

Firm Energy Reliability Mechanism Agreement

[Project name]

[Financial Vehicle Pty Ltd]

and

The long duration capacity provider listed in Item 3 of the Reference Schedule

FERM Tender: Round 1

[Note (to be deleted in execution version): updated trustee limitation of liability provisions and AFSL provisions are to be provided and added to this agreement prior to execution].

[Note (to be deleted in execution version): this FERMA is drafted on the basis that the long duration capacity is either a battery energy storage system or a gas generator. The FERMA will be adjusted for other technology types and combinations.]

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DATE Earliest date on which this agreement has been duly signed by both parties.

PARTIES

FV **[Financial Vehicle Pty Ltd ACN 123 123 123]**

LDCP The party listed in Item 3 of the Reference Schedule

BACKGROUND

-
- A. LDCP is a Long Duration Capacity Provider which has been awarded this agreement under Part 5, Division 3 of the FERM Regulations for the provision of long duration dispatchable electricity capacity.
- B. The parties have agreed that:
- (i) LDCP will construct, own and operate the Facility;
 - (ii) the parties will pay the Quarterly Net Payments and Annual Net Payments (as applicable),
on the terms of this agreement.

It is agreed as follows.

1 PRIMARY OBLIGATIONS

LDCP has agreed to develop, construct and operate the Facility and the parties have agreed to pay the Quarterly Net Payments and Annual Net Payments (as applicable) on the terms of this agreement.

2 THIS AGREEMENT

2.1 Constituent documents

- (a) This agreement is constituted by:
 - (i) this instrument of agreement;
 - (ii) the Reference Schedule (Schedule 1);
 - (iii) the Scheme Financial Mechanism (Schedule 2);
 - (iv) the Specific Terms: Development Period (Schedule 3);
 - (v) the Specific Terms: Operational Period (Schedule 4);
 - (vi) the General Terms (Schedule 5);
 - (vii) the Definitions and Interpretation Schedule (Schedule 6);
 - (viii) the Required Insurances Schedule (Schedule 7);
 - (ix) the tripartite deed template (Annexure 1); and
 - (x) the Early Termination Security template (Annexure 2).
- (b) To the extent of any inconsistency between the documents listed in clause 2.1(a) above and subject to clause 18 of the General Terms, such documents will have the same order of priority as listed, with this instrument of agreement taking the highest level of precedence.

2.2 Defined terms

Unless otherwise defined:

- (a) capitalised terms used in this agreement have the meanings given to them in the Definitions and Interpretation Schedule (Schedule 6); and
- (b) *italicised* terms used in this agreement have the meanings given to them in the *NER*.

3 COUNTERPARTS

This parties acknowledge and agree that this agreement may be executed in counterparts, and may be executed and circulated utilising an electronic signing platform such as DocuSign or AdobeSign.

4 GOVERNING LAW

- (a) This agreement is governed by the Laws of South Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.
- (b) Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

EXECUTION

Executed as an agreement.

Executed by FV in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Director

Director/secretary

Name

Name

Date signed

Date signed

Executed by LDCP in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

Director

Director/secretary

Name

Name

Date signed

Date signed

SCHEDULE 1 – REFERENCE SCHEDULE

ITEM	DETAILS		
Part 1: parties and notice details			
ITEM 1 FV	[Financial Vehicle Pty Ltd ACN 123 123 123]		
ITEM 2 FV notice details	Physical address	Attention:	[insert]
		Address:	[insert]
	Email address	Attention:	[insert]
		To:	[insert]
		Cc:	[insert]
ITEM 3 LDCP	[Name and ACN]		
ITEM 4 LDCP notice details	Physical address	Attention:	[insert]
		Address:	[insert]
	Email address	Attention:	[insert]
		To:	[insert]
		Cc:	[insert]
Part 2: Term and key dates			
ITEM 5 Term	Period between the Signing Date and the end of the Operational Period (unless this agreement is terminated earlier).		
ITEM 6 Development Period	Period between the Signing Date and COD.		
ITEM 7 Milestones and Milestones Dates	#	Milestone	Milestone Date
	1	Land access LDCP has secured all Tenure required for the Project (and the operation of the Facility for the Term).	Signing Date + [12] months
	2	Authorisations – construction All Authorisations necessary to enable construction of the Facility to commence are held by FV.	Signing Date + [12] months
	3	5.3.4 milestone The Facility and its Performance Standards have achieved compliance with r 5.3.4A and r 5.3.4B of the NER.	Signing Date + [12] months
	4	Generator licence Any required ESCOSA Licence is held by LDCP in connection with the Facility.	Signing Date + [12] months
	5	Financial Close Financial Close for the Project has been achieved.	Signing Date + [12] months
	6	NTP Notice to proceed (or similar, however defined) has been provided to the contractors under each Major Works Contract.	Signing Date + [12] months

ITEM		DETAILS					
	7	Construction completion – LDCP All primary plant and equipment forming part of the Facility has been constructed and/or installed and is ready for commissioning.				Signing Date + [34] months	
	8	COD COD for the Facility is achieved, and the Facility is fully operational.				[1 November 2028 OR 1 November 2029 OR 1 November 2031] [Note (to be deleted in execution version): this will be the Required COD nominated by the Proponent in its Bid]	
ITEM 8 Operational Period		The period commencing on the later of: 1. [insert] (Target COD); and 2. COD, and ending on the date that is 15 years after the Target COD. [Note (to be deleted in execution version): the Target COD for the relevant Tender Category to be inserted at (1).]					
Part 3: Early Termination Amount							
ITEM 9 Early Termination Amount		An amount equal to \$20,000 per MW of Committed Output Capacity, capped at \$4,000,000.					
Part 4: Specification							
ITEM 10 General		1. The Facility must be capable of dispatching electricity into the NEM at the Committed Output Capacity for at least 8 continuous hours. 2. If the Facility consists of bidirectional unit/s, such units must be capable of storing energy up to the Committed Storage Capacity. [Note (to be deleted in execution version): for Aggregated Facilities, additional criteria from paragraph (c) of EC2 to be inserted.]					
ITEM 11 Facility type		[insert] [Note (to be deleted in execution version): it should be specified here if the facility is composed of one type of production unit only (i.e. diesel or gas generators only, bidirectional only (i.e., BESS, pumped hydro) or composed of two or more types of production units (i.e., generators and bidirectional units working together. For such Facility compositions, further changes to this FERMA may be required by the Scheme Administrator prior to recommendation, to ensure that the document operates as intended.)]					
ITEM 12 Nameplate Rating of Facility		Number of bidirectional units	Nameplate rating per bidirectional unit (output)	Nameplate rating per bidirectional unit (import)	Number of generating units	Nameplate rating per generating unit (output)	Aggregate nameplate rating of Facility (output)
		[XX]	[XX]MW	[XX]MW	[XX]	[XX]MW	[XX]MW
ITEM 13 Design life		Bidirectional units	[15 years]				
		Generating units	[30 years]				

ITEM	DETAILS			
	BOP	[30 years]		
ITEM 14 Heat Rate	[[XX]GJ/MWh / Not applicable.] [Note (to be deleted in execution version): where the Facility does not include any conventional generating units, this is to be marked as not applicable.]			
ITEM 15 MSOC	[[XX]MWh / Not applicable.] [Note (to be deleted in execution version): this reference is intended to deal with bidirectional units which are BESS assets. If the Facility consists of different storage technologies, it should be considered whether a MSOC value is required for calculating the storage rebate. If the Facility does not include any bidirectional units, this should be marked as not applicable.]			
ITEM 16 Network	[The Facility will be connected to the transmission network. / The Facility will be connected to the distribution network.] [Note (to be deleted in execution version): Delete inapplicable.]			
ITEM 17 Utility Connection Assets	LDCP Utility Connection Assets	[insert]		
	Third Party Utility Connection Assets	[insert]		
Part 5: Committed capacity of Facility				
ITEM 18 Committed Output Capacity	Committed Bidirectional Capacity (MW)	Committed Conventional Capacity (MW)	Committed Output Capacity (MW)	Committed Storage Capacity (MWh)
Committed Storage Capacity	[XX]MW	[XX]MW	[XX]MW	[XX]MWh [Note (to be deleted in execution version): Proponents to note the requirements set out in EC2 of the Tender Guidelines.]
Notes: 1. Committed Bidirectional Capacity is the required capability (expressed in MW) of all <i>bidirectional units</i> included in the Facility (in aggregate) to dispatch power into the <i>NEM</i> through the Connection Point at any given time. 2. Committed Conventional Capacity is the required capability (expressed in MW) of all conventional generation units included in the Facility (in aggregate) to dispatch power into the <i>NEM</i> through the Connection Point at any given time. 3. Committed Output Capacity is the required capability (expressed in MW) of the Facility (in aggregate) to dispatch power into the <i>NEM</i> through the Connection Point at any given time. 4. Committed Storage Capacity is the required storage capacity (expressed in MWh) of all <i>bidirectional units</i> included in the Facility (in aggregate) to store energy which is able to be dispatched into the <i>NEM</i> (in one discharge cycle) through the Connection Point. 5. For the purposes of this agreement, Committed Storage Capacity: a. is an amount of storage capacity (in MWh) in excess of the Minimum State of Charge of all <i>bidirectional units</i> included in the Facility (in aggregate) for the Facility (where a MSOC value is included in Item 15 above but not otherwise); and				

ITEM	DETAILS			
	b. is to disregard degradation which occurs over time, with the effect that as a minimum, at all times during each Operational Year, the actual storage capacity of the Facility must be at least equal to the Committed Storage Capacity.			
ITEM 19 LOR Notice Period (Conventional)	6 hours			
ITEM 20 LOR Notice Period (Bidirectional)	6 hours			
Part 6: Other items				
ITEM 21 Required Availability Percentage	90%			
ITEM 22 Agreed Maintenance Windows	Hot Weather Peak Period	Autumn Maintenance Window	Cold Weather Peak Period	Spring Maintenance Window
	1 December to 15 March	16 March to 31 May	1 June to 31 August	1 September to 30 November
Part 7: Scheme Payments Mechanism				
ITEM 23 Revenue Floor	In respect of each Operational Year: [\$XX] (ex GST) [Note (to be deleted in execution version): the Revenue Floor is the annual Net Revenue threshold which needs to be met to enable the Facility to become viable on an annualised basis.] [Note (to be deleted in execution version): It is expected that Proponents of conventional generators (e.g. gas generators) that are entitled to receive a Fuel Reimbursement will take this into account, in providing an efficient bid with a lower Revenue Floor, compared with if they were not entitled to receive that Fuel Reimbursement.]			
ITEM 24 Revenue Sharing Cap	In respect of each Operational Year: [\$XX] (ex GST) [Note (to be deleted in execution version): the Revenue Sharing Cap represents the maximum amount of revenue to be shared with the FV on an annualised basis.] [Note (to be deleted in execution version): tender guidelines will prescribe symmetrical Revenue Sharing Cap and Payment Cap.]			
ITEM 25 Payment Cap	In respect of each Operational Year: [\$XX] (ex GST) [Note (to be deleted in execution version): the Payment Cap represents the maximum amount to be paid to LDCP for Scheme Payments on an annualised basis].			
ITEM 26 Upside Percentage	50%			
ITEM 27 Downside Percentage	90%			

ITEM	DETAILS
ITEM 28 Excluded Operational Years	<p>[insert / Not applicable]</p> <p>Must be full years between (1 November and 31 October) during the Term.</p> <p>[Note (to be deleted in execution version): Excluded Operational Years may only include Operational Years FV has agreed are Excluded Operational Years as part of the tender process for this agreement].</p>
Part 8: Payments	
ITEM 29 LDCP nominated bank account	<p>[insert]</p>

SCHEDULE 2 – SCHEME FINANCIAL MECHANISM

1 SCHEME PAYMENTS, UPSIDE PAYMENTS AND FUEL REIMBURSEMENT

[Note (to be deleted in execution version): Scheme Payments (payable by FV to LDCP) and Upside Payments (payable by LDCP to FV) are:

- (a) to be determined on a quarterly (year-to-date) and annual basis using the methodology set out in this Schedule 2; and**
- (b) after netting off between payments, are payable quarterly and annually in arrears in respect of each Operational Year in accordance with clause 6 and 7 of the Specific Terms: Operational Period.]**

1.1 Determining Net Revenue

The first step is to determine Net Revenue for the relevant Operational Year (NR_n). NR_n is to be determined in accordance with the following formula:

$$NR_n = R_n - C_n$$

Where:

R_n is Operational Revenue in respect of the relevant Operational Year; and

C_n is Permitted Costs in respect of the relevant Operational Year.

1.2 Determining Scheme Payments and Upside Payments

Once NR_n is known, the second step is to determine the Scheme Payment in respect of the Operational Year (**Scheme Payment_n**) and/or the Upside Payment in respect of the relevant Operational Year (**Upside Payment_n**), which are to be determined as follows:

- (a) (**NR_n below Revenue Floor**): where NR_n is below the Revenue Floor:
 - (i) the Upside Payment is zero;
 - (ii) a Scheme Payment is determined in accordance with the following formula:

$$\text{Scheme Payment}_n = DP \times (RF - NR_n)$$

Where:

DP is the Downside Percentage (as specified in Item 27 of the Reference Schedule);

RF is the Revenue Floor (as specified in Item 23 of the Reference Schedule); and

NR_n is Net Revenue in respect of the relevant Operational Year (determined pursuant to clause 1.1 above); and

- (iii) the Scheme Payment_n is to be capped at the Payment Cap (as specified in Item 25 of the Reference Schedule);

- (b) (**NR_n above Revenue Floor**): where NR_n is above the Revenue Floor:

- (i) the Scheme Payment is zero;
- (ii) an Upside Payment is determined in accordance with the following formula:

$$\text{Upside Payment}_n = UP \times (NR_n - RF)$$

where:

UP is the Upside Percentage (as specified in Item 26 of the Reference Schedule);

NR_n is Net Revenue in respect of the relevant Operational Year (determined pursuant to clause 1.1 above); and

RF is the Revenue Floor (as specified in Item 23 of the Reference Schedule); and

- (iii) the Upside Payment_n for an Operational Year is to be capped at an amount equal to the Revenue Sharing Cap (as specified in Item 24 of the Reference Schedule) *plus* the Fuel Reimbursement for that Operational Year; and
- (iv) where the Upside Payment is calculated to be less than zero, the Upside Payment is zero.

- (c) **(NR_n equal to Revenue Floor)**: where NR_n is equal to the Revenue Floor, each of the Upside Payment and the Scheme Payment is zero.

1.3 Fuel Reimbursement

[Note (to be deleted in execution version): this clause applies in respect of conventional gas generators. Where diesel units are tendered, an equivalent clause will need to be inserted. For bidirectional storage units, provisions relating to Fuel Reimbursement are not applicable and will be deleted from the contract].

- (a) Subject to paragraph (d), the Fuel Reimbursement for an Operational Year is to be calculated as follows:

$$\text{Fuel Reimbursement (FR}_n\text{)} = \text{FP}_{\text{Var},n} \times \text{HR} \times \text{CUGV}_n + \text{FP}_{\text{Cons},n}$$

where:

FR_n is the Fuel Reimbursement for the relevant Operational Year;

FP_n is the Fuel Price for an Operational Year as defined in the applicable Fuel Price Determination for the relevant Operational Year, which is the sum of any variable (FP_{Var,n}, \$/GJ) and fixed (FP_{Cons,n}, \$/year) components;

HR is the heat rate specified in Item 14 of the Reference Schedule; and

CUGV is the total energy (MWh) dispatched into the *NEM* by any conventional generating units included in the Facility during the relevant Operational Year.

- (b) In the event where multiple Fuel Price Determinations apply in respect of an Operational Year (due to an amendment of an existing Fuel Price Determination or otherwise), separate calculations under clause 1.3(a) will be made in respect of each portion of the Operational Year during which each Fuel Price Determination is current, and the **FR_n** will be the sum of the fuel costs determined by such calculations.
- (c) In the event where a Fuel Price Determination has not been made for an Operational Year due to no fault or omission of LDCP, when determining the Fuel Price pursuant to clause 1.3(a), **FP_n** will be determined as:

FP_{Var,n} the time weighted average ex-ante price at the Adelaide Hub of the STTM over the Operational Year (expressed in \$/GJ); and

FP_{Cons,n} the actual costs incurred for haulage over the Operational Year that are attributable to efficient and prudent LDCP operations, divided by the quantity of fuel consumed by the Facility in the Operational Year, and expressed in \$/GJ.

- (d) If (HR x CUGV) for an Operational Year is greater than the **FR Quantity Cap** for the Operational Year (as calculated below), then (HR x CUGV) will be an amount equal to that FR Quantity Cap:

$$FR\ Quantity\ Cap_n = 0.5 \times NR_n \times H_n$$

where:

NR_n is the sum of the nameplate ratings of the conventional *generating units* which are included in the Facility for the Operational Year, which may not be greater than an amount equal to the product of the 'Number of generating units' and the 'Nameplate rating per generating unit' listed in the Specification; and

H_n is the number of hours in the Operational Year.

Note (to be deleted in execution version): this paragraph (d) imposes a limit on the Fuel Reimbursement that may be paid in an Operational Year. This limit will still vary in accordance with the Fuel Price Determination. Any excess Fuel Reimbursement above this cap will be included as a Permitted Cost.

1.4 Indexation of Base Figures

- (a) The Base Figures are to be indexed annually in accordance with the following formula:

$$New\ Base\ Figure = \frac{CPIB}{CPIA} \times IBF$$

Where:

CPI is consumer price index (all groups Adelaide) or if such index ceases to be published an equivalent or comparable index nominated by FV in its place;

CPIA is the most recent quarterly CPI figure published as at the commencement of the preceding Operational Year, or if there is no preceding Operational Year, as at the Signing Date;

CPIB is the most recent quarterly CPI figure published as at the commencement of the ensuing Operational Year; and

IBF is the relevant Base Figure (as indexed under this clause 1.4 to date).

- (b) Indexing (in respect of the ensuing Operational Year) under this clause 1.4 is to occur as at the first day of each Operational Year (including the First Operational Year).
- (c) Any increase to the Base Figures due to CPI indexation under this clause 1.4 will be capped at 3% per annum.

1.5 Determining YTD Scheme Payment, YTD Upside Payment and YTD Fuel Reimbursement

- (a) The parties acknowledge that:
- (i) clause 7.1 of the Specific Terms: Operational Period involves a determination of YTD Scheme Payment, YTD Upside Payment and YTD Fuel Reimbursement for each Quarter on a 'year-to-date' basis which, after accounting for payments already made between the parties in respect of previous Quarters in that Operational Year, is used to calculate a Quarterly Net Payment between the parties in respect of that Quarter; and
 - (ii) it is the intention of the parties that after the Quarterly Net Payments are accounted for in the calculation of the Annual Net Payment in respect of an Operational Year, the parties will be in the same net position (as it relates to

payments under this agreement) as if the Scheme Payment, Upside Payment and Fuel Reimbursement was calculated once in respect of the Operational Year as a whole.

- (b) Each of the “**YTD Scheme Payment**”, “**YTD Upside Payment**” and “**YTD Fuel Reimbursement**” for a Quarter, is determined in accordance with clauses 1.1, 1.2 and 1.3 (as those clauses apply to the Scheme Payment, Upside Payment and Fuel Reimbursement respectively) except that:
- (i) references to “Operational Year” are to be replaced with references to the period from the start of the Operational Year in which the Quarter occurs and ending on the last day of that Quarter (**YTP Period**); and
 - (ii) each of the Base Figures will be an amount equal to the prorated portion of the Base Figure that YTD Period (based on the number of days included in such period as a percentage of 365).

1.6 Pro-rating for First Operational Year

If the First Operational Year is a period less than 12 months, then for the purpose of determining the Annual Net Payment, each of the Base Figures for that Operational Year will be an amount equal to the prorated portion of the Base Figure for such period (based on the number of days included in such period as a percentage of 365).

2 NOTIONAL QUANTITY AND DEEMED REVENUE CALCULATIONS

[Note (to be deleted in execution version): this clause 2 is to be read together with the mechanism set out in clause 3 of the General Terms, which is included in this agreement to safeguard the integrity of the FERM, including in the context of Over-Contracted Arrangements and Ineligible Wholesale Contracts.]

2.1 Determining Notional Quantity

The **Notional Quantity** for a *trading interval* is calculated as follows:

$$NQ_{TI} = P \times SOG_{TI} \times MLF_{TI}$$

where:

NQTI is the Notional Quantity for the *trading interval* (in MWh);

P is either:

- (a) the proportion (expressed as a decimal) of the ~~Committed~~ total energy S_{storage} Capacity or the Committed Output C_{capacity} of the Facility or the Aggregate Nameplate Rating of Facility that is the subject of the applicable Ineligible Wholesale Contract for that *trading interval*; or
- (b) if FV specifies a different proportion (expressed as a decimal) of the ~~Committed~~ total energy S_{storage} C_{capacity} or the Committed Output Capacity of the Facility or the Aggregate Nameplate Rating of Facility that is deemed to be the subject of the applicable Ineligible Wholesale Contract for that *trading interval*, then the proportion so specified by FV;

SOGTI is the *sent out generation* for the *trading interval* (in MWh) and the Connection Point; and

MLFTI is the Marginal Loss Factor for the *trading interval*.

2.2 Calculation of Deemed Wholesale Contract Energy Revenue

- (a) The **Deemed Wholesale Contract Energy Revenue** for a period is the aggregate of the deemed revenue for each Ineligible Wholesale Contract, insofar as it relates to energy exported by the Facility, (**Ineligible Wholesale Energy Contract**) for each *trading interval* arising during that period, calculated in accordance with clause 2.2(b).
- (b) The deemed revenue for an Ineligible Wholesale Energy Contract for a *trading interval* arising during a period is calculated as follows:

$$DRiwec_{TI} = NQ_{TI} \times DMP_{TI}$$

where:

DRiwec_{TI} is the deemed revenue for the Ineligible Wholesale Energy Contract, for the *trading interval*;

NQ_{TI} is the Notional Quantity for the *trading interval*, calculated in accordance with clause 2.1 above; and

DMP_{TI} is a deemed market price in \$/MWh, being the *spot price* and/or any other \$/MWh price (or any other price or amount, converted into a \$/MWh equivalent price) paid by AEMO (or any *Registered Participant*) to any person under the NER (including, for example, payments for ancillary services or any other services available or contemplated under the NER from time to time) in respect of any Notional Quantity exported from the Facility during the *trading interval*.

2.3 Calculation of Deemed Wholesale Contract Green Revenue

- (a) The **Deemed Wholesale Contract Green Revenue** for a period is the aggregate of the deemed revenue for each Ineligible Wholesale Contract, insofar as it relates to Green Products created by the Facility, (**Ineligible Wholesale Green Contract**) for each *trading interval* arising during that period, calculated in accordance with clause 2.3(b).
- (b) The deemed revenue for an Ineligible Wholesale Green Contract for a *trading interval* arising during a period, is calculated as follows:

$$DRiwgc_{TI} = NQ_{TI} \times GP_{TI}$$

where:

DRiwgc_{TI} is the is the deemed revenue for the Ineligible Wholesale Green Contract, for the *trading interval*;

NQ_{TI} is the Notional Quantity for the *trading interval*, calculated in accordance with clause 2.1 above); and

GP_{TI} is the market price (in \$MW/h) for the Green Product applicable during the *trading interval*, determined in accordance with clause 2.5).

2.4 Calculation of Deemed Wholesale Contract Capacity Revenue

- (a) The **Deemed Wholesale Contract Capacity Revenue** for a period is the aggregate of the deemed revenue for each Ineligible Wholesale Contract, insofar as it relates to Capacity Products created by the Facility (**Ineligible Wholesale Capacity Contract**) for each *trading interval* arising during that period, calculated in accordance with clause 2.4(b).
- (b) The deemed revenue for an Ineligible Wholesale Capacity Contract for a period, is calculated as follows:

$$DR_{iwcc_{TI}} = P \times NR \times CP$$

where:

- DR_{iwcc_{TI}}** is the is the deemed revenue for the Ineligible Wholesale Capacity Contract for that period;
- P** has the meaning given in clause 2.1 above;
- NR** the aggregate nameplate rating of Facility (output) listed in Item 12 of the Reference Schedule; and
- CP** is the market price (in \$/MW) for the Capacity Product applicable during the *period*, determined in accordance with clause 2.5.

2.5 Determination of market prices

- (a) Subject to clause 2.5(b), for the purposes of determining market prices in calculating the Deemed Wholesale Contract Green Revenue under clause 2.3 or the Deemed Wholesale Contract Capacity Revenue under clause 2.4, the market price for a Green Product or Capacity Product will be determined by FV (acting reasonably and in good faith), having regard to:
- (i) in respect of a type of Green Product or Capacity Product (as relevant):
- (A) the historic spot market price for that certificate or product type of Green Product or Capacity Product (as relevant) that is calculated as the average of the quotations (stated on a GST inclusive basis) for that certificate or product type of Green Product or Capacity Product (as relevant) for the 3-month period immediately preceding the relevant calculation date; or
- (B) if there is no historic spot market price for that certificate or product type of Green Product or Capacity Product (as relevant), then the spot market price for that certificate or product type of Green Product or Capacity Product (as relevant) as at the relevant calculation date, obtained from two independent and suitably qualified brokerage firms nominated by FV; and
- (ii) any other information that FV has relating to the prices for that Green Product or Capacity Product (as relevant).
- (b) FV must either within 20 Business Days after the end of each Quarter in each Operational Year, publish, or notify LDCP of, the market prices determined in accordance with clause 2.5(a), that will apply to that Quarter for the purposes of determining Scheme Payments.
- (c) At all times, LDCP is not entitled to, and must not make a Claim to receive, any information held by FV referred to in clause 2.5(a)(ii).
- (d) FV's determinations under this clause 2.5 are to be final and binding on the parties. Any Disputes in respect of this clause 2.5 may not be referred for resolution under clause 12 of the General Terms.

2.6 Consent to use and disclose pricing information

For the purposes of clause 13 of the General Terms, LDCP consents to FV using and disclosing pricing information (including under any publication or notice referred to in clause 2.5) for any Green Product or Capacity Product that LDCP receives under a Wholesale Contract or otherwise in the market, provided that:

- (a) such information is disclosed on an anonymised basis and is not attributable to either LDCP, the Facility or any particular contract counterparty; and
- (b) such information is used by FV for the purposes of determining the market price for that certificate or product type of Green Product or Capacity Product (as relevant) under a comparable provision to clause 2.5 in an Other FERM Contract.

3 AVAILABILITY REBATE

3.1 Application of this clause

This clause 3 applies in respect of all conventional *generating units* and *bidirectional units* which are included in the Facility.

3.2 Availability Rebate

- (a) Where the Availability Uptime Percentage of the Facility during any Operational Year is less than the Required Availability Percentage, an Availability Rebate will apply in respect of that Operational Year.

- (b) The Availability Rebate for an Operational Year is calculated as follows:

$$\text{Availability Rebate} = \text{Scheme Payment}_{\text{n}} \times \text{Availability Rebate Percentage}$$

where:

Scheme Payment_n is the Scheme Payment for the Operational Year;

Availability Rebate Percentage is calculated in accordance with clause 3.3 below.

3.3 Calculation of Availability Rebate Percentage

- (a) The Availability Rebate Percentage for each Operational Year during the Operational Period is calculated as follows:

$$\begin{aligned} \text{Availability Rebate Percentage} \\ &= \text{Required Availability Percentage} \\ &- \text{Availability Uptime Percentage} \end{aligned}$$

- (b) Provided that:

- (i) if the Availability Rebate Percentage for the relevant Operational Year is less than 0%, the Availability Rebate Percentage for that Operational Year will be deemed to be 0%; and
- (ii) if the Availability Uptime Percentage for the relevant Operational Year is less than 10%, the Availability Rebate Percentage for that Operational Year will be deemed to be 100%.

3.4 Calculation of Availability Uptime Percentage

- (a) Subject to clause 3.5, the Availability Uptime Percentage of the Facility for an Operational Year is to be calculated in accordance with the formula set out in paragraph 8.11 of IEEE 726-2006 on the basis that:
 - (i) the reference to "Unit" is taken to be a reference to all conventional *generating units* and *bidirectional units* forming part of the Facility (on an aggregated basis); and
 - (ii) the reference to "Equivalent Availability Factor" will be taken to be a reference to Availability Uptime Percentage.

- (b) If the capacity of the Facility to charge or discharge energy is reduced during a period of time as a direct result of a direction or instruction given by *AEMO* under the NER that:
- (i) relates to the condition of the *transmission network* (or *distribution network* if the Connection Point is within the *distribution network*); and
 - (ii) was not issued as a response to or as a result of any act or omission of LDCP or LDCP's officers, employees, subcontractors or agents,
- then that period of time will be disregarded for the purpose of calculating the Availability Uptime Percentage for the Facility.

3.5 Impact of Force Majeure Events on Availability Rebate

Subject to clause 8 of the Specific Terms: Operational Period and clause 6.6 of the General Terms, when determining the Availability Uptime Percentage, to the extent that LDCP is unable to meet the Availability Requirement as the direct result of a Force Majeure Event, the relevant adjustment in Table S1-1 will apply.

Table S1-1: Availability – FM adjustments

#	Continuous Duration of Force Majeure Event	Availability adjustment
FM Band 1	Less than 90 days continuous duration	The Facility will be taken to be unavailable for the duration of the Force Majeure Event (to the extent of the FM Reduction).
FM Band 2	More than 90 days but less than 360 days continuous duration	<ol style="list-style-type: none"> 1. The Facility will be taken to be unavailable for first 90 days continuous duration of the Force Majeure Event (to the extent of the FM Reduction). 2. There will be taken to be no FM Reduction from the start of the 91st day through to the 360th day of the Force Majeure Event.
FM Band 3	More than 360 days continuous duration	<ol style="list-style-type: none"> 1. The Facility will be taken to be unavailable for first 90 days continuous duration of the Force Majeure Event (to the extent of the FM Reduction). 2. There will be taken to be no FM Reduction from the start of the 91st day through to the 360th day of the Force Majeure Event. 3. The Availability Uptime Percentage for the period commencing on and from the 361st day and ending on the final day of the Force Majeure Event will be taken to be: <ol style="list-style-type: none"> a. 50% (where the actual Availability Uptime for the relevant period is lower than 50%); or b. the actual Availability Uptime Percentage (where the actual Availability Uptime for the relevant period is higher than 50%).

Notes:

- 1 In Table S1-1, **FM Reduction** means the extent that the Availability Uptime Percentage is less than the Required Availability Percentage because of the Force Majeure Event.

- 2 For the purposes of clause 3.2, a time-based adjustment is to occur to any Availability Rebate that is payable by LDCP which adjusts the Availability Rebate payable in respect of the relevant Operational Year by reference to the number of hours which have elapsed within FM Band 1, FM Band 2 and FM Band 3, as applicable.
- 3 A reference to a 'day' in Table S1.1 is a reference to a consecutive period of 24 hours.
- 4 Despite the note 3, the duration of each Force Majeure Event is to be determined based on the number of hours for which the relevant event subsists, rounded up to the nearest full hour.

4 COMMITTED STORAGE REBATE

4.1 Application of this clause

This clause 4 applies in respect of *bidirectional units* which are included in the Facility only.

4.2 Calculation of Committed Storage Rebate

- (a) The Committed Storage Rebate for an Operational Year is calculated as follows:

$$\text{Storage Capacity Rebate} = \text{Scheme Payment}_{t_n} \times \text{Storage Rebate Percentage}_{e_n}$$

where:

Scheme Payment_{t_n} is the Scheme Payment for the Operational Year;

Storage Rebate Percentage is calculated in accordance with clause 4.3 below.

- (b) Where the Facility is constituted by one or more *bidirectional unit/s* and one or more *generating unit/s*, for the purpose of determining the Committed Storage Rebate, **Scheme Payment_{t_n}** is to be reduced by multiplying Scheme Payment_{t_n} (as determined in for the Operational Year accordance with clause 1.2 above) by the percentage determined by dividing the Committed Bidirectional Capacity by the Committed Output Capacity of the Facility.

4.3 Calculation of Storage Rebate Percentage

The Storage Rebate Percentage for an Operational Year is calculated as follows:

$$\text{Storage Rebate Percentage}_{e_n} = (SC_n - MSOC - TSC_n) / (SC_n - MSOC)$$

Where:

SC_n is Committed Storage Capacity for an Operational Year.

MSOC is the minimum state of charge specified in Item 15 of the Reference Schedule (if applicable); and

TSC_n is Tested Storage Capacity for the relevant Operational Year provided that if the Committed Storage Rebate Percentage is less than 0% then TSC be deemed to be 0%.

SCHEDULE 3 – SPECIFIC TERMS: DEVELOPMENT PERIOD

1 PROJECT MILESTONES

1.1 Milestones and Milestone Dates

- (a) LDCP must:
 - (i) develop the Project in a manner which achieves each Milestone by the applicable Milestone Date; and
 - (ii) provide a notice to FV:
 - (A) confirming it has achieved a Milestone; and
 - (B) attaching reasonable evidence to confirm that it has achieved that Milestone,within 10 Business Days after achieving that Milestone.
- (b) Subject to clause 1.5, LDCP will not be taken to have achieved a Milestone unless it has complied with clause 1.1(a)(ii).

1.2 Delay in achieving Milestone Dates

If any events or circumstances occur which prevent LDCP from achieving any Milestone/s by the applicable Milestone Date/s (**Delay Event**), LDCP must:

- (a) use its best endeavours (including by applying or deploying adequate resources and incurring expenditure as required) to overcome the Delay Event and achieve the Milestone as soon as reasonably possible; and
- (b) within 10 Business Days of becoming aware of the Delay Event, provide a notice to FV setting out:
 - (i) the circumstances of the Delay Event;
 - (ii) the measures that are being taken by LDCP to ensure that the Delay Event is overcome and the Milestone is achieved as soon as reasonably possible; and
 - (iii) LDCP's estimated timing for the Milestone to be achieved.

1.3 Extension of Milestone Dates

- (a) If FV:
 - (i) is notified by LDCP of a Delay Event pursuant to clause 1.2; or
 - (ii) notifies LDCP that a Milestone has not been achieved by the applicable Milestone Date,FV may provide LDCP with a notice (**Milestone Delay Notice**) asking LDCP to provide FV with any information reasonably required by FV in connection with the relevant Delay Event, including any information (or further information) of the type specified in clause 1.2(b).
- (b) If FV asks for information under clause 1.3(a), LDCP must provide any such information (in a level of detail reasonably acceptable to FV) within 10 Business Days after a request is made by FV.
- (c) Subject to clause 1.3(e) and clause 1.4, LDCP will be entitled to an extension of the relevant Milestone Date, where:
 - (i) FV consents to the extension (which it may do so in its discretion); or

- (ii) other than in respect of the COD Milestone Date (which will not be extended), the delay is caused by a Qualifying Cause of Delay.
- (d) Where LDCP is entitled to an extension to any Milestone Date/s:
 - (i) the parties will act in good faith in negotiating updated Milestone Date/s that are to apply; and
 - (ii) LDCP will provide FV with an updated schedule for the Project which reflects the extension,

within 20 Business Days after the date on which the Milestone Delay Notice is provided.
- (e) LDCP will not be entitled to an extension of a Milestone Date under this clause 1.3 where FV forms the view, acting reasonably, that the failure to achieve the Milestone by the relevant Milestone Date will prevent COD from being achieved by the COD Milestone Date, in which case clause 1.4 will apply.

1.4 Critical Path Cure Plans

- (a) If at any time FV forms the view, acting reasonably, that LDCP is unable to achieve COD by the COD Milestone Date as the result of LDCP failing to meet any Milestone by the relevant Milestone Date or for any other reason, instead of providing a Milestone Delay Notice under clause 1.3(a), it may provide a notice to LDCP (**Critical Path Notice**):
 - (i) confirming that FV considers that the critical path for the Project has been compromised and that as a result, FV is of the opinion that COD is unable to be achieved by the COD Milestone Date; and
 - (ii) requiring LDCP to prepare and provide to FV a cure plan (within 10 Business Days after the Critical Path Notice) which:
 - (A) specifies LDCP's plan for achieving COD by the COD Milestone Date (in a reasonable amount of detail); and
 - (B) attaches LDCP's updated schedule (and revised dates) for achieving all remaining Milestones, including the COD Milestone,

(**Critical Path Cure Plan**).
- (b) LDCP must make any changes to the Critical Path Cure Plan (and provide any additional supporting information) reasonably requested by FV within 10 Business Days of request by FV.
- (c) FV will have discretion as to whether it accepts or rejects a Critical Path Cure Plan and despite anything to the contrary in clause 1.3, FV will have discretion as to whether it accepts a Critical Path Cure Plan which extends the COD Milestone Date.
- (d) Without limiting FV's discretion under clause 1.3(c), in exercising its discretion under clause 1.3(c) FV may take into consideration:
 - (i) the long-term financial interests of South Australian energy consumers; and
 - (ii) FV's ability to secure other long duration dispatchable electricity capacity to cover any shortfall as a result of the LDCP not meeting the original COD Milestone Date.
- (e) If FV accepts a Critical Path Cure Plan, it must be complied with by LDCP in all respects.

- (f) If LDCP fails to provide a Critical Path Cure Plan within the timeframe required by this clause, or fails to comply with a Critical Path Cure Plan, FV may terminate this agreement in accordance with clause 6.1 of the General Terms.

1.5 COD Preconditions

LDCP will not be taken to have achieved COD (and it will not be taken to have satisfied the COD Milestone) unless all of the following preconditions (**COD Preconditions**) have been satisfied (or waived by FV):

- (a) **(Milestones achieved)**: all other Milestones have been met;
- (b) **(Specification met)**: the Facility has been designed and constructed in a manner which meets the Specification;
- (c) **(commissioning complete)**: the Facility has been fully commissioned (including any joint commissioning of all Utility Connection Assets);
- (d) **(Capacity Commitment)**: the Facility is capable of achieving the Capacity Commitment;
- (e) **(Minimum Performance Obligation)**: the Facility is capable of achieving the Minimum Performance Obligation;
- (f) **(AEMO registration)**: the Facility is registered with AEMO in accordance with the requirements of the NER;
- (g) **(hold points released)**: the Facility has been released from the final hold point required to enable the Facility to meet the Capacity Commitment and the Minimum Performance Obligation; and
- (h) **(Independent COD Report)**: LDCP has delivered to FV a report from an independent engineering firm reasonably acceptable to FV (which is expressed to be a report upon which FV may rely), confirming that each of the COD Preconditions have been satisfied.

[Note (to be deleted in execution version): where a Proponent has Bid an Aggregated Facility it is the intent that COD will only occur when the COD Preconditions for each Project Component has been satisfied.]

1.6 Notification of COD

- (a) FV must approve or dispute the Independent COD Report within 20 Business Days of receipt from LDCP.
- (b) Unless FV disputes the contents of the Independent COD Report in good faith within the timeframe set out in paragraph (a), COD will be taken to have been achieved on the date that is 5 Business Days after the date on which the Independent COD Report is provided to (and received by) FV in accordance with clause 1.5(f).

1.7 Period following COD Milestone Date

- (c) Where the Facility has not achieved COD by the COD Milestone Date (as extended by a Critical Path Cure Plan that is accepted by FV, if any), FV may terminate this agreement upon notice to LDCP in accordance with clause 6.2 of the General Terms.
- (d) Without limiting clause 1.7(a), where COD has not been achieved by the COD Milestone Date and FV has not terminated this agreement in accordance with clause 6.2 of the General Terms LDCP must continue to do all things necessary (including by applying or deploying adequate resources and incurring expenditure as required) to achieve COD as soon as reasonably possible.

2 CHANGES TO FACILITY PRE-COD

2.1 Variation Request

If at any time before COD, LDCP proposes to make any changes to the Specification of the Facility, LDCP must submit a notice to FV (**Variation Request**) setting out the particulars of how the proposed change will prevent the Facility from meeting the Specification.

2.2 FV may accept or reject Variation Request

- (a) Within 10 Business Days of the Variation Request being received by FV, the parties will meet and discuss the Variation Request.
- (b) FV must act reasonably in providing or withholding its consent to a Variation Request if it can be established by LDCP that the relevant Variation Request will not:
 - (i) prevent the Facility from meeting:
 - (A) the Capacity Commitment; or
 - (B) the Minimum Performance Obligation;
 - (ii) prevent LDCP from achieving COD by the COD Milestone Date; or
 - (iii) require the Base Figures to increase.
- (c) Otherwise, it is acknowledged and agreed that FV may accept or reject a Variation Request in its discretion (with or without providing reasons).
- (d) In any event, FV will use its best endeavours to notify LDCP whether or not a Variation Request is accepted within 20 Business Days after the meeting referred to in clause 2.2(a).

2.3 Documentation of change

If FV accepts the Variation Request:

- (a) the parties must negotiate and enter into an appropriate formal agreement giving effect to the variation as soon as reasonably practicable; and
- (b) the execution of such formal agreement by both parties will be taken to be a COD Precondition.

3 MILESTONE REPORTING

3.1 Progress reports to be provided Quarterly

- (a) LDCP must provide, within 20 Business Days after the end of each Quarter in the Development Period, a Quarterly report that sets out the following information with reasonable supporting information:
 - (i) **(Milestone progress)**: the progress of achieving the Milestones as against the Milestone Dates, including updated estimated dates for achieving each Milestone;
 - (ii) **(Delay Events)**: updated information regarding Delay Events (or any Milestones which have not been achieved by their Milestone Dates) including their status;
 - (iii) **(Critical Path Cure Plan)**: where applicable, updated information regarding any Critical Path Cure Plan and LDCP's progress in carrying out the Critical Path Cure Plan;

- (iv) **(changes to the Facility)**: any changes, or proposed changes, to the design or configuration of the Facility (other than those which have been disclosed in accordance with clause 2.1);
 - (v) **(work, health and safety issues)**: any material work, health and safety incidents (including details of any such incidents which have been reported to an Authority) which have occurred in the course of constructing the Facility;
 - (vi) **(complaints and legal proceedings)**: details of complaints received or legal proceedings threatened or commenced in relation to the Project or the Facility;
 - (vii) **(urgent matter updates)**: updates regarding the status of any matters which have previously been reported to FV under clause 3.4;
 - (viii) **(Project Documents)**: information regarding the status of, and any formal notices which have been exchanged between the parties of the Project Documents in connection with the Project Documents; and
 - (ix) **(other)**: such other matters as may be reasonably requested by FV at least 10 Business Days before the due date for the relevant report.
- (b) Within the 10 Business Day period after it is provided with a Quarterly report, FV may provide a notice to LDCP requesting:
- (i) that LDCP updates such report to provide details regarding any matters specified above which are not addressed in the report; and/or
 - (ii) such further clarification or supporting information as may be reasonably requested by FV in relation to the matters addressed in the report,
- and LDCP must provide such updates, clarification and/or supporting information to FV within a further period of 5 Business Days after receiving the notice.

3.2 Revised Facility development plan

[Note (to be deleted in execution version): this clause will only be included for FERMA awarded in Tender Category 3 (i.e. Target COD of 1 November 2031), to provide confidence to FV that the COD Milestone Date will be met given the extended Development Period.]

When providing the Quarterly report under clause 3.1 which is required to be provided closest to the date being 18 months after the Signing Date, in addition to the information required to be provided in clause 3.1, LDCP must ensure that such report also includes the following with a reasonable amount of supporting information:

- (a) LDCP's plan for achieving all Milestones by Milestone Dates (and COD by the COD Milestone Date);
- (b) the status of all Authorisations required in connection with the construction and operation of the Facility;
- (c) the status of all key procurement and construction activities in connection with the Facility including those relating to any relevant Utility Connection; and
- (d) a detailed project schedule specifying all key activities undertaken and to be undertaken, in order to achieve each Milestone by the applicable Milestone Date (and COD by the COD Milestone Date); and
- (e) a detailed description of any challenges LDCP envisages in achieving each Milestone by the applicable Milestone Date.

3.3 Additional reporting

- (a) Where:
 - (i) a Delay Event has occurred in relation to a Milestone;
 - (ii) a Milestone has not been achieved by the relevant Milestone Date;
 - (iii) a Critical Path Notice has been provided to LDCP; or
 - (iv) a Critical Path Cure Plan is in place,LDCP must provide additional (or updated) reports containing any or all of the information required to be contained in a report prepared in accordance with clause 3.1 that is required by FV within 5 Business Days of a request from FV.
- (b) In addition to (and without limiting) clause 3.2 or 3.3(a), LDCP must provide a written update regarding the status of each Milestone (and provide a reasonable amount of supporting information in relation to such update) and LDCP's updated estimate for achieving COD within 10 Business Days of a request from FV.

3.4 Urgent reporting

- (a) Prior to COD being achieved, LDCP must notify FV (and provide a reasonable amount of supporting information regarding the relevant event or circumstance) within 5 Business Days of becoming aware of any of the following:
 - (i) **(death or serious injury)**: any death or serious injury which occurs in the course of carrying out the Project or constructing the Facility;
 - (ii) **(contamination and environmental harm)**: any event resulting in contamination or environmental harm to the Site which occurs in the course of carrying out the Project or constructing the Facility;
 - (iii) **(Project Documents)**: any formal notices (including in relation to variation, suspension of work or any actual or alleged breaches) being issued under a Project Document;
 - (iv) **(environmental Law)**: any breach of any environmental Law which occurs in the course of carrying out the Project or constructing the Facility; or
 - (v) **(insolvency of counterparty)**: the insolvency of LDCP or any counterparty to a Project Document.
- (b) Once an urgent report is provided to FV under clause 3.4(a), LDCP must provide updates to FV regarding the status of the relevant event or circumstance:
 - (i) in each Quarterly report under clause 3.1 moving forward; and
 - (ii) within 5 Business Days of receiving a notice from FV requesting such an update at any time.

SCHEDULE 4 – SPECIFIC TERMS: OPERATIONAL PERIOD

1 OPERATIONAL PERIOD

1.1 General undertakings

At all times during the Operational Period, LDGP must operate and maintain the Facility in accordance with Good Industry Practice, and otherwise in a manner which ensures that the Facility:

- (a) **(applicable Law)**: complies with applicable Law (including without limitation, the NER);
- (b) **(conforms to Specification)**: conforms to the Specification;
- (c) **(Capacity Commitment)**: meets the Capacity Commitment;
- (d) **(Minimum Performance Obligation)**: meets the Minimum Performance Obligation; and
- (e) **(Technical Standards)**: meets the Technical Standards.

1.2 Bidding and market undertakings

At all times during the Operational Period, LDGP must:

- (a) **(Registered Participant)**: be registered as the *Registered Participant* for the Facility (subject to clause 3.1 of the General Terms);
- (b) **(NEM bidding and dispatch)**: bid and dispatch the Facility (acting as a stand-alone asset at the Connection Point and not on the basis that it is aggregated with any other *facility* connected at a different Connection Point) into the *NEM* in good faith in accordance with market signals;
- (c) **(AEMO directions)**: bid the Facility in to the *NEM* in accordance with any *AEMO* directions (including during Compliance Intervals and Actual LOR Intervals);
- (d) **(operate to maximise revenue)**: subject to clause 1.2(e) and the Capacity Commitment, operate the Facility in a manner which seeks to maximise the amount of revenue derived from the Facility (and reduce the quantum of Scheme Payments payable under this agreement) in good faith;
- (e) **(manage fuel costs)** subject to clause 1.2(c) and the Capacity Commitment, bid the Facility in a manner which ensures that the Facility is not dispatched where the sum of Permitted Costs and the Fuel Reimbursement in respect of a *trading interval* are expected to exceed the Operational Revenue in that *trading interval*; and
- (f) **(Market Liquidity Obligation)**: ensure that it meets the Market Liquidity Obligation (if applicable).

[Note (to be deleted in execution version): for Aggregated Facilities, an undertaking to comply with paragraph (d) of EC2 (regarding the operating protocol) is to be inserted.]

2 CAPACITY COMMITMENT¹

2.1 Capacity Commitment

LDGP must ensure that the Facility is compliant with clause 2.2 in respect of all Compliance Intervals which occur during the Operational Period.

¹ Failure to comply with this clause 2 is a Tier 1 Civil Penalty for the purposes of the FERM Regulations.

2.2 Compliance Intervals

Subject to clause 2.3, LDCP must ensure that:

- (a) at all times during each Compliance Interval, the Actual Capacity of:
 - (i) any conventional *generating units* included in the Facility (on an aggregated basis) is equal to at least the Committed Conventional Capacity (**Conventional Capacity Commitment**); and
 - (ii) any *bidirectional units* included in the Facility (on an aggregated basis) is equal to at least the Committed Bidirectional Capacity (**Bidirectional Capacity Commitment**); and
- (b) in respect of each Compliance Period, the Actual Capacity of the Facility on an aggregated basis is equal to at least the Committed Output Capacity for the duration the Compliance Period (**Capacity Commitment**).

2.3 Relief from Capacity Commitment

- (a) For the purposes of determining compliance with clause 2.2:
 - (i) **(longer than 8-hour duration)**: LDCP will not be required to meet the Capacity Commitment in respect of any Compliance Intervals occurring after the initial 8-hours of a Compliance Period;
 - (ii) **(insufficient notice of Compliance Intervals)**: if, due to changes in ST PASA information published by AEMO, LDCP does not receive prior notice of the commencement of a Compliance Interval:
 - (A) which is at least equal to the LOR Notice Period (Conventional):
 - (1) LDCP will not be required to meet the Conventional Capacity Commitment; and
 - (2) the Capacity Commitment will be reduced by an amount equal to the Conventional Capacity Commitment, for that Compliance Interval;
 - (B) which is at least equal to the LOR Notice Period (Bidirectional):
 - (1) LDCP will not be required to meet the Bidirectional Capacity Commitment; and
 - (2) the Capacity Commitment will be reduced by an amount equal to the Bidirectional Capacity Commitment, for that Compliance Interval;
 - (iii) **(inadequate charging time)**: if, due to:
 - (A) the occurrence of any recent Actual LOR Interval which has occurred within a *trading interval* which is not a Compliance Interval;
 - (B) the occurrence of any recent Compliance Interval which is not part of the same Compliance Period as the Compliance Interval; or
 - (C) any directions which have been received by LDCP from AEMO,
 LDCP does not receive notice of the commencement of a Compliance Period which is at least equal to the LOR Notice Period (Bidirectional) during which it is able to charge the *bidirectional units* included in the Facility on an uninterrupted basis:

- (D) it will not be required to comply with the Bidirectional Capacity Commitment in respect of that Compliance Period; and
- (E) the Capacity Commitment in respect of that Compliance Period will be the Conventional Capacity Commitment (or zero if there are no conventional generation units included in the Facility); and
- (iv) **(Force Majeure Events)**: to the extent LDCP is:
 - (A) unable to meet Conventional Capacity Commitment in respect of a Compliance Interval due to a Force Majeure Event, subject to clause 8.3:
 - (1) LDCP will not be required to meet the Conventional Capacity Commitment in respect of that Compliance Interval; and
 - (2) the Capacity Commitment for that Compliance Interval will be taken to be the Bidirectional Capacity Commitment (or zero if there are no *bidirectional units* included in the Facility);
 - (B) unable to meet Bidirectional Capacity Commitment in respect of a Compliance Interval due to a Force Majeure Event, subject to clause 8.3:
 - (1) LDCP will not be required to meet the Bidirectional Capacity Commitment in respect of that Compliance Interval; and
 - (2) the Capacity Commitment for that Compliance Interval will be taken to be the Conventional Capacity Commitment (or zero if there are no conventional generation units included in the Facility).

2.4 Repeated failures to comply with Capacity Commitment

- (a) If LDCP fails to comply with the Capacity Commitment more than 3 times in any 12-month period (other than as a result of a Force Majeure Event), it must:
 - (i) investigate the cause of each failure; and
 - (ii) within 20 Business Days after becoming aware of the third relevant failure (or being requested to do so by FV) (**CC Cure Period**), provide a draft cure plan to FV which demonstrates how LDCP will ensure that the Capacity Commitment will be achieved moving forward (**Draft CC Cure Plan**).
- (b) FV must act reasonably in determining whether to approve or reject the Draft CC Cure Plan and must either approve or reject a Draft CC Cure Plan within 30 Business Days after that Draft CC Cure Plan (which complies with this agreement) is submitted to FV.
- (c) If FV rejects a Draft CC Cure Plan:
 - (i) FV must provide LDCP with written reasons for the rejection at the time the Draft CC Cure Plan is rejected; and
 - (ii) LDCP may submit a revised Draft CC Cure Plan for approval by FV in accordance with clause 2.4(a)(ii).
- (d) Clause 2.4(b) and 2.4(c)(i) but not clause 2.4(c)(ii), will apply to an amended Draft CC Cure Plan submitted by LDCP pursuant to clause 2.4(c)(ii).
- (e) If FV approves a Draft CC Cure Plan it must notify LDCP of that approval and that Draft CC Cure Plan becomes the approved cure plan on the date of that approval (**CC**

Cure Plan). On and from the date on which FV notifies LDCP of that approval, LDCP must:

- (i) comply with the CC Cure Plan; and
- (ii) provide a report to FV regarding its progress against the approved CC Cure Plan within 5 Business Days after the end of each month until LDCP next satisfies the Capacity Commitment.

3 PERFORMANCE REQUIREMENTS

3.1 Actual LOR Intervals (non-forecasted)

Where an Actual LOR Interval occurs during a *trading interval* which is not a Compliance Interval, LDCP must:

- (a) **(output)**: use its best endeavours to start up and/or ramp up the Facility to ensure that the Actual Capacity of the Facility is equal to at least the Committed Output Capacity as soon as reasonably possible; and
- (b) **(storage)**: if the Facility includes *bidirectional units*, use best endeavours to ensure that any stored energy as at commencement of the Actual LOR Period (up to the Committed Storage Capacity) is made available for immediate dispatch into the *NEM*.

3.2 Minimum Performance Obligation

At all times during the Operational Period (including during Compliance Intervals), LDCP must ensure that:

- (a) the Facility meets the Availability Requirement; and
- (b) all *bidirectional units* included in the Facility (on an aggregated basis) meet the Storage Requirement,

(Minimum Performance Obligation).

3.3 Availability Uptime and Availability Rebate

- (a) LDCP must ensure that the Availability Uptime Percentage for the Facility during each Operational Year is equal to, or higher than, the Required Availability Percentage **(Availability Requirement)**.
- (b) If the Facility does not meet the Availability Requirement during an Operational Year, the Availability Rebate will be payable by LDCP under clause 7.3(b)(ii) of the Specific Terms: Operational Period, which is to be determined in accordance with clause 3 of Schedule 2.
- (c) Subject to the Capacity Commitment (including any related civil penalties arising under the FERM Regulations), the Minimum Performance Obligation and clause 6 of the General Terms, the payment of the Availability Rebate is FV's sole remedy for LDCP's failure to achieve the Required Availability Threshold in an Operational Year.

3.4 Committed Storage Capacity and Committed Storage Rebate

- (a) LDCP must ensure that the Tested Storage Capacity of all *bidirectional units* included in the Facility (on an aggregated basis) at all times during each Operational Year is equal to, or higher than, the Committed Storage Capacity **(Storage Requirement)**.
- (b) If the Facility does not meet the Storage Requirement) during an Operational Year, the Committed Storage Rebate will be payable by LDCP under clause 7.3(b)(iii) of the Specific Terms: Operational Period, which is to be determined in accordance with clause 4 of Schedule 2.

- (c) Subject to the Capacity Commitment (including any related civil penalties arising under the FERM Regulations), the Minimum Performance Obligation and clause 6 of the General Terms, the payment of the Committed Storage Rebate is FV's sole remedy for LDCP's failure to maintain the Committed Storage Capacity.

3.5 One rebate to apply only

The parties acknowledge and agree that despite anything to the contrary in this agreement:

- (a) where the Facility includes both, conventional *generating units* and *bidirectional units*, or is constituted by *bidirectional units* only, LDCP will not be liable for the Availability Rebate and the Committed Storage Rebate in respect of the same Operational Year;
- (b) in respect of any Operational Year where LDCP is liable for both the Availability Rebate and the Committed Storage Rebate, LDCP will be taken to be liable for the higher of the Availability Rebate and the Committed Storage Rebate only; and
- (c) where clause 3.5(b) applies, LDCP will be taken to be fully released from its liability in respect of the rebate it is not liable for under clause 3.5(b).

3.6 Rebates are to be subtracted from Scheme Payments

- (a) The Availability Rebate and the Committed Storage Rebate (as applicable) will be subtracted from the Scheme Payment which would otherwise be payable by FV to LDCP in respect of the relevant Operational Year.
- (b) If the Scheme Payment for the relevant Operational Year is less than the amount of the Availability Rebate and/or the Committed Storage Rebate (as applicable), the Scheme Payment for that year will be zero, and LDCP will not have any liability to pay any further Availability Rebate or Committed Storage Rebate in respect of the relevant Operational Year.

3.7 Determination of Tested Storage Capacity

- (a) This clause 3.7 only applies where the Facility includes *bidirectional units*.
- (b) In the last Quarter of an Operational Year, LDCP must conduct a Committed Storage Capacity test in accordance with this clause 3.7.
- (c) LDCP must use reasonable endeavours to undertake the Committed Storage Capacity test at a time that is likely to maximise revenue.
- (d) During the Committed Storage Capacity test:
 - (i) LDCP will charge the Facility until it reaches the Committed Storage Capacity, or the available charge power (as reported by the Facility's SCADA system) is zero;
 - (ii) LDCP will continuously discharge the Facility (without charging) where possible, at the Committed Output Capacity (or less, subject to dispatch instructions) for 8 continuous hours;
 - (iii) all auxiliary loads must be operating normally and not restricted; and

the **Tested Storage Capacity** is the quantity of electricity discharged (in MWh) as measured at the AC side of the Connection Point following the completion of the 8 hours discharge.
- (e) No adjustments will be made for ambient temperature when determining Tested Storage Capacity.

- (f) LDCP must include full details of the Committed Storage Capacity test (and a reasonable amount of supporting evidence) in the Annual FERM Report required under clause 6.3, including:
 - (i) the ambient temperature;
 - (ii) the power at the Connection Point during the Committed Storage Capacity test;
 - (iii) auxiliary load use;
 - (iv) the state of charge during the Committed Storage Capacity test; and
 - (v) the Tested Storage Capacity.

3.8 Testing, Force Majeure Events and Major Loss Events

- (a) If LDCP is unable to test the Facility within the Quarter specified in clause 3.7(b) at its full operational capability due to a Force Majeure Event:
 - (i) such testing must promptly be carried out following the end of the relevant Force Majeure Event; and
 - (ii) LDCP must include the results of such testing in the Annual FERM Report in respect of the relevant Operational Year (or if such report has already been provided to FV, provided an updated version of that report containing the information specified in clause 6.1(d) and 6.1(e) within 5 Business Days of the relevant testing being completed).
- (b) Where, due to a Force Majeure Event, such testing cannot be carried out until after commencement of the following Operational Year, then:
 - (i) LDCP must conduct the test as soon as practicable after the Force Majeure Event ends;
 - (ii) when the testing is completed, the Tested Storage Capacity will be used to determine whether LDCP has met the Storage Requirement during the previous Operational Year; and
 - (iii) any Committed Storage Rebate that is payable by LDCP in respect of the previous Operational Year will be carried forward and will be subtracted from the Scheme Payment payable in respect of the current Operational Year.

3.9 Minimum Performance Thresholds – cure plan

- (a) If:
 - (i) the Availability Uptime Percentage for an Operational Year is less than 80%; and/or
 - (ii) the Tested Storage Capacity of the Facility is less than 80% of the Committed Storage Capacity,
 other than as a direct result of a Force Majeure Event or a Major Loss Event **(Minimum Performance Threshold)** in each case in any Operational Year LDCP must:
 - (iii) investigate the cause of the non-compliance; and
 - (iv) within 20 Business Days after becoming aware of the relevant failure (or being asked to do so by FV) **(MPT Cure Period)**, provide a draft cure plan to FV which demonstrates how LDCP will ensure that the relevant Minimum Performance Thresholds will be achieved in the following Operational Year **(Draft MPT Cure Plan)**.

- (b) FV must act reasonably in determining whether to approve or reject the Draft MPT Cure Plan and must either approve or reject a Draft MPT Cure Plan within 30 Business Days after that Draft MPT Cure Plan (which complies with this agreement) is submitted to FV.
- (c) If FV rejects a Draft MPT Cure Plan:
 - (i) FV must provide LDCP with written reasons for the rejection at the time the Draft MPT Cure Plan is rejected; and
 - (ii) LDCP may submit a revised Draft MPT Cure Plan for approval by FV in accordance with clause 3.9(a)(iv).
- (d) Clause 3.9(b) and 3.9(c)(i) but not clause 3.9(c)(ii), will apply to an amended Draft MPT Cure Plan submitted by LDCP pursuant to clause 3.9(c)(ii).
- (e) If FV approves a Draft MPT Cure Plan it must notify LDCP of that approval and that Draft MPT Cure Plan becomes the approved cure plan on the date of that approval (**MPT Cure Plan**). On and from the date on which FV notifies LDCP of that approval, LDCP must:
 - (i) comply with the MPT Cure Plan; and
 - (ii) provide a report to FV regarding its progress against the approved MPT Cure Plan within 5 Business Days after the end of each month until LDCP next satisfies the relevant Minimum Performance Threshold.

4 MAINTENANCE

4.1 Maintenance activities

LDCP must ensure that all maintenance activities are carried out:

- (a) **(Good Industry Practice)**: in accordance with Good Industry Practice;
- (b) **(OEM Manuals)**: in a manner which ensures compliance with all OEM manuals in relation to individual components of the Facility;
- (c) **(OEM Warranties)**: in a manner which ensures that any OEM warranty/ies held by LDCP are not voided; and
- (d) **(Maintenance Plan)**: in respect of Planned Maintenance, in accordance with the most up to date Maintenance Plan provided to FV under clause 4.2.

4.2 Maintenance Plans

- (a) Within 20 Business Days after the commencement of each Operational Year, LDCP must submit a 2 year forward looking maintenance plan for the following 2 Operational Years to FV (**Maintenance Plan**).
- (b) The Maintenance Plan must set out, in a reasonable amount of detail:
 - (i) all non-capital Planned Maintenance activities which are to be carried out on the Facility during the relevant Operational Year;
 - (ii) all capital Planned Maintenance activities which are to be carried out on the Facility during the relevant Operational Year; and
 - (iii) a schedule for the completion of Planned Maintenance activities during the relevant Operational Years which is compliant with clause 4.3.
- (c) The Maintenance Plan must also be accompanied with a certification letter signed by a director of LDCP confirming that LDCP is satisfied that all critical spare parts for the

Facility (which would typically be held by a prudent operator of the Facility operating in accordance with Good Industry Practice) are held.

- (d) FV may, within the 20 Business Day period following receipt of an annual Maintenance Plan, notify LDCP of reasonable changes to the Maintenance Plan which are required in order to comply with the requirements of this agreement.
- (e) LDCP must make any changes to the Maintenance Plan which are requested by FV pursuant to clause 4.2(d) and re-submit with Maintenance Plan to FV within 20 Business Days after the request by FV under clause 4.2(d) is received.

4.3 Planned Maintenance

- (a) Planned Maintenance activities which:
 - (i) **(reduction of Capacity Commitment):**
 - (A) require an *outage* in respect of the Facility; or
 - (B) will reduce LDCP's ability to meet the Capacity Commitment, must not be carried out during Peak Periods, and may only be carried out during Agreed Maintenance Windows;
 - (ii) **(no impact on Capacity Commitment):**
 - (A) do not require an *outage* in respect of the Facility; or
 - (B) will not reduce LDCP's ability to meet the Capacity Commitment, may be carried out at any time during Agreed Maintenance Windows or Peak Periods.
- (b) LDCP may carry out Planned Maintenance activities of the type specified in clause 4.3(a) without any requirement to provide FV with prior notice.

4.4 Unplanned Maintenance - Emergencies and Force Majeure

Nothing in this clause 4 is intended to prevent or limit LDCP's ability to carry out Unplanned Maintenance at any time (during an Agreed Maintenance Window or a Peak Period) including where such maintenance activities are required in order to:

- (a) mitigate, abate or remedy an Emergency; or
- (b) mitigate, abate or remedy a Force Majeure Event which is preventing the Facility from meeting the Capacity Commitment or the Minimum Performance Obligation.

5 ALTERATIONS TO FACILITY

5.1 FV consent

- (a) LDCP must not:
 - (i) make or permit any alteration, expansion or change to the Facility (including any increase in the generation or storage capacity of the Facility); or
 - (ii) install or permit the installation of any load, energy storage system or additional generation system behind the Connection Point for the Facility, **(Alteration or New Installation)**, including in connection with or for the purpose of giving effect to staging of the development of the Facility, without FV's prior written consent.
- (b) FV must not unreasonably withhold or delay such consent where the Alteration or New Installation will not materially or adversely impact:

- (i) LDCP's ability to meet the Capacity Commitment;
 - (ii) LDCP's ability to meet the Minimum Performance Obligation;
 - (iii) LDCP's ability to derive revenue from the Facility; and
 - (iv) the financial position of FV in connection with this agreement (taking into consideration Scheme Payments, Upside Payments, Fuel Reimbursement and revenue sharing).
- (c) The parties acknowledge and agree that FV may withhold its consent (in its discretion) if any Alteration or New Installation would result in the Facility no longer being able to meet the Capacity Commitment.

5.2 Materials to be provided

- (a) If LDCP asks FV for consent under clause 5.1(a), LDCP must, promptly (and in any event within 10 Business Days of a request from FV), provide FV with details of the following, with such supporting information that is reasonably required by FV:
 - (i) any change to the capacity, availability or generation profile of the Facility that would result from the Alteration or New Installation;
 - (ii) all Authorisations (or variations to existing Authorisations) which are required in connection with the Alteration or New Installation and their status;
 - (iii) any *outages* that would result from, or be required in connection with, the Alteration or New Installation; and
 - (iv) any impact of the Alteration or New Installation on LDCP's ability to carry out its obligations under this agreement.
- (b) If further information is requested under clause 5.2(a), FV will not provide its consent and clause 5.1(b) will not have any effect until such information is provided (in form and substance reasonably acceptable to FV).

6 REPORTING

6.1 Report to be provided Quarterly

- (a) LDCP must provide a Quarterly report to FV within 10 Business Days after the end of each Quarter during the Operational Period (**Quarterly Report**).
- (b) The Quarterly Report is to be in the form of a template excel spreadsheet which is to be provided to LDCP by FV. The template may be updated by FV from time to time (as notified by FV to LDCP) in which case all future Quarterly Reports are to be in the form of the new template notified by FV.
- (c) Each Quarterly Report is to be cumulative (in that the same spreadsheet will be updated each Quarter throughout the Operational Period), and is to contain the following information, with each item below to be individually detailed in its own tab (and is to be accompanied with a reasonable amount of supporting information):
 - (i) the Base Figures for the relevant Operational Year (and a separate tab setting out how the Base Figures have been indexed over time);
 - (ii) the Permitted Costs and Operational Revenue for that Operational Year which are to be expressed on a Quarterly and year to date basis;
 - (iii) a summary of the YTD Scheme Payments, YTD Upside Payments and YTD Fuel Reimbursement in respect of the relevant Operational Year;

- (iv) a summary of the Quarterly Net Payment which LDCP calculates as being payable in respect of each Quarter;
 - (v) details of how LDCP has complied with the Market Liquidity Obligation during the relevant Operational Year to date;
 - (vi) a list of all Compliance Intervals during the reporting period and confirmation as to whether the Facility has been compliant with clause 2.2 during those intervals;
 - (vii) a separate tab setting out a list of all Actual LOR Intervals (other than Actual LOR Intervals that occur during a Compliance Interval) during the reporting period and confirmation as to whether the Facility has been compliant with clause 2.2 during those intervals;
 - (viii) a separate tab setting out confirmation as to whether the Availability Requirement has been met to date in respect of the relevant period and LDCP's calculation of any Availability Rebate.
- (d) In addition to the above requirements, the final Quarterly Report for an Operational Year is to confirm whether the Facility has the Committed Storage Capacity as at the relevant testing date and include all information required to be included in accordance with clause 3.7(f) of the Specific Terms: Operational Period, and LDCP's calculation of any Committed Storage Rebate.
- (e) Within the 10 Business Day period following receipt of the Quarterly Report, FV may request that LDCP provides further information or evidence that is reasonably required by FV in relation to the information that has been provided by FV in the Quarterly Report.

6.2 Review of Quarterly Report by FV

- (a) Within 20 Business Days after the date on which FV receives the Quarterly Report and certification in accordance with clause 6.1 (and any further information that is requested under clause 6.1(e)), FV may provide a notice to LDCP that FV Disputes the Quarterly Net Payment or any of its components.
- (b) The parties agree that notwithstanding any notice (or lack thereof) by FV Disputing a Quarterly Report or Quarterly Net Payment:
- (i) any action or communication by FV is not to be taken as agreement or consent by FV to the contents of the Quarterly Report or LDCP's calculation of the Quarterly Net Payment (or any of its components); and
 - (ii) subject to clause 6.4, FV reserves its rights in respect of the Quarterly Net Payment and Annual Net Payment.

6.3 Report at end of Operational Year

- (a) The final Quarterly Report that is provided in relation to an Operational Year (**Annual FERM Report**) is to:
- (i) also include a summary of the Annual Net Payment which LDCP calculates as being payable in respect of the Operational Year; and
 - (ii) be accompanied with a certification letter which has been signed by a director of LDCP confirming that the Annual FERM Report is true and correct.
- (b) Within the 10 Business Day period following receipt of the Annual FERM Report, FV may request that LDCP provides further information or evidence that is reasonably required by FV in relation to the information that has been provided by FV in the Annual FERM Report.

- (c) LDCP must provide the information that is requested by FV within 10 Business Days of a request from FV.

6.4 Review of Annual FERM Report by FV

Within 20 Business Days after the date on which FV receives the Annual FERM Report and certification in accordance with clause 6.3 (and any further information that is requested under clause 6.3(b)), FV will provide a notice to LDCP confirming one of the following:

- (a) FV agrees with the calculation of the Annual Net Payment and its components;
- (b) FV (acting reasonably and in good faith) Disputes the Annual Net Payment or any of its components; or
- (c) FV (acting reasonably and in good faith) requires an additional period of time to consider the Annual FERM Report, such additional period not to exceed 40 Business Days.

6.5 Failure to provide FERM Report

If LDCP fails to provide FV with a Quarterly Report or an Annual FERM Report (each, a **FERM Report**) in accordance with (and within the timeframe required by) clause 6.1 or 6.3 (as applicable), FV may at its discretion:

- (a) issue a Breach Notice to LDCP under clause 6.7(b) of the General Terms, which will require LDCP to provide the FERM Report within the period required by that clause for the remedy of breaches; and
- (b) suspend all payments which it is obliged to pay to LDCP until such time as the FERM Report has been prepared and provide to FV in a form that is reasonably acceptable to FV; and
- (c) in addition to the above, without limiting LDCP's obligation to prepare and provide the FERM Report (and remedy any Breach Notice which has been issued):
 - (i) FV may procure or compile the required FERM Report (or certain required inputs or components of the FERM Report) itself; and
 - (ii) LDCP must pay any costs incurred by FV in doing so within 10 Business Days of a request as a debt due to FV.

6.6 Form of report

At any time during the Term, upon request by FV, LDCP must act reasonably in cooperating with FV to develop a templated form of report, or updates to a templated form of report in order to assist FV with streamlining and assessing reporting information which is provided under this clause 6.

7 PAYMENTS

7.1 Quarterly payments

In respect of each Quarter in an Operational Year (except for any Quarter ending on 31 October and, if COD occurs after the Target COD, any Quarter in which COD occurs):

- (d) FV agrees to pay any positive Quarterly Net Payment to LDCP; and
- (e) LDCP agrees to pay the absolute value of any negative Quarterly Net Payment to FV, provided that if amount exceeds the Cumulative Balance then it will instead be taken to be an amount equal to the Cumulative Balance,

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

7.2 Quarterly Net Payment

The Quarterly Net Payment for a Quarter (**QNP_Q**) is calculated as follows:

$$QNP_Q = (YSP_Q - YUP_Q + YFR_Q) - QNP_P$$

where:

YSP_Q is the YTD Scheme Payment for the Quarter (if any);

YUP_Q is the YTD Upside Payment for the Quarter (if any);

YFR_Q is the YTD Fuel Reimbursement for the Quarter (if any); and

QNP_P is the net sum of any Quarterly Net Payments paid in respect of any previous Quarters in the Operational Year (where a Quarterly Net Payment paid by FV to LDCP is a positive number and the Quarterly Net Payment paid by LDCP to FV is a negative number),

in each case determined in accordance with clause 1.5 of Schedule 2.

7.3 Annual payments

In respect of each Operational Year:

- (a) FV agrees to pay any positive Annual Net Payment to LDCP; and
- (b) LDCP agrees to pay:
 - (i) the absolute value of any negative Annual Net Payment for the Operational Year, provided that if amount exceeds the Cumulative Balance then it will instead be taken to be an amount equal to the Cumulative Balance;
 - (ii) any Availability Rebate for the Operational Year; and
 - (iii) any Committed Storage Rebate for the Operational Year,
 to FV,

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

7.4 Annual Net Payment

The Annual Net Payment for an Operational Year (**ANP_Y**) is calculated as follows:

$$ANP_Y = (SP_Y - UP_Y + FR_Y) - QNP_P$$

where:

SP_Y is the Scheme Payment for the Operational Year (if any);

UP_Y is the Upside Payment for the Operational Year (if any);

FR_Y is the Fuel Reimbursement for the Operational Year (if any); and

QNP_P is the net sum of any Quarterly Net Payments paid in respect of any previous Quarters in the Operational Year (where a Quarterly Net Payment paid by FV to LDCP is a positive number and the Quarterly Net Payment paid by LDCP to FV is a negative number),

In each case determined in accordance with clauses 1.2 and 1.3 of Schedule 2.

7.5 Disputed amounts

If FV notifies LDCP that it Disputes:

- (a) any of the items in the Quarterly Report within the timeframe specified in clause 6.2(a); or
- (b) any of the items in an Annual FERM Report within the timeframe specified in clause 6.4 (subject to any extension notified by FV under clause 6.4(c),

then:

- (c) the parties must meet as soon as practicable, and in any event within 10 Business Days after the notice, to discuss the Dispute; and
- (d) if the Dispute is unable to be resolved at the meeting, then either party may refer the matter for determination by an Independent Expert under clause 12.6 of the General Terms.

7.6 Invoices

- (a) Once the process in clause 6.2 or 6.4 (as applicable) has been carried out, in respect of any portion of:
 - (i) the a positive Quarterly Net Payment or positive Annual Net Payment which is not in Dispute, LDCP may provide FV with a tax invoice for that amount, which must be paid by FV within 14 days of receipt;
 - (ii) a negative Quarterly Net Payment or negative Annual Net Payment which is not in Dispute:
 - (A) within 14 days after the process in clause 6.2 or 6.4 (as applicable) has been completed, LDCP must either:
 - (1) where permitted by applicable Law, issue an RCTI to FV in respect of such amount and pay such amount to FV; or
 - (2) notify FV that it is not permitted by applicable Law to issue an RCTI for such amount; and
 - (B) where LDCP notifies FV that it is not permitted by applicable Law to issue an RCTI, FV may provide a tax invoice to LDCP for payment of that amount, which must be paid by LDCP within 14 days of receipt.
- (b) Where applicable, following the resolution of a Dispute in accordance with clause 12 of the General Terms:
 - (i) in respect of any positive Quarterly Net Payment or positive Annual Net Payment (or incremental increase to a Quarterly Net Payment or Annual Net Payment) which is determined to be payable, LDCP may provide FV with a tax invoice for that amount, which must be paid by FV within 14 days of receipt; and
 - (ii) in respect of any negative Quarterly Net Payment or negative Annual Net Payment (or incremental decrease to a negative Quarterly Net Payment or negative Annual Net Payment) which is determined to be payable:
 - (A) within 14 days after resolution of the Dispute, LDCP must either:
 - (1) where permitted by applicable Law, issue an RCTI to FV in respect of such amount and pay such amount to FV; or
 - (2) notify FV that it is not permitted by applicable Law to issue an RCTI for such amount; and

- (B) where LDCP notifies FV that it is not permitted by applicable Law to issue an RCTI, FV may provide a tax invoice to LDCP for payment of that amount, which must be paid by LDCP within 14 days of receipt.
- (c) It is acknowledged and agreed that:
 - (i) all payments to be made by FV under clause 7.6(a)(i) and 7.6(b)(i) are to be paid out of; and
 - (ii) all payments to be made by LDCP under clause 7.6(a)(ii) and 7.6(b)(ii) are to be paid into,
the fund which has been established for the purpose of the FERM pursuant to the FERM Regulations.
- (d) All payments to be made under this agreement to LDCP must be paid from the fund into LDCP's nominated bank account (which must be an ADI) in cleared funds. The nominated bank account of LDCP is the bank account specified in item 29 of the Reference Schedule. LDCP party may change the nominated bank account on not less than 5 Business Days' notice.

7.7 Financial hardship

- (a) If LDCP is at risk of financial hardship due to a requirement to pay a negative Annual Net Payment, then LDCP may request deferral of its liability to pay the negative Annual Net Payment.
- (b) A request by LDCP under clause 7.7(a) must include sufficient supporting details and evidence (in FV's reasonable opinion) to enable FV to determine whether to grant a deferral.
- (c) FV must consider any request it receives under clause 7.7(a) but may determine whether to grant such deferral at its discretion.
- (d) Without limiting FV's discretion under clause 7.7(c), the parties acknowledge that a deferral of LDCP's payment of a negative Annual Net Payment will not be granted where FV determines that the financial hardship is due to an action taken by LDCP or its debt or equity investors, including the incurrence of excessive indebtedness or the making of a dividend or other distribution.

7.8 Adjustments

- (a) On request by FV and subject to paragraph (c), LDCP will adjust an invoice to the extent required to reflect any changes to the inputs that were used to determine that invoice, including any change under a Revised Statement.
- (b) LDCP must include any adjustments in the next prepared invoice.
- (c) Other than adjustments for Revised Statements, no adjustment will be made to an Invoice more than 3 years after the end of the Quarter that is the subject of the Invoice.

8 FORCE MAJEURE

8.1 Effect of a Force Majeure Event

If a party (**Affected Party**) is prevented from performing its obligations under this agreement or, in the case of LDCP, meeting the Capacity Commitment or the Minimum Performance Obligation (in whole or in part) as a direct result of a Force Majeure Event, then provided that the Affected Party has complied with the requirements set out in clause 8.2 the relevant obligations of the Affected Party in each case, to the extent that they are unable to be met as a result of the Force Majeure Event, will be suspended from the time that the Force Majeure

Event prevents the performance of such obligations until the time that such obligations are no longer affected by the Force Majeure Event (**Force Majeure Suspension Period**).

8.2 Notice and performance

- (a) If a party becomes aware of any matter likely to constitute a Force Majeure Event, that party must immediately give notice of that matter and all relevant particulars to the other party.
- (b) Within 5 Business Days after becoming aware of the occurrence of a Force Majeure Event, the Affected Party must give the other party written notice of:
 - (i) the full particulars of the Force Majeure Event including the nature and likely duration of the Force Majeure Event; and
 - (ii) the relevant obligations of the Affected Party under this agreement affected by the Force Majeure Event and the nature, extent and likely duration of the effect of the Force Majeure Event on the Affected Party's ability to perform those obligations; and
 - (iii) the actions taken or the actions proposed to be taken by the Affected Party to remedy, abate, mitigate or minimise the effects of the Force Majeure Event.
- (c) The Affected Party must:
 - (i) use all reasonable diligence and all reasonable means (including by spending money as required to rectify the Facility) to remedy, abate, mitigate or minimise the effect of the Force Majeure Event (and where the Affected Party is LDCP ensure the Facility is able to meet the full Capacity Commitment and Minimum Performance Obligation as soon as reasonably possible);
 - (ii) use all reasonable diligence and all reasonable means to reduce the Scheme Payments which would otherwise be payable under this agreement, including by complying with clause 8.3;
 - (iii) notify the other party in writing when the Force Majeure Event has ended (and where applicable, the Facility has been fully restored) and:
 - (A) when it is able to resume of performance of its obligations under this agreement; and
 - (B) where the Affected Party is LDCP, when the Capacity Commitment and Minimum Performance Obligation are able to be met.

8.3 Operate at reduced capacity

Where possible to do so in a safe manner which is consistent with Good Industry Practice, LDCP must continue to operate the Facility (including by preparing for, and responding to, Compliance Intervals in the manner required by clause 2.2) at a reduced capacity being the maximum output and/or storage capacity and/or state of charge (as applicable) reasonably possible having regard to the nature and extent of the relevant Force Majeure Event.

8.4 Regular updates to FV

- (a) Where the Affected Party is LDCP, it must provide FV with regular updates (in an amount of detail reasonably acceptable to FV) in relation to the status of any Force Majeure Event which is subsisting, how it is impacting LDCP's ability to perform this agreement and meet the Capacity Commitment, and the estimated timeframe for the Force Majeure Event to end.
- (b) Such updates are to be provided at least every 20 Business Days, and at more regular intervals if reasonably requested by FV.

8.5 Costs of Force Majeure Event

The parties must bear their own costs incurred arising out of or in connection with the occurrence, remedy, abatement or mitigation of a Force Majeure Event.

8.6 Impact on Scheme Payments, Upside Payments, Fuel Reimbursement and Rebates

The parties acknowledge and agree that other than as expressly set out in Schedule 2, the occurrence of a Force Majeure Event will not limit a party's obligation to pay amounts to the other party under this agreement.

9 MAJOR LOSS EVENTS

9.1 Reinstatement notice

If a Major Loss Event occurs (regardless of whether it has been caused by a Force Majeure Event), then within 180 days of the occurrence of the Major Loss Event, LDCP must provide FV with either:

- (a) a notice that LDCP elects to reinstate the Facility (**Election to Reinstate**), including LDCP's proposed plan (and timing schedule) detailing how the Facility is to be reinstated as soon as reasonably possible (**Proposed Reinstatement Plan**); or
 - (b) a notice that LDCP elects to not reinstate the Facility,
- provided that if LDCP does not provide an Election to Reinstate in accordance with clause 9.1(a) within the required 180 day timeframe, LDCP will be taken to have elected to not reinstate the Facility.

9.2 Reinstatement plan

- (a) If FV receives an Election to Reinstate, then:
 - (i) FV must either:
 - (A) request any changes to the Proposed Reinstatement Plan that it considers (acting reasonably) are in the best long-term financial interests of electricity consumers in South Australia; or
 - (B) approve the Proposed Reinstatement Plan,provided that if FV does not request any changes to the Proposed Reinstatement Plan, within 60 Business Days after receipt of the Election to Reinstate, then FV will be taken to have approved the Proposed Reinstatement Plan; and
 - (ii) if FV requests any changes to the Proposed Reinstatement Plan in accordance with clause 9.2(a)(i)(A), then:
 - (A) within 20 Business Days after FV's request, LDCP must provide an amended Proposed Reinstatement Plan to FV; and
 - (B) within 20 Business Days after receipt of LDCP's amended Proposed Reinstatement Plan, FV must (acting reasonably) approve or reject the amended Proposed Reinstatement Plan.
- (b) FV may decide whether it will approve a Proposed Reinstatement Plan in its discretion. If FV approves a Proposed Reinstatement Plan or amended Proposed Reinstatement Plan, then:
 - (i) that document will become an **Approved Reinstatement Plan**; and
 - (ii) LDCP must, at its sole cost, comply with that Approved Reinstatement Plan in all material respects.

SCHEDULE 5 – GENERAL TERMS

1 TERM

1.1 Term

- (a) The Term of this agreement is the period commencing on the Signing Date and ending on the last day of the Operational Period (unless terminated earlier).
- (b) To avoid doubt, the Operational Period will not be extended if COD occurs after the Target COD.

1.2 Excluded Operational Years

The parties acknowledge and agree that;

- (a) no Scheme Payments or Fuel Reimbursements are to be payable in respect of any Excluded Operational Year; however
- (b) LDCP must perform all other obligations in this agreement in respect of that Excluded Operational Year, including without limitation:
 - (i) meeting the Capacity Commitment; and
 - (ii) meeting the Minimum Performance Obligation; and
 - (iii) preparing and providing to FV all reports required by clause 6 of the Specific Terms: Operational Period in respect of each Operational Year (as if it was not an Excluded Operational Year); and
- (c) LDCP must pay any Upside Payments to FV in respect of each Excluded Operational Year on the basis that the relevant Operational Year is not an Excluded Operational Year.

2 UNDERTAKINGS

2.1 SPV

LDCP is, and must ensure that it remains at all times during the Term, a ringfenced 'special purpose vehicle' which:

- (a) receives all revenue generated by, and other economic value associated with, the Facility;
- (b) is the counterparty to all revenue contracts and other revenue arrangements in respect of the Facility;
- (c) is the *Registered Participant* for the Facility (unless a Permitted Arrangement under which a third party *intermediary* becomes the *Registered Participant* for the Facility has been entered into by LDCP); and
- (d) is the only party entitled to the benefit of the following:
 - (i) all rights and Authorisations required to develop the Project;
 - (ii) all rights and Authorisations required to operate the Facility;
 - (iii) all rights under each of the Project Documents;
 - (iv) all rights under in and to the Tenure for the Facility; and
 - (v) all plant, equipment and infrastructure forming part of the Facility, and does not:

- (e) have an ownership interest in any other electricity generation or storage project or *facility* (or any other business venture) or carry on any business other than the operation of the Facility; or
- (f) have any Subsidiaries unless consented to in writing by FV prior to incorporation.

2.2 General undertakings

At all times during the Term, LDCP must:

- (a) **(Authorisations)**: ensure that it holds all Authorisations that are required in connection with the design, construction, operation, maintenance and repair of the Facility;
- (b) **(Law)**: ensure that all development, construction and operational activities which are undertaken under or on connection with this agreement, the Project or the Facility comply with applicable Law; and
- (c) **(Project Documents)**: ensure that it fully complies with its obligations, and diligently pursues and enforces its rights, under the Project Documents and that none of the Project Documents are amended at any time (in a manner which could limit the performance of LDCP's obligations under this agreement) without FV's prior written consent.

2.3 Intermediaries

If a third-party *intermediary* becomes the Registered Participant in respect of the Facility as part of a Permitted Arrangement:

- (a) LDCP must ensure that such third party operates the Facility in a manner which is fully compliant with:
 - (i) the Capacity Commitment;
 - (ii) the Minimum Performance Obligation; and
 - (iii) any other obligations in this agreement which relate to the Facility's interaction with, or participation in, the *NEM*,as if the third party were the LDCP under this agreement;
- (b) LDCP acknowledges and agrees that despite clause 2.3(a) and/or the appointment of such *intermediary*:
 - (i) LDCP will remain responsible for all of, and will not be relieved from any of, its obligations under or in connection with, this agreement; and
 - (ii) LDCP will be liable for all civil penalties which arise under the FERM Regulations for failures by the Facility to meet the Capacity Commitment.

2.4 Civil penalties

The parties acknowledge and agree that nothing in this agreement is intended to limit LDCP's exposure to civil penalties under or in connection with the FERM Regulations, the NEL, the NER or any other applicable Law.

3 WHOLESALE CONTRACTS

3.1 Intermediaries and reallocations

- (a) Despite clause 2.1(c), LDCP may enter into a contract or other arrangement (including as part of a Wholesale Contract) with another person:
 - (i) for that person to be registered as *intermediary* in respect of the Facility; or

- (ii) to enter into a *reallocation* involving that other person in respect of the Facility,

(Permitted Arrangement).

- (b) If there is a Permitted Arrangement, any revenue that would have been Operational Revenue had LDCP not entered into that Permitted Arrangement will be deemed to be Operational Revenue. **[Note (to be deleted in execution version): Proponents should note that this deeming provision would also apply to Eligible Wholesale Contracts that use an intermediary arrangement.]**

3.2 Capacity Products and Green Products

- (a) If LDCP holds Capacity Products or Green Products which were created, or referable to electricity exported or capacity available from or operation of the Facility during an Operational Year, the Net Revenue for that Operational Year will:
 - (i) be deemed to include an amount equal to the relevant market price for such products multiplied by number of each of those Capacity Products and Green Products LDCP holds; and
 - (ii) exclude any amounts received from the sale of Capacity Products or Green Products that were created, or referable to, electricity generated or capacity available from the Facility prior to that Operational Year.
- (b) Unless otherwise agreed by the parties, the market price for such products will be determined as the average of the quotations (stated on a GST exclusive basis) for the Operational Year, obtained from two independent and suitably qualified brokerage firms, one nominated by each of the parties.
- (c) If a market price cannot be determined in accordance with clause 3.2(b), the matter will be referred to an Independent Expert for determination under clause 12.6.

3.3 Eligible Wholesale Contracts

- (a) Subject to clause 3.3(b), an **Eligible Wholesale Contract** is a Qualifying Contract or a Wholesale Contract that:
 - (i) complies with clause 3.8 below;
 - (ii) is not with a counterparty which is a Related Entity of LDCP;
 - (iii) has been entered into by LDCP to sell the rights to dispatch (at the counterparty's discretion and control) part, or all, of the ~~Committed-Output Capacity~~Aggregate Nameplate Rating of ~~the~~ Facility in the NEM, such that the Wholesale Contract:
 - (A) has a fixed annual fee payable by the counterparty;
 - (B) entitles the counterparty to retain all the revenue derived from the NEM arising out of or in connection with the proportion of the ~~Committed-Output Capacity~~Aggregate Nameplate Rating of ~~the~~ Facility that it controls;
 - (C) requires the counterparty to pay all costs attributable to the Facility's participation in the NEM commensurate with the proportion of the ~~Committed-Output Capacity~~Aggregate Nameplate Rating of ~~the~~ Facility that it controls;
 - (D) entitles LDCP to retain some discretion and control over the availability of the Facility and other operational conditions that enable LDCP to maintain Good Industry Practice;

- (E) has a risk allocation that is transparent and equitable, commensurate with the ability of both LDCP and the counterparty to price and manage the risks arising under or in connection with the Wholesale Contract; and
- (F) entitles LDCP to receive a contract price that complies with clause 3.8 below;
- (iv) has a contract tenor of at least 12 months;
- (v) does not have any explicit or implicit revenue or profit-sharing arrangements between LDCP and the counterparty embedded within the pricing or commercial structure of the Wholesale Contract; and
- (vi) is not a retail electricity supply contract.
- (b) A contract will not be an Eligible Wholesale Contract if FV considers (acting reasonably) that the contract is not on reasonable commercial terms.
- (c) FV may waive any of the conditions set out in clause 3.3(a) or 3.3(b) at its discretion, including when LDCP has made a request under clause 3.4.
- (d) FV may, from time to time, provide to LDCP guidance in relation to what information is:
 - (i) relevant to the determination of an Eligible Wholesale Contract (including the definition of “reasonable commercial terms” or what constitutes a risk allocation that is “transparent and equitable”); and
 - (ii) required to be provided to FV pursuant to this clause 3.3; and
 - (iii) LDCP must comply with that guidance, provided that FV may only clarify or broaden, and not narrow, the definition of an “Eligible Wholesale Contract” under this agreement.

3.4 Notification of Wholesale Contract

- (a) Within 10 Business Days after the execution of a Wholesale Contract, LDCP must provide to FV a notice setting out details of the Wholesale Contract including:
 - (i) whether or not the contract qualifies as an Eligible Wholesale Contract (including sufficient supporting details and evidence for FV to verify whether the contract qualifies as an Eligible Wholesale Contract);
 - (ii) the tenor of that contract;
 - (iii) LDCP’s reasonable estimate of the revenue that LDCP will be entitled to receive during the tenor of that contract in each case allocated on a Operational Year basis; and
 - (iv) certification by a director of LDCP that the information contained in the notice from LDCP to FV under this clause 3.4 is true and correct,

in a form reasonably requested by FV. LDCP may include in its notice a request to FV that FV waive any of the conditions set out in clause 3.3(a) or 3.3(b) above.
- (b) If:
 - (i) a Related Entity of LDCP is party to an Eligible Wholesale Contract; and
 - (ii) LDCP enters into a Wholesale Contract with that Related Entity, **(Related Wholesale Contract)**, then:

- (iii) within 10 Business Days after LDCP executes that Related Wholesale Contract, LDCP must notify FV that it has entered into the Related Wholesale Contract; and
 - (iv) LDCP must provide to FV reasonable details of the Related Wholesale Contract as requested by FV (acting reasonably), which must be certified by a director of LDCP as being true and correct.
- (c) A Related Wholesale Contract will only be an Eligible Wholesale Contract if FV waives clause 3.3(a)(ii) above.
- (d) LDCP must not receive, or agree to receive, any upfront or lump sum or ongoing payment from a counterparty to an Eligible Wholesale Contract for the purposes of, or that has the effect of, reducing the contract price that LDCP is entitled to receive under that Eligible Wholesale Contract.

3.5 Amendment to Eligible Wholesale Contract

If LDCP amends or agrees to amend an Eligible Wholesale Contract (including any transfer of an Eligible Wholesale Contract) after the date of LDCP's notice under clause 3.4(a), then:

- (a) within 10 Business Days after that amendment, LDCP must provide to FV a notice setting out:
 - (i) all relevant details of the amendment and the reason(s) for the amendment;
 - (ii) updates to the information initially provided to FV under clause 3.4(a);
 - (iii) whether or not the contract continues to qualify as an Eligible Wholesale Contract (including sufficient supporting details and evidence for FV to verify whether the contract continues to qualify as an Eligible Wholesale Contract); and
 - (iv) certification by a director of LDCP that the information contained in the notice from LDCP to FV under this clause 3.5(a) is true and correct,
 in a form reasonably requested by FV; and
- (b) within 10 Business Days after the later of receiving the information described in clause 3.5(a) and receiving any further information requested by FV, FV must notify LDCP of whether:
 - (i) the terms (including the contract price and volume) of the Eligible Wholesale Contract as initially notified to FV under clause 3.4(a) will continue to apply for the contract tenor despite the amendment;
 - (ii) the updated terms of the Eligible Wholesale Contract as notified to FV under clause 3.5(a) will apply from the date of the amendment for the remaining contract tenor; or
 - (iii) the amended contract will be audited pursuant to clause 3.6.

3.6 Verification of Eligible Wholesale Contracts

- (a) FV may, at any time after receiving the information described in clause 3.4(a) or clause 3.5, and having regard to any guidance provided by it pursuant to clause 3.3(d), verify whether the contract as notified by LDCP is an Eligible Wholesale Contract in accordance with clause 3.3(a).
- (b) If FV undertakes a verification and determines (acting reasonably) that a contract notified by LDCP as an Eligible Wholesale Contract under clause 3.4(a) or 3.5(a) above (as applicable) is not an Eligible Wholesale Contract, then the contract is deemed to not be an Eligible Wholesale Contract from the later of:

- (i) the date of LDCP's notice under clause 3.4(a) or 3.5(a) (as applicable); and
- (ii) the date that is 2 years prior to FV determining that the contract is not an Eligible Wholesale Contract.

3.7 Application of Eligible Wholesale Contract

Subject to clause 3.9(a) and clause 3.9(b), an Eligible Wholesale Contract applies to a *trading interval* occurring during the tenor of that contract if that Eligible Wholesale Contract was notified to FV under clause 3.4(a) at least 3 months prior to that Eligible Wholesale Contract coming into effect. In its discretion, FV may waive the requirement for 3 months' notice.

3.8 Bona fide and arm's length arrangements

- (a) LDCP must not enter into any Wholesale Contract or any arrangement regarding Operational Revenue and/or Permitted Costs, in each case which applies during the Operational Period:
 - (i) that is not entered into on a bona fide basis and on arm's length terms; and
 - (ii) if that contract or the arrangement would require LDCP to physically or notionally:
 - (A) (to the extent that the contract or arrangement relates to electricity) import or export, or otherwise contract in respect of more than 100% of the ~~Committed Output Capacity or the Committed Storage Capacity~~total energy storage capacity of the Facility or the Aggregate Nameplate Rating of Facility, when taken together with all other Wholesale Contracts that relate to electricity; or
 - (B) (to the extent that contract or the arrangement relates to Green Products or Capacity Products) sell or deliver, or otherwise contract in respect of, more than the number of Green Products or Capacity Products able to be created by reference to 100% of the ~~Committed Output Capacity or the Committed Storage Capacity~~total energy storage capacity of the Facility or the Aggregate Nameplate Rating of Facility, when taken together with all other Wholesale Contracts that relate to Green Products or Capacity Products created by reference to the Facility.
 - (iii) LDCP acknowledges that:
 - (A) the purpose of this agreement is to provide revenue support during the Operational Period to support the development of the Facility, and is not intended to distort the market signals that would otherwise apply to the Facility; and
 - (B) this agreement including this clause 3 is to be interpreted and applied consistent with that purpose.

3.9 Over-Contracted Arrangements

- (a) If LDCP enters into a Wholesale Contract in contravention of clause 3.8(a)(ii) (an **Over-Contracted Arrangement**), then FV may (at its discretion) notify LDCP that, subject to the remainder of this clause 3:
 - (i) the Over-Contracted Arrangement may be an Eligible Wholesale Contract, in which case clause 3.9(b) applies; or
 - (ii) the Over-Contracted Arrangement is a Wholesale Contract or is neither an Eligible Wholesale Contract nor a Wholesale Contract for the purposes of this agreement, in which case clause 3.9(c) applies.

- (b) This clause 3.9 is without prejudice to any rights or remedies FV may have in relation to matters arising under or in connection with this agreement (including under this clause 3 and clause 6.7 of these General Terms).
- (c) In its notice to LDCP under clause 3.9(a)(i), FV must set out its proposed treatment of the Eligible Wholesale Contract for *trading intervals* to which the Over-Contracted Arrangement applies (**Over-Contracted Trading Intervals**), which may include that, for the purposes of determining Net Revenue:
 - (i) all or a specified part of the Notional Quantity that is subject to all or part of that Over-Contracted Arrangement is deemed not to be subject to an Eligible Wholesale Contract (but is subject to a Wholesale Contract) for a particular period or periods (in which case, FV must also specify one or more proportions to apply under clause 2.1 of Schedule 2 in respect of that particular period or periods for the purposes of the calculation of the Notional Quantity in accordance with that clause); and/or
 - (ii) all or a specified part of the Notional Quantity that is subject to any other Eligible Wholesale Contract that applies during a particular period or periods is deemed not to be an Eligible Wholesale Contract (but is a Wholesale Contract) for the relevant period or periods (in which case, FV must also specify one or more proportions to apply under clause 2.1 of Schedule 2 in respect of that particular period or periods for the purposes of the calculation of the Notional Quantity for that Wholesale Contract in accordance with that clause),
such that:
 - (iii) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to electricity that applies in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity; and
 - (iv) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to Green Products or Capacity Products that applies in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity.
- (d) In its notice to LDCP under 3.9(a)(ii), FV must set out its proposed treatment of the Over-Contracted Trading Intervals, which may include that, for the purposes of determining Net Revenue:
 - (i) all or a specified part of the Notional Quantity that is subject to all or part of that Over-Contracted Arrangement is deemed not to be subject to a Wholesale Contract for a particular period or periods and is to be excluded for all purposes under this agreement (in which case, FV must also specify one or more proportions to apply under clause 2.1 of Schedule 2 in respect of that particular period or periods for the purposes of the calculation of the Notional Quantity in accordance with that clause); and/or
 - (ii) all or a specified part of the Notional Quantity that is subject to any other Eligible Wholesale Contract or Wholesale Contract that applies during a particular period or periods is deemed not to be subject to:
 - (A) an Eligible Wholesale Contract for a particular period or periods (in which case clause 3.9(b)(ii) may apply); and/or
 - (B) a Wholesale Contract for a particular period or periods and is to be excluded for all purposes under this agreement (in which case, FV must also specify one or more proportions to apply under clause 2.1

of Schedule 2 in respect of that particular period or periods for the purposes of the calculation of the Notional Quantity in accordance with that section),

such that:

- (iii) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to electricity that apply in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity; and
- (iv) the Notional Quantity that is subject to all Eligible Wholesale Contracts relating to Green Products or Capacity Products that apply in respect of an Over-Contracted Trading Interval is equal to or less than 100% of the Notional Quantity.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and warranties

Each party represents and warrants that:

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

4.2 Anti-bribery and anti-corruption

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

4.3 Tender representations and warranties from LDCP

LDCP represents and warrants that:

- (a) all materials and information provided by LDCP to FV in connection with LDCP's tender for this agreement (other than forecasts or projections) were true, correct and not misleading in any material respect (whether by omission or otherwise) as at the Tender Date; and

- (b) all forecasts and projections which were provided by LDCP in connection with LDCP's tender for this agreement were prepared using due care and skill based on assumptions which LDCP believed, in good faith, were fair and reasonable assumptions as at the Tender Date.

4.4 Repetition

Each of the representations and warranties in this clause 4 are deemed to have been repeated at the commencement of each Operational Year.

4.5 No reliance

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

5 LDCP TRUSTEE PROVISIONS

5.1 Operation of this clause

This clause 5 only applies where LDCP is expressed to be a party to this agreement in its capacity as trustee of a trust.

5.2 Trustee representations and warranties

LDCP represents and warrants to FV that:

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

5.3 Trustee undertakings

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

5.4 Restrictions on trustee

Without the consent of FV, LDCP may not, and may not agree, attempt or take any step to, do anything which:

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

6 TERMINATION

6.1 Failure of critical path Milestones

FV may terminate this agreement by written notice to LDCP with immediate effect if:

- (a) LDCP does not prepare and provide a Critical Path Cure Plan to FV within the timeframe required by clause 1.4(a)(ii) of the Specific Terms: Development Period; or
- (b) a Critical Path Cure Plan is rejected by FV under clause 1.4(c) of the Specific Terms: Development Period; or
- (c) a Critical Path Cure Plan is accepted by FV in accordance with clause 1.4 of the Specific Terms: Development Period, but not complied with by LDCP.

6.2 Failure to meet COD Milestone Date

FV may terminate this agreement by written notice to LDCP with immediate effect if LDCP does not satisfy the COD Preconditions by the COD Milestone Date (as extended by a Critical Path Cure Plan that is accepted by FV, if any).

6.3 Repeated failure to meet Capacity Commitment

FV may terminate this agreement by written notice to LDCP if LDCP:

- (a) fails to submit a Draft CC Cure Plan to FV within the relevant CC Cure Period in accordance with clause 2.4 of the Specific Terms: Operational Period;
- (b) has submitted a draft CC Cure Plan which has been rejected by FV and has resubmitted the draft CC Cure Plan which has also been rejected, each case in accordance clause 2.4 of the Specific Terms: Operational Period; or
- (c) fails to commence the implementation of the CC Cure Plan as required pursuant to clause 2.4(e) of the Specific Terms: Operational Period, or otherwise fails to comply with the CC Cure Plan in any material respect, and does not remedy any such failure within 20 Business Days after receipt of a notice from FV requiring it to do so.

6.4 Minimum Performance Obligation

FV may terminate this agreement by written notice to LDCP if LDCP:

- (a) fails to submit a Draft MPT Cure Plan to FV within the relevant MPT Cure Period in accordance with clause 3.9(a) of the Specific Terms: Operational Period;
- (b) has submitted a draft MPT Cure Plan which has been rejected by FV and has resubmitted the draft MPT Cure Plan which has also been rejected, each case in accordance clause 3.9 of the Specific Terms: Operational Period;
- (c) fails to commence the implementation of the MPT Cure Plan as required pursuant to clause 3.9(e) of the Specific Terms: Operational Period, or otherwise fails to comply with the MPT Cure Plan in any material respect, and does not remedy any such failure within 20 Business Days after receipt of a notice from FV requiring it to do so; or
- (d) fails to meet the relevant Minimum Performance Threshold in respect of any two consecutive Operational Years.

6.5 Failure to reinstate following Major Loss Event

FV may terminate this agreement by written notice to LDCP if, following a Major Loss Event:

- (a) LDCP does not provide an Election to Reinstate to FV with the timeframe required by clause 9.1(a) of the Specific Terms: Operational Period;
- (b) LDCP is taken to have elected not to reinstate the Facility under clause 9.1 of the Specific Terms: Operational Period;
- (c) LDCP does not provide an amended Proposed Reinstatement Plan within the timeframe required by clause 9.2(a)(ii)(A) of the Specific Terms: Operational Period;
- (d) a Proposed Reinstatement Plan is not accepted by FV in accordance with clause 9.2(a)(ii)(B) of the Specific Terms: Operational Period; or
- (e) LDCP fails to comply with an Approved Reinstatement Plan.

6.6 Extended Force Majeure Event

FV may terminate this agreement by written notice to LDCP if a Force Majeure Event occurs which prevents LDCP from meeting the Capacity Commitment for a continuous period of more than 18 months.

6.7 Other termination events – FV

FV may terminate this agreement with immediate effect by notice in writing to LDCP if:

- (a) **(payment default):** LDCP fails to pay any amount by the due date for that payment to FV under this agreement (other than an amount which is the subject of a good faith dispute) and LDCP does not pay that amount in full within 20 Business Days after receiving notice from FV of that failure;
- (b) **(breach):** LDCP fails to comply with an obligation under this agreement (other than an obligation to pay an amount due) and:
 - (i) LDCP does not commence remedying that failure within 20 Business Days after receiving notice from FV of that failure (**Breach Notice**); or
 - (ii) if LDCP has commenced remedying that failure within 20 Business Days after receiving the Breach Notice, LDCP:
 - (A) does not pursue that remedy in a diligent manner; or
 - (B) does not remedy the relevant failure within 40 Business Days after receiving the Breach Notice (or by any later date agreed by FV acting reasonably);

- (c) **(misrepresentation):**
 - (i) an express representation made by LDCP under this agreement (other than under clause 4.3 of these General Terms) is incorrect or misleading in any material respect when made; and
 - (ii) LDCP does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from FV of that incorrect or misleading representation (including by LDCP paying FV compensation reasonably acceptable to FV on account of Loss suffered by it or by electricity consumers in South Australia (or both));
- (d) **(tender misrepresentation):**
 - (i) an express representation made by LDCP under clause 4.3 of these General Terms is incorrect or misleading in any material respect when made;
 - (ii) FV reasonably forms the view that FV would likely not have recommended that FV award LDCP this agreement but for the materials and information which caused or contributed to that representation being materially incorrect or misleading;
 - (iii) FV notifies LDCP of that incorrect or misleading representation in writing no later than 2 years after COD; and
 - (iv) LDCP does not remedy that incorrect or misleading representation within 60 Business Days after receiving notice from FV of that incorrect or misleading representation (including by LDCP paying FV compensation reasonably acceptable to FV on account of Loss suffered by it or by electricity consumers in South Australia (or both));
- (e) **(insolvency):** LDCP is the subject of an Insolvency Event and LDCP does not cure that Insolvency Event within 5 Business Days after receiving notice from FV;
- (f) **(Early Termination Security):** the Early Termination Security is not provided by LDCP to FV within the timeframe required by clause 7.1 or 7.2.

6.8 Termination by LDCP

LDCP may terminate this agreement with immediate effect by notice in writing to FV if FV fails to pay any amount by the due date for that payment to LDCP under this agreement (other than an amount which is the subject of a good faith Dispute) and FV:

- (a) does not pay that amount in full within 20 Business Days after receiving notice from LDCP of that failure; and
- (b) LDCP has issued a second notice of failure to FV, and FV does not pay that amount in full within 20 Business Days of the second notice.

6.9 Scheme Payments and repayment of Cumulative Balance

If this agreement:

- (a) is terminated:
 - (i) by FV under clause 6.5 or 6.6; or
 - (ii) by LDCP under clause 6.8,

LDCP will be entitled to any Scheme Payments and Fuel Reimbursements it would have been entitled to receive up to the termination date (and any Scheme Payments which are payable in respect of part of a year are to be pro-rated and based on the number of days elapsed in that year up until the termination date); or

- (b) is terminated for any other reason:
 - (i) no further Scheme Payments are to be payable by FV to LDCP; and
 - (ii) LDCP must pay to FV an amount equal to the Cumulative Balance upon demand.

6.10 Early Termination Amount

- (a) Without limiting clause 6.9, if this agreement is terminated by FV in accordance with this clause 6, other than:
 - (i) pursuant to clause 6.5 where the Major Loss Event has been primarily caused by a Force Majeure Event; or
 - (ii) pursuant to clause 6.6,then LDCP must pay the Early Termination Amount to FV upon demand.
- (b) If this agreement is terminated by FV in accordance with clause 6.5 where the Major Loss Event has been primarily caused by a Force Majeure Event, then LDCP must pay the Early Termination Amount to FV upon demand if LDCP or a Related Entity of LDCP subsequently reinstates the Facility within 5 years after the Major Loss Event occurred.
- (c) The parties acknowledge and agree that the Early Termination Amount is a genuine pre-estimate of the Loss that will be incurred by FV if this agreement is terminated early. If:
 - (i) the Early Termination Amount becomes payable by LDCP under clause 6.10(a); and
 - (ii) that Early Termination Amount is found to be a penalty or LDCP's obligation to pay the Early Termination Amount pursuant to this clause 6 is found to be void or unenforceable for any reason (whether in whole or in part),then LDCP indemnifies FV against, and agrees to reimburse and compensate it for, any liability or Loss (including in respect of loss of bargain) suffered by FV arising from or in connection with the termination of this agreement, provided that LDCP's aggregate liability under this clause will not exceed an amount equal to the Early Termination Amount.
- (d) The Early Termination Amount specified in Item 9 of the Reference Schedule is inclusive of any GST.

6.11 Remaining Annual Payments

- (a) If this agreement is terminated by LDCP under clause 6.8, LDCP will be entitled to a termination amount equal to the net present value (determined as at the date of termination of this agreement) of the Remaining Annual Payments, which is to be calculated using a discount rate of 7% per annum.
- (b) In clause 6.11(a), **Remaining Annual Payments** means:
 - (i) in respect of any full periods of 12 months from 1 November to 31 October between the termination date and the end of the Term (excluding any Excluded Operational Years), an amount equal to the current Payment Cap figure which is applicable as at the termination date (as indexed to date in accordance with clause 1.4 of Schedule 2) (**Current Annual Payment Cap**); and
 - (ii) provided that termination does not occur in the Excluded Operational Year, in respect of any periods of less than 12 months between the termination date

and the next 1 November, an amount equal to the prorated portion of the Current Annual Payment Cap for such period (based on the number of days included in such periods as a percentage of 365).

6.12 Sole remedy

Without limiting LDCP's liability for civil penalties under the FERM Regulations or any other applicable Law, the parties acknowledge and agree that:

- (a) each party's sole remedy arising out of or in connection with a termination under this clause 6 is that party's entitlement to the payments it is entitled to receive in accordance with clause 6.9 to 6.11 (inclusive); and
- (b) other than in respect of such payments, subject to clause 6.10(c), each party fully releases and indemnifies the other in respect of all Claims which it would otherwise have been entitled to make against the other party in connection with the termination of this agreement.

7 EARLY TERMINATION SECURITY

7.1 Early Termination Security

LDCP must provide the Early Termination Security to FV within 20 Business Days after the date of this agreement and ensure that FV holds the Early Termination Security at all times before COD.

7.2 Replacement of Early Termination Security

LDCP must provide a replacement Early Termination Security to FV:

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

7.3 Recourse to Early Termination Security

- (a) FV may only draw on the Early Termination Security if LDCP has failed to:
 - (i) pay the Early Termination Amount in accordance with clause 6.10; or
 - (ii) provide a replacement Early Termination Security to FV where required under clause 7.2.
- (b) If FV draws on the Early Termination Security in accordance with clause 7.3(a), then FV will:
 - (i) hold that amount on trust for LDCP and FV; and
 - (ii) promptly pay the amounts held on trust to LDCP (including any interest) if LDCP provides a replacement Early Termination Security in accordance with clause 7.2 (disregarding any timing requirements in clause 7.2).
- (c) If FV is holding an amount on trust pursuant to clause 7.3(b) and is entitled to draw on the Early Termination Security in accordance with clause 7.3(a), then FV may retain those funds (including any interest) to which it is entitled for its own benefit.

7.4 Return of Early Termination Security

FV must return the Early Termination Security, or any amount FV is holding on trust pursuant to clause 7.3(b), to LDCP within 10 Business Days after:

- (a) COD; or
- (b) the date on which LDCP has paid the full Early Termination Amount to FV.

8 LIABILITY

8.1 Excluded Loss

Subject to clause 8.2 and 8.3, and except to the extent that Loss cannot be lawfully excluded, neither party is liable to the other under or in connection with this agreement for:

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

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

8.2 Limitation of liability

To the extent permissible by Law and subject to clause 8.3:

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

8.3 No exclusion

Clauses 8.1 and 8.2 of these General Terms do not limit a party's obligation:

- (a) to make any payments expressly required to be made under this agreement, including a Scheme Payment, Upside Payment, Fuel Reimbursement or a termination payment;
- (b) to pay under the indemnities in clause 8.4 of these General Terms; or
- (c) arising from any criminal or fraudulent act or omission, or wilful misconduct or wilful breach of a party, or its officers, employees, subcontractors or agents.

8.4 Indemnity by LDCP

- (a) LDCP indemnifies FV against, and agrees to reimburse and compensate it for, any liability or Loss:
 - (i) arising from any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of LDCP or its officers, employees, subcontractors or agents; or
 - (ii) in respect of death or personal injury, arising from the Project or in connection with the Facility.

- (b) Without limiting clause 8.4(a) above, LDCP indemnifies FV against, and agrees to reimburse and compensate it for, any liability or Loss arising from, and any costs incurred in connection with, any Claim by a third party against FV in relation to:
 - (i) the Project; or
 - (ii) any act or omission of LDCP or its Related Bodies Corporate, or their respective officers, employees, subcontractors or agents arising from the Project.
- (c) The amounts payable under this clause 8.4 include any liability or Loss and any costs of the kind referred to in this indemnity which are incurred by FV's officers, employees, subcontractors or agents under this agreement.
- (d) The amounts referred to in this clause 8.4 are not payable to the extent that FV's liability or Loss:
 - (i) is caused or contributed to by any criminal or fraudulent act or omission, wilful misconduct or wilful breach, or negligence of FV, its officers, employees, subcontractors or agents; or
 - (ii) arises in respect of an electricity hedging arrangement entered into by FV and a third party.

9 INSURANCES

9.1 General

- (a) LDCP must procure and maintain insurance policies in connection with the Project and the Facility consistent with Good Industry Practice including, as a minimum, the Insurance Policies set out in Required Insurances Schedule.
- (b) The Insurance Policies must be obtained from insurers with an Acceptable Credit Rating.
- (c) The Insurance Policies may only be cancelled or changed if:
 - (i) the cancellation or change will not constitute a breach of this agreement; and
 - (ii) LDCP has provided at least 14 days' written notice to FV.
- (d) The obtaining of any insurance by LDCP in accordance with this clause does not in any way reduce, limit or otherwise affect any obligations, liabilities or warranties of LDCP under any other provision of this agreement or otherwise at Law.
- (e) LDCP must pay all premiums and all deductibles applicable to the Insurance Policies when due and promptly reinstate any insurance required under this clause 9.1 if it lapses or if cover is exhausted.

9.2 Term

- (a) LDCP must effect and maintain the Insurance Policies referred to in this clause 9 until the end of the Term (unless stated otherwise in the Required Insurances Schedule).
- (b) Despite clause 9.2(a):
 - (i) if the wording of the Insurance Policy required by the Required Insurances Schedule is constructed on a "claims made" basis, the insurance must be maintained without interruption for a period of 7 years after the Term; or
 - (ii) LDCP will only be required to maintain any contract works insurance policy required by this agreement until COD.

9.3 Proof

Within 14 days of request by FV, LDCP must give FV certificates of insurance and such other proof of compliance with the provisions of this clause 9 as FV may reasonably require.

9.4 LDCP's further obligations

LDCP must comply with the terms of the Insurance Policies, and LDCP must not do any act, or omit to do any act, when the act or omission (as the case may be) would be grounds for an insurer to refuse to pay a claim made under any of the Insurance Policies.

9.5 Subcontractors

Where appropriate and prudent to do so, LDCP must ensure that all of its contractors engaged in the construction and operation of the Project and the Facility also effect and maintain the Insurance Policies in accordance with this clause 9.

10 INFORMATION AND

10.1 LDCP to retain books, accounts and records

LDCP:

- (a) must maintain during the Term, and continue to maintain for a period of no less than seven years from the end of the Term (**Records Retention Period**):
 - (i) in accordance with applicable accounting standards, accurate books, records and accounts in the English language in connection with the Project and the Facility;
 - (ii) all supporting information which is held by LDCP in relation to each FERM Report;
 - (iii) all information required to be retained by Schedules S5.2 to S5.5 of the NER in relation to the Facility, including:
 - (A) all data and data sheets referred to in the Power System Model Guidelines and/or the Generating System Model Guidelines published by AEMO which LDCP is required to prepare or maintain; and
 - (B) data derived from manufacturers' data, detailed design calculations, works or site tests (including those items denoted in Schedule S5.5.3 to S5.5.5 (both inclusive) of the NER as R1); and
 - (C) after connection, data derived from on-system testing (including those items denoted in Schedule S5.5.3 to S5.5.5 (both inclusive) of the NER as R2);
 - (iv) all information in relation to the compliance system for the Facility which is created in accordance with r 4.15 of the NER;
 - (v) all approved Maintenance Plans and evidence, information and contractor records and logs relating to all maintenance (including Planned Maintenance and Unplanned Maintenance carried out during the Operational Period); and
 - (vi) any other records required to be retained by applicable Law;
- (b) must:
 - (i) undertake regular audits; and
 - (ii) have controls in place, and continue to implement such controls,

to ensure the accuracy of those books, records and accounts.

10.2 Inspection and audit

- (a) FV may at any time and from time to time during the Record Retention Period, direct LDCP to provide FV or its nominee or an independent person appointed by FV (**Auditor**), access to the records and information mentioned in clause 10.1 for the purpose of verifying:
 - (i) the accuracy of any report or information provided by LDCP arising from or in connection with this agreement; and
 - (ii) LDCP's compliance with this agreement.
- (b) Within 5 Business Days of a request, LDCP must give the Auditor proper opportunity to conduct inspections and audits of the records and information specified in clause 10.1 at the LDCP's registered offices or at another convenient location as reasonably directed by FV, during normal business hours.
- (c) LDCP must comply with any such audit, including that it must:
 - (i) subject to clause 10.2(d), allow the Auditor to access, during business hours, the information specified in clause 10.1 and any premises, systems, equipment, personnel and information of LDCP relating to the Facility;
 - (ii) provide reasonable co-operation, information and assistance to the auditor, including answering reasonable questions relating to the audit and inspection in writing; and
 - (iii) if an audit reveals any breach of this agreement or errors in the information provided to FV in connection with this agreement, LDCP must take remedial action including complying with any reasonable directions or instructions from FV.
- (d) The Auditor's access to any premises, systems, equipment and personnel will be subject to LDCP's reasonable instructions relating to site access and to physical and information security.
- (e) If:
 - (i) a breach of this agreement is subsisting at the time of the inspection or audit; or
 - (ii) completion of the inspection or audit results in FV identifying a failure by LDCP to comply with a breach of this agreement,the costs of the inspection or audit are to be paid by LDCP. Otherwise, the costs of the inspection or audit are to be paid by FV.

11 CHANGE IN LAW

11.1 Change in Law

- (a) If, at any time after the Tender Date, a Change in Law occurs that prevents or materially interferes with the operation of this agreement or any of the transactions contemplated by this agreement, then:
 - (i) LDCP will use its best endeavours to mitigate the effect of the Change in Law; and
 - (ii) the parties will consider and negotiate in good faith any specific amendment to this agreement (other than the Base Figures) requested by a party so as to

preserve the efficacy of the operation of this agreement in the manner originally intended at the date of this agreement.

- (b) If the parties are unable to agree any changes to this agreement as contemplated under clause 11.1(a), then this agreement will continue to operate in accordance with its terms.
- (c) This clause 11.1 may operate in conjunction with clause 11.2 but is intended to address amendments to the agreement other than those relating to the Base Figures.

11.2 Relevant Cost Change

Subject to clause 15, if LDCP incurs a Relevant Cost Change, then LDCP must use its best endeavours to mitigate any additional costs to be incurred and to minimise any costs arising from the Relevant Cost Change.

11.3 Notice

- (a) If the net impact of a Relevant Cost Change on LDCP is likely to result in:
 - (i) a net increase in costs that exceeds the Cost Change Threshold, then LDCP may give FV a notice under this clause 11.3 in respect of that Relevant Cost Change; or
 - (ii) a net reduction in costs that exceeds the Cost Change Threshold, then LDCP must give FV a notice under this clause 11.3 in respect of that Relevant Cost Change.
- (b) The net impact of a Relevant Cost Change pursuant to this clause 11.3 is to be calculated on the basis that LDCP complies with its obligations under clause 11.2.
- (c) A notice given by LDCP pursuant to this clause 11.3 must specify:
 - (i) reasonable details of the Relevant Cost Change and the circumstances that gave rise to it;
 - (ii) its best estimate of the amount of the Relevant Cost Change (together with reasonable supporting evidence); and
 - (iii) reasonable evidence demonstrating LDCP's steps taken to use best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clause 11.2.
- (d) Within 20 Business Days following receipt of a notice pursuant to this clause 11.3, FV may request that LDCP provides further information or evidence that is reasonably required by FV in relation to the information that has been provided by FV in the notice.
- (e) LDCP must provide the information that is requested by FV under clause 11.3(d) within 20 Business Days of a request from FV.

11.4 Adjustment to Base Figures

If LDCP gives notice to FV in accordance with clause 11.3 (and any further information that is requested under clause 11.3(d), then the parties will negotiate in good faith and FV will determine an adjustment to one or more of the Base Figures which FV considers (acting reasonably and in good faith) is necessary to pass 50% of the Relevant Cost Change to FV in accordance with the Cost Change Principles set out in clause 11.6.

11.5 Dispute resolution

- (a) If LDCP disputes the required adjustment to the Base Figures determined by FV under clause 11.4 by the later of the date that is:

- (i) 60 Business Days after the notice under clause 11.3; and
 - (ii) 120 Business Days after the commencement of the relevant Change in Law, then LDCP may refer the Dispute to an Independent Expert for determination under clause 12.6.
- (b) If a Dispute is referred to an Independent Expert under this clause 11.5, then that Independent Expert must base its recommendation or decision on the Cost Change Principles.

11.6 Cost Change Principles

The “Cost Change Principles” to be applied in determining an adjustment to the Base Figures are:

- (a) any cost passed through to the Base Figures will be calculated after deduction of the Cost Change Threshold amount;
- (b) any adjustment to the Base Figures will commence at the start of an Operational Year;
- (c) the adjustment will reflect the impact of the Change in Law on LDCP had LDCP used best endeavours to mitigate additional costs and maximise reductions in costs in accordance with clauses 11.1 and 11.2;
- (d) any increase in LDCP’s costs will be discounted for any related economic benefit to LDCP associated with the relevant Change in Law (including any tax benefits); and
- (e) where the most efficient response to the Change in Law involves the incurring of capital expenditure by LDCP, the cost of that capital expenditure will be annualised and allocated on a proportional basis between the remaining Term and the expected useful economic life of the Project.

12 DISPUTE RESOLUTION

12.1 Dispute mechanism

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

12.2 No proceedings

Subject to clause 12.8, a party must not commence or maintain a court action or proceedings in relation to a Dispute until the party has complied with this clause 12.

12.3 Disputes

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

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

12.4 Procedure to resolve Disputes

- (a) If there is a Dispute, then the parties must use reasonable endeavours to resolve that Dispute as soon as practicable.
- (b) The procedure that is to be followed to resolve a Dispute is as follows:

- (i) first, negotiation of the Dispute under clause 12.5;
- (ii) second, if permitted under clause 12.5(b), referral of the Dispute for determination by an Independent Expert under clause 12.6; and
- (iii) third, determination of the Dispute in a court of competent jurisdiction.

12.5 Negotiation

- (a) Within 10 Business Days after the service of a Dispute Notice, a senior representative of each party must meet, negotiate and seek to resolve the Dispute in good faith.
- (b) If the Dispute is not resolved within 20 Business Days after the negotiations between senior representatives commencing pursuant to clause 12.5(a), then either party may by written notice:
 - (i) where:
 - (A) expressly provided for under this agreement; or
 - (B) the Dispute is of a technical or engineering nature, refer the Dispute for determination by an Independent Expert; and
 - (ii) where the Dispute is not of a technical or engineering nature, commence proceedings in a court of competent jurisdiction.

12.6 Independent Expert

- (a) If this agreement provides that a Dispute is to be referred for determination by an independent expert, then the parties must appoint a person to which the Dispute will be referred for determination (**Independent Expert**) by mutual agreement within 10 Business Days after a notice referring a Dispute to an Independent Expert being given (or such longer period the parties agree).
- (b) Failing agreement within the period specified in clause 12.6(a), either party may request the CEO of the Resolution Institute (or their independent nominee) to appoint an Independent Expert.
- (c) If an Independent Expert is not appointed within 20 Business Days after the date of the request being made under clause 12.6(b), then either party may commence proceedings in a court of competent jurisdiction in relation to the Dispute.
- (d) The Independent Expert appointed must have reasonable qualifications, and commercial and practical experience, in the area of the Dispute (including in the context of the *NEM*) and no interest or duty which conflicts or may conflict with their function as an Independent Expert.
- (e) The Independent Expert will act as an expert and not as an arbitrator.
- (f) The parties must comply with all reasonable requests by an Independent Expert for information relating to the Dispute.
- (g) The parties must ensure that the Independent Expert's terms of appointment include the following requirements:
 - (i) the Independent Expert must consult with the parties concerning the matters under Dispute;
 - (ii) the Independent Expert must make a draft report available to the parties within 30 Business Days after their appointment;
 - (iii) the Independent Expert must meet with representatives of the parties to discuss any queries they may have in relation to the draft report;

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

12.7 Continued performance following a Dispute

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

12.8 Interim relief

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

13 CONFIDENTIALITY

13.1 Disclosure of information

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

- (a) information that is publicly available (other than through a breach of this clause 13);
- (b) to:
 - (i) any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this agreement;
 - (ii) officers, employees, agents, contractors, legal and other advisers and auditors of the party;
 - (iii) a party's banks or other financial institutions (and their professional advisers);
 - (iv) any person who is proposing to acquire a direct or indirect interest in the party; or
 - (v) any Related Entity of a party to this agreement,provided the recipient agrees to act consistently with this clause;
- (c) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (d) where the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this agreement;
- (e) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
- (f) in the case of disclosure by FV, to:

- (i) *AEMO, AER*, a scheme regulator or the scheme administrator (as defined in the FERM Regulations);
 - (ii) any government department, agency, authority, instrumentality, minister (including the Minister) or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and
 - (iii) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in clauses 13.1(f)(i) to 13.1(f)(ii),
- provided that FV uses reasonable endeavours to ensure that any such person does not disclose such information to a person to whom disclosure is not otherwise permitted under this agreement.

13.2 Publicity

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

13.3 Information sharing with Minister

The parties acknowledge and agree that FV must:

- (a) provide copies of all formal notices provided to FV by LDCP regarding:
 - (i) the achievement of Milestones and COD;
 - (ii) any required extension to the Milestone Dates;
 - (iii) the development of and compliance with any Critical Path Cure Plans;
 - (iv) the termination of this agreement (for any reason),to the Minister promptly following receipt; and
- (b) provide copies of all formal notices it provides to LDCP relating to the matters specified in clause 13.3(a) to the Minister contemporaneously with (or as soon as practicable after) such notices being provided to LDCP.

14 NOTICES

14.1 How notices given and received

Any notice, demand, consent or other communication given or made under this agreement:

- (a) must be in writing and sent to the address or email address for the recipient specified in Item 2 or 4 of the Reference Schedule (which addresses may be updated by a party from time to time upon giving notice to the other party);
- (b) must either be delivered to the recipient by prepaid post (or if posted to an address in another country, by registered airmail) or by hand or email;
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;

- (ii) in the case of delivery by post, 7 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
- (iii) in the case of email:
 - (A) at the time the sender's computer or other device generates a report confirming that the email has been received by the recipient's information system; or
 - (B) if no such report is generated, 1 Business Day after the date on which the email is sent, provided that the sender has not by that time received a delivery failure notification (or similar),but if the result of the foregoing is that a notice would be taken to be given or made on a day which is not a Business Day, it will be taken to have been duly given or made at the commencement of business on the next Business Day.

14.2 Contract Representative

- (a) At all times, LDCP must appoint and maintain the appointment of a natural person who is involved with the day-to-day operation and administration of the Project and the Facility and this agreement as its Contract Representative.
- (b) LDCP must ensure that it notifies FV as soon as reasonably practicable (and in any event within 5 Business Days) of any changes to the identity or contact details of the Contract Representative, including any temporary changes to the identity or contact details of the Contract Representatives.
- (c) FV may contact the Contract Representative at all reasonable times in respect of any matter in connection with the day-to-day operation or administration of the Project or this agreement.
- (d) Despite clause 14.2(b), any notices and other communications that FV is required to give under this agreement will be given to LDCP in accordance with clause 14.1.

15 TAXES

Subject to clause 16, LDCP will be solely liable for payment of all taxes, duties and levies (including corporate taxes, personal income tax, fringe benefits tax, payroll tax, stamp duty, withholding tax, PAYG, turnover tax and excise and import duties, and any subcontractor's taxes) which may be imposed on LDCP in relation to any payments made to LDCP under this agreement.

16 GST

16.1 Interpretation

Unless the contrary intention appears, the terms and phrases used in this clause have the meanings given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Law**).

16.2 GST exclusive consideration

- (a) Unless otherwise specified in this agreement, any amounts that are payable under or in connection with this agreement do not include GST (**GST exclusive consideration**).
- (b) The recipient of a taxable supply under or in connection with this agreement must, in addition to and at the same time as the GST exclusive consideration is payable, pay

to the supplier an amount equal to the amount of GST imposed by the GST Law from time to time on the taxable supply.

- (c) The additional amount is not payable unless the supplier provides to the recipient a tax invoice which is in an approved form for GST purposes.

16.3 RCTIs

- (a) To the extent permitted by applicable Law, LDCP will raise and issue tax invoices in respect of the Upside Payments it is required to make to FV under this agreement (recipient created tax invoices) (**RCTIs**).
- (b) Any RCTI which is raised and issued by LDCP in connection with this agreement must be in a form which is compliant with applicable Law. LDCP warrants and undertakes that:
 - (i) it is registered for GST as at the date of this agreement; and
 - (ii) it will remain registered for GST at all times during the Term.

16.4 Reimbursement of costs and expenses

If a party is required under this agreement to reimburse or indemnify another party for costs and expenses incurred, those costs and expenses must be reduced by the amount of any input tax credit available to the supplier and grossed-up for GST under this clause.

17 GENERAL

17.1 Entire agreement

This agreement contains the entire agreement between the parties, and supersedes all prior agreements and understandings between the parties with respect to, its subject matter.

17.2 Amendment

No amendment or variation of this agreement is valid or binding on a party unless made in writing executed by both parties.

17.3 Costs

The parties must bear their own costs (including legal costs) which are incurred in connection with the preparation or negotiation of this agreement.

17.4 Severability of provisions

Any provision of this agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

17.5 Moratorium legislation

To the full extent permitted by Law, all legislation which at any time directly or indirectly:

- (a) lessens, varies or affects any obligation of a party under this agreement; or
- (b) delays, prevents or prejudicially affects the exercise by a party of any rights under this agreement,

is excluded from this agreement.

17.6 Assignment by LDCP

- (a) LDCP must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement, the Facility or the Project other than in accordance with this clause 17.6.
- (b) Subject to clause 17.6(c), provided LDCP is not in breach or default of any of its obligations under this agreement, LDCP may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with FV's prior written consent, which must not be unreasonably withheld or delayed if:
 - (i) FV is reasonably satisfied that the assignee, novatee or transferee:
 - (A) has the legal, financial and technical capability to perform LDCP's obligations under this agreement; and
 - (B) agrees to assume all obligations of LDCP under or in connection with this agreement; and
 - (ii) in the case of a proposed assignment, novation or transfer that would occur prior to COD, FV considers (at its discretion) that the assignee, novatee or transferee would have achieved an equivalent or higher merit score from the Scheme Administrator during the tender assessment conducted in connection with this agreement.
- (c) LDCP must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement or the Facility unless it simultaneously assigns, novates or otherwise transfers the agreement and the Facility to the same entity to whom it assigns or novates this agreement in accordance with this clause 17.6.

17.7 Security Interests granted by LDCP

- (a) The parties agree that LDCP may grant a Security Interest in respect of its rights and obligations under this agreement, the Facility or the Project in favour of secured lender/s (or a security trustee or agent acting on its/their behalf) who is/are providing financial accommodation on secured terms to LDCP in connection with the Project or the Facility.
- (b) The parties acknowledge and agree that subject to the contents of any tripartite deed entered into by FV in accordance with clause 17.7(c), the provisions of clause 17.6 will apply to any assignment, novation or transfer of LDCP's rights and obligations under, title to and interest in this agreement following the enforcement of a Security Interest granted by LDCP in accordance with clause 17.7(a).
- (c) Upon request by LDCP, FV will act reasonably in negotiating and entering into a financier tripartite deed with LDCP's secured lender/s (or a security trustee or agent acting on its/their behalf), provided such deed is substantially in the form set out in Annexure 1 to this agreement.
- (d) LDCP must indemnify FV for any legal fees incurred by FV in connection with the negotiation of such a financier tripartite deed.

17.8 Assignment by FV

- (a) FV must not assign, novate or otherwise transfer its rights or obligations under, title to or interest in this agreement other than in accordance with this clause 17.8.
- (b) FV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement with LDCP's prior written consent, such consent not to be unreasonably withheld or delayed.

- (c) FV may assign, novate or otherwise transfer its rights and obligations under, title to or interest in this agreement without LDCP's consent to:
 - (i) a Government Entity; or
 - (ii) any entity which replaces the Financial Vehicle from time to time.

17.9 Release

If a party assigns, novates or otherwise transfers its rights and obligations under, title to or interest in this agreement in accordance with clause 17.6 or 17.8, then the non-assigning party agrees to release the assigning party from its obligations under this agreement arising on and from the date of the assignment, novation or transfer to the extent that those obligations are assumed in writing by the assignee on terms reasonably acceptable to the non-assigning party.

17.10 Change in Control

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

17.11 Survival

- (a) If this agreement is terminated or expires then, except where this agreement provides otherwise:
 - (i) the parties are released from their obligations to continue to perform this agreement except the obligations which are expressed to, or by their nature, survive termination;
 - (ii) each party retains the rights and claims it has against the other party for any past breach of this agreement; and
 - (iii) the provisions of this agreement survive termination to the extent necessary to give effect to this clause 17.11.
- (b) Without limiting clause 17.11(c), Schedule 6 and clauses 6.9, 6.9, 8, 10, 12, 13, and 17.11 of these General Terms survive termination of this agreement.
- (c) The indemnities in this agreement are:
 - (i) continuing, separate and independent obligations of the parties from their other obligations and survive termination of this agreement; and
 - (ii) absolute and unconditional and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the liability of the party giving the indemnity.

18 FV TRUSTEE PROVISIONS

[Note (to be deleted in execution version): this FV trustee clause is indicative only and will be updated prior to signing.]

18.1 Trustee capacity of FV

FV is party to this agreement in its capacity as trustee of the Statutory Trust.

18.2 Notification of retirement, removal or replacement

FV must notify LDCP as soon as practicable if it retires, is removed or is replaced as trustee of the Statutory Trust. If practicable, the notification must be made before the retirement, removal or replacement takes effect.

18.3 Trustee limitation of liability

- (a) Subject to clauses 18.3(b), (c) and (d), FV's liability to LDCP in connection with this agreement (including to make Scheme Payments and Fuel Reimbursements) is limited to the extent the liability can be and is satisfied out of the Statutory Trust Property by FV exercising its right of indemnity out of the Statutory Trust Property.
- (b) LDCP may not seek to recover any amounts owing to it in connection with this agreement by bringing proceedings against FV in its personal capacity, or take any steps to have FV placed in any form of insolvency administration or to have a receiver or receiver and manager appointed.
- (c) The limitations and restrictions under clauses 18.3(a) and (b) do not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of FV's indemnification out of the Statutory Trust Property as a result of FV's own fraud, negligence or wilful default. This clause 18.3(c) does not, however, apply to the extent the relevant act or omission of FV is caused or contributed to by any other person, including LDCP. Nothing in this clause 18.3(c) shall make FV liable to any claim for an amount greater than the amount which LDCP would have been able to claim and recover from the Statutory Trust Property in relation to the relevant liability if FV's right of indemnity had not been prejudiced in the manner described in this clause 18.3(c).
- (d) FV is not obliged to do or refrain from doing anything under this agreement unless its liability is limited in the same manner as set out in this clause 18.3.
- (e) The limitation of FV's liability under clause 18.3(a) is to be disregarded for the purposes of determining whether FV has failed to comply with or perform any obligation under this agreement because of a failure by FV to pay an amount payable by it under this agreement.
- (f) A reference to a right of indemnity in this clause 18.3 includes any right or power in law or in equity for FV to meet the liability out of the Statutory Trust Property.

18.4 Paramountcy etc

This clause 18 prevails over any other provision of this agreement to the extent of any inconsistency. It applies to all liabilities and obligations of FV in any way connected with any representation, warranty, conduct, omission, agreement or transaction under or connected to this agreement.

SCHEDULE 6 – DEFINITIONS AND INTERPRETATION SCHEDULE

1 DEFINITIONS

In this agreement:

Acceptable Credit Rating means a credit rating of at least A- by Standard & Poor's or A3 by Moody's or an equivalent rating from another reputable ratings agency acceptable to FV (acting reasonably).

Actual Capacity means at any time the sum of the amount of electricity (in MW) actually being dispatched into the *NEM* and the amount of additional reserve capacity which is which is capable of being immediately dispatched into the *NEM*.

Actual LOR Interval means any *trading interval* in respect of which *AEMO* has declared an actual LOR2 or LOR3 in the South Australian region of the *NEM* as a result of a shortfall of available capacity reserves in accordance with the reserve level declaration guidelines and the *NER*.

Aggregate Nameplate Rating of Facility means the 'aggregate nameplate rating of Facility (output)' specified in Item 12 of the Reference Details.

Agreed Maintenance Windows means each Autumn Maintenance Window and each Spring Maintenance Window.

Annual FERM Report has the meaning as defined in clause 6.3 of the Specific Terms: Operational Period.

Approved Reinstatement Plan has the meaning as defined in clause 9.2(b) of the Specific Terms: Operational Period.

ASX means the Australian Securities Exchange, operated by ASX Limited ACN 008 624 691.

Auditor has the meaning as defined in clause 10.2(a) of the General Terms.

Authorisation means any consent, permit, authorisation, registration, filing, accreditation, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with an Authority. Without limitation, it includes any required *AEMO* registration and *ESCOSA* Licence, and any Authorisations required under:

- (a) the *Native Vegetation Act 1991* (SA) or the *Biodiversity Act 2025* (SA);
- (b) the *Planning, Development and Infrastructure Act 2016* (SA) or the *Hydrogen and Renewable Energy Act 2023* (SA); and
- (c) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Authority means any governmental, semi-governmental, judicial, administrative, municipal, local governmental, statutory, fiscal, monetary or supervisory authority or body. It includes *AEMO*, *AER* and any regulatory organisation established under statute or any stock exchange rules.

Autumn Maintenance Window means the Autumn Maintenance Window specified in Item 22 of the Reference Schedule.

Availability Rebate means the availability rebate for an Operational Year, as determined in accordance with clause 3 of Schedule 2.

Availability Rebate Percentage means the availability rebate percentage for an Operational Year, as determined in accordance with clause 3 of Schedule 2.

Availability Requirement has the meaning as defined in clause 3.3 of the Specific Terms: Operational Period.

Availability Uptime Percentage means the availability uptime percentage for an Operational Year determined in accordance with clause 3.4 of Schedule 2.

Base Figure means the:

- (a) Revenue Floor (as specified in Item 23 of the Reference Schedule);
- (b) Revenue Sharing Cap (as specified in Item 24 of the Reference Schedule); and
- (c) Payment Cap (as specified in Item 25 of the Reference Schedule).

Bidirectional Capacity Commitment has the meaning as defined in clause 2.2(a) of the Specific Terms: Operational Period.

BOP means balance of plant.

Breach Notice has the meaning as defined in clause 6.7(b) of the General Terms.

Business Day means a day that is not:

- (a) a Saturday, Sunday or public holiday in South Australia; or
- (b) between 25 December and 1 January.

Capacity Commitment has the meaning as defined in clause 2.2 of the Specific Terms: Operational Period.

Capacity Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which becomes available to the owner or operator of a production unit that is attributable to the capacity or availability of the Facility, but not including any Green Products or any ancillary services.

CC Cure Period has the meaning as defined in clause 2.4(a) of the Specific Terms: Operational Period.

Change in Control occurs in relation to a party where:

- (a) a person who does not Control the party acquires such Control; or
- (b) a person that Controls that party ceases to have such Control, but does not include a change in Control of a party which occurs as a result of:
 - (i) the party or any of its Related Bodies Corporate becoming listed on the ASX or other recognised securities exchange;
 - (ii) a transfer of or other dealing in shares in the party or any of its Related Bodies Corporate that are listed on the ASX or other recognised securities exchange; or
 - (iii) an internal restructure or reorganisation, provided that the restructuring or reorganisation does not result in a change to the Ultimate Holding Company of the party.

Change in Law means the imposition of, change in, change in the application or official interpretation of or repeal of a Law (other than a Law relating to an Ineligible Tax), but excludes:

- (a) any change in planning or environmental requirements associated with the construction of the Facility (including any native title or cultural heritage costs);
- (b) any change in the NER which, as at the Tender Date, is the subject of a final determination of the Australian Energy Market Commission or the Energy Security Board;

- (c) the introduction of, or any change to, the Market Liquidity Obligation (except to the extent the Market Liquidity Obligation imposes materially more onerous obligations on LDCP than those which were described in the Tender Documents); and
- (d) the introduction of, or any change to, the Scheme Regulator guidelines issued under the FERM Regulations in relation to the determination of Fuel Price (except to the extent the guidelines impose a materially less favourable Fuel Price determination methodology for LDCP than the methodology described in the Tender Documents).

CIS means the Capacity Investment Scheme created by legislative instrument under the *Industry Research and Development Act 1986* (Cth) as such scheme is amended by any other Commonwealth legislation, including the *Climate Change Act 2022* (Cth).

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

COD means commercial operations date, being the date on which the LDCP receives notice from FV that LDCP has satisfied all COD Preconditions in accordance with clause 1.6 of the Specific Terms: Development Period.

COD Preconditions has the meaning as defined in clause 1.5 of the Specific Terms: Development Period.

Cold Weather Peak Periods means the cold weather peak periods specified in Item 22 of the Reference Schedule.

Committed Bidirectional Capacity has the meaning as specified in Item 18 of the Reference Schedule.

Committed Conventional Capacity has the meaning as specified in Item 18 of the Reference Schedule.

Committed Output Capacity has the meaning as specified in Item 18 of the Reference Schedule.

Committed Storage Capacity has the meaning as specified in Item 18 of the Reference Schedule.

Committed Storage Rebate means the committed storage rebate for an Operational Year, as determined in accordance with clause 4 of Schedule 2.

Compliance Interval means each *trading interval* in respect of which AEMO forecasts LOR2 or LOR3 in the LOR Assessment Horizon regardless of whether the *trading interval*:

- (a) ceases to be a forecasted LOR2 or LOR3 *trading interval*; or
- (b) becomes an Actual LOR Interval.

Compliance Period means a continuous, consecutive series of Compliance Intervals.

Connection Agreement means any agreement between LDCP and a third party to give effect to a Utility Connection that is required for the Project.

Connection Point means the transmission network connection point or distribution network connection point for the Facility (as applicable).

Contract Representative means the person appointed by LDCP in accordance with clause 14.2 of the General Terms.

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

- (a) the application of section 50AA(4) will be disregarded;

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

and Controlled has a corresponding meaning.

Conventional Capacity Commitment has the meaning as defined in clause 2.2(a) of the Specific Terms: Operational Period.

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

Cost Change Threshold means an amount equal to \$500,000 plus \$20,000/MW of ~~Committed-Output Capacity~~ Aggregate Nameplate Rating of Facility, capped at \$5 million (each figure in this definition escalating in accordance with clause 1.4 of Schedule 2 as if it were a Base Figure).

Critical Path Cure Plan has the meaning as defined in clause 1.4(b)(ii) of the Specific Terms: Development Period.

Critical Path Notice has the meaning as defined in clause 1.4 of the Specific Terms: Development Period.

Cumulative Balance means, in respect of a Quarter or Operational Year (the **Relevant Period**), the cumulative balance of all Scheme Payments and Fuel Reimbursements to date (in respect of Quarters Years before the Relevant Period) less all Upside Payments to date (in respect of Quarters before the Relevant Period).

Current Annual Payment Cap has the meaning as defined in clause 6.11(b) of the General Terms.

Deemed Wholesale Contract Capacity Revenue has the meaning as defined in clause 2.4 of Schedule 2.

Deemed Wholesale Contract Energy Revenue has the meaning as defined in clause 2.2 of Schedule 2.

Deemed Wholesale Contract Green Revenue has the meaning as defined in clause 2.3 of Schedule 2.

Deemed Wholesale Contract Revenue means, for a period, the aggregate of all Deemed Wholesale Contract Energy Revenue, Deemed Wholesale Contract Capacity Revenue and Deemed Wholesale Contract Green Revenue.

Definitions and Interpretation Schedule means this Schedule 6 to this agreement.

Delay Event has the meaning as defined in clause 1.2 of the Specific Terms: Development Period.

Development Period means the period specified in Item 6 of the Reference Schedule.

Dispute has the meaning as defined in clause 12.1 of the General Terms.

Dispute Notice has the meaning as defined in clause 12.3 of the General Terms.

Downside Percentage means the downside percentage specified in Item 27 of the Reference Schedule.

Draft CC Cure Plan has the meaning as defined in clause 2.4(a) of the Specific Terms: Operational Period.

Draft MPT Cure Plan has the meaning as defined in clause 3.8(a) of the Specific Terms: Operational Period.

Early Termination Amount means the amount specified in Item 9 of the Reference Schedule.

Early Termination Security means an unconditional bank guarantee or letter of credit:

- (a) issued by an issuer with an Acceptable Credit Rating and which has an office in Sydney;
- (b) which has a face value amount equal to at least the Early Termination Amount; and
- (c) which is substantially in the form set out in Annexure 2 to this agreement; and
- (d) which is otherwise in a form acceptable to FV (in its discretion).

Election to Reinstate has the meaning as defined in clause 9.1(a) of the Specific Terms: Operational Period.

Eligible Wholesale Contract has the meaning as defined in clause 3.3(a) of the General Terms.

Emergency means any event which poses an imminent risk of:

- (a) death or personal injury to any person; or
- (b) causing a Major Loss Event.

ESCOSA Licence means any licence that LDCP is required to hold for the Project under the *Electricity Act 1996* (SA) (including any licence granted by the Essential Services Commission of South Australia).

Excluded Operational Year means each excluded Operational Year specified in Item 28 of the Reference Schedule.

Facility means the long duration electricity generation and/or storage *facility* which is to:

- (a) be owned and operated by LDCP; and
- (b) meet the Specifications,

and includes the Utility Connection Assets.

FERM Guidelines means the Minister's Guidelines made pursuant to Part 2 of the FERM Regulations.

FERM Regulations means the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025* (SA).

FERM Report has the meaning given in clause 6.5 of the Specific Terms: Operational Period.

Financial Close occurs when LDCP has secured the equity and/or external debt financing that is required to fund the construction and commissioning of the Facility, and all conditions precedent to first draw down under that financing have been satisfied or waived and that first draw down is made available to LDCP.

Financial Vehicle has the meaning as defined in the FERM Regulations.

Firm Energy Reliability Mechanism (or **FERM**) means the scheme established by the FERM Regulations.

First Operational Year has the meaning as defined in the definition of Operational Year below.

Force Majeure Event means an event or circumstance, or combination of events or circumstances which is/are not within the reasonable control of LDCP, including without limitation:

- (a) an electrical, mechanical or operational malfunction, breakdown or failure of any assets which form part of the Facility;
- (b) an electrical, mechanical or operational malfunction, breakdown or failure of any Utility Connection Assets;
- (c) any planned or unplanned *outage* of the *transmission network* or the *distribution network*;
- (d) curtailment or congestion affecting the availability of the *transmission network* or the *distribution network* in the South Australian region;
- (e) a lack of supply or shortage of electricity, natural gas or water,

but only to the extent that LDCP could not have avoided such event/s or circumstance/s through the exercise of reasonable care, compliance with its obligations under this agreement or Good Industry Practice, and excluding:

- (a) a lack of supply or shortage of electricity, natural gas, diesel, fuel or water which is caused by a failure by LDCP to use its best endeavours to contract for such supply in accordance with Good Industry Practice;
- (b) financial hardship, failure or inability of any person to pay any sum due and payable, or the inability of LDCP (or any of its Related Entities) to obtain financing or insurance or to profit or achieve a satisfactory rate of return;
- (c) any malfunction, temporary unavailability, breakdown or failure of any assets forming part of the Facility:
 - (i) caused by normal wear and tear; or
 - (ii) to the extent such event could have been rectified and overcome if LDCP held all spare parts which would typically be held by a prudent operator of the Facility operating in accordance with Good Industry Practice;
- (d) any event or circumstance arising due to a failure by LDCP to properly maintain any equipment, property or asset forming part of the Facility in accordance with a Maintenance Plan or Good Industry Practice;
- (e) any event or circumstance arising due to a negligent or unlawful act or omission of LDCP, any of its Related Entities or any of their respective employees, agents or subcontractors;
- (f) any event or circumstance arising due to a breach of this agreement or a Project Document by LDCP;
- (g) any event or circumstance arising due to the Facility and/or the Utility Connection Assets not being designed in a manner which meets the Specification; or
- (h) strikes, industrial disputes or other industrial actions or disruption that only affect LDCP.

Force Majeure Suspension Period has the meaning as defined in clause 8.1 of the Specific Terms: Operational Period.

Fuel Price Determination means a determination made by the Scheme Regulator in accordance with the applicable guideline published pursuant to the FERM Regulations.

Fuel Reimbursement means the fuel reimbursement for an Operational Year (as determined in accordance with clause 1.3 of the Schedule 2).

Fuel Reimbursement (Without Volume Cap) means an amount equal to the Fuel Reimbursement before any application of clause 1.3(d) of Schedule 2.

General Terms means Schedule 5 to this agreement.

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

- (a) are used by prudent, competent, experienced and reputable developers, contractors and operators who develop and operate projects of a similar nature to the Project; and
- (b) are consistent with all relevant standards, including international standards and good electricity industry practice (as defined in the NER) to the extent that that definition is relevant to the Project and/or the Facility.

Government Entity means:

- (a) the Crown in right of the State of South Australia;
- (b) a Minister, agency or instrumentality of the Crown; or
- (c) any entity established by or under the Laws of South Australia or owned directly or indirectly by or on behalf of the State.

Government Initiative means the CIS and any other grant funding or project funding or underwriting scheme under which any Authority (or a scheme or financial vehicle created pursuant to any Law) provides financial assistance to electricity generators or storage providers.

Green Product means any right, entitlement, credit, offset, allowance, compensation, payment, benefit or certificate of any kind, recognised or arising under any scheme, Law, policy or arrangement which may be created in respect of, or relate to, the regulation or reduction of greenhouse gas emissions or the regulation or generation of renewable energy.

GST exclusive consideration has the meaning as defined in clause 16 of the General Terms.

Hot Weather Peak Period means the hot weather peak periods specified in Item 22 of the Reference Schedule.

Independent COD Report means a report provided (or to be provided) under clause 1.5 of the Specific Terms: Development Period.

Independent Expert has the meaning as defined in clause 12.6(a) of the General Terms.

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

Ineligible Wholesale Capacity Contract has the meaning as defined in clause 2.4 of Schedule 2.

Ineligible Wholesale Contract means any Wholesale Contract to the extent it is not an Eligible Wholesale Contract.

Ineligible Wholesale Energy Contract has the meaning as defined in clause 2.2 of Schedule 2.

Ineligible Wholesale Green Contract has the meaning as specified in clause 2.3 of Schedule 2.

Insolvency Event means, in respect of a party:

- (a) it is (or states that it is) insolvent (as defined in the Corporations Act);
- (b) it is or becomes a Chapter 5 Body Corporate (as defined in the Corporations Act);
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium or compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (d) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (e) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (f) something having a substantially similar effect to any of the things described in paragraphs (a) to (e) happens in connection with that party under the law of any jurisdiction.

Insurance Policies means the insurance policies specified in the Required Insurance Schedule.

Law means:

- (a) those principles of common law and equity established by decisions of courts;
- (b) any legislation or regulation; or
- (c) any Authorisation (including any conditions or requirements under them) which is issued under an instrument referred to in paragraph (b) of this definition.

LDCP Trust means, where LDCP is expressed to be a party to this agreement in its capacity as trustee of a trust, that trust.

LDCP Trust Deed means the deed of settlement or other instrument which establishes and governs the LDCP Trust.

LDCP Trust Property means LDCP's present and future property which is the subject of the LDCP Trust.

LDCP Utility Connection Assets means any Utility Connection Assets which are to be owned and operated by LDCP.

Long Duration Capacity Provider has the meaning as defined in the FERM Regulations.

LOR Assessment Horizon has the meaning as defined in the reserve level declaration guidelines.

LOR Notice Period (Conventional) has the meaning as specified in Item 19 of the Reference Schedule.

LOR Notice Period (Bidirectional) has the meaning as specified in Item 20 of the Reference Schedule.

Loss means all damage, loss, cost or expense. In relation to a Claim, Loss includes amounts payable in respect of the Claim and reasonable legal costs and expenses on a full indemnity basis.

Maintenance Plan has the meaning as defined in clause 4.2(a) of the Specific Terms: Operational Period.

Major Loss Event means an event or circumstance that results in the loss, destruction or material damage to the Facility which results in a loss of at least 50% of the ~~Committed Output Capacity or Committed Storage Capacity~~ total energy storage capacity of the Facility or the Aggregate Nameplate Rating of Facility (as applicable).

Major Supply Contract means, if covered under a different agreement to the Major Works Contract, the primary head contract/s for the procurement of the *generating units* (or *bidirectional units*), inverters (if applicable) and the generator or *bidirectional unit control system* which form part of the Facility.

Major Works Contract means the primary head contract/s for the design, construction and commissioning of the Facility.

Marginal Loss Factor means the *intra-regional loss factor* applicable to the Connection Point.

Market Liquidity Obligation has the meaning as defined in Regulation 33 of the FERM Regulations and the FERM Guidelines.

Milestone means each milestone specified in Item 7 of the Reference Schedule.

Milestone Date means each milestone date specified in Item 7 of the Reference Schedule.

Milestone Delay Notice has the meaning as defined in clause 1.3 of the Specific Terms: Development Period.

Minimum Performance Obligation has the meaning as defined in clause 3.2 of the Specific Terms: Operational Period.

Minimum Performance Thresholds has the meaning as defined in clause 3.9(a) of the Specific Terms: Operational Period.

Minister means the Minister for Energy and Mining, a body corporate pursuant to the *Administrative Arrangements Act 1994* (SA).

MPT Cure Period has the meaning as defined in clause 3.9(a) of the Specific Terms: Operational Period.

MPT Cure Plan has the meaning as defined in clause 3.9(e) of the Specific Terms: Operational Period.

MW means megawatt, a measure of electrical power.

MWh means megawatt hour, a measure of electrical energy.

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

National Electricity Rules or **NER** means the National Electricity Rules made under the National Electricity Law.

Net Revenue means, in respect of any Operational Year, the amount determined in accordance with the formula set out in clause 1.1 of Schedule 2.

Network Support Services means any service provided by the Facility to support a transmission network or a distribution network, including any service that is an alternative to network augmentation.

Notional Quantity has the meaning as specified in clause 2.1 of Schedule 2.

NTP means notice to proceed.

Operational Period means the period specified in Item 8 of the Reference Schedule.

Operational Revenue means, in respect of a period, revenue derived from the Facility on a cashflow basis (without double counting), including any:

- (a) revenue from an Eligible Wholesale Contract;
- (b) revenue deemed to be Operational Revenue in clause 3.1(b) of the General Terms (deemed Permitted Arrangement revenue);
- (c) Deemed Wholesale Contract Revenue;
- (d) revenue from the supply of ancillary services, Network Support Services or System Support Services;
- (e) revenue from the sale of electricity into the *NEM* (and revenue from the use of electricity from the *NEM* during *trading intervals* where the *spot price* is negative);
- (f) revenue from the sale of hedges, whether OTC or through the ASX;
- (g) to the extent not covered by paragraphs (a) to (f) above, revenue from *AEMO* (in its capacity as a market body) including any compensation under Chapter 3 of the *NER* (including arising from “market suspension”, the application of the “administered floor price” or “administered price cap”, or a “direction” (each as defined in the *NER*));
- (h) to the extent not covered by paragraphs (a) to (f) above, revenue in respect of, or other economic value associated with, any Capacity Products or Green Products;
- (i) financial assistance from the CIS or any other Government Initiative; and
- (j) amounts to which LDGP is entitled under or in connection with an insurance policy, but excluding:
 - (k) Scheme Payments and Fuel Reimbursements;
 - (l) damages and/or liquidated damages to which LDGP is entitled under a Project Document (except to the extent that those damages compensate for loss of revenue and/or profit); and
 - (m) amounts received from LDGP under an insurance policy (other than amounts which compensate for loss of revenue and/or profit, including where caused by a Force Majeure Event).

Operational Year means each of the following periods:

- (a) the period ~~from COD~~ commencing on the later of COD and the Target COD, and continuing to the ~~next~~ subsequent 31 October ~~following COD~~ (**First Operational Year**);
- (b) the period from 1 November to the day preceding the final day of the Term (**Last Operational Year**); and
- (c) each 12-month period from 1 November to 31 October from the end of the First Operational Year to the start of the Last Operational Year.

OTC means over the counter.

Other FERM Contract means a 'FERM contract' under the FERM Regulations, other than this agreement.

Over-Contracted Arrangement has the meaning as defined in clause 3.9(a).

Over-Contracted Trading Intervals has the meaning as defined in clause 3.9(b).

Payment Cap means the Payment Cap specified in Item 25 of the Reference Schedule.

Peak Periods means each Hot Weather Peak Period and each Cold Weather Peak Period during the Operational Period.

Performance Standards means the performance standards registered with AEMO from time to time for the Facility.

Permitted Arrangement has the meaning as defined in clause 3.1(a) of the General Terms.

Permitted Costs means, in respect of a period, the following costs and expenses incurred by LDCP on a cash flow basis in respect of the Facility in that period (without double counting):

- (a) the costs in relation to the import of electricity from the transmission network or distribution network, including any costs incurred on arm's length terms on account of Green Products required by Law (or required to avoid a shortfall charge imposed by Law) to be acquired or surrendered in respect of such electricity;
- (b) the costs incurred by the Facility in respect of any ancillary services, Network Support Services or System Support Services;
- (c) any other amounts incurred by LDCP under the NER;
- (d) any payments under any Eligible Wholesale Contract;
- (e) any costs incurred on arm's length terms on account of Green Products required by Law (or required to avoid a shortfall charge imposed by Law) to be acquired or surrendered in respect of such electricity;
- (f) any costs incurred on arm's length terms on account of carbon credits which are required to be acquired and / or surrendered by LDCP in order to comply with applicable Law;

(g) [any amount by which the Fuel Reimbursement \(Without Volume Cap\) exceeds the Fuel Reimbursement;](#)

(h) ~~(g)~~ any other costs and expenses LDCP and FV agree are Permitted Costs, but excluding:

(i) ~~(h)~~ costs as a result of dispatching into the *NEM* during *trading intervals* where the *spot price* is negative;

(j) ~~(i)~~ any Taxes (and GST);

(k) ~~(j)~~ any fines or penalties (including fines or penalties under the NER, the NEL or the FERM Regulations);

(l) ~~(k)~~ any liquidated damages, warranty payments, or payments related to non-performance under a Wholesale Contract; and

(m) ~~(l)~~ any Upside Payment, Availability Rebate or Committed Storage Rebate;

(n) ~~(m)~~ any interest, margin, guarantee or letter of credit fees, line fees, commitment fees, establishment fees, underwriting fees, discount, rent under finance leases or hire purchase or other one-off or recurrent payments in the nature of the foregoing (including gross-ups and recurrent increased cost or reduced yield indemnity payments) payable by LDCP in relation to any debt financing for the Project.

Planned Maintenance means the maintenance activities to be undertaken in accordance with the Maintenance Plan during the Operational Period.

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

Project means the development, design, construction and operation of the Facility by LDCP.

Project Documents means:

- (a) the Major Works Contracts;
- (b) the Major Supply Contracts;
- (c) the Connection Agreements; and
- (d) any other agreement which the parties agree is a Project Document for the purposes of this agreement.

Proposed Reinstatement Plan has the meaning as defined in clause 9.1(a) of the Specific Terms: Operational Period.

Qualifying Cause of Delay means:

- (a) a breach of this agreement (or other act of prevention) by FV; or
- (b) a Force Majeure Event.

Qualifying Contract means a contract which meets the criteria specified in the FERM Guidelines.

Quarter means each quarterly period ending on 31 January, 30 April, 31 July and 31 October in any calendar year.

Quarterly Report has the meaning as defined in clause 6.1(a) of the Specific Terms: Operational Period.

RCTI has the meaning as defined in clause 16.3 of the General Terms.

Records Retention Period has the meaning as defined in clause 10.1 of the General Terms.

Reference Schedule means Schedule 1 to this agreement.

Related Entity has the meaning as defined in the Corporations Act.

Relevant Cost Change means a net increase or decrease in LDCP's direct costs of:

- (a) constructing and commissioning the Project; or
- (b) generating, storing and exporting electricity, or
that arises as a result of a Change in Law that occurs after the Tender Date, but excluding costs in relation to:
- (c) existing or new participant fees (as defined in the NER);
- (d) existing or new ancillary services; and
- (e) any other amounts payable by LDCP under the NER.

Related Wholesale Contract has the meaning as defined in clause 3.4(b) of the General Terms.

Remaining Annual Payments has the meaning as defined in clause 6.11(b) of the General Terms.

Required Availability Percentage means the percentage specified in Item 21 of the Reference Schedule.

Required COD means the Milestone Date for COD specified in Item 7 of the Reference Schedule.

Required Insurances Schedule means Schedule 7 to this agreement.

Revenue Floor means the Revenue Floor specified in Item 23 of the Reference Schedule.

Revenue Sharing Cap means the Revenue Sharing Cap specified in Item 24 of the Reference Schedule.

Revised Statement means a “routine revised statement” or a “special revised statement” (each as defined in the NER).

SCADA means supervisory control and data acquisition.

Scheme Administrator has the meaning as defined in the FERM Regulations.

Scheme Payments means the annual payments which are to be paid by FV to LDCP which are determined in accordance with clause 1 of Schedule 2.

Scheme Regulator has the meaning as defined in the FERM Regulations.

Security Interest any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA; or
- (b) agreement to create any of the above or allow them to exist.

Signing Date means the earliest date on which this agreement has been signed by both parties.

Site means the site on which the Facility and the LDCP Utility Connection Assets are located (or to be located).

Specification means the specification outlined in Part 4 of the Reference Schedule.

Specific Terms: Development Period means the terms and conditions set out in Schedule 3.

Specific Terms: Operational Period means the terms and conditions set out in Schedule 4.

Spring Maintenance Window means each Spring Maintenance Window specified in Item 22 of the Reference Schedule during the Operational Period.

SPV means special purpose vehicle, which must be a company or corporate trustee which is registered under the Corporations Act.

ST PASA means *short term PASA*.

State means South Australia.

Statutory Trust means the trust arising on account of subregulation 9(3) of the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025* (SA).

Statutory Trust Property means FV’s present and future property which is the subject of the Statutory Trust.

Storage Requirement has the meaning as defined in clause 3.4 of the Specific Terms: Operational Period.

STTM means Short Team Trading Market.

Subsidiary of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is part of the consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

System Support Services means any service provided by the Facility to support the power system including the provision of inertia or the provision of a system strength service, but excluding any Network Support Service.

Target COD has the meaning given in Item 8 of the Reference Schedule.

Tax means any present or future tax, levy, impost, duty, rate, charge, excise, royalty (whether based on value, profit or otherwise), fee, deduction or withholding of any nature, which is imposed, levied or administered by an Authority, the Commonwealth or any State or Territory of the Commonwealth, together with any interest, penalty, charge, fee or other amount imposed or made on, or in connection with, any of the foregoing.

Technical Standards means the Performance Standards and the other standards and requirements published by any Authority under, any applicable Laws (including, in particular, Schedule S5.2 of the NER) that relate to the performance or operation of, or a service provided by the Facility as those requirements are modified by any derogations in force under that applicable Law at that time or the provisions of this agreement).

Tender Date mean the date on which the tender for this agreement was lodged by LDCP in accordance with the FERM Guidelines.

Tender Documents means the tender rules, guidelines and other materials provided to, or made available to, LDCP in connection with the tender process relating to this agreement.

Tenure means:

- (a) a freehold interest; and/or
- (b) an interest under a lease, sale and purchase agreement, transfer granting an easement agreement, easement or similar right including any valid option to enter into such an agreement or right, which provides for access to and/or use of land for the purpose of developing, constructing, commissioning, operating, maintaining and decommissioning the Facility (including any connection assets).

Term means the period specified in Item 5 of the Reference Schedule.

Tested Storage Capacity has the meaning as defined in clause 3.7(d) of the Specific Terms: Operational Period.

Third Party Utility Connection Assets means any Utility Connection Assets which are to be owned and operated by a third-party utility provider.

Ultimate Holding Company has the meaning given in the Corporations Act but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and that 'body corporate' includes any entity and a trust.

Unplanned Maintenance means any maintenance activities (other than Planned Maintenance) undertaken during the Operational Period.

Upside Payment means an upside payment determined in accordance with clause 1 of Schedule 2.

Upside Percentage means the upside percentage specified in Item 26 of the Reference Schedule.

Utility Connection means any connection to an existing shared electricity, water or natural gas transmission or distribution system which is required for the Facility to become fully operational in accordance with the Specification.

Utility Connection Assets means any infrastructure which is required to connect the Facility to any shared electricity, water or natural gas transmission or distribution system.

Variation Request has the meaning as defined in clause 2.1 of the Specific Terms: Development Period.

Wholesale Contract means any contract or other arrangement (other than this agreement) that entitles LDCP to receive amounts payable in respect of, or other economic value associated with:

- (a) the Facility;
- (b) any Green Products or Capacity Products created by reference to the Facility;
- (c) electricity imported or exported by the Facility;
- (d) the supply of ancillary services by the Facility; and/or
- (e) the availability or use of the energy storage capacity of Facility.

YTD Fuel Reimbursement has the meaning given in clause 1.5 of Schedule 2.

YTD Scheme Payment has the meaning given in clause 1.5 of Schedule 2.

YTD Upside Payment has the meaning given in clause 1.5 of Schedule 2.

2 INTERPRETATION

In this agreement, unless it is stated to the contrary:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity;
- (c) a reference to a clause is a reference to a clause of this agreement;
- (d) a reference to an agreement or document (including this agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by that agreement or document;
- (e) if a party consists of more than one person, an obligation of or warranty by that party binds each person constituting that party, jointly and severally;
- (f) a reference to a party to this agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to dollars and \$ is to Australian currency;

- (i) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (j) references to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing;
- (k) references to communications “in writing” include communications made by email; and
- (l) nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or any part of it.

2.1 Headings

Headings do not affect the interpretation of this agreement.

2.2 Terms defined in the NER

In this agreement, italicised terms have the meanings given to them in the NER.

SCHEDULE 7 – REQUIRED INSURANCES

S7.1 General Liability (whole Term)

At all times during the Term, LDCP must effect and/or maintain a combined general liability policy. The policy must:

- (a) cover general and public liability;
- (b) cover liability for death or bodily injury to any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance) and loss of or damage to property;
- (c) be endorsed to cover:
 - (i) the use of unregistered motor vehicles and plant and equipment; and
 - (ii) sudden and accidental pollution;
- (d) be for an amount of not less than \$20,000,000 in respect of any one occurrence; and
- (e) comply with clause 9 of the General Terms.

S7.2 Workers Compensation (whole Term)

At all times during the Term, LDCP must (and must ensure that its contractors) effect and/or maintain workers' compensation insurance in accordance with applicable law.

S7.3 Industrial special risks (from COD)

At all times during the period commencing on COD until the end of the Term, LDCP must effect and/or maintain an industrial special risks policy. The policy must:

- (a) be a property damage or industrial special risks policy covering the Facility and related assets on a reinstatement or replacement basis, or otherwise in accordance with good insurance practice for a prudent and competent owner and operator of similar assets in Australia; and
- (b) comply with clause 9 of the General Terms.

S7.4 Contract works (Development Period)

At all times during the Development Period when the Facility is under construction (up until and including COD), LDCP must effect and maintain a contract works policy. The contract works policy must:

- (a) be a stand-alone policy in relation to the Facility;
- (b) waive any express or implied rights of subrogation by insurers against the FV but only to the extent of the indemnities given and the liabilities assumed by LDCP;
- (c) be for an amount of not less than \$20,000,000 for any one occurrence or series of occurrences arising from the one event.

ANNEXURE 1 – TRIPARTITE DEED TEMPLATE

DATE Earliest date on which this agreement has been duly signed by both parties.

PARTIES

FV **[Financial Vehicle Pty Ltd ACN 123 123 123]**

LDCP The party listed in Item 3 of the Reference Schedule

**Security
Trustee**

BACKGROUND

- A. LDCP and FV have entered into the FERMA in connection with the Project.
- B. LDCP has requested that the Beneficiaries provide financial accommodation to LDCP or its Related Bodies Corporate to enable it to carry out the Project.
- C. The provision of financial accommodation is conditional on, among other things:
 - (a) LDCP granting Security to Security Trustee over its rights under the FERMA; and
 - (b) LDCP and FV entering into this document with Security Trustee.

It is agreed as follows.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Beneficiary has the meaning it has in the Security Trust Deed.

Controller has the meaning it has in the Corporations Act.

Cure Period Start Date means, for a Termination Event which FV is relying on for the purposes of clause 4.4 ("Termination"), the date on which all of the following are satisfied:

- (a) the Termination Event which FV is relying on has occurred; and
- (b) FV has given Security Trustee:
 - (i) a copy of the Termination Event Notice (if any) it has given to LDCP which states that the Termination Event which FV is relying on has occurred; or
 - (ii) if FV has not given Security Trustee a Termination Event Notice which complies with paragraph (i) above, including for example because it was not required to give such a notice to LDCP under the FERMA, it has notified LDCP and Security Trustee of the Termination Event it is relying on (and the notice includes reasonable details of that event); and
- (c) all cure periods (if any) specified in, or agreed under, the FERMA for that Termination Event have expired or ended.

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

Enforcing Party means Security Trustee or any Controller or attorney appointed under any Security.

FERMA means the firm energy reliability mechanism agreement dated [insert] between LDCP and FV with respect to the Project.

Security means any Security Interest granted by or entered into by LDCP or any of its Related Bodies Corporate (whether alone or with other grantors) in favour of Security Trustee (in its capacity as trustee of the Security Trust).

Security Trust has the meaning it has in the Security Trust Deed.

Security Trust Deed means the security trust deed executed by Security Trustee before this document was signed and which relates to the Security.

Security Trustee has the meaning it has in the Details. **Terminate** includes terminate, end, close out, determine, rescind, cancel, revoke, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance) or accept the termination, rescission or repudiation of the FERMA. It includes claiming that an obligation under the FERMA is void, voidable or unenforceable.

Termination Event means each of the events set out in clauses [6.1 ("Failure of critical path Milestones") to 6.7 ("Other termination events – FV")] of Schedule 5 of the FERMA.

Termination Event Notice means any notice(s) given by FV to LDCP notifying LDCP of the occurrence of a Termination Event.

Transferee has the meaning given in clause 5.1 ("Transfer").

1.2 Terms defined in the FERMA

Unless the contrary intention appears, a term which has a defined meaning in the FERMA has the same meaning when used in this document.

1.3 General interpretation

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

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to [Adelaide] time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (k) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

- (l) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (m) a period of time dating from a given day or the day of an act or event is to be calculated exclusive of that day;
- (n) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, then it is taken to be done on the next Business Day;
- (o) if the day on which a party must do something under this document is not a Business Day, then the party must do it on the next Business Day;
- (p) a reference to "property" or "asset" includes any present or future, real or personal, tangible or intangible property, asset or undertaking and any right, interest or benefit under or arising from it;
- (q) a reference to cure includes any deemed cure contemplated or effected by clause 4.6 ("Deemed cure");
- (r) a reference to remedy, rectify, cure or overcoming the effects of, or similar, includes a reference to any of them; and
- (s) a reference to "cure period" includes a reference to any cure, grace, notice or other period or requirement, or similar.

1.4 Inconsistent documents

If a provision of this document is inconsistent with a provision of the FERMA, the provisions of this document prevail to the extent of the inconsistency.

1.5 Capacity of Financial Vehicle

[Note (to be deleted in execution version): See clause in FERMA re the Financial Vehicle's capacity as trustee. Similar clause to be inserted into this deed].

1.6 Capacity of Security Trustee

- (a) Security Trustee enters into and performs this document and the transactions it contemplates only as the trustee of the Security Trust, except where expressly stated otherwise. This applies also in respect of any past and future conduct (including omissions) relating to this document or those transactions.
- (b) Under and in connection with this document and those transactions and conduct:
 - (i) Security Trustee's liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Security Trust. Security Trustee need not pay any such liability out of other assets; and
 - (ii) another party may only do the following with respect to Security Trustee (but any resulting liability remains subject to the limitations in this clause):
 - (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of Security Trustee but only with respect to Security Trust assets;
 - (B) exercise rights, powers and remedies with respect to Security Trust assets, including set-off;
 - (C) enforce its security (if any) and exercise contractual rights; and
 - (D) bring any proceedings against Security Trustee seeking relief or orders that are not inconsistent with the limitations in this clause,and may not:

- (E) bring other proceedings against Security Trustee;
 - (F) take any steps to have Security Trustee placed in any form of insolvency administration or to have a receiver or receiver and manager appointed; or
 - (G) seek by any means (including set-off) to have a liability of Security Trustee to that party (including for negligence) satisfied out of any assets of Security Trustee other than Security Trust assets.
- (c) Clauses 1.5(a) and 1.5(b) apply despite any other provision in this document but do not apply with respect to any liability of Security Trustee to another party (including for negligence):
 - (i) to the extent that Security Trustee has no right or power to have Security Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in either case because Security Trustee's behaviour was beyond power or improper in relation to the Security Trust; or
 - (ii) under any provision which expressly binds Security Trustee other than as trustee of the Security Trust (whether or not it also binds it as trustee of the Security Trust).
- (d) The limitation in clause 1.5(b)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 1.5(b)(ii), and interpreting this document and any security for it, including determining the following:
 - (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as a payable if they would have been owed had a suit or action barred under clause 1.5(b)(ii) been brought);
 - (ii) the calculation of amounts owing; or
 - (iii) whether a breach or default has occurred,but any resulting liability will be subject to the limitations in this clause.

1.7 Replacement of Security Trustee

- (a) If Security Trustee is replaced as trustee under the Security Trust Deed, then:
 - (i) Security Trustee may assign, transfer or novate (or do any combination of these things in respect of) its rights and obligations under this document to the replacement trustee; and
 - (ii) the other parties agree to co-operate and to execute such documents as are reasonably necessary to give effect to any such assignment, transfer or novation (or any combination of them).
- (b) LDGP must pay FV's legal and other costs and expenses incurred in complying with this clause 1.6.

1.8 Consideration

Each party acknowledges entering into this document and incurring obligations and giving rights under this document for valuable consideration received from each other party.

1.9 Condition precedent

- (a) The provisions of this document (other than this clause 1 and clauses 6, 7, 8, 9 and 10) are of no force or effect unless and until Financial Close occurs.

- (b) The condition precedent in clause 1.8(a) is for the benefit of each party to this document and may only be waived by notice in writing given by each party.

2 REPRESENTATIONS AND WARRANTIES

2.1 Mutual representations and warranties

Each party represents and warrants in respect of itself as follows:

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

2.2 Reliance

FV acknowledges that the Beneficiaries may provide financial accommodation to LDGP or any of its Related Bodies Corporate in reliance on the representations and warranties made by FV in clause 2.1 ("Mutual representations and warranties").

3 CONSENTS AND UNDERTAKINGS

3.1 Consent by LDGP

LDGP:

- (a) consents to this document; and
- (b) agrees to be bound by and co-operate in the implementation of this document. This clause 3.1(b) is only for the benefit of Security Trustee.

3.2 Consent and undertakings by FV

FV gives the following:

- (a) **(consent)**: It consents to the Security.
- (b) **(no default)**: It agrees that none of:
 - (i) the creation or existence of the Security;
 - (ii) the entry into of this document by LDGP;
 - (iii) the appointment of any Enforcing Party to LDGP or a person who has Control over LDGP under the Security; or

- (iv) the exercise by Security Trustee or any Enforcing Party of any rights, powers or remedies in connection with this document or the Security (in compliance with the applicable provisions of this document (including compliance with clause 5 ("Transfer following enforcement") in effecting a sale of an ownership interest in a person who has Control over LDCP)),
- will, of itself:
- (v) contravene or constitute a default or breach of the FERMA; or
 - (vi) entitle FV to exercise any rights, powers or remedies to Terminate the FERMA.
- (c) **(enforcement)**: It agrees that an Enforcing Party may, but need not, exercise all or any of the rights, powers and remedies, and perform all or any of the obligations of LDCP, in connection with the FERMA, as if it were LDCP to the exclusion of LDCP.
 - (d) **(no assumption)**: It agrees that an Enforcing Party will not be liable nor have any obligations, and will not be taken to have assumed any liability or obligations, in connection with the FERMA as a result of the entry into of the Security or this document or the exercise of any rights, powers or remedies by an Enforcing Party in connection with the Security or this document. However, this does not:
 - (i) apply to any obligation of LDCP under the FERMA expressly assumed by Security Trustee by written notice to FV (with a copy to LDCP); or
 - (ii) affect any liability or obligation of LDCP for acts and omissions of an Enforcing Party where the Enforcing Party is acting as the agent of LDCP.
 - (e) **(no consent to dealing)** It agrees to not consent to any assignment, transfer, novation or other dealing by LDCP of any of LDCP's rights or obligations under the FERMA without the prior consent of the Security Trustee.

4 TERMINATION EVENTS – CURE AND TERMINATION

4.1 Termination Event Notices to Security Trustee

If a Termination Event occurs, FV agrees to:

- (a) give Security Trustee a copy of any Termination Event Notice and all other documents issued by FV to LDCP in connection with the Termination Event as soon as reasonably practicable after it gives any of them to LDCP; and
- (b) give the Enforcing Party any information it reasonably requests from time to time in connection with a Termination Event.

4.2 Cure rights

The parties agree that Security Trustee, or any other Enforcing Party, may but need not, take steps to cure, or procure the cure of, a Termination Event or (where relevant) prevent the occurrence of a Termination Event.

FV agrees that a Termination Event no longer exists under or for the purposes of the FERMA once:

- (a) it is cured or procured to be cured by Security Trustee or any other Enforcing Party; or
- (b) it is taken to be cured in accordance with clause 4.6 ("Deemed cure").

4.3 Restriction on Termination

- (a) FV agrees that despite anything in the FERMA and any rights, powers or remedies it may otherwise have (including at Law), it can and will only:

- (i) Terminate; or
- (ii) give any notice which would (or with the expiration of time would) Terminate, the FERMA only in reliance on a Termination Event and only as expressly permitted by clause 4.4 ("Termination").
- (b) Any actual or purported Termination of the FERMA in breach of this clause 4.3 is ineffective.

4.4 Termination

FV may terminate the FERMA:

- (a) **(payment default)**: in reliance on a Termination Event under the FERMA which relates to a failure by LDCP to pay money due under the FERMA, if the failure has not been cured within 10 Business Days after the applicable Cure Period Start Date;
- (b) **(insolvency or Change in Control)**: in reliance on a Termination Event under the FERMA which is or relates to an Insolvency Event or a Change in Control:
 - (i) if an Enforcing Party has not been appointed (or become a Controller) to or over:
 - (A) for only a Change in Control, shares in LDCP; or
 - (B) LDCP's rights under the FERMA,
 - (ii) within 15 Business Days after the applicable Cure Period Start Date; and
 - (iii) if having been so appointed, the Insolvency Event or Change in Control has not been cured within 365 days after the applicable Cure Period Start Date (or by any later date agreed to in writing by FV in its discretion);
- (c) **(other events)**: in reliance on a Termination Event under the FERMA which is not described above, if:
 - (i) an Enforcing Party has not commenced remedying that Termination Event within 30 Business Days after the applicable Cure Period Start Date (or by any later date agreed to in writing by FV at its discretion); or
 - (ii) if the Enforcing Party has commenced remedying that Termination Event within 30 Business Days after the applicable Cure Period Start Date (or by any later date agreed to in writing by FV at its discretion):
 - (A) without prejudice to clause 4.4(c)(B), the Enforcing Party does not pursue that remedy in a diligent manner; or
 - (B) in any event, the Enforcing Party has not remedied the relevant Termination Event within 60 Business Days after the applicable Cure Period Start Date (or by any later date agreed to in writing by FV, acting reasonably); and
- (d) **(no cure)**: in reliance on a Termination Event under the FERMA, if Security Trustee notifies FV in writing that it does not intend to take any steps or further steps to cure that Termination Event,

by written notice to LDCP and Security Trustee (given after the applicable requirement above is satisfied), if FV is still entitled under the FERMA to Terminate the FERMA in reliance on the relevant event and which event remains uncured.

4.5 Rights and obligations not affected

FV agrees that if a Termination Event occurs, LDCP's rights, and FV's obligations, under the FERMA are not, and will not be, affected while Security Trustee or any other Enforcing Party is able to or is exercising any right, power or remedy (including those described in this clause 4 or in connection with any Security) in connection with that Termination Event.

4.6 Deemed cure

FV agrees that a Termination Event is taken to be cured under and for the purposes of the FERMA and this document (as applicable):

- (a) if it relates to a failure to pay money due under the FERMA, when an Enforcing Party has paid or procured the payment of the amount of that money to FV;
- (b) if it relates to a failure to do anything under the FERMA, when an Enforcing Party has done, or procured to be done, that thing;
- (c) if it is or relates to a Change in Control or an Insolvency Event, when an Enforcing Party has procured:
 - (i) the assignment, transfer or novation of (or any combination of these things to be done in respect of) LDCP's rights and obligations under the FERMA to a Transferee; or
 - (ii) the transfer of the shares in LDCP to a Transferee,in each case, in accordance with clause 5.1 ("Transfer"); and
- (d) for any other Termination Event or if Security Trustee reasonably considers that the Termination Event is not able to be cured, or will not be or is unlikely to be cured by the end of any applicable cure period provided under the FERMA or this document, when an Enforcing Party makes arrangements (which may include the taking of steps to prevent a recurrence of the Termination Event or the payment of compensation to FV on account of loss suffered by it or by South Australian electricity consumers (or both)) which are satisfactory to FV (acting reasonably).

5 TRANSFER FOLLOWING ENFORCEMENT

5.1 Transfer

FV agrees that after Security Trustee has commenced enforcing the Security in accordance with its terms, an Enforcing Party may:

- (a) transfer the shares in LDCP in accordance with clauses [17.6] ("Assignment by LDCP") and [17.10] ("Change in Control") of Schedule 5 of the FERMA; or
- (b) assign, transfer or novate (or do any combination of these things) in respect of LDCP's rights and obligations under the FERMA in accordance with clause [17.6] ("Assignment by LDCP") of Schedule 5 of the FERMA,

to any person (including Security Trustee) ("Transferee"), but not otherwise.

5.2 Transfer documentation

FV and LDCP agree to co-operate with Security Trustee and to execute all documents as are reasonably necessary to give effect to any assignment, transfer or novation (or any combination of these things) under clause 5.1 ("Transfer").

6 GST

6.1 Definitions and interpretation

For the purposes of this clause 6:

- (a) "**GST Act**" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 6, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156.5(1) of the GST Act applies is to be treated as if it were a separate supply.

6.2 GST exclusive

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

6.3 Payment of GST

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

6.4 Adjustment events

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

6.5 Reimbursements

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

7 CONFIDENTIALITY

7.1 Disclosure of information

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

- (a) information that is publicly available (other than through a breach of this clause 7);
- (b) to any person in connection with an exercise of rights or a dealing, or proposed dealing, with rights or obligations in connection with this document;
- (c) to officers, employees, agents, contractors, legal and other advisers and auditors of the party;
- (d) to a party's banks or other financial institutions (and their professional advisers);
- (e) any person who is proposing to acquire a direct or indirect interest in the party;
- (f) any Related Entity of a party to this document;

- (g) with the consent of the party who provided the information (such consent not to be unreasonably withheld);
- (h) where the disclosure is required by an order of a court of competent jurisdiction for the purposes of any litigation or arbitration arising from this document;
- (i) any disclosure that the recipient reasonably believes is required by any Law or securities exchange;
- (j) in the case of disclosure by Security Trustee, to the Beneficiaries from time to time; or
- (k) in the case of disclosure by FV, to:
 - (i) *AEMO, AER*, a scheme regulator or the scheme administrator (as defined in the FERM Regulations)
 - (ii) any government department, agency, authority, instrumentality, Minister or officer of the State or to Cabinet, Parliament or a Parliamentary committee of the State; and
 - (iii) to officers, employees, agents, contractors, legal and other advisers and auditors (as applicable) of the entities set out in subparagraphs (i) to (ii).

7.2 Publicity

Clause [13.2] ("Publicity") of Schedule 5 of the FERMA is incorporated into this document as if set out in full in this document, mutatis mutandis.

8 NOTICES

Any notice, demand, consent or other communication given or made under this agreement:

- (a) must be in writing and sent to the address or email address for the recipient specified in the Details (which addresses may be updated by a party from time to time upon giving notice to the other party);
- (b) must either be delivered to the recipient by prepaid post (or if posted to an address in another country, by registered airmail) or by hand or email;
- (c) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, 7 Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of email:
 - (A) at the time the sender's computer or other device generates a report confirming that the email has been received by the recipient's information system; or
 - (B) if no such report is generated, 1 Business Day after the date on which the email is sent, provided that the sender has not by that time received a delivery failure notification (or similar),
- (d) but if the result of the foregoing is that a notice would be taken to be given or made on a day which is not a Business Day, it will be taken to have been duly given or made at the commencement of business on the next Business Day.

9 GENERAL

9.1 Duration of this document

Security Trustee must give notice to FV (copied to LDCP) if it has fully and finally discharged all of the Security. This document terminates (without prejudice to any accrued right or liability) upon the giving of the notice.

9.2 Variation and waiver

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

9.3 Discretion in exercising rights

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

9.4 Partial exercising of rights

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

9.5 Conflict of interest

A party may exercise its rights, power and remedies in connection with this document even if this involves a conflict of duty or the party has a personal interest in their exercise.

9.6 Remedies cumulative

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

9.7 Supervening Law

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

9.8 Entire agreement

This document and the FERMA together constitute the entire agreement of the parties about their subject matter and supersede all previous agreements, understandings and negotiations on that subject matter.

9.9 Prompt performance

Each party agrees to perform its obligations under this document promptly, unless a specific time for performance is expressly stated in this document. Time is of the essence in respect of an obligation to pay money.

9.10 Costs

LDCP agrees to pay FV's legal and other costs and expenses (including any stamp duty) in connection with the negotiation, preparation, execution and completion of this document.

9.11 Rules of construction

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

9.12 No liability for loss

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

9.13 Limitation of FV liability

Despite any other provision of this document, the parties acknowledge and agree that FV's total aggregate liability in connection with this document and the FERMA at any time, will be no greater than FV's total aggregate liability in connection with the FERMA at that time (assuming the FERMA is enforceable in accordance with its terms) and will be subject to the same limitations of liability set out in the FERMA.

9.14 Further steps

LDCP and FV agree, at LDCP's expense, to do anything another party reasonably asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) as may be necessary or desirable to:

- (a) give full effect to the provisions of this document and the transactions contemplated by it; and
- (b) without limiting paragraph (a), ensure any assignment, transfer or novation (or any combination of them) contemplated by clause 5 ("Transfer following enforcement"), and any document the subject or product of any such dealing, is in registerable form, enforceable and registered with the agreed priority.

9.15 Counterparts

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

10 GOVERNING LAW

10.1 Governing Law and jurisdiction

The Law in force in South Australia governs this document. The parties submit to the exclusive jurisdiction of the courts of that place.

10.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 8.1 ("How notices given and received").

EXECUTED as a deed. **[Drafting Note: execution blocks to be inserted].**

ANNEXURE 2 – EARLY TERMINATION SECURITY TEMPLATE

A2.1 LETTER OF CREDIT TEMPLATE

[Issuer letterhead]

TO: [FV Name] (FV)
[FV Address]

Dear All,

[insert Issuer name and ABN] of [insert address] (the **Issuer**) issues a letter of credit in favour of the Beneficiary on the terms set out below.

IRREVOCABLE STANDBY LETTER OF CREDIT NO. – [insert]

DATED – [insert]

On Account of: [LDCP Name] (ABN [XX]) of [LDCP Address] (LDCP)

Beneficiary: [FV name] (ABN [XX]) of [FV Address] (FV)

Guaranteed Sum: At any time a total aggregate sum of AUD\$[insert] [insert amount in words]

Expiry Date: 4.00pm (Sydney Time) insert date

Available at: [insert Issuer name] and [physical address in Sydney]

By Drafts on: [insert Issuer name] and [physical address in Sydney]

Payable at: Sight

Enfaced: Drawn under Standby Letter of Credit No. [insert] dated [insert]

Presented to: [insert Issuer name] and [insert physical address in Sydney]

Issued in connection with: The document titled 'Firm Energy Reliability Mechanism Agreement – [Project name]' dated [XX] between FV and LDCP (the **FERMA**).

At the request of LDCP (and in consideration of FV accepting this letter of credit in connection with the FERMA) the Issuer issues this irrevocable standby letter of credit in favour of FV. The Issuer unconditionally and irrevocably undertakes and covenants to pay to FV on demand any sum or sums not exceeding the Guaranteed Sum.

This letter of credit continues in full force and effect until the earlier of:

1. FV provides written notice to the Issuer that this letter of credit is no longer required by FV;
2. FV returns this letter of credit to the Issuer at the address set out above;
3. payment to FV by the Issuer under this letter of credit of the whole of the Guaranteed Sum; and
4. the Expiry Date.

Upon presentation, at the address set out above, of this letter of credit accompanied by a demand by FV in writing, the Issuer unconditionally and irrevocably agrees to pay the Guaranteed Sum or any part of the Guaranteed Sum to the bank account nominated in the written demand:

1. without reference to, or right of set-off, counterclaim or deduction by, LDCP or any other person, or to the FERMA or any other contract between FV and LDCP;
2. without any withholding (including in respect of any taxes, duties, charges or otherwise whatsoever);

3. without enquiring into the performance or non-performance of the FERMA by LDCP or FV;
4. despite any notice by LDCP or any other person to the Issuer not to pay the whole or any part of the Guaranteed Sum;
5. with no obligation on the Issuer to enquire as to the correctness or validity of any demand; and
6. despite anything which but for this provision may operate to release, prejudicially affect or discharge the liability of the Issuer under this letter of credit.

Where a demand and payment is made under this letter of credit for a sum that is less than the Guaranteed Sum, the Issuer will issue FV with a replacement letter of credit on the same terms for the balance of the Guaranteed Sum remaining, after such part payment or payments.

Any variation (with or without the knowledge or consent of the Issuer) to the terms of the FERMA or any extensions of time or any other forbearance by FV or LDCP will not impair, diminish or discharge (in part or in full) the Issuer's liability under this letter of credit.

The Issuer hereby irrevocably undertakes to make all payments under this letter of credit in full in Australian dollars for value on the same business day as receipt by the Issuer of a written demand, unless the demand is made after 12pm (Sydney time), in which case the payment must be made by 12pm (Sydney time) on the next business day. For the purposes of this letter of credit, 'business day' means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (UCP 600). To the extent that the UCP 600 conflicts with the terms of this letter of credit, the terms of this letter of credit shall prevail. If this letter of credit would expire during the interruption of business for reasons referred to in the UCP 600, this letter of credit shall not expire until 30 days after the end of such interruption.

The benefit of this letter of credit is not assignable or transferrable by FV without the prior written consent of the Issuer, which consent must not be unreasonably withheld or delayed. This letter may be assigned or transferred more than once.

This letter of credit shall be governed by the laws of New South Wales, and the Issuer and FV hereby submit to the jurisdiction of the courts of New South Wales and agree not to claim that such courts are not a convenient and proper forum.

Executed as a deed poll on [Date] this [Day] day of [Month] [Year]:

[Drafting Note: execution block to be inserted and copy of power of attorney to be provided.]

A2.2 BANK GUARANTEE TEMPLATE

[Issuer letterhead]

At the request of [LDCP Name] (ABN [XX]) of [LDCP Address] (LDCP) and in consideration of [FV name] (ABN [XX]) of [FV address] (the FV) accepting this bank guarantee in connection with the document titled 'Firm Energy Reliability Mechanism Agreement – [Project name]' dated [XX] between the FV and the LDCP (the FERMA), [Issuer Name] (ABN [XX]) of [Issuer Address] (the Issuer) unconditionally and irrevocably undertakes and covenants to pay to FV on demand any sum or sums which may from time to time be demanded in writing by FV to a maximum aggregate sum of AUD\$[insert] ([insert] dollars) (Guaranteed Sum).

This bank guarantee continues in full force and effect until the earlier of:

1. FV provides written notice to the Issuer that this bank guarantee is no longer required by FV;

2. FV returns this bank guarantee to the Issuer at the address set out above;
3. payment to FV by the Issuer under this bank guarantee of the whole of the Guaranteed Sum; and
4. [insert]pm (Sydney time) on [insert].

Provided always that the Issuer may at any time without being required to do so pay to the FV the whole of the Guaranteed Sum less any amount or amounts it may previously have paid or such lesser sum as may be required and specified by the FV and thereupon the liability of the Issuer hereunder shall immediately cease.

Upon presentation, at the address set out above, of this bank guarantee accompanied by a demand by FV in writing, the Issuer unconditionally and irrevocably agrees to pay the Guaranteed Sum or any part of the Guaranteed Sum to the bank account nominated in the written demand:

1. without reference to, or right of set-off, counterclaim or deduction by, LDCP or any other person, or to the FERMA or any other contract between FV and LDCP;
2. without any withholding (including in respect of any taxes, duties, charges or otherwise whatsoever);
3. without enquiring into the performance or non-performance of the FERMA by LDCP or FV;
4. despite any notice by LDCP or any other person to the Issuer not to pay the whole or any part of the Guaranteed Sum;
5. with no obligation on the Issuer to enquire as to the correctness or validity of any demand; and
6. despite anything which but for this provision may operate to release, prejudicially affect or discharge the liability of the Issuer under this bank guarantee.

Where a demand and payment is made under this bank guarantee for a sum that is less than the Guaranteed Sum, the Issuer will issue FV with a replacement bank guarantee on the same terms for the balance of the Guaranteed Sum remaining, after such part payment or payments.

Any variation (with or without the knowledge or consent of the Issuer) to the terms of the FERMA or any extensions of time or any other forbearance by FV or LDCP will not impair, diminish or discharge (in part or in full) the Issuer's liability under this bank guarantee.

The Issuer hereby irrevocably undertakes to make all payments under this bank guarantee in full in Australian dollars for value on the same business day as receipt by the Issuer of a written demand, unless the demand is made after 12pm (Sydney time), in which case the payment must be made by 12pm (Sydney time) on the next business day. For the purposes of this bank guarantee, 'business day' means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

The benefit of this bank guarantee is not assignable or transferrable by FV without the prior written consent of the Issuer, which consent must not be unreasonably withheld or delayed. This bank guarantee may be assigned or transferred more than once.

This bank guarantee shall be governed by the laws of New South Wales, and the Issuer and the FV hereby submit to the jurisdiction of the courts of New South Wales and agree not to claim that such courts are not a convenient and proper forum.

Executed as a deed poll on [Date] this [Day] day of [Month] [Year]

[Drafting Note: execution block to be inserted and copy of power of attorney to be provided.]