any amount (that is not the subject of a bona fide dispute) when due and payable under this agreement.
Flex Year	a calendar year of the Supply Term commencing on and from 1 January 2025.



Term	Meaning
GIPA Act	the <i>Government Information (Public Access) Act 2009</i> (NSW).
Good Electricity Industry Practice	has the meaning given to that term in the National Electricity Rules.
Government Agency	any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
Green Product	any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset, certificate (including LGCs) or allowance, howsoever entitled or designated, that is recognised or arises under a Green Product Scheme, in each case resulting from, attributable to or associated with a Facility's benefits to the environment and which is capable of being (a) measured, verified or calculated and (b) transferred to the Buyer.
Green Product Scheme	each scheme, law, policy or arrangement established or regulated by a Government Agency, and that provides for the recognition or creation of a Green Product, including the RET Scheme.
GST	has the meaning given in the GST law.
GST law	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
ICAC Act	has the meaning given to that term in clause 16.3.
Independent Expert	has the meaning given to that term in clause 15.3(b).
Initial Quarterly LGC Volume	the amount of LGCs set out opposite this term in Schedule 1.
Insolvency Event	with respect to a person: 1 that person ceasing, or threatening to cease, to carry on all or substantially all of its business or operations; 2 that person declaring itself, or being declared, to be insolvent or bankrupt or applying to a court for an order to similar effect;

Term	Meaning
	3 any writ of execution, garnishee order, mareva injunction or similar order, attachment or process being made against that person or all or substantially all of its assets; 4 a liquidator, administrator, receiver, controller, trustee or similar official, being appointed to that person or all or substantially all of its assets; 5 an order being made, or a resolution being passed or a meeting being convened for the purpose of that person: – being wound up, deregistered or dissolved; or – proposing to enter or entering into any form of moratorium, scheme of arrangement or deed of company arrangement with its creditors; 6 that person being unable to pay its debts as and when those debts become due and payable; or 7 that person being an insolvent under administration as defined in the <i>Corporations Act 2001</i> (Cth).
LGC	a large-scale generation certificate created under Subdivision A of Division 4 of Part 2 of the Act, registered under Division 5 of Part 2 of the Act and transferable under Division 6 of Part 2 of the Act.
LGC Price	the amount per LGC specified in Schedule 1 exclusive of GST.
LGC Register	the register of LGCs required to be kept under the Act.
LGC Volume	1 in respect of the Quarter commencing on the Commencement Date and ending on 30 September 2024, the Initial Quarterly LGC Volume; 2 in respect of the Quarter commencing on 1 October 2024 and ending on 31 December 2024, the Initial Quarterly LGC Volume; and 3 subject to paragraph 1 and 2 above, in respect of each calendar year of the Supply Term, the Annual LGC Volume, as the case may be.
Liable Party	has the meaning given in clause 11.3(a).
Liquidated Damages	the amount payable by the Seller in the event of a Quarterly LGC Shortfall in accordance with this agreement as determined in accordance with clause 4.1 and Schedule 1.



Term	Meaning
Loss	any loss, damage, cost or expense.
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
National Electricity Law	the national electricity law set out in the <i>National Electricity (South Australia) Act 1996</i> (SA), as adopted and applied in New South Wales.
National Electricity Rules	the national electricity rules made under the National Electricity Law, as adopted and applied in New South Wales.
Non-Liable Party	has the meaning given in clause 11.3(a).
Notice	has the meaning given in clause 19.1.
Personnel	1 in respect of the Seller, any directors, officers, employees, consultants and agents of the Seller; and 2 in respect of the Buyer, any directors, officers, employees, consultants, agents and contractors of the Buyer (other than Seller), and, where used in paragraph 1, the term 'consultant' means any independent contractor who is a natural person that is engaged by the Seller.
Primary Facility	the approximately 190MW _{AC} Avonlie Solar Farm currently under construction by a Related Body Corporate of the Seller.
Project Force Majeure Event	has the meaning given in clause 13.1(a).
Quarter	a calendar quarter during the Supply Term.
Quarterly LGC Shortfall	where the number of LGCs Transferred to the Buyer in respect of any Quarter during the Supply Term is less than the Quarterly LGC

Term	Meaning
	Volume required to be Transferred in respect of that Quarter, the difference between the relevant Quarterly LGC Volume and the number of LGCs actually Transferred in respect of that Quarter.
Quarterly LGC Volume	1 in respect of the Quarter commencing on the Commencement Date and ending on 30 September 2024, the Initial Quarterly LGC Volume; 2 in respect of the Quarter commencing on 1 October 2024 and ending on 31 December 2024, the Initial Quarterly LGC Volume; and 3 in respect of a Flex Year, the Annual LGC Volume for that Flex Year divided by 4, and where this term is used in this agreement it means the LGCs comprising that volume.
Ratings Agency	1 Standard & Poor's or Moody's; or 2 if those agencies cease to operate or give ratings of the kind contemplated in the definition of 'Acceptable Credit Rating', any other ratings agency recognised in the Australian financial market as being of equivalent standing to Standard & Poor's or Moody's from time to time.
Recipient	where this term is used in clause 14, a party that receives, comes to know, derives or produces any Confidential Information, as contemplated by the definition of Confidential Information.
Registration System Disruption Event	1 where LGCs are the only nominated Green Product of the Buyer under this agreement, any one or more situations that cause disruption to either or both of the availability or functionality of the LGC Register and/or the procedures utilised by the Regulator to enable LGCs to be created, registered or transferred; and 2 where LGCs are not the only nominated Green Product of the Buyer under this agreement, any one or more situations that cause disruption to either or both of the availability or functionality of any register and/or the procedures utilised by any Green Product Scheme administrator to enable the relevant Green Product to be created, registered or transferred.
Regulator	has the meaning given in the Act.
Related Body Corporate	has the meaning given in the <i>Corporations Act 2001</i> (Cth).

Term	Meaning
Replacement Green Products	has the meaning given to that term in clause 6.2(a).
RET Scheme	means the Renewable Energy Target scheme established under the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
RET Scheme Termination Event	has the meaning given to that term in clause 6.2(a).
Safety Breach	has the meaning given to that term in clause 16.1(c).
Secondary Facilities	each of the following renewable energy generation facilities which, as at the Award Date, are owned by Related Bodies Corporate of the Seller: 1 the 140.7MW Capital Wind Farm near Bungendore NSW; 2 the 48.3MW Woodlawn Wind Farm near Tarago NSW; 3 the 113.2MW Bodangora Wind Farm near Wellington NSW; - and 4 the approximately 145MW Flyers Creek Wind Farm currently under construction near Orange NSW, and any other renewable energy generation facility nominated by the Seller, and accepted by the Buyer, in a document signed by the parties that states that that facility is a Secondary Facility for the purposes of this agreement.
Seller Default	has the meaning given in clause 10.3.
Seller Default Notice	has the meaning given in clause 10.4.
Seller Financial Default	a Financial Default by the Seller.
Seller Non-Financial Default	a Seller Default other than a Financial Default.
Supply Term	the period commencing on the Commencement Date and ending on the Expiry Date.

Term	Meaning
Tax	- any tax including any GST, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding; or - any income, stamp or transaction duty, tax or charge, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the above.
Tax Invoice	a tax invoice issued by the Seller to the Buyer, which must be in a form approved by the Buyer (acting reasonably).
Term	the period of time from the Award Date up to and including the Expiry Date.
Transaction	any transfer, sale, assignment, surrender, conveyance or disposal of any LGC that is sold or to be sold to the Buyer under this agreement to any other person than the Buyer.
Transfer	a transfer of LGCs under the Act.
Transfer Date	the transfer date specified in Schedule 1, unless otherwise varied pursuant to this agreement.
Tripartite Deed	a deed between the parties and a financier(s) to the Seller or to its Related Bodies Corporate (or a security trustee or agent of any such financier(s)) in relation to the Finance Arrangements.
Volume Flex Notice	has the meaning given in clause 2.1.
WH&S Laws	each of: - the <i>Rail Safety National Law</i> (NSW), as defined in the <i>Rail Safety (Adoption of National Law) Act 2012</i> (NSW); <i>Work Health & Safety Act 2011</i> (NSW); <i>Workers Compensation Act 1987</i> (NSW); <i>Workplace Injury Management and Workers Compensation Act 1998</i> (NSW); and - regulations made under each of those Acts.

1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders.
- (d) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (e) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (l) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.
- (m) If a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (n) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (o) If an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- (p) A reference to time is a reference to Sydney time.
- (q) A reference to \$ is to Australian currency unless denominated otherwise.



1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.5 Agreement components

This agreement includes any schedule.

2 Sale and title

2.1 Annual Volume Flex

By no later than 31 October in the year immediately prior to the commencement of a Flex Year, the Buyer may, by giving notice to the Seller, nominate an amount of LGCs required to be sold and purchased pursuant to this agreement in respect of that Flex Year (**Volume Flex Notice**), provided that the nominated amount of LGCs in that Volume Flex Notice must not be:

- (a) greater than 110% of the Base LGC Volume; or
- (b) less than 90% of the Base LGC Volume.

2.2 Sale

The Seller agrees to sell and arrange for the Transfer to the Buyer, and the Buyer agrees to purchase from the Seller, the Quarterly LGC Volume in respect of each Quarter for the LGC Price and otherwise in accordance with this agreement.

2.3 Transfer

The Seller must arrange for the Transfer of the Quarterly LGC Volume to the Buyer on each Transfer Date in accordance with clause 3.1.

2.4 Title

Title to the LGCs sold or to be sold pursuant to this agreement will pass from the Seller to the Buyer at such time as the LGC Register has been altered by the Regulator in accordance with the Act to reflect that the Buyer is the owner of the relevant LGCs.

2.5 LGCs Vintage

Each LGC comprising part of a Quarterly LGC Volume delivered pursuant to this agreement must have a vintage year that is no earlier than:

- (a) in the case of LGCs sourced from a Facility, 1 calendar year prior to the calendar year of the Quarter in respect of which that Quarterly LGC Volume is to be delivered; and



- (b) in the case of Alternative Generator LGCs, 2 calendar years prior to the calendar year of the Quarter in respect of which that Quarterly LGC Volume is to be delivered.

3 Delivery and Payment

3.1 Delivery

- (a) The Seller must give to the Buyer any notice required pursuant to the Act to effect the Transfer of the Quarterly LGC Volume required to be Transferred on a Transfer Date so that the LGCs appear in pending transfer status on the LGC Register prior to 2pm on the relevant Transfer Date.
- (b) The Seller must do all things necessary that are within its control to arrange for the Transfer of the Quarterly LGC Volume to the Buyer by 2pm on each Transfer Date. Each party must, where required under the Act, or by any procedures of the Regulator, or where requested by the other party, provide a copy of any notification relating to the intended Transfer along with any relevant documentary evidence which either accompanied the notification or demonstrated that the notification occurred (if such documentary evidence is able to be generated).
- (c) The Buyer must do all things necessary that are within its control to assist the Regulator in effecting the Transfer of the relevant Quarterly LGC Volume into the Buyer's name, including promptly confirming that the details of the intended Transfer are correct or otherwise prior to the Transfer Date.
- (d) If details of any intended Transfer of the relevant Quarterly LGC Volume required to be Transferred on a Transfer Date are not correct, then each party must do all things necessary that are within its control to ensure that the intended Transfer proceeds in accordance with this agreement.
- (e) The obligations of the parties under this clause 3.1 are subject to the Act and any rules and procedures that govern the transfer of LGCs as at the relevant Transfer Date.

3.2 Registration System Disruption Event

If a Registration System Disruption Event occurs or is subsisting on a Transfer Date, then:

- (a) that Transfer Date will be deemed to be the next Business Day after the Registration System Disruption Event has ceased to subsist or is otherwise agreed by the parties as having ceased to subsist (the **Extended Transfer Date**); and
- (b) the parties are required to fulfil their respective obligations under this agreement in respect of the delivery and Transfer of the relevant Quarterly LGC Volume on the Extended Transfer Date and references elsewhere in this agreement to the Transfer Date shall, where appropriate, be read as references to the Extended Transfer Date.

3.3 Verification of Green Products

- (a) **(Quarterly statement)** On each Transfer Date, the Seller must provide a statement to the Buyer setting out details of all LGCs and other Green Products transferred to the Buyer by the Seller on that Transfer Date.
- (b) **(Annual statement)** On or before the date that is 30 Business Days after the end of each calendar year that falls within the Supply Term, the Seller must provide a statement to the Buyer setting out details of all LGCs and other Green Products transferred to the Buyer by the Seller during that calendar year (or part thereof).
- (c) **(Statement information)** Each statement provided under clause 3.3(a) or 3.3(b) must include certificate numbers (where applicable), vintage and source information in relation to each LGC and other Green Product transferred by the Seller to the Buyer pursuant to this agreement, including any Replacement Green Products, Additional Green Products and Alternative Generator LGCs.
- (d) **(Buyer reporting requirements)** The Seller must promptly provide all details reasonably requested by the Buyer to comply with its green certification and carbon accounting reporting requirements to the extent that such details:
 - (1) relate to any LGC and other Green Product transferred by the Seller to the Buyer pursuant to this agreement, including any Replacement Green Products, Additional Green Products and Alternative Generator LGCs; and
 - (2) are available to the Seller or the owners of the Facilities from which the relevant LGCs and other Green Products transferred by the Seller to the Buyer pursuant to this agreement were created.

3.4 Invoice

On or promptly after each Transfer Date, the Seller must issue to the Buyer:

- (a) a Tax Invoice in relation to the LGCs Transferred to the Buyer on the relevant Transfer Date; and
- (b) a Notice confirming the quantity of any Quarterly LGC Shortfall so as to permit the Buyer to calculate the amount of any Liquidated Damages to be paid by the Seller to the Buyer under clause 4.1.

3.5 Obligation to pay LGC Price

- (a) The Buyer must pay the LGC Price for any LGCs Transferred by the Seller to the Buyer under this agreement by the date that is 30 days after the date of a Tax Invoice issued under clause 3.4 (**Due Date**).
- (b) The Buyer may set off or reduce (as applicable) an obligation it has to make any payment to the Seller under this agreement by any amount that is at the relevant time due and payable by the Seller to the Buyer under this agreement but which remains unpaid, including any Liquidated Damages due and payable by the Seller to the Buyer.

3.6 Payment account

All payments by:

- (a) the Buyer under this agreement must be made to the Seller's account specified in Schedule 1 or to an alternative Australian bank account of the Seller as



notified by the Seller to the Buyer from time to time in accordance with clause 19; and

- (b) the Seller under this agreement must be made to the Buyer's account specified in Schedule 1 or to an alternative Australian bank account of the Buyer as notified by the Buyer to the Seller from time to time in accordance with clause 19.

3.7 Disputed amounts

- (a) If the Buyer reasonably believes that the amount payable in respect of a Tax Invoice is incorrect, the Buyer must:
 - (1) on or prior to the Due Date, provide the Seller with a statement of its reasons for disputing the Tax Invoice;
 - (2) prior to the Due Date, make any request to the Seller for further information in accordance with clause 15.2(e); and
 - (3) on the Due Date, pay that part of the Tax Invoice which is not in dispute.
- (b) Any disputes in relation to a Tax Invoice must be dealt with under the dispute resolution procedures set out in clause 15, provided that the parties shall first attempt to resolve the dispute in accordance with clause 15.2(e) and:
 - (1) if the disputed amount determined to be payable is greater than the amount paid by the Buyer in accordance with clause 3.7(a)(3), the Buyer must pay the difference between the disputed amount determined to be payable and the amount paid in accordance with clause 3.7(a)(3) to the Seller together with interest calculated in accordance with clause 3.8; and
 - (2) if the disputed amount determined to be payable is less than the amount paid by the Buyer in accordance with clause 3.7(a)(3), the Seller must pay the difference between the amount paid in accordance with clause 3.7(a)(3) and the disputed amount determined to be payable to the Buyer together with interest calculated in accordance with clause 3.8.
- (c) Any amount payable under clause 3.7(b) must be paid within 10 Business Days from the date of resolution of the dispute.

3.8 Interest

Each party must pay interest to the other party on any late payment by the first party under this agreement at the Default Interest Rate, calculated from the date the unpaid amount was due to the date that payment is made.

4 Shortfall

4.1 LGC Shortfall

- (a) In the event of a Quarterly LGC Shortfall occurring (other than as a result of a RET Scheme Termination Event or the failure of the Buyer to comply with its obligations under clause 3.1 or 3.2(b)), the Seller must pay to the Buyer Liquidated Damages in respect of that Quarterly LGC Shortfall in an amount



calculated in accordance with Schedule 1. The Seller must pay any such Liquidated Damages within 10 Business Days of receipt of an invoice from the Buyer under clause 4.1(b).

- (b) The Buyer may issue to the Seller an invoice (which must be a tax invoice if clause 8.2(b) applies) in relation to any Liquidated Damages that become payable together with reasonable evidence to support its calculation of the Liquidated Damages amount.
- (c) The Buyer may terminate this agreement with immediate effect by giving Notice to the Seller if a Quarterly LGC Shortfall occurs (other than as a result of a RET Scheme Termination Event or the failure of the Buyer to comply with its obligations under clause 3.1 or 3.2(b)) in either:
 - (1) [REDACTED] Quarters; or
 - (2) [REDACTED] Quarters in aggregate,in each case during the Supply Term.
- (d) If the Buyer terminates this agreement under clause 4.1(c), the Seller must pay an Early Termination Payment to the Buyer in accordance with clause 11.

4.2 Genuine pre-estimate

The parties agree that other than the Buyer's right to terminate this agreement under clause 4.1(c) and receive an Early Termination Payment under clause 11 the amount(s) payable as Liquidated Damages are:

- (a) the Buyer's sole and exclusive remedy in respect of any failure by the Seller to Transfer the relevant Quarterly LGC Volume to the Buyer in accordance with this agreement; and
- (b) a realistic and genuine pre-estimate and assessment of the loss and damage the Buyer will suffer as a result of the Seller's failure to Transfer the relevant Quarterly LGC Volume to the Buyer in accordance with this agreement.

5 Facilities

5.1 Source of LGCs

- (a) The Seller must use reasonable endeavours to ensure that all LGCs supplied under this agreement are sourced from one or more of the Facilities but may substitute LGCs from alternative sources (**Alternative Generator LGCs**) where the output from the Facilities is insufficient to permit the creation of a quantity of LGCs in a volume that equals or exceeds the entire Quarterly LGC Volume required to be delivered under this agreement.
- (b) Notwithstanding clause 5.1(a), the Buyer may terminate this agreement if:
 - (1) when delivering the LGCs required to be delivered in respect of any two consecutive calendar years during the Supply Term, the Seller does not deliver a quantity of LGCs sourced from the Facilities that (in aggregate) is equal to or exceeds at least 80% of the Base LGC Volume; or
 - (2) when delivering the LGCs required to be delivered in respect of any single calendar year during the Supply Term, the Seller does not deliver a quantity of LGCs sourced from the Facilities that (in



aggregate) is equal to or exceeds at least 50% of the Base LGC Volume.

For the avoidance of doubt, the 2024 calendar year will be disregarded for the purposes of determining whether the Buyer's termination right under paragraph (1) or (2) above arises.

- (c) If the Seller is prevented from sourcing the percentage of the Base LGC Volume specified in either clause 5.1(b)(1) or clause 5.1(b)(2) (as applicable) for the relevant period due to one or more Project Force Majeure Events, then that failure will be disregarded for the purposes only of determining whether the Buyer's termination right under clause 5.1(b) arises.
- (d) If the Buyer terminates this agreement under clause 5.1(b) the Seller must pay an Early Termination Payment to the Buyer in accordance with clause 11.
- (e) Notwithstanding anything to the contrary in the preceding provisions of this clause 5.1, clauses 5.1(a), 5.1(b) and 5.1(d) only apply where, within the relevant period contemplated by clause 5.1(b)(1) or clause 5.1(b)(2), as applicable, no RET Scheme Termination Event occurs and, accordingly, if any RET Scheme Termination Event occurs during any such period:
 - (1) the rights of either party to terminate this agreement; and
 - (2) the liability of either party to pay an Early Termination Payment to the other party,

will be solely and exclusively governed by clause 6.2(d).

5.2 Seller's operational related obligations

- (a) The Seller must use reasonable endeavours to ensure that each Facility is operated in accordance with Good Electricity Industry Practice at all times (once constructed and commissioned in the case of those Facilities currently under construction).
- (b) The Seller must:
 - (1) use reasonable endeavours to ensure that all licences, authorisations and registrations required to operate each Facility (once constructed and commissioned in the case of those Facilities currently under construction) at its full capacity are obtained and maintained;
 - (2) obtain and maintain all licences, authorisations and registrations required to perform its obligations under this agreement from time to time; and





6 Green Products

6.1 Acknowledgement

The parties acknowledge and agree that while LGCs are the initial nominated Green Product for delivery by the Seller, and acquisition by the Buyer, under this agreement it is the intention of the parties that should the Buyer:

- (a) as contemplated by clause 6.2(a), nominate Replacement Green Products that are capable of being created in respect of the electricity generated by the Primary Facility then those Replacement Green Products will be delivered by the Seller and acquired by the Buyer under this agreement:
 - (1) in a quantity equal to the volume of such Replacement Green Products that can be created by reference to the same amount of electricity exported from the Primary Facility at its connection point (in MWh) after taking into account any applicable loss factor, that prior to the RET Scheme Termination Event would have created:
 - (A) in the case of the period from the Commencement Date until 31 December 2024 – an amount equal to 75% of the Initial Quarterly LGC Volume, multiplied by 2;
 - (B) in the case of each calendar year of the Supply Term commencing on or after 1 January 2025 – 75% of the Base LGC Volume; and
 - (2) at the same aggregate price that prior to the RET Scheme Termination Event would have been payable by the Buyer to the Seller under this agreement in respect of the relevant volume of LGCs referred to in clause 6.1(a)(1)(A) or 6.1(a)(1)(B), as applicable, that prior to the RET Scheme Termination Event would have been created by reference to the same amount of electricity exported from the Primary Facility at its connection point (in MWh) after taking into account any applicable loss factor; or
- (b) as contemplated by clause 6.3(a), nominate Additional Green Products that are (i) not mutually exclusive to the creation of LGCs by the Primary Facility and (ii) capable of being created in respect of the electricity generated by the Primary Facility and exported from the Primary Facility at its connection point after taking into account any applicable loss factor, then those Additional Green Products will be delivered by the Seller and acquired by the Buyer under this agreement:
 - (1) in a quantity equal to the volume of such Additional Green Products that can be created by reference to the same amount of electricity exported from the Primary Facility at its connection point (in MWh) after taking into account any applicable loss factor, that can also create:
 - (A) in the case of the period from the Commencement Date until 31 December 2024 – an amount equal to 75% of the Initial Quarterly LGC Volume, multiplied by 2; and
 - (B) in the case of each calendar year of the Supply Term commencing on or after 1 January 2025 – 75% of the Base LGC Volume; and
 - (2) except as provided in clause 6.3(d)(2), for no additional price or cost beyond the amount that would have been payable by the Buyer to the



Seller under this agreement in respect of the relevant volume of LGCs referred to in clause 6.1(b)(1)(A) or 6.1(b)(1)(B), as applicable, had only LGCs been delivered.

6.2 Replacement Green Products

- (a) If there is an early termination, repeal or amendment to the RET Scheme such that LGCs can no longer be created or transferred to the Buyer (**RET Scheme Termination Event**), the Buyer may nominate replacement Green Products that are capable of being created and transferred in respect of the electricity generated by the Primary Facility to be supplied instead of LGCs (**Replacement Green Products**) in a quantity equal to the volume of such Replacement Green Products that can be created by reference to the same amount of electricity exported from the Primary Facility at its connection point (in MWh) after taking into account any applicable loss factor, that prior to the RET Scheme Termination Event would have created:
- (1) in the case of the period from the Commencement Date until 31 December 2024 – an amount equal to 75% of the Initial Quarterly LGC Volume, multiplied by 2; and
 - (2) in the case of each calendar year of the Supply Term commencing on or after 1 January 2025 – 75% of the Base LGC Volume.
- [REDACTED]
- (c) The parties must use their best endeavours to agree any amendments to this agreement required to reasonably accommodate the delivery of Replacement Green Products contemplated by clause 6.2(a), including:
- (1) subject to clause 6.2(c)(2), preserving any obligations:
 - (A) on the Seller to deliver volumes of the Replacement Green Product as replacement for the relevant volume of LGCs referred to in clause 6.1(a)(1)(A) or 6.1(a)(1)(B), as applicable; and
 - (B) on the Buyer to pay an amount equivalent to that which the Buyer would have had to pay for each delivery of the relevant volume of LGCs referred to in clause 6.1(a)(1)(A) or 6.1(a)(1)(B), as applicable;
 - (2) if requested by the Seller, reshaping the delivery profile of the volume of the Replacement Green Products to be delivered to the Buyer in respect of:
 - (A) the period from the Commencement Date until 31 December 2024; and
 - (B) each Quarter that falls within a calendar year of the Supply Term commencing on or after 1 January 2025,so as to account for the seasonality of electricity production from the Primary Facility; and
 - (3) if requested by the Seller, and irrespective of whether or not contemplated by clause 6.2(a) or the preceding provisions of this clause 6.2(c), renegotiating those features of this agreement which will result in material additional risk for the Seller as a result of the



volume of Replacement Green Products required to be sourced solely from the Primary Facility, such as:

- (A) any Buyer termination rights that arise upon the failure to deliver certain volumes; and
- (B) the respective rights and obligations of the parties where the Seller fails to deliver required volumes of Replacement Green Products due to events or circumstances that are not within the reasonable control of the Seller.



6.3 Additional Green Products

- (a) If both LGCs and other Green Products may be created in respect of the electricity generated by the Primary Facility and exported from the Primary Facility at its connection point, after taking into account any applicable loss factor (**Additional Green Products**), then at the request of the Buyer the Seller must deliver to the Buyer both LGCs and/or a quantity of such Additional Green Products that can be created by reference to the same amount of electricity exported from the Primary Facility at its connection point (in MWh) after taking into account any applicable loss factor, as would create:
 - (1) in the case of the period from the Commencement Date until 31 December 2024 – an amount equal to 75% of the Initial Quarterly LGC Volume, multiplied by 2; and
 - (2) in the case of each calendar year of the Supply Term commencing on or after 1 January 2025 – 75% of the Base LGC Volume.
- (b) Within 30 Business Days of receipt of a request under clause 6.3(a) the Seller must provide the Buyer with a good faith estimate of any additional costs it expects to incur in registering or otherwise being eligible to create, and transferring, such Additional Green Products to the Buyer.
- (c) Within 20 Business Days of receipt of notice under clause 6.3(b) the Buyer must, if it still wishes to receive the Additional Green Products, confirm its request for Additional Green Products by further notice to the Seller.
- (d) If the Buyer confirms its request for Additional Green Products under clause 6.3(c):
 - (1) the parties must use their best endeavours to agree any amendments to this agreement required to reasonably accommodate the delivery of Additional Green Products contemplated by clause 6.3(a), including:
 - (A) if requested by the Seller, reshaping the delivery profile of the volume of LGCs and/or Additional Green Products to be delivered to the Buyer in respect of:
 - (i) the period from the Commencement Date until 31 December 2024; and



- (ii) each Quarter that falls within a calendar year of the Supply Term commencing on or after 1 January 2025, so as to account for the seasonality of electricity production from the Primary Facility; and
- (B) if requested by the Seller, and irrespective of whether or not contemplated by clause 6.3(a) or the preceding provisions of this clause 6.3(d), renegotiating those features of this agreement which will result in material additional risk for the Seller as a result of the volume of Additional Green Products required to be sourced solely from the Primary Facility, such as:
 - (i) any Buyer termination rights that arise upon the failure to deliver certain volumes; and
 - (ii) the respective rights and obligations of the parties where the Seller fails to deliver required volumes of Additional Green Products due to events or circumstances that are not within the reasonable control of the Seller; and



provided that, for clarity, the aggregate amount payable by the Buyer in relation to the delivery of LGCs and/or Additional Green Products will be an amount equivalent to that which it would have had to pay for the delivery of the relevant volume of LGCs had only LGCs been delivered.

6.4 Verification

For the avoidance of doubt, clause 3.3 applies to any Replacement Green Products and Additional Green Products delivered by the Seller to the Buyer under this agreement.

6.5 Buyer reporting rights

The Buyer and the Seller acknowledge and agree that, as between the Buyer and the Seller, upon the delivery by the Seller, and acquisition by the Buyer, of any LGC, Replacement Green Product or Additional Green Product under this agreement, all reporting rights related to any such LGC, Replacement Green Product or Additional Green Product, as the case may be (other than in relation to the initial creation and transfer thereof), including the right of a person to report:

- (a) the ownership thereof in compliance with Commonwealth or State law, if applicable; or
- (b) otherwise to a Commonwealth or State agency, or any other person, including under any present or future Commonwealth, State or local law, regulation or bill or any international or foreign emissions trading program,

will vest in, and may only be exercised by, the Buyer.



7 Warranties

7.1 General warranties

Each party warrants and represents to the other party that:

- (a) it validly exists under the law of the place of its incorporation or formation, has the power and authority to execute and deliver this agreement and to perform its obligations under it;
- (b) it has taken all necessary action to authorise the entry into, and the observance and performance of its obligations under, this agreement;
- (c) this agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms, subject to any necessary stamping and registration, the availability of equitable remedies and any applicable law relating to the enforcement of creditor's rights; and
- (d) the execution, delivery and performance by it of this agreement and each obligation contemplated by this agreement does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:
 - (1) any provision of its constituent documents;
 - (2) any material term or provision of any security arrangement, undertaking, agreement or deed to which it is a party or is subject or by which it is bound; or
 - (3) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound.

7.2 Seller warranties

The Seller warrants and represents to the Buyer that, as at each Transfer Date:

- (a) it has the power and authority to sell and have Transferred to the Buyer the LGCs that are Transferred to the Buyer on that Transfer Date;
- (b) it was, prior to the Transfer, shown as the owner under the Act of the LGCs that are Transferred to the Buyer on that Transfer Date;
- (c) it has not sold, transferred, assigned, licensed or otherwise created any interest in the LGCs that are Transferred to the Buyer on that Transfer Date, other than as contemplated in this agreement;
- (d) all the LGCs sold to the Buyer under this agreement on that Transfer Date have been validly created and registered under the Act and any other requirements of the regime under which they are created, comply with the requirements of the Act and are registered with the Regulator;
- (e) all the LGCs sold to the Buyer under this agreement on that Transfer Date are free of any encumbrance, third party Claim or Transactions and the Seller has not entered into any agreement or arrangement having the effect of assigning, selling, promising or disposing of any of the rights or creating any interest in those LGCs; and
- (f) all the LGCs sold to the Buyer under this agreement on that Transfer Date can be utilised, as at that Transfer Date, within the regimes under which they are created as separate and individual rights acquired under this agreement.

8 GST

8.1 Definitions

In this clause 8, all terms that are defined in the GST law have the same meaning in this clause 8. In addition, in this clause 8:

Term	Meaning
agreement Price	the consideration to be provided under this agreement for the Supply (other than under this clause 8).
Recipient	the party that receives the Supply from the Supplier.
Supplier	the party that provides the Supply to the Recipient and includes the representative member of the GST group if the Supplier is a member of a GST group.
Supply	any supply to the Recipient by the Supplier pursuant to this agreement. However, if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply for the purposes of this clause 8.

8.2 Operative provisions

Notwithstanding any other provision in this agreement, if the Supplier is or becomes liable to pay GST in connection with any Supply:

- (a) the Recipient must pay to the Supplier, in addition to the agreement Price, an additional amount equal to the amount of that GST;
- (b) the Recipient must pay the agreement Price plus the additional amount on account of GST within 14 days of receiving a tax invoice from the Supplier for that Supply or as otherwise provided in this agreement;
- (c) if the GST payable in relation to a Supply made under or in connection with this agreement varies from the additional amount paid or payable by the Recipient under clause 8.2(a) such that a further amount of GST is payable in relation to the Supply or a refund or credit of GST is obtained in relation to the Supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 8.2(a). If an adjustment event occurs in relation to a Supply, the Supplier must issue an adjustment note to the Recipient in relation to that Supply within 14 days after becoming aware of the adjustment; and

- (d) where a party reimburses the other party for an expense or other amount incurred in connection with any wholly or partly creditable acquisition or any wholly or partly creditable importation made by that other party, the amount reimbursed must be net of any input tax credit claimable in respect of that acquisition or importation.

9 Buyer Credit Support

9.1 Condition

The parties acknowledge and agree that:

- (a) this clause 9 will only apply if the Buyer (or, to avoid doubt, any transferee or novatee of the Buyer's obligations under this agreement) is not or ceases to be Controlled by, or an agency of, the State of New South Wales; and
- (b) subject to clause 9.1(a), all references to the Buyer in this clause 9 will be deemed to be a reference to any transferee or novatee of the Buyer's obligations under this agreement, where this agreement is transferred or novated pursuant to clause 12.2.

9.2 Provision of Buyer Credit Support

- (a) If the Buyer:
 - (1) is not Controlled by, or an agency of, the State of New South Wales; and
 - (2) does not hold an Acceptable Credit Rating,
 the Buyer must provide to the Seller and maintain in place, Buyer Credit Support in accordance with this clause 9.
- (b) If at any time prior to the last Transfer Date the circumstances described in clause 9.2(a) arise, the Buyer must notify the Seller in writing and provide either a Bank Guarantee or a Buyer Corporate Guarantee to the Seller no later than 20 Business Days after the circumstances arose.
- (c) If at any time after the date on which the Buyer is first obliged to provide Buyer Credit Support under clause 9.2(a):
 - (1) the Seller does not hold a Bank Guarantee, including where the Seller has returned a Bank Guarantee to the Buyer pursuant to its obligations under this clause 9; and
 - (2) neither the Buyer nor, where a Buyer Corporate Guarantee (that remains in effect) has been provided to the Seller, the guarantor under that Buyer Corporate Guarantee, hold an Acceptable Credit Rating,
 the Buyer must promptly procure and deliver a Bank Guarantee to the Seller.
- (d) The Buyer must, at any time when the Seller holds a Bank Guarantee, maintain such Bank Guarantee so that it meets the Buyer BG Requirements until such time as the Seller is obliged to return the Bank Guarantee under this clause 9.
- (e) The Buyer will not be in breach of its obligations under clause 9.2(d) where it replaces a Bank Guarantee that ceases to meet any Buyer BG Requirement in accordance with clause 9.3(a)(1) or 9.3(a)(3).



9.3 Replacement of Bank Guarantee

- (a) With respect to any Bank Guarantee provided by the Buyer to the Seller pursuant to this agreement, the Buyer:
 - (1) may, at any time, deliver to the Seller a replacement Bank Guarantee(s) that meets the Buyer BG Requirements;
 - (2) without limiting clause 9.3(a)(1), may, at any time after the first date upon which the Buyer Credit Support Amount changes (as contemplated in the definition of Buyer Credit Support Amount), deliver to the Seller a replacement Bank Guarantee(s) that meets the Buyer BG Requirements (including as to the then current Buyer Credit Support Amount); and
 - (3) where the Seller is entitled to a Bank Guarantee under this clause 9, must deliver to the Seller a replacement Bank Guarantee(s) that meets the Buyer BG Requirements:
 - (A) at least 20 Business Days prior to the expiry of the Bank Guarantee that it is replacing; or
 - (B) within 20 Business Days if the issuer of the Bank Guarantee ceases to be an Approved Bank.
- (b) Upon the Seller's receipt of a replacement Bank Guarantee(s) under clause 9.3(a) or 9.6(c), the Seller must promptly, and in any event within 10 Business Days, return the replaced Bank Guarantee(s) to the Buyer.

9.4 Recourse to Bank Guarantee

- (a) Subject to clause 9.4(b), the Seller may only draw down an amount under, or make a demand upon, a Bank Guarantee for an amount due and owing under this agreement that the Buyer has failed to pay, and only where there is no bona fide Dispute outstanding in relation to the Buyer's liability to pay that amount.
- (b) If:
 - (1) the Buyer has failed to provide a replacement Bank Guarantee as required under clause 9.3(a)(3) on or before the relevant date specified in a sub-clause thereof; and
 - (2) the Buyer has not provided a Buyer Corporate Guarantee to the Seller where that Buyer Corporate Guarantee remains in effect and the guarantor holds an Acceptable Credit Rating,then the Seller is entitled to draw down the entire amount of any such Bank Guarantee, in which case the proceeds of that drawing or demand may only be dealt with by the Seller in accordance with clause 9.5(a) and 9.5(b).
- (c) Subject to clause 9.5(a) and 9.5(b), each drawing or demand that results in the Seller's receipt of an amount under a Bank Guarantee is taken to constitute a payment by the Buyer to the Seller under this agreement of the amount received by the Seller.

9.5 Proceeds of Bank Guarantee to be held on trust

- (a) If the Seller draws an amount under, or makes a demand upon, a Bank Guarantee in accordance with clause 9.4(b), then the Seller:

- (1) holds the funds it receives on trust for the Buyer and the Seller and may only deal with those funds in accordance with this clause 9.5(a) and clause 9.5(b);
 - (2) must immediately open a bank account in its name but designated as being held on trust for the Buyer and the Seller with an Approved Bank (**Buyer Security Proceeds Account**), deposit the funds into the Buyer Security Proceeds Account and keep the funds separate from any other bank account or other funds held by the Seller; and
 - (3) subject to clause 9.5(b), may only withdraw funds from the Buyer Security Proceeds Account and apply them to satisfy an amount due and owing under this agreement that the Buyer has failed to pay, and only where there is no bona fide Dispute outstanding in relation to the Buyer's liability to pay that amount or to meet the costs of establishing and maintaining the account.
- (b) If:
- (1) the Buyer provides the Seller with a Bank Guarantee in an amount equal to the then current Buyer Credit Support Amount (or if the Seller holds other Bank Guarantees, in an amount such that the Seller will hold Bank Guarantees in an aggregate amount equal to the then current Buyer Credit Support Amount); or
 - (2) the Buyer provides the Seller with a Buyer Corporate Guarantee; or
 - (3) 70 days elapses after the end of the Term in circumstances where:
 - (A) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
 - (B) there are no existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement; or
 - (4) on the date the Seller is obliged to return a Bank Guarantee under clause 9.7(a)(1), 9.7(a)(2), 9.7(a)(3) or 9.7(a)(4), there are no circumstances then entitling the Seller to make a withdrawal from the Buyer Security Proceeds Account as permitted by clause 9.5(a)(3),
- the Seller must within 10 Business Days after written request by the Buyer pay to the Buyer (or as it directs) the balance of the funds in the Buyer Security Proceeds Account.
- (c) If 70 days elapses after the end of the Term in circumstances where:
- (1) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
 - (2) there are one or more existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement,
- the Seller must within 10 Business Days after written request by the Buyer pay to the Buyer (or as it directs) the balance of the funds in the Buyer Security Proceeds Account less the amount (or amounts) claimed by the Seller in relation to the relevant Dispute (or Disputes).



- (d) Any interest earned on the funds held from time to time in the Buyer Security Proceeds Account will belong to the party ultimately having an entitlement under this clause 9 to receive the relevant funds.

9.6 Top up

If the Seller:

- (a) draws an amount under, or makes a demand upon, a Bank Guarantee in accordance with clause 9.4(a); or
- (b) makes a withdrawal and application of funds from the Buyer Security Proceeds Account in accordance with clause 9.5(a)(3),

the Buyer must, within 20 Business Days of such drawing or demand or within 20 Business Days of the Seller providing the Buyer with notice of such withdrawal and application (as applicable), either:

- (c) replace the Bank Guarantee with a new Bank Guarantee; or
- (d) provide an additional Bank Guarantee,

such that the aggregate face values of the Bank Guarantees (together with the current balance of the Buyer Security Proceeds Account, if any), then held by the Seller equals at least the then current Buyer Credit Support Amount.

9.7 Return of Bank Guarantee

- (a) Where a Bank Guarantee has been provided to the Seller under this clause 9, or a replacement bank guarantee has been provided to the Seller under clause 9.7(b), the Seller must return to the Buyer such Bank Guarantee or replacement bank guarantee no later than 10 Business Days from:
 - (1) the date on which the Buyer obtains or regains a credit rating that is equal to, or better than, an Acceptable Credit Rating, and the Buyer notifies the Seller in writing of that event (which notice shall include reasonable supporting evidence of obtaining or regaining that credit rating); or
 - (2) the date on which the Buyer provides the Seller with a Buyer Corporate Guarantee; or
 - (3) where the Buyer has previously provided the Seller with a Buyer Corporate Guarantee (that has not been released) the guarantor under that Buyer Corporate Guarantee regains a credit rating that is equal to, or better than, an Acceptable Credit Rating, and the Buyer notifies the Seller in writing of that event (which notice shall include reasonable supporting evidence of the guarantor under that Buyer Corporate Guarantee obtaining or regaining that credit rating); or
 - (4) 70 days elapses after the end of the Term in circumstances where:
 - (A) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
 - (B) there are no existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement,

as the case may be.



- (b) Where a Bank Guarantee has been provided to the Seller under this clause 9 and 70 days elapses after the end of the Term in circumstances where:
- (1) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
 - (2) there are one or more existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement,
- the Seller must within 10 Business Days after written request by the Buyer return the Bank Guarantee to the Buyer provided that it replaces such Bank Guarantee with a replacement bank guarantee(s) that meets the Buyer BG Requirements in all respects except that the face value of that replacement bank guarantee(s) need only be equal to, or exceed, the amount (or amounts) claimed by the Seller in relation to the relevant Dispute (or Disputes) rather than the then current Buyer Credit Support Amount.

9.8 Provision of Credit Rating information

Unless the Buyer has provided the Seller with one or more Bank Guarantees in an aggregate amount equal to the then current Buyer Credit Support Amount, the Buyer must notify the Seller within 10 Business Days if:

- (a) the Buyer; or
- (b) any guarantor that has provided a Buyer Corporate Guarantee to the Seller (that remains in effect),

ceases to hold an Acceptable Credit Rating in circumstances where that person previously did so.

9.9 Buyer Corporate Guarantee

- (a) Where the Buyer has provided a Buyer Corporate Guarantee (that remains in effect) to the Seller pursuant to this clause 9, the Seller must, no later than 20 Business Days from:
- (1) the date on which the Buyer obtains or regains a credit rating that is equal to, or better than, an Acceptable Credit Rating, and the Buyer notifies the Seller in writing of that event (which notice shall include reasonable supporting evidence of obtaining or regaining that credit rating); or
 - (2) the date on which the Buyer provides the Seller with a replacement Buyer Corporate Guarantee from an alternative guarantor that holds an Acceptable Credit Rating; or
 - (3) 70 days elapses after the end of the Term in circumstances where:
 - (A) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
 - (B) there are no existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement; or

- (4) the date on which the Buyer provides the Seller with a Bank Guarantee(s) in an amount equal to the then current Buyer Credit Support Amount,

as the case may be, deliver to the Buyer a deed of release, duly executed by the Seller, pursuant to which the Seller unconditionally and irrevocably releases the guarantor under that Buyer Corporate Guarantee from all of its obligations and liabilities under that Buyer Corporate Guarantee (other than in respect of any valid demand made under that Buyer Corporate Guarantee that has not been satisfied by the guarantor prior to the expiry of the 20 Business Day period referred to in paragraph (a) above), such deed to be in form and substance acceptable to the Buyer, acting reasonably.

- (b) Where the Buyer has provided a Buyer Corporate Guarantee (that remains in effect) to the Seller pursuant to this clause 9 and 70 days elapses after the end of the Term in circumstances where:

- (1) there is no amount due and owing under this agreement that the Buyer has failed to pay; and
- (2) there are one or more existing Disputes that have been notified by a party to the other party that might reasonably be expected (if adversely determined against the Buyer) to result in the Buyer being liable to pay an amount to the Seller under or in connection with this agreement,

the Seller must, no later than 20 Business Days from the date of resolution of any and all such Disputes (and payment by the Buyer to the Seller of any amount for which the Buyer is liable in relation to such Disputes), deliver to the Buyer a deed of release, duly executed by the Seller, pursuant to which the Seller unconditionally and irrevocably releases the guarantor under that Buyer Corporate Guarantee from all of its obligations and liabilities under that Buyer Corporate Guarantee (such deed to be in form and substance acceptable to the Buyer, acting reasonably).

- (c) With respect to any Buyer Corporate Guarantee provided to the Seller under this clause 9:

- (1) the Seller may only make a demand upon that Buyer Corporate Guarantee for an amount due and owing under this agreement that the Buyer has failed to pay, and only where there is no bona fide Dispute outstanding in relation to the Buyer's liability to pay that amount; and
- (2) each demand made upon that Buyer Corporate Guarantee which results in the Seller's receipt of an amount under that Buyer Corporate Guarantee is taken to constitute a payment by the Buyer to the Seller under this agreement of the amount received by the Seller.

10 Termination and default

10.1 Buyer Default

A **Buyer Default** occurs if the Buyer:

- (a) fails to pay to the Seller any amount (that is not the subject of a bona fide dispute) when due and payable under this agreement; or

- (b) breaches any other material term of this agreement.

10.2 Buyer Default Notice

- (a) Where a Buyer Default occurs, the Seller may give the Buyer a Notice in writing specifying that the Buyer Default has occurred and the nature of the Buyer Default (**Buyer Default Notice**).
- (b) In the case of a Buyer Financial Default, the Seller may terminate this agreement with immediate effect by giving Notice to the Buyer if the relevant amount remains unpaid for 10 Business Days after receipt of the Buyer Default Notice, provided that no such Notice of termination may be given in connection with the failure to pay the relevant amount after the relevant amount has actually been paid.
- (c) In the case of a Buyer Non-Financial Default, the Seller must specify in the Buyer Default Notice a reasonable period of not less than 20 Business Days to remedy the Buyer Default.
- (d) If the Buyer does not remedy the Buyer Default within the period specified in clause 10.2(c) then the Seller may terminate this agreement with immediate effect by giving Notice to the Buyer.

10.3 Seller Default

A **Seller Default** occurs if the Seller:

- (a) fails to pay to the Buyer any amount (that is not the subject of a bona fide dispute) when due and payable under this agreement; or
- (b) breaches any other material term of this agreement [REDACTED]

10.4 Seller Default Notice

- (a) Where a Seller Default occurs, the Buyer may give the Seller a Notice in writing specifying that the Seller Default has occurred and the nature of the Seller Default (**Seller Default Notice**).
- (b) In the case of a Seller Financial Default, the Buyer may terminate this agreement with immediate effect by giving Notice to the Seller if the relevant amount remains unpaid for 10 Business Days after receipt of the Seller Default Notice, provided that no such Notice of termination may be given in connection with the failure to pay the relevant amount after the relevant amount has actually been paid.
- (c) In the case of a Seller Non-Financial Default, the Buyer must specify in the Seller Default Notice a reasonable period of not less than 20 Business Days to either remedy the Seller Default or provide compensation acceptable to the Buyer (acting reasonably) in respect of the Seller Non-Financial Default.
- (d) If the Seller does not remedy the Seller Default or provide acceptable compensation within the period specified in clause 10.4(c) then the Buyer may terminate this agreement with immediate effect by giving Notice to the Seller.
- (e) If the Buyer receives acceptable compensation under clause 10.4(c) in respect of a Seller Non-Financial Default then that Seller Default will be deemed to be remedied.



10.5 Termination for Insolvency

If an Insolvency Event occurs with respect to a party and the effects of such Insolvency Event are not overcome within 5 Business Days of the occurrence of the Insolvency Event, the other party may, to the extent permitted by law, terminate this agreement with immediate effect by giving Notice to the party in respect of whom the Insolvency Event has occurred.

10.6 Termination for convenience

- (a) The Buyer may terminate this agreement at any time upon 90 days' Notice to the Seller.
- (b) If the Buyer terminates this agreement in accordance with clause 10.6(a), then the Buyer will be liable to pay an Early Termination Payment to the Seller in accordance with clause 11.2.

10.7 Additional rights to terminate

For the avoidance of doubt, the rights conferred on the parties to terminate under this clause 10 are separate from and in addition to the other rights conferred on a party to terminate under this agreement, including the parties' rights to terminate this agreement under clauses 4.1(c), 5.1, [REDACTED] 13.4 and 16.3(b).

10.8 Survival

Clauses 1, 8, 9, 10, 11, 14, 15, 18 and 20 and any other provisions of this agreement which are expressed to survive, or by their nature survive, termination of this agreement will continue independently from the other obligations of the parties and survive termination of this agreement. Termination of this agreement does not affect any rights or obligations that may have accrued under this agreement.

11 Early Termination Payment

11.1 Termination by the Buyer

If this agreement is terminated by the Buyer in accordance with its terms:

- (a) under clause 4.1(c);
- (b) under clause 5.1 for failure of the Seller to source sufficient LGCs from the Facilities;
- (c) under clause 10.4 for Seller Default;
- (d) under clause 10.5 for an Insolvency Event affecting the Seller,

then the Seller must pay the Buyer the Early Termination Payment.

11.2 Termination by the Seller or for convenience

If this agreement is terminated in accordance with its terms:

- (a) by the Seller under clause 10.2 for Buyer Default;
- (b) by the Seller under clause 10.5 for an Insolvency Event affecting the Buyer; or



- (c) by the Buyer under clause 10.6(a),
then the Buyer must pay the Seller the Early Termination Payment.

11.3 Early Termination Payment Calculation

- (a) If this agreement is terminated in the circumstances set out in clause 11.1 or clause 11.2, the terminating party (**Non-Liable Party**) will calculate the early termination payment to be made by the non-terminating party (**Liable Party**) to the Non-Liable Party in accordance with clause 11.3(b) (**Early Termination Payment**), except that where this agreement is terminated by the Buyer under clause 10.6 the Seller will be the Non-Liable Party and undertake the relevant calculation and the Buyer will be the Liable Party.
- (b) The Non-Liable Party must calculate the Early Termination Payment using commercially reasonable procedures to determine the net amount of its costs and/or losses associated with replacing the material terms of this agreement, including consideration of:
- (1) quotations for replacement LGC sale and purchase arrangements on substantially equivalent terms to those set out in this agreement (including remaining tenor of supply) supplied by one or more third parties (taking into account the creditworthiness of the parties); and
 - (2) LGC market data and forecast LGC prices supplied by one or more third parties.

For the avoidance of doubt, if the calculation of the Early Termination Payment results in a negative number then the Early Termination Payment will be deemed to be zero.

- (c) Subject to clause 11.6(b), the parties acknowledge and agree that:
- (1) the Non-Liable Party's sole remedy arising out of or in connection with the circumstances described in clause 11.1 or 11.2, as the case may be, is the Non-Liable Party's entitlement to an Early Termination Payment in accordance with this clause 11.3; and
 - (2) the Non-Liable Party's entitlement to payment by the Liable Party of the Early Termination Payment constitutes an adequate remedy for the Non-Liable Party in respect of the circumstances described in clause 11.1 or 11.2, as the case may be.

11.4 Invoice

- (a) The Non-Liable Party must provide an invoice to the Liable Party setting out the Early Termination Payment (which must be a tax invoice if clause 8.2(b) applies) together with reasonable supporting evidence to substantiate the calculation of the Early Termination Payment within 30 Business Days of termination of this agreement.
- (b) The Liable Party must pay the undisputed amount of any such Early Termination Payment within 15 Business Days of receipt of an invoice provided under clause 11.4(a).

11.5 Disputed invoice

- (a) If the Liable Party in good faith believes an invoice issued under clause 11.4 to be incorrect, it must pay any amount set out in the invoice which is not in dispute in accordance with clause 11.4(b) and, at the same time, provide the



Non-Liable Party with a statement of its reasons for disputing the disputed amount.

- (b) Any dispute in relation to an invoice issued under clause 11.4 will be a Dispute and either party may refer the Dispute for determination by an Independent Expert in accordance with clause 15.3 and each party must make such additional payments (or repayments) as are required to correct any difference between amounts paid under clause 11.5(a) and the disputed Early Termination Payment ultimately agreed or determined to be payable.
- (c) Any amount payable under clause 11.5(b) must be paid within 10 Business Days from the date of resolution of the Dispute.
- (d) For the avoidance of doubt, clause 3.8 applies to any late payment of an amount payable under clause 11.5(b).

11.6 Enforceability

- (a) Each party agrees that the calculation of the Early Termination Payment is a genuine pre-estimate of the Non-Liable Party's anticipated losses arising from the termination of this agreement prior to the last Transfer Date.
- (b) If the obligation to pay an Early Termination Payment is for any reason determined to be unenforceable the parties agree to treat termination of this agreement in the circumstances for which an Early Termination Payment would have been payable as arising from a breach of a fundamental term. In such circumstances the parties:
 - (1) agree that the Liable Party must pay the Non-Liable Party damages for its loss of bargain associated with the early termination of this agreement; and
 - (2) acknowledge and agree that notwithstanding clause 18.2 such damages may include (without double counting) loss of profit and loss of revenue.

12 Transfer and security

12.1 Transfer of the agreement

- (a) Subject to clauses 12.2 and 12.4, a party must not assign, transfer, novate, create any security interest or other interest in or deal in any other way with any of its right, title or interest in this agreement without obtaining the prior written consent of the other party, which consent must not be unreasonably withheld or delayed if:
 - (1) the transferee is in the reasonable opinion of the non-transferring party legally, financially and technically capable of performing the transferor's obligations under this agreement;
 - (2) the transferee enters into a deed of covenant with the non-transferring party (in a form reasonably acceptable to the non-transferring party) by which the transferee assumes and covenants to perform and discharge all obligations and liabilities of the transferor arising under this agreement, to the extent arising on and after the date of transfer; and



- (3) where the transferor is the Buyer, and the Seller is party to a Tripartite Deed, the transferee enters into a replacement Tripartite Deed (in place of the Buyer).
- (b) If a party deals with any of its right, title or interest in this agreement in accordance with clause 12.1(a) then the non-transferring party must release the transferring party from its obligations under this agreement arising from and after the date of that transfer to the extent that those obligations are assumed by the transferee on terms reasonably acceptable to the non-transferring party.

12.2 Assignment by the Buyer

The Buyer may, without the prior written consent of the Seller, assign, transfer or novate its right, title or interest in this agreement at any time if:

- (a) the transferee is an entity which is wholly owned by or is an agency of the State of New South Wales; or
- (b) the transfer is in connection with any reform, restructure or privatisation of the Buyer,

and the Seller must, at the written request of the Buyer, do all things, and execute all documents, reasonably necessary to effect the transfer.

12.3 Change of Control

- (a) The Seller must obtain the prior written consent of the Buyer in respect of any Change of Control of the Seller during the Term.
- (b) The Buyer's consent under clause 12.3(a) must not be unreasonably withheld or delayed unless the Change of Control would result, in the reasonable opinion of the Buyer, in a material adverse impact to the Seller's:
 - (1) legal, technical or financial capability to perform its obligations and meet its liabilities under this agreement; or
 - (2) creditworthiness.
- (c) The parties acknowledge that it will not be unreasonable for the Buyer to withhold its consent under clause 12.3(a) if the Change of Control would be inconsistent with the basis upon which the Buyer formed a view that the Seller met the Assessment Criteria as at the Award Date.

12.4 Project Finance and Tripartite Deed

- (a) The parties acknowledge that the Seller:
 - (1) may wish to create a security interest in respect of its rights and interests under this agreement in favour of a financier(s) to the Seller or to its Related Bodies Corporate (**Finance Arrangements**); and
 - (2) may request that the Buyer enter into a Tripartite Deed in relation to this agreement and any such Finance Arrangements.
- (b) If the Seller makes a request of the Buyer under clause 12.4(a)(2), the Buyer must negotiate in good faith a form of Tripartite Deed on terms reasonably acceptable to the Buyer to be entered into in respect of this agreement and the Finance Arrangements.

13 Project Force Majeure Event

13.1 Project Force Majeure Event defined

- (a) In this agreement, **Project Force Majeure Event** means any material event or circumstance or combination of events or circumstances occurring after the Award Date that:
- (1) is not within the reasonable control of the Affected Party;
 - (2) the occurrence or effect of which the Affected Party could not have avoided through compliance with its obligations under this agreement and the exercise of reasonable care and conducting its activities in accordance with Good Electricity Industry Practice; and
 - (3) causes the output from the Facilities to be insufficient to permit the creation of LGCs sourced from the Facilities in a quantity that equals or exceeds 50% of the Base LGC Volume in any calendar year.
- (b) For the purposes of this clause 13, the **Affected Party** means:
- (1) the Seller; and
 - (2) any owner, operator or controller of a Facility, other than (i) the Seller or (ii) any person providing maintenance services in respect of a Facility.

13.2 Exclusions

Notwithstanding clause 13.1, the following will not constitute Project Force Majeure Events:

- (a) lack of funds, financial hardship or the inability of the Affected Party or any of its Related Bodies Corporate to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this agreement;
- (b) the inability of the Affected Party or any of its Related Bodies Corporate to obtain financing or insurance, either completely or on commercially acceptable terms;
- (c) a shortage of materials, consumables, equipment or utilities required by the Affected Party, except to the extent it is itself caused by a Project Force Majeure Event or any event or circumstance that, had it happened to the Affected Party, would have been a Project Force Majeure Event under this agreement;
- (d) a breakdown or failure of the Affected Party's equipment, property or an asset caused by normal wear and tear;
- (e) any event or circumstance arising due to a failure by the Affected Party, its Related Bodies Corporate, or their respective employees, agents or contractors to properly maintain any equipment, property or an asset or to hold sufficient stock of spares, except to the extent it is itself caused by a Project Force Majeure Event or any event or circumstance that, had it happened to the Affected Party, would have been a Project Force Majeure Event under this agreement;
- (f) strikes, industrial disturbances or other industrial action other than those not specific to the site of a Facility or a Facility;

- (g) the failure of any person (other than the Buyer) to perform an obligation it owes to the Affected Party, except to the extent such failure is caused by any event or circumstance that, had it happened to the Affected Party, would have been a Project Force Majeure Event under this agreement;
- (h) change in law, unless and to the extent that the change in law prohibits the Affected Party from performing its obligations under this agreement;
- (i) the inability of the network (including at a Facility's connection point to the network) to accept dispatch from a Facility other than to the extent such inability arises due to a forced network outage or network fault;
- (j) failure or inability of any person to pay any sum due and payable; or
- (k) any lack of wind or solar resource.

13.3 Notification and diligence

If it wishes to be entitled to the benefit of clause 5.1(c), the Seller must:

- (a) notify the Buyer as soon as reasonably possible of:
 - (1) full particulars of the Project Force Majeure Event, as available at the relevant time; and
 - (2) the date of commencement and expected duration of the Project Force Majeure Event and an estimate of the impact on the Facility's output and the Seller's ability to source LGCs from the Facility (and any other Facility);
- (b) keep the Buyer informed of any material changes or developments to any of the matters referred to in clause 13.3(a);
- (c) use all reasonable diligence to remedy or abate the Project Force Majeure Event as expeditiously as possible; and
- (d) notify the Buyer when the Project Force Majeure Event has terminated and of the estimated final impact of the Project Force Majeure Event on the Facilities' output and creation of LGCs.

13.4 Termination for prolonged Project Force Majeure Event

- (a) If due to the occurrence of one or more Project Force Majeure Events, output from the Facilities is insufficient, or in the Buyer's reasonable opinion is likely to be insufficient, to permit the creation of a quantity of LGCs in a volume that equals or exceeds at least 50% of the Base LGC Volume in any two consecutive calendar years during the Supply Term (disregarding the 2024 calendar year), the Buyer may give a notice to the Seller that it intends to terminate this agreement by Notice to the Seller.
- (b) Unless the Seller gives a notice in accordance with clause 13.4(c) this agreement will terminate on the expiry of the 10 Business Day period after the Buyer's notice under clause 13.4(a).
- (c) If the Seller does not agree that the output from the Facilities is or is likely to be insufficient to meet the requirements of clause 13.4(a), the Seller may within 10 Business Days refer the matter for resolution in accordance with the dispute resolution procedures in clause 15 (including, for the avoidance of doubt, referral to an Independent Expert under clause 15.3).
- (d) If the Seller gives a notice in accordance with clause 13.4(c), then notwithstanding anything to the contrary in clause 13.4(a) or 13.4(b), this



agreement will only terminate if the parties agree, or it is otherwise determined, that it is more likely than not that, due to the occurrence of one or more Project Force Majeure Events, the output from the Facilities will be insufficient to permit the creation of a quantity of LGCs in a volume that equals or exceeds at least 50% of the Base LGC Volume in two consecutive calendar years during the Supply Term (disregarding the 2024 calendar year).

- (e) If this agreement terminates under clause 13.4(b) or 13.4(d) then no Early Termination Payment will be payable by either party.

14 Confidentiality and publicity

14.1 Confidential Information not to be disclosed

Subject to clause 14.2, the Recipient must treat all Confidential Information as confidential and secret and must not:

- (a) make public or disclose that Confidential Information to any third party; or
- (b) make or allow to be made copies of or extracts of all or any part of the Confidential Information except for the purposes of this agreement.

14.2 Permitted disclosure

Nothing in clause 14.1 restricts the disclosure of Confidential Information:

- (a) **(already in lawful possession)** that, at the time of the first disclosure to or observation by the Recipient, was already in the lawful possession of the Recipient;
- (b) **(public domain)** that is or becomes part of the public domain (other than through breach of any confidentiality obligation on the Recipient or any of its Related Bodies Corporate or their respective representatives);
- (c) **(third parties)** that is disclosed to a party by a person who is not a party to this agreement provided that that information was not obtained directly or indirectly from any party to this agreement;
- (d) **(employees, agents, advisers, etc.)** that a director, officer, employee, agent, adviser, insurer or financier of the Recipient or its Related Bodies Corporate needs to know, but only where such directors, officers, employees, agents, advisers, insurers or financiers have been required to keep the information confidential;
- (e) **(auditors)** to an auditor of the Seller or its Related Bodies Corporate, in connection with an audit of that person's financial statements;
- (f) **(court)** in proceedings before any court or tribunal arising out of, or in connection with, this agreement;
- (g) **(Government Agency)** in the case of the Buyer, to any New South Wales Government Agency and any of its Personnel;
- (h) **(regulatory body)** to the extent required by lawful requirement of:
 - (1) any Government Agency having jurisdiction over a party to this agreement or its Related Bodies Corporate; or
 - (2) any stock exchange having jurisdiction over a party to this agreement or its Related Bodies Corporate;

- (i) **(Independent Expert)** to the extent reasonably necessary in connection with any Dispute that is referred to an Independent Expert for determination under and in accordance with clause 15.3;
- (j) **(law)** if required under any law, or administrative guidelines, directive, request or policy, whether or not having force of law; and
- (k) **(consent)** where the disclosure has been approved in writing by the non-disclosing party, which approval must not be unreasonably withheld or delayed.

14.3 GIPA Act

- (a) The Seller acknowledges that the Buyer may disclose this agreement (and information concerning the terms of this agreement) under or in accordance with any one or more of the following:
 - (1) the GIPA Act; and
 - (2) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,
 and the Seller must provide to the Buyer any other information which the Buyer reasonably requires to comply with its obligations under clause 14.3(a)(1).
- (b) If the Buyer is required to include a copy of this agreement in the government contracts register pursuant to the GIPA Act:
 - (1) the Buyer will use reasonable endeavours to not disclose the specific charges and volumes under this agreement, but may disclose the total estimated value of the transaction along with the remainder of this agreement; and
 - (2) if the Seller considers that the Buyer should not disclose any other provisions of this agreement on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Seller must within 10 Business Days of the Award Date give the Buyer written notice of:
 - (A) any provisions of this agreement it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
 - (B) details of:
 - i. the reasons why the provisions should not be disclosed;
 - ii. whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
 - iii. a general description of the types of provisions that the Seller proposes should not be disclosed.
- (c) In complying with its disclosure obligations under the GIPA Act, the Buyer will consider, but will not be bound by, any proposal made by the Seller under clause 14.3(b)(2).
- (d) For the avoidance of doubt, nothing in this agreement will waive any rights that the Seller may have in relation to information provided under or subject to GIPA Act.

14.4 Announcements

- (a) Neither the Seller nor any of its Related Bodies Corporate will issue, give or make any announcement or other publicity concerning the making or the contents of this agreement unless and to the extent:
- (1) **(court)** required by an order of a court or tribunal arising out of, or in connection with, this agreement;
 - (2) **(regulatory body)** required by lawful requirement of:
 - (A) any Government Agency having jurisdiction over a party to this agreement or its Related Bodies Corporate; or
 - (B) any stock exchange having jurisdiction over a party to this agreement or its Related Bodies Corporate;
 - (3) **(law)** if required under any law, or administrative guideline, directive, request or policy, whether or not having force of law; or
 - (4) **(consent)** the announcement or publicity has been approved in writing by the Buyer under clause 14.5,
- provided that nothing in this clause 14.4 or in clause 14.5 precludes or restricts the Seller or any of its Related Bodies Corporate from disclosing in any promotional material the mere fact that the Buyer is an LGC customer of the Seller, where any such disclosure is made after the date upon which the Buyer has already publicly disclosed the same.
- (b) The Buyer may give or make any announcement or other public statement or publicity concerning the making or the contents of this agreement without the prior written consent of the Seller, provided that the Buyer will not disclose the specific charges and volume of LGCs to be transacted under this agreement, but may disclose the total estimated value of the transaction along with the remainder of this agreement.

14.5 Procedure for making announcements

In the case of written announcements or other written publicity to be issued or made by the Seller concerning the making or the contents of this agreement, the Seller must:

- (a) first deliver a copy of the proposed announcement or publicity to the Buyer; and
- (b) give the Buyer a reasonable opportunity to see and approve the same before making the announcement or issuing the publicity and promptly after making the announcement or issuing the publicity must give a written copy of the final version of the announcement or publicity to the Buyer.

14.6 Survival

This clause 14 will continue to bind all parties after the Expiry Date or the date of termination of this agreement, as the case may be, for a period of 5 years after that date, or such other period as the parties may agree in writing.

15 Dispute resolution

15.1 Disputes

All Disputes must be dealt with in accordance with this clause 15.

15.2 Reference to negotiation

- (a) First, the party claiming the Dispute must give a Notice to the other party setting out particulars of the Dispute (**Dispute Notice**).
- (b) Second, the Dispute must be referred to senior representatives of each party or their nominee or delegate, who must meet within 10 Business Days of receipt by a party of a Dispute Notice with a view to resolving the Dispute in good faith.
- (c) Any agreement under clause 15.2(b) regarding the resolution of the Dispute must be recorded in writing.
- (d) If for any reason (including the non-occurrence of a meeting between senior representatives of the parties) within 30 Business Days after service of the Dispute Notice either:
 - (1) the Dispute has not been resolved; or
 - (2) the parties have not agreed a mechanism and timetable for resolving the Dispute,
 then either party may commence proceedings in a court in New South Wales.
- (e) Where the Buyer disputes any amount included in a Tax Invoice, then prior to referring the dispute to nominated senior representatives pursuant to this clause 15.2 the Buyer may, prior to the Due Date, request the Seller to provide it with such further information reasonably necessary to enable the parties to resolve the dispute. The Seller must provide such information to the Buyer within 5 Business Days after receiving the Buyer's request. If the information provided by the Seller under this clause 15.2(e) does not resolve the dispute, the process set out in clauses 15.2(a) to 15.2(d) will apply.

15.3 Independent Expert

- (a) This clause 15.3 will only apply between the parties in respect of a Dispute where either this agreement expressly provides that the Dispute can be referred to an Independent Expert under this clause 15.3 or the parties otherwise agree to refer the Dispute to an Independent Expert.
- (b) If this clause 15.3 applies, the parties must appoint (subject to clause 15.3(a)) an independent expert to which the Dispute will be referred (**Independent Expert**) either:
 - (1) by mutual agreement within 5 Business Days of a Notice referring a Dispute to an Independent Expert being given (or such longer period as the parties may agree); or
 - (2) failing agreement to appoint an Independent Expert within the period specified in clause 15.3(b)(1), either party may request the Resolution Institute to appoint an Independent Expert to which the Dispute will be referred, which appointment must be made within 15 Business Days of the request being made.
- (c) The Independent Expert appointed under clause 15.3(b) must:

- (1) have reasonable qualifications, and commercial and practical experience, in the area of the dispute;
- (2) have no interest or duty which conflicts or may conflict with his/her function as an Independent Expert, and the Independent Expert will be required to fully disclose any such interest or duty before his/her appointment; and
- (3) not be an employee or former employee of any of the parties or any of their Related Bodies Corporate.
- (d) If the Resolution Institute is unwilling or unable to appoint an Independent Expert within the period specified in clause 15.3(b)(2), the Dispute will not be referred to an Independent Expert, and either party may refer the Dispute to resolution in accordance with clause 15.2(d).
- (e) The parties must make their submissions to the Independent Expert within 20 Business Days of the Independent Expert's appointment.
- (f) The Independent Expert will inform the parties of its decision in writing and its reasons for its decision within 15 Business Days of the closing of submissions made to it by the parties.
- (g) The Independent Expert will act as an expert and not as an arbitrator.
- (h) In the absence of fraud or manifest error, each party agrees that any decision or award made by an Independent Expert pursuant to this clause 15.3 will be final and binding.
- (i) Each party must bear its own costs incurred in the preparation and presentation of any submissions, documents and information to the Independent Expert.
- (j) The parties agree that the fees and expenses of the Independent Expert will be borne as follows:
 - (1) if the expert determines the relevant Dispute 100% in favour of one party, those fees and expenses will be borne 100% by the other party; or
 - (2) if the expert does not determine the relevant Dispute 100% in favour of one party, those fees and expenses will be borne:
 - (A) equally between the parties unless subparagraph (B) applies; or
 - (B) as directed by the expert after taking into account each party's relative success or failure in making their respective claims the subject of the relevant Dispute.

15.4 Interlocutory or urgent relief

Nothing in this clause 15 prevents any party from seeking urgent interlocutory or declaratory relief from a court of competent jurisdiction where, in that party's reasonable opinion, that action is necessary to protect that party's rights.

15.5 Parties to continue to perform

Pending the resolution or determination of a Dispute (including a payment dispute), the parties must continue to perform their respective obligations under this agreement.

16 Compliance

16.1 Safety

- (a) In performing its obligations under this agreement to sell and deliver LGCs and other Green Products (if applicable) to the Buyer, the Seller must, and must ensure that its Personnel, comply with:
 - (1) all of the Buyer's relevant operational and safety requirements and procedures; and
 - (2) WH&S Laws, including any relevant safety management system and environmental management system provided by the Buyer to the Seller,
 in each case to the extent relevant to the performance of such obligations.
- (b) The Buyer will provide the Seller with copies of the relevant requirements or procedures and provide the Seller with reasonable notice of any new or amended relevant requirements or procedures.
- (c) The Seller must notify the Buyer as soon as reasonably possible of any breach of clause 16.1(a) (**Safety Breach**).
- (d) If the Buyer becomes aware of a Safety Breach the Buyer may require the Seller to prepare and deliver a Cure Plan in accordance with clause 16.1(e).
- (e) The Seller must, within 30 Business Days of receipt of a notice from the Buyer under clause 16.1(d) prepare and provide the Buyer with a detailed written plan that complies with any applicable standards or laws setting out the steps it will take to ensure that the relevant Safety Breach does not recur (**Cure Plan**).
- (f) The Seller must comply with, and diligently pursue the actions set out in any Cure Plan provided pursuant to clause 16.1(e).

16.2 Modern slavery

- (a) The Seller acknowledges that it is not aware of any Modern Slavery in its supply chain.
- (b) Should the Seller become aware of any:
 - (1) Modern Slavery risks in its supply chain or operations, it must notify the Buyer of those risks and advise the Buyer of the steps it is taking to eliminate or minimise those risks; or
 - (2) Modern Slavery practices being carried out within its operations or supply chain, it must:
 - (A) in writing, immediately notify the Buyer of those practices and of the remediation action it proposes to take; and
 - (B) at its cost, take any such additional remediation action required by the Buyer (acting reasonably and after due consultation with the Seller).
- (c) If the Seller is a 'reporting entity' for the purposes of any Australian state or federal Modern Slavery legislation, including the *Modern Slavery Act 2018* (Cth), it must comply with such legislation and provide the Buyer with a copy of any report it is required to prepare under that legislation at the Buyer's request.



- (d) For the purposes of this clause, **Modern Slavery** has the meaning given in section 4 of the *Modern Slavery Act 2018* (Cth) and includes any form of slavery, servitude, debt bondage, deceptive recruitment practices, or forced labour to exploit children or other persons.

16.3 Corruption prevention

- (a) The Seller warrants and represents to the Buyer that:
- (1) it has not, and none of its Personnel have, engaged in any corrupt conduct at any time prior to the Award Date; and
 - (2) it will not, and will ensure that its Personnel do not, at any time engage in any corrupt conduct.
- (b) Without limiting or otherwise restricting any other rights of the Buyer under this agreement, if:
- (1) the Seller or any of its Personnel are at any time found to have engaged in corrupt conduct; or
 - (2) the Seller is at any time found to have breached the warranty and representation given above,
- the Buyer may terminate this agreement with immediate effect by giving Notice to the Seller.
- (c) In this clause, terms which are defined in the *Independent Commission Against Corruption Act 1988* (NSW) (**ICAC Act**) have the meaning given in the ICAC Act.

17 Community benefits

The Seller warrants to the Buyer that the Avonlie Project Company (or one of its Related Bodies Corporate on behalf of the Avonlie Project Company) has contributed \$250,000 to the Narrandera Shire Council to identify and distribute the funds for one or more public purpose projects within the council's local government area.

18 [REDACTED] Liability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



18.2 Liability

Other than in respect of:

- (a) any Early Termination Payment payable under this agreement;
- (b) any other amount expressly stated to be payable under this agreement including, without limitation, under clause 3.5; or



neither party will be liable to the other party for any indirect or consequential losses or for any loss of profits, loss of revenue or loss of use of property, in each case in connection with any breach of or default under this agreement.

19 Notices

19.1 Form of Notice

A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party in accordance with the details nominated in Schedule 1 (or any alternative details nominated to the sending party by Notice).

19.2 How Notice must be given and when Notice is received

- (a) A Notice must be given by one of the methods set out in the table below.
- (b) A Notice is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day (**business hours period**), then the Notice will instead be regarded as given and received at the start of the following business hours period.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address.
By express post to the nominated address	On the Business Day after the date it was mailed if mailed before 5pm or otherwise on the second Business Day after it was mailed.
By email to the nominated email address	Unless the party sending the email knows or reasonably ought to suspect that the email



Method of giving Notice

When Notice is regarded as given and received

was not delivered to the intended recipient's domain specified in the email address or the recipient could not open the communication due to its format and communicates that to the sender, an email is taken to be received on the earlier of the time that:

- (a) the email is received by the intended recipient; and
- (b) is 24 hours after the email was sent.

However, if within 24 hours after the email was sent, the sender receives an "out of office", an "undeliverable" or similar notice indicating the email was not delivered, the sender is deemed to know the email was not delivered to the intended recipient.

19.3 Notice must not be given by electronic communication

A Notice must not be given by electronic means of communication (other than email as permitted in clause 19.2).

19.4 Default and termination notices

If the Buyer fails to give the Seller:

- (a) a Seller Default Notice; or
 - (b) a Notice of termination, or intended termination, of this agreement by the Buyer,
- in accordance with the details nominated in Schedule 1 for the delivery of such Notices to the Seller (or in accordance with any other email delivery requirement as nominated by the Seller to the Buyer by Notice), then any such Notice given by the Buyer is ineffective.

20 General

20.1 Governing law and jurisdiction

- (a) This agreement is governed by the law applying in New South Wales.
- (b) Each party irrevocably:
 - (1) submits to the exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this agreement; and
 - (2) waives any objection it may now or in the future have to the venue of any proceedings relating to this agreement and any Claim it may now or in the future have that any proceedings relating to this agreement



have been brought in an inconvenient forum if that venue falls within clause 20.1(b)(1).

20.2 No partnership

This agreement does not constitute a partnership between the Buyer and the Seller and neither the Buyer nor the Seller is an agent or trustee for the other and no act, obligation or right under this agreement is taken to create or any such relationship.

20.3 Consents

A party may exercise a right, remedy or discretion arising under or in connection with this agreement or give or refuse to give its consent under or in connection with this agreement in its absolute and unfettered discretion (including by imposing conditions) unless this agreement states otherwise.

20.4 No waiver

- (a) A party waives a right under this agreement only by written notice in which it says that it waives that right. If a waiver is validly given, it is limited to the specific instance to which it relates and to the specific purpose for which it is given and is not an implied waiver of any other obligation or breach.
- (b) A party's failure or omission to enforce or require strict or timely compliance with any provision of this agreement does not affect or impair that provision, or the right of that party to avail itself of the remedies it may have in respect of any breach of that provision.

20.5 Entire agreement

To the extent permitted by law, this agreement records the entire agreement between the parties with respect to its subject matter. It supersedes all prior (or other) agreements, contracts, obligations, representations, conduct and understandings the parties had or may have had in relation to the same subject matter.

20.6 No representation or reliance

- (a) Subject to clause 20.6(a)(2), each party acknowledges that it:
 - (1) has not entered into this agreement in reliance on any representation, promise or other inducement made or given or alleged to be made or given by or on behalf of the other party prior to the Award Date; and
 - (2) did not rely on any representation, warranty, statement or other inducement by any person in deciding to enter into this agreement, except for those expressly set out in this agreement.
- (b) Clause 20.6(a) does not apply to, or limit in any way, the Buyer's reliance upon the statements, representations and acknowledgements made or given by the Seller under or in connection with any document it has submitted to the Buyer as part of the Bid Process.

20.7 Counterparts

This agreement may be signed in any number of counterparts and by the parties in separate counterparts.



20.8 Amendments

This agreement may only be amended or varied by a further agreement in writing signed by the parties.

20.9 Costs and stamp duty

Each party must pay its own costs and expenses in respect of this agreement and the documents and transactions it contemplates. The Buyer must pay any stamp duty payable on or by reference to this agreement and the transactions it contemplates.

20.10 No merger

The rights and obligations of the parties will not merge on the completion of any transaction this agreement contemplates. Those rights and obligations will survive the signing and delivery of any assignment or other document entered into for the purpose of implementing a transaction this agreement contemplates.

20.11 Severability

- (a) Each provision of this agreement is severable and independent.
- (b) If all or any part of a provision of this agreement is invalid or unenforceable in any jurisdiction, that part or provision will be deemed to be severed for the purposes of that jurisdiction and will not affect the validity or enforceability of the remaining provisions or that provision in any other jurisdiction.

20.12 Indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and [REDACTED] survives termination, completion and expiry of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

20.13 Further Acts

Each party must promptly do all further acts and sign and deliver all further documents required by applicable law or reasonably requested by the other party to give effect to this agreement.



Schedule 1

Terms of sale

Base LGC Volume [REDACTED] LGCs.

Initial Quarterly LGC Volume [REDACTED] LGCs.

LGC Price (excl GST) the LGC Price for each LGC delivered by the Seller to the Buyer in respect of a Quarter is determined by reference to the calendar year in which that Quarter falls as follows:

2024	\$ [REDACTED] / LGC
2025	\$ [REDACTED] / LGC
2026	\$ [REDACTED] / LGC
2027	\$ [REDACTED] / LGC
2028	\$ [REDACTED] / LGC
2029	\$ [REDACTED] / LGC
2030	\$ [REDACTED] / LGC

Transfer Date In respect of a Quarter, 25 Business Days after the end of that Quarter.

Commencement Date 1 July 2024.

Expiry Date 31 December 2030.

LGC Register Account

Buyer:	[REDACTED]
	[REDACTED]
	[REDACTED]
Seller:	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

Seller's account [REDACTED]
[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]

Buyer's account

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**Address for Notices:
Seller**

Level 17, 56 Pitt Street
Sydney NSW 2000

[REDACTED]

Email: [REDACTED]

with a copy of (i) any Seller Default Notice or (ii) Notice of termination or intended termination of this agreement by the Buyer, to:

[REDACTED]

**Address for Notices:
Buyer**

231 Elizabeth Street
Sydney NSW 2000

Liquidated Damages

For a Quarter in respect of which Liquidated Damages are payable, those Liquidated Damages (**LD**) are calculated as follows:

$$LD = (QGPS \times (MP - GPP)) + TC$$

provided that no Liquidated Damages will be payable where the amount would be equal to or less than zero.

Where:

- **QGPS** is the Quarterly LGC Shortfall;
 - **GPP** is the LGC Price;
 - **MP** is the market price at which LGCs in the Quarterly LGC Shortfall volume are available for sale on the Business Day following the relevant Transfer Date (as calculated by the Buyer on a reasonable basis); and
 - **TC** is the Buyer's reasonable transaction costs of acquiring the replacement LGCs.
-



Signing page

Executed as an agreement

Buyer

Executed by
**Sydney Trains (ABN 38 284 779
682)**

sign here

print name

Seller

Executed by
**Iberdrola Australia Energy
Markets Pty Limited**
in accordance with section 127 of the
Corporations Act 2001 (Cth)

sign here

print name