PROFORMA VERSION 1.2

Tripartite Deed (Carbon Abatement Contract [*insert CAC number as on ERF Register*])

Dated 201[ ]

[*insert Seller’s name*](ABN [*insert Seller’s ABN*]) (“**Seller**”)

The Commonwealth of Australia, as represented by the Clean Energy Regulator (a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth)) (ABN 72 321 984 210) (“**Buyer**”)

[*insert Financier’s name*] (ABN [*insert Financier’s ABN*]) (“**Financier**”)

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Details

|  |  |  |
| --- | --- | --- |
| **Parties** | **Seller**, **Buyer** and **Financier**, each as defined below | |
| **Seller** | Name | **[*insert Seller’s name*]** |
|  | ABN | [*insert Seller’s ABN*] |
|  | Address | [*insert mailing address for notices to Seller*] |
|  | Attention | [*insert name/title of addressee for notices to Seller*] |
|  | Email | [*insert email address for notices to Seller*] |
| **Buyer** | Name | **The Commonwealth of Australia** as represented by the **Clean Energy Regulator** (a Commonwealth entity established by the *Clean Energy Regulator Act 2011* (Cth)) |
|  | ABN | 72 321 984 210 |
|  | Address | GPO Box 621, Canberra ACT 2601, Australia |
|  | Attention | Manager, ERF Contracts and ANREU |
|  | Email | ERF-Contracts@cleanenergyregulator.gov.au |
| **Financier** | Name | **[*insert Financier’s name*]** |
|  | ABN | [*insert Financier’s ABN*] |
|  | Address | [*insert mailing address for notices to Financier*] |
|  | Fax | [*insert fax number for notices to Financier*] |
|  | Attention | [*insert name/title of addressee for notices to Financier*] |
|  | Email | [*insert email address for notices to Financier*] |
| **Project** | Name | [*insert name of project as on ERF Register*] |
|  | CER project number | [*insert project number as on ERF Register*] |
| **Recitals** | **A** The Seller and the Buyer are parties to the Contract. | |
|  | **B** The Seller has requested that the Financier provide financial accommodation to partially finance the Project. | |
|  | **C** Two of the conditions for the provision of financial accommodation referred to in Recital B above under the relevant Finance Documents are that: the Seller grant to the Financier security over, among other things, all the right, title and interest of the Seller in the Contract; andthe Seller and the Buyer, as parties to the Contract, enter into this deed with the Financier. | |
| **Governing law** | Australian Capital Territory | |
| **Date of** **deed** | See Signing page | |

General terms

# Interpretation

## Definitions in the Contract

In this deed, capitalised words and expressions used but not expressly defined in this deed have the same meaning as in the Code of Common Terms.

## Definitions

In this deed:

**Acceptable Third Party** means any party that is a natural person or body corporate that:

has the legal capacity, power and authority to become a party to and be bound by the obligations of the Seller under the Contract and the Finance Documents; and

has the financial and technical capability to perform (or cause to be performed) the obligations of the Seller under the Contract and the Finance Documents; and

is not a person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by Australia, the United States of America, the European Union or any other relevant country,

and either:

is a “project proponent” of an “eligible offsets project”, as those terms are defined in the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (“**CFI Act**”); or

passes the “fit and proper person test”, as that term is defined in the CFI Act, for the purposes of the CFI Act, but excluding, for the purposes of this definition, the application of section 61(1)(k) of the *Carbon Credits (Carbon Farming Initiative) Rule 2015*.

**AML/CTF Laws** means the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), any regulations or rules made thereunder, and any other anti-money laundering, counter-terrorism financing or sanctions laws or regulations applicable in Australia or any other relevant country from time to time including, without limitation, any laws or regulations imposing ‘know your customer’ or other identification checks or procedures.

**Authorised Officer** means:

in respect of the Seller, any director or secretary, or any person from time to time nominated as an “Authorised Officer” by the Seller by notice to the Financier accompanied by certified copies of signatures of all new persons so appointed and, where applicable:

the identity of that person has been verified to the Financier’s satisfaction in order to ensure compliance with the Financier’s obligations under the AML/CTF Laws; and

the Financier has no notice of revocation of that authority;

in respect of the Buyer, the Chair or any other official of the Clean Energy Regulator whose title contains the word “Manager” (or a person performing the functions of any such person) or any attorney or other person nominated by the Buyer as an “Authorised Officer” for the purposes of this deed; and

in respect of the Financier, a director or secretary or any person whose title contains the word “Director”, “Chief”, “counsel”, “Head”, “President”, “Manager”, “Executive” or “manager” (or a person performing the functions of any of them) or any attorney or other person nominated by the Financier as an “Authorised Officer” for the purposes of this deed.

**Business Day** means any day (other than a Saturday or Sunday or any day between 26 December in a year and 1 January in the following year) on which commercial banks are open for general banking business in Sydney and the Australian Capital Territory.

**Buyer** means the person so described in the Details.

**CER Act** means the *Clean Energy Regulator Act 2011* (Cth).

**Code of Common Terms** means the document entitled “Carbon Abatement Contract Code of Common Terms (Version [1.0 of 11 February 2015]/[2.0 of 21 August 2015]) as agreed between the Seller and the Buyer on or before the date of this deed, as replaced, supplemented, amended or varied from time to time (in each case) in accordance with clause 4.5 (“Amendments to the Contract and the Delivery Schedule”).

**Contract** means the Carbon Abatement Contract in relation to the Project having the Contract Date of [*insert Contract Date*] and Buyer allocated contract number CAC-[*insert CAC number*], between the Seller and Buyer comprising:

the Code of Common Terms;

the Commercial Terms as set out in the application [(Form CER-AUC-001 v1.1 03/03/2015) / titled “Auction qualification – offer to enter into a Carbon Abatement Contract – Commercial Terms”] dated [*insert date*] made by the Seller to the Buyer and as agreed between the Seller and Buyer on or before the date of this deed, as replaced, supplemented, amended or varied from time to time (in each case) in accordance with clause 4.5 (“Amendments to the Contract and the Delivery Schedule”);

the Delivery Terms as set out in the application [(Form CER-ERF-AUC002 V1.2 24/03/2015) / titled “Auction registration – supplementing the offer to enter into a Carbon Abatement Contract – Delivery Terms”] dated [*insert date*] made by the Seller to the Buyer, [as varied pursuant to the letter from the Seller to the Buyer dated [*insert date*], and] as agreed between the Seller and Buyer on or before the date of this deed, as further replaced, supplemented, amended or varied from time to time (in each case) in accordance with clause 4.5 (“Amendments to the Contract and the Delivery Schedule”); and

the Financial Terms as set out in the application (Form CER-ERF-AUC003 [v1.0 20/03/2015 / v2.0 16/10/2015])] dated [*insert date*] made by the Seller to the Buyer and as agreed between the Seller and Buyer on or before the date of this deed, as replaced, supplemented, amended or varied from time to time (in each case) in accordance with clause 4.5 (“Amendments to the Contract and the Delivery Schedule”).

**Controller** has the meaning given to that term in the Corporations Act.

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

**Default Notice** means any notice given by the Buyer to the Seller in respect of an Event of Defaultin accordance with clause 9.5 (“Termination rights”) of the Code of Common Terms.

**Details** means the section of this deed headed “Details”.

**Disclosure Material** has the meaning given in clause 3.3(c) (“Buyer consents, acknowledgments and confirmations”).

**Enforcing Party** means the Financier or any receiver, receiver and manager, agent or attorney or other Controller appointed under any Security Document.

**Event of Default** has the meaning given to it in the Code of Common Terms but only includes an event in respect of which the Seller is the Defaulting Party.

**Facility Agreement** means the agreement entitled “Facility Agreement and Guarantee” dated [*insert date*] between, amongst others, the Seller and the Financier (as amended from time to time).

**Finance Event of Default** means any event which constitutes an “Event of Default” under the Facility Agreement.

**Finance Documents** has the meaning given to it in the Facility Agreement.

**Financier** means the person so described in the Details.

**Government Body** means any government or any governmental, semi- governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

**Insolvency** means the occurrence of any of the events described in clause 9.2.1.a (“Events of Default with respect to Seller”) of the Code of Common Terms.

**Power** means any power, right, authority, discretion, remedy or privilege, whether express or implied (including to exercise a Termination Right or accepting repudiation and granting waivers) conferred on any person.

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

**Project** means the project described in the Details.

**Proposed Purchaser** has the meaning given in clause 3.3(c) (“Buyer consents, acknowledgments and confirmations”).

**Qualifying Transferee** means:

any person who is not a person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is sanctioned under economic and trade sanctions imposed by Australia, the United States of America, the European Union or any other relevant country; or

any other person who is approved by the Buyer.

**Security Document** means:

the document titled “General Security Deed” dated on or about the date of this deed granted by the Seller in favour of the Financier, creating among other things, a security interest over the Seller’s right, title and interest in the Contract; and

any “security” howsoever defined in the Facility Agreement from time to time.

**Security Interest** means any:

security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA; or

right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or

right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or

third party right or interest, or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

**Seller** means the person so described in the Details.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Government Body together with any related interest, penalties, fines and expenses in connection with them.

**Terminate** means, in relation to a document, to terminate, determine, rescind, repudiate, avoid, release, surrender, forfeit, discharge (other than by performance) or accept the termination, rescission or repudiation of that document but excludes, in relation to the Contract, the termination of the Contract as provided for in clauses 2.1.4 and 9.5.1.e of the Code of Common Terms, and “**Termination**” has a corresponding meaning.

**Termination Right** means any right of the Buyer to, but for this deed, Terminate the Contract.

**Unit Price Information** means the Unit Price and includes any information that indicates that the Unit Price is above a certain or identifiable price, or is below a certain or identifiable price, or is between two certain or identifiable prices.

## General

In this deed, unless the context otherwise requires:

### the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

### a reference to any law, legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instruments issued under that legislation or legislative provision;

### the singular includes the plural and vice versa;

### a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

### an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

### a reference to any gender includes all genders;

### a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time, except where that occurs in contravention of this deed;

### a reference to any party to this deed or any other document or arrangement includes that party’s executors, administrators, substitutes, successors and permitted assigns; and

### where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning.

## Headings

In this deed, headings are for convenience of reference only and do not affect interpretation.

## Business Day

If the day on which any act, matter or thing is to be done under or pursuant to this deed is not a Business Day, that act, matter or thing must be done on or by the next Business Day.

## Precedence of obligations

If any ambiguity, inconsistency or conflict of obligations exists or arises between this deed and the Contract relating to matters the subject of this deed, the provisions of this deed shall take precedence over the Contract and shall apply to resolve that ambiguity, inconsistency or conflict.

## Rights and obligations

### The duties, obligations and liabilities of the Buyer, the Seller and the Financier under this deed are several and not joint or joint and several.

## Termination

A reference to “termination” does not include the coming to the end of the Contract by the effluxion of time or discharge by performance.

## Finance Document

The Seller and the Financier agree that this deed is a Finance Document.

## Finance Event of Default

Any notice in writing by the Financier to the Buyer (with a copy to the Seller) that a Finance Event of Default is continuing is taken to be conclusive evidence for the purposes of this deed and the Buyer only that a Finance Event of Default is continuing.

# Representations and warranties

## General representations and warranties

Each party represents and warrants in respect of itself to each other party that as at the date of this deed:

### in the case of the Seller in respect of itself, it is a corporation validly existing under the laws of its place of incorporation;

### in the case of the Buyer in respect of the Clean Energy Regulator, it is a Commonwealth entity established by the CER Act and its Chair or other authorised delegate is empowered to enter into this deed on behalf of the Commonwealth of Australia;

### in the case of the Financier in respect of itself, it is a [ ] [established by/validly existing under] the [ ] Act;

### it is empowered to enter into and perform its obligations under this deed and (in the case of each of the Buyer and the Seller each in respect of itself) the Contract and to carry out the transactions contemplated by this deed and the Contract to which it is a party;

### it has taken all necessary action to authorise the entry into and performance of this deed and (in the case of each of the Buyer and the Seller each in respect of itself) the Contract and to carry out the transactions contemplated by this deed and the Contract to which it is a party;

### its obligations under this deed, (in the case of each of the Buyer and the Seller each in respect of itself) the Contract and any document relating to this deed or the Contract to which it is a party constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, subject to any necessary stamping and registration, applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors’ rights generally and to equitable principles;

### the execution, observance and performance of its obligations under this deed and (in the case of each of the Buyer and the Seller each in respect of itself) the Contract and each transaction contemplated under those documents did not and will not violate in any respect any provision of, or require any consent or waiver under:

#### a law or treaty or a legally binding interpretation, judgment, injunction, ruling, writ, order or decree of a Government Body binding on it, including administrative, environmental and zoning laws (and including, in the case of the Buyer, in respect of itself, the CER Act and the *Public Governance, Performance and Accountability Act 2013* (Cth) (“**PGPA**”)[, and further including, in the case of the Financier in respect of itself, the [ ] Act [and the PGPA]]);

#### its constitution or other constituent documents; or

#### any other document or agreement which is binding on it or its assets;

### in the case of the Seller in respect of itself, to the best of its knowledge and belief, no Event of Default has occurred and is continuing, and no such event would occur as a result of its entering into or performing its obligations under this deed or the Contract, and (in respect of the Buyer) it has not failed to perform any of its material obligations under the Contract;

### in the case of the Seller in respect of itself, the Contract (and the documents expressly referred to in it) and all documents and agreements which have the effect of varying it:

#### have been provided to the Financier and are true and complete copies of them and are in full force and effect; and

#### set out the entire agreement between the Seller and the Buyer in respect of its subject matter;

### it has consulted with its own legal advisers to the extent that it has deemed necessary, and it has made its own decision to enter into this deed, (in the case of each of the Buyer and the Seller each in respect of itself) the Contract and (in the case of the Seller and the Financier each in respect of itself) the Finance Documents based upon its own judgement and upon any advice from such advisers as it has deemed necessary and not upon any view expressed by the other party or parties to the Contract or this deed or any of its affiliates or agents; and

### in the case of the Seller in respect of itself, it enters into this deed and the Contract in its personal capacity only and not as trustee of any trust or agent of any principal.

## No reliance

### Each of the Buyer and the Seller represents and warrants to the Financier that it has not entered into the Contract or this deed in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of the Financier or any of its related bodies corporate (as defined in the Corporations Act), other than, in the case of the Buyer in respect of itself:

#### the representations and warranties made or given by each of the Financier and the Seller under this deed; and

#### the terms and conditions of, and the conduct by or on behalf of the Financier and the Seller under, this deed and the Contract.

### Each of the Seller and the Financier represents and warrants to the Buyer that it has not entered into this deed in reliance on, or as a result of, any statement or conduct of any kind by or on behalf of the Buyer, other than, in the case of the Financier in respect of itself:

#### the representations and warranties made or given by each of the Buyer and the Seller in this deed and the Contract; and

#### the terms and conditions of, and the conduct by or on behalf of the Buyer and the Seller under, this deed and the Contract; and

#### the terms and conditions of, and the conduct by or on behalf of any other obligor or security provider under, the Finance Documents.

## Survival

### The representations and warranties given under this deed survive the execution of this deed.

# Consent and acknowledgments

## Seller and Buyer co-operation

The Seller and the Buyer agree to co-operate in the implementation of this deed and irrevocably consent to and agree to be bound by this deed. The Seller and the Buyer acknowledge that this provision is only for the benefit of the Financier.

## Seller notice

### The Seller hereby gives notice to the Buyer that the Seller has created or will create, pursuant to the Security Documents, Security Interests in favour of the Financier over (amongst other things) all of the Seller’s present and future right, title, benefit and interest in and to the Contract.

### The Buyer expressly acknowledges and agrees that it has received the notice referred to in clause 3.2(a).

## Buyer consents, acknowledgments and confirmations

### The Buyer consents to the Seller entering into the Security Documents and granting the Security Interests in favour of the Financier, including Security Interests over the Seller’s right, title and interest in the Contract.

### Despite anything else in the Contract, the Buyer acknowledges and agrees that the entry into the Security Documents and this deed by the Seller (or the Contract being subject to a Security Interest) and the exercise of any Power under any Security Document or the Finance Documents generally (including the appointment of any Enforcing Party) will not of itself contravene or constitute an Event of Default under the Contract or entitle the Buyer to exercise any Power under the Contract (including a right to Terminate) other than any Power under clause 2.2 of the Code of Common Terms.

### Each of the Buyer and the Seller agrees that the Financier and an Enforcing Party:

#### are entitled to a copy of the Contract (including, without limitation, the Unit Price) and this deed (and any correspondence and notices in relation to the Contract and this deed which must be provided to the Financier in accordance with the terms of this deed) (the “**Disclosure Material**”); and

#### may provide a copy of the Disclosure Material to any bona fide proposed purchaser or assignee of any or all of the Seller’s assets (including any contracts or choses in action) or any equity interest in the Seller (and to their directors, office holders, officers, employees, contractors, agents, consultants and advisers) (“**Proposed Purchaser**”) and to any consultants or advisers engaged by the Financier or an Enforcing Party (each a “**Disclosee**”),

#### provided that, if the Disclosure Material includes any Unit Price Information:

the Disclosee has agreed with the Buyer to comply with confidentiality obligations at least as stringent as those contained in article 11 (“Confidential information”) of the Code of Common Terms prior to the disclosure of the Unit Price Information to that Disclosee; and

##### (B) clause 3.3(c)(i) does not operate in relation to disclosure of that information to an Enforcing Party other than the Financier unless and until the Enforcing Party has agreed with the Buyer to comply with confidentiality obligations at least as stringent as those contained in article 11 (“Confidential information”) of the Code of Common Terms prior to the disclosure.

### The Buyer acknowledges that at any time after the Buyer receives notification of the occurrence of a Finance Event of Default pursuant to clause 1.10 (“Finance Event of Default”) and for so long as that notification is not revoked by the Financier by notice given by it to the Buyer, any Enforcing Party may by notice to the Buyer, but is not obliged to, perform the obligations of the Seller under or in relation to the Contract. Any obligation so performed by an Enforcing Party is taken to satisfy the Seller’s corresponding obligation to an equivalent extent but otherwise nothing in this paragraph (d) limits the Seller’s obligations under the Contract. For the purposes of this paragraph (d), the Buyer agrees and acknowledges that the obligation of the Seller pursuant to clause 4.1.1 of the Code of Common Terms to make a Delivery from the Seller’s ANREU Account may be settled or otherwise satisfied by any Deliveries made by any Enforcing Party pursuant to this paragraph (d).

### The Buyer confirms to the Financier that, if on any Scheduled Delivery Date under clause 4.1.1 (“Delivery of the Periodic Quantity”) of the Contract, transfers of Kyoto ACCUs are not capable of being made through ANREU to the Buyer’s ANREU Account for any reason beyond the control of the Seller and its contractors and agents, then the regime in clause 4.1.2 (“Delivery of the Periodic Quantity”) will apply. The Buyer agrees to promptly notify the Financier should such circumstances arise.

### The Buyer acknowledges that, if requested by the Financier, it (and the Seller) must consult with the Financier during any Negotiation Period under the Contract.

### The Buyer acknowledges that the Financier may nominate a representative to be involved in any dispute resolution under clause 12.1 (“Procedure for dispute resolution”) of the Code of Common Terms.

## Confidentiality obligation of Financier

The Financier undertakes, for itself and on behalf of its related entities (as defined in the Corporations Act) not to disclose to any person any Unit Price Information, unless such disclosure is:

### to a director, office holder, officer, employee, contractor, agent or adviser of the Financier, its related entities or, if the requirement in proviso (B) of clause 3.3(c) is satisfied, an Enforcing Party whose function requires them to have that information; or

### of information which is lawfully in the public domain otherwise than by breach of this clause 3.4; or

### required to be disclosed in proceedings before any court or tribunal arising out of, or in connection with, this deed; or

### required, authorised or permitted to be disclosed:

#### under any law; or

#### by any stock exchange on which a party to this deed or its affiliates are listed; or

### made by the Financier to a person to whom it may wish to assign, novate, transfer or dispose of its rights and obligations under this deed in accordance with this deed, provided that the Financier requires that person to acknowledge and comply with confidentiality obligations at least as stringent as those contained in this clause 3.4; or

### made by the Financier with the consent of the Buyer (such consent not to be unreasonably withheld or delayed) and is made in a manner consistent with that consent, provided that while giving its consent, the Buyer may require the Financier to require the person to whom the disclosure is to be made to acknowledge and comply with confidentiality obligations at least as stringent as those contained in this clause 3.4; or

### permitted under clause 3.3(c)(ii) (“Buyer consents, acknowledgements and confirmations”), and then only to the extent and in the manner permitted by that clause.

## Seller and Financier consents, acknowledgements and confirmations

### The Seller consents and acknowledges that the Buyer may deal with the Financier and any Enforcing Party as envisaged in this deed.

### Each of the Seller and the Financier acknowledges and confirms that the Buyer’s entry into, performance of or exercise of any Power under this deed does not fetter or constrain the Powers, duties, obligations or responsibilities of the Clean Energy Regulator under any statute or legislative instrument (including, without limitation, the CER Act and the CFI Act).

### Each of the Seller and the Financier acknowledges and confirms that the Seller’s or the Financier’s entry into, performance of or exercise of any Power under this deed does not fetter or constrain the Powers, duties, obligations or responsibilities of the Seller under the CFI Act.

### Each of the Seller and the Financier acknowledge that this clause 3.5 is only for the benefit of the Buyer.

## No obligation of Financier

Subject to clause 5.3 (“Consequences of enforcement”), and save in respect of obligations of the Seller under the Contract expressly assumed by an Enforcing Party by written notice to the Buyer under clause 3.3(d) (“Buyer consents, acknowledgments and confirmations”), the Buyer acknowledges that neither the Financier nor any other Enforcing Party will assume any liability or obligation under or in respect of the Contract as a result of the entry into or exercise of any Powers under any Security Document or this deed.

# Covenants by Buyer

## Termination by Buyer

The Buyer undertakes to the Financier that it will not Terminate the Contract except in accordance with clause 4.3 (“Financier’s cure rights prior to termination”) or 4.4 (“Financier’s rights prior to termination for Force Majeure”) of this deed.

## Notifications by Buyer

The Buyer undertakes to the Financier that it will give to the Financier:

### a copy of any notice issued by it to the Seller under clause 9.1.1.a (“Events of Default with respect to any party”) or clause 9.5 (“Termination rights”) of the Code of Common Terms at the same time that it gives such notice to the Seller or as soon as reasonably practicable thereafter;

### a copy of any notice it gives to, or receives from, the Seller (on or after the date of this deed) under the provisions of the Contract described in the Schedule to this deed, as soon as reasonably practicable after it gives such notice to, or receives such notice from, the Seller; and

### promptly, any other information in relation to the Contract reasonably requested by the Financier from time to time,

provided that:

### failure to give any such notice or other information does not comprise a failure to give any notice required to be given under the Contract; and

### a breach of an undertaking in this clause 4.2 (“Notifications by Buyer”) by the Buyer does not give rise to a liability for damages by the Buyer to, or any other remedy against the Buyer in favour of, the Financier.

## Financier’s cure rights prior to termination

### Subject to clause 4.4 (“Financier’s cure rights prior to termination for Force Majeure”), the Buyer agrees and the Seller consents and acknowledges that despite anything in the Contract (including the Code of Common Terms), the Buyer may not, without the Financier’s prior written consent, Terminate the Contract (and no notice of Termination will take effect) unless and until:

#### the Financier has received a copy of:

##### if applicable, a notice of default issued by the Buyer in accordance with clause 9.1.1.a (“Events of Default with respect to any party”) of the Contract; and

##### a Default Notice issued by the Buyer,

##### in accordance with clause 4.2 (“Notifications by Buyer”); and

#### any of the following occurs:

##### in the case of an Event of Default being a failure by the Seller to pay an amount when due under the Contract (including, without limitation, any Buyer’s Market Damages), the Seller or an Enforcing Party has not remedied the Event of Default within 20 Business Days after the Financier receives a copy of the relevant Default Notice; or

##### in the case of the Insolvency of the Seller, the Financier has not appointed a Controller under any Security Document within 15 Business Days after the Financier receives a copy of the relevant Default Notice; or

##### in the case of any other Event of Default, an Enforcing Party has not, within 30 Business Days after the Financier receives a copy of the relevant Default Notice, either:

###### remedied the subject matter of the Default Notice or overcome its consequences; or

###### if the actions required to remedy such subject matter or overcome its consequences will, despite best efforts having been made by an Enforcing Party, where evidence of such efforts has been provided to the Buyer, extend beyond 30 Business Days of the Financier receiving a copy of the Default Notice, agreed with the Buyer (acting reasonably) a timeframe to remedy such subject matter or overcome its consequences; or

##### an Enforcing Party, having entered into an agreement with the Buyer as envisaged in clause 4.3(a)(ii)(C)(ab), fails to remedy the relevant Event of Default or overcome its consequences within the timeframe committed to by the Enforcing Party under such agreement (as may be extended by the Buyer); or

##### the Financier notifies the Buyer that it elects not to take any steps to remedy the subject matter of the Default Notice.

### Without prejudice to clause 4.3(a)(ii)(C), an Enforcing Party will be deemed to have remedied the subject matter of the Default Notice if:

#### the Enforcing Party itself assumes the obligations of the Seller under the Contract in accordance with clause 14.3 (“Assignment”) of the Code of Common Terms and remedies the relevant default which is the subject matter of the Default Notice or overcomes its consequences; or

#### the Enforcing Party procures an Acceptable Third Party to assume the obligations of the Seller under the Contract in accordance with clause 14.3 (“Assignment”) of the Code of Common Terms and that third party remedies the relevant Event of Default which is the subject matter of the Default Notice or overcomes its consequences or demonstrates and undertakes to the Buyer’s reasonable satisfaction that it will be in a position to remedy the relevant Event of Default or overcome its consequences within a period of time satisfactory to the Buyer,

#### provided always that:

##### the consent of the Seller will not be required to any such assumption, assignment or novation of obligations (as contemplated in clause 4.3(b)(i) or (ii) above) and the Seller must assist the Enforcing Party to effect any assumption, assignment or novation (including by executing any document to effect such assumption, assignment or novation); and

##### despite anything in the Contract, the Buyer will be entitled to terminate the Contract without the prior written consent of or notice to any party if a third party fails to remedy the relevant Event of Default or overcome its consequences (in each case) in accordance with its undertaking referred to in clause 4.3(b)(ii) above.

### For the purposes of clauses 4.3(a)(ii)(C) and 4.3(b)(i), the Buyer must use reasonable endeavours to provide an Enforcing Party or its authorised representatives such information with respect to the remedy by the Enforcing Party of the subject matter of a Default Notice as it is reasonably able to provide and to the extent that it is reasonable for the Buyer to provide, having regard to the nature of the relevant Event of Default.

### In providing the information prescribed under clause 4.3(c), the Buyer must, to the extent the Buyer is reasonably able to provide and to the extent that it is reasonable for the Buyer to provide, provide information about any steps which the Buyer considers appropriate to be taken to remedy the subject matter of the Default Notice.

### It is acknowledged that the Financier or any Enforcing Party may remedy any Event of Default by the Seller under the Contract but that nothing in this deed or otherwise obliges the Financier or any Enforcing Party to remedy any such Event of Default.

### For the purposes of clauses 4.3(a)(ii)(C), 4.3(a)(ii)(D), 4.3(c) and 4.3(d) it is acknowledged and agreed that:

#### if the relevant Event of Default relates to the Project (or any of them) not having commenced in accordance with terms agreed between the Buyer and the Seller or as represented by the Seller to the Buyer, remedying that Event of Default or overcoming its consequences involves commencing the Project (or each of them) in accordance with those terms or that representation, or so commencing any other eligible offsets project(s) that is(are) reasonably capable of generating a number of Kyoto ACCUs which is not less in aggregate than the Agreed Quantity; and

#### the relevant Event of Default will not have been remedied and its consequences will not have been overcome if doing so involves or would involve, but for this clause 4.3(f)(ii), extension of the Delivery Period, postponement of a Scheduled Delivery Date to a date after the Expiry Date, or increase or reduction in the Agreed Quantity.

### Subject to clause 3.6 (“No obligation of Financier”), an Enforcing Party is not liable in any circumstances for any Event of Default or for any failure by the Seller to observe its obligations under the Contract. However, this does not affect the liability of the Seller (which continues to be responsible for the performance of its obligations under the Contract).

## Financier’s cure rights prior to termination for Force Majeure

The Buyer agrees that despite anything in the Contract, no notice of Termination of the Contract issued by it pursuant to clause 9.4.3 (“Force Majeure”) of the Code of Common Terms will take effect pursuant to that clause unless:

### it has provided the Financier with a copy of the notice given to it by the Seller under clause 9.4.1 (“Force Majeure”) of the Code of Common Terms; and

### it has provided the Financier with a copy of the notice given by it under clause 9.4.3 (“Force Majeure”) of the Code of Common Terms.

## Amendments to the Contract and the Delivery Schedule

### Subject to clause 4.5(b), the Buyer undertakes to and agrees with the Financier that it will not:

#### make or agree to any material amendment or material supplement to, or material variation of, the Contract; or

#### agree to any waiver or release of any material term, material provision or condition of the Contract,

### without prior reasonable notice (setting out the terms of the proposed amendment, waiver or release) to, and the prior written consent of, the Financier (such consent not to be unreasonably withheld or delayed).

### The Buyer undertakes to and agrees with the Financier that:

#### it will not agree with the Seller to amend the Delivery Schedule without the prior written consent of the Financier; and

#### if clause 9.3.4 (“Delivery Failure”) of the Code of Common Terms applies, the Delivery Schedule will not be deemed to be replaced in accordance with that clause unless and until:

##### the Buyer has notified the Financier in writing that the Seller has failed to provide a notice under clause 9.3.3.c.ii or 9.3.3.d.ii (as applicable) of the Code of Common Terms (“**Failure Notification**”); and

##### the Financier or relevant Enforcing Party has failed to provide such notice to the Buyer within 10 Business Days following receipt of the relevant Failure Notification.

##### If the Buyer receives the relevant notice under clause 9.3.3.c.ii or 9.3.3.d.ii (as applicable) of the Code of Common Terms from the Financier or relevant Enforcing Party under this clause, such notice is deemed to be a notice provided by the Seller in accordance with clause 9.3.3.c.ii or 9.3.3.d.ii (as applicable) of the Code of Common Terms.

### The Seller consents to and acknowledges the arrangements in this clause 4.5.

# Enforcement

## Appointment and rights of Enforcing Party

The Buyer agrees and the Seller acknowledges that, without limiting the rights of the Financier under any Security Document and without limiting the liability of the Seller (which continues to be responsible for the performance of its obligations under the Contract), following the occurrence of a Finance Event of Default of which the Buyer receives notice in accordance with clause 1.10 (“Finance Event of Default”), and for so long as that notice is not revoked by the Financier by notice given by it to the Buyer, but subject to this deed and the Security Documents:

### the Financier may, or may appoint an Enforcing Party to, exercise the rights of the Seller or perform the obligations of the Seller under the Contract; and

### the Financier or any Enforcing Party may assign, novate, transfer or dispose of the rights and obligations of the Seller under the Contract to an Acceptable Third Party in accordance with clause 14.3 of the Code of Common Terms provided always that the consent of the Seller will not be required to any such assumption, assignment or novation of obligations and the Seller must assist the Enforcing Party to effect any assumption, assignment or novation (including by executing any document to effect such assumption, assignment or novation).

## Buyer Acknowledgments

### The Buyer acknowledges and agrees that the Financier may, upon the occurrence of a Finance Event of Default of which the Buyer receives notice in accordance with clause 1.10 (“Finance Event of Default”), and for so long as that notice is not revoked by the Financier by notice given by it to the Buyer, directly exercise the rights, remedies and powers of the Seller under the Contract subject to clause 3.3(d) (“Buyer consents, acknowledgments and confirmations”).

### For the avoidance of doubt and without limiting clause 3.3(b) (“Buyer consents, acknowledgments and confirmations”), it is acknowledged and agreed that the taking of any steps by the Financier to enforce any Security Document will not (of itself) be relied upon by the Buyer as giving rise to a right of Termination of the Contract.

## Consequences of enforcement

### If the Financier appoints a Controller over the Contract or otherwise appoints an Enforcing Party pursuant to the Security Documents (following the occurrence of a Finance Event of Default of which the Buyer receives notice in accordance with clause 1.10 (“Finance Event of Default”)):

### subject to clause 3.3(d) (“Buyer consents, acknowledgments and confirmations”), the Seller must continue to comply with its obligations in accordance with the Contract;

### the Buyer must continue to duly and punctually perform and observe its duties and obligations under the Contract (in accordance with its terms);

### the Contract will remain in full force and effect;

### unless the Enforcing Party has notified the Buyer in writing that it agrees to assume a liability or obligation of the Seller under the Contract, the Enforcing Party will not be liable to the Buyer in respect of any events, acts or omissions which have occurred or should have occurred, or for any liability of the Seller to the Buyer in relation to the Contract in respect of any event, act or omission; and

### the Financier must notify the Buyer, stating that it is a notice under this paragraph (e), of the enforcement or exercise of any of its rights, powers or remedies under any Security Document (including by appointing a Controller or other Enforcing Party) promptly after it has enforced or exercised such rights, powers or remedies (however, the parties acknowledge and agree that any failure by the Financier to provide the notice contemplated in this paragraph (e) does not invalidate any purported enforcement or exercise of any such rights, powers or remedies by the Financier).

## Documentation

The Buyer, the Enforcing Party and/or the assignee or transferee shall execute such documents as are reasonably necessary to give effect to the assignment, novation, transfer or disposal referred to in clause 5.1(b) (“Appointment and rights of Enforcing Party”). The Seller must on the Buyer’s demand pay all costs and expenses reasonably incurred by the Buyer in relation to considering its consent to and giving effect to any such assignment, novation, transfer or disposal, and for the purposes of the Contract any amount owing by the Seller to the Buyer under this clause will be deemed to be an amount owing by the Seller to the Buyer under the Contract.

## Rights to enforce

It is agreed as between the Seller and the Financier that nothing in this deed prevents the Financier or any other person from:

### giving any notices under the Finance Documents including (for the avoidance of doubt) any Security Document;

### demanding the payment of any money under the Finance Documents or secured by any Security Document;

### exercising or enforcing any powers, right or remedy afforded generally to unsecured creditors or under any agreement other than the Security Documents; or

### enforcing any of its Security Documents,

in each case, in accordance with the terms of the relevant Finance Document or Security Document (as applicable).

# Payment of money

## Direction to pay

### Notwithstanding clause 5.2.2 (“Payment”) of the Code of Common Terms, if:

### (a) a Finance Event of Default of which the Buyer has received notification in accordance with clause 1.10 (“Finance Event of Default”) is continuing; and

### (b) the Financier directs the Buyer in writing to pay all money due to the Seller under the Contract in a particular manner or to a specified bank account in Australia,

### the Buyer must, until the Buyer receives written notice from the Financier that the Finance Event of Default has ceased to continue, pay all money due by it to the Seller under the Contract in accordance with the Financier’s written direction.

## Discharge of obligations

The Seller acknowledges and consents to the obligations of the Buyer as set out in clause 6.1 (“Direction to pay”) and agrees that any such payment by the Buyer will discharge the Buyer from its corresponding obligation to make that payment to the Seller under the Contract in a corresponding amount.

# Assignment

## By the Seller

Subject to clause 5.1(b) (“Appointment and rights of Enforcing Party”), the Seller must not assign or otherwise dispose of, novate or deal with its rights or obligations under this deed or the Contract.

## By Buyer

### The Buyer must not, without the prior written consent of the Financier, assign, transfer or otherwise dispose of to any person any of its rights, benefits or obligations under this deed or the Contract.

### The Financier must not withhold or delay its consent to the assignee or transferee proposed under paragraph (a) if the proposed assignee or transferee:

#### is another agency or entity acting on behalf of the Commonwealth of Australia; and

#### enters into any deed or written instruments in favour of the Financier, as may be reasonably required by the Financier, for the purpose of assuming the obligations imposed on the Buyer under, and agreeing to be bound by the terms of, this deed and the Contract.

## By the Financier

### The Seller and the Buyer acknowledge and agree that the Financier may assign its rights and novate or otherwise transfer its obligations under this deed to any Qualifying Transferee whom becomes “Financier” under the Facility Agreement.

### Each of the Seller and the Buyer agrees that it will enter into, on terms acceptable to the Buyer (acting reasonably) a novation deed in relation to this deed with any Qualifying Transferee whom becomes “Financier” under the Facility Agreement.

### Without limiting clauses 7.3(a) and 7.3(b), if the Seller undertakes a refinancing of its financing arrangements, the Buyer agrees that, if the Seller requests in writing, it will enter into a document on the same or substantially similar terms as this deed, or agree to a novation of this deed on terms acceptable to the Buyer (acting reasonably), to the extent necessary to confer the Financier’s rights under this deed to any such new or replacement financier.

### Each party must provide all reasonable co-operation and enter into any documentation reasonably requested by the Financier in connection with, or to give effect to, the Financier’s exercise of its rights under this clause 7.3.

## Discharge of finance by the Financier

If the Financier provides a full and final discharge to the Seller in respect of the Seller’s obligations under the Finance Documents, (excluding any discharge relating to a transaction contemplated in clause 7.3(a) to (c)), upon request by the Buyer (without prejudice to accrued but unperformed obligations or liabilities) the Financier agrees to discharge the Buyer from any future obligations under this deed.

# Notices and other communications

## Form - all communications

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified to in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

## Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 8.1 (“Form - all communications”). However, the email must state the first and last name of the sender.

### Communications sent by email are taken to be signed by the named sender.

## Delivery

Communications must be:

### left at the address set out in the Details; or

### sent by prepaid ordinary post (airmail, if appropriate) to the address set out in the Details; or

### sent by fax to the fax number set out to in the Details; or

### sent by email to the address set out in the Details.

However, if the intended recipient has notified a changed address or fax number, then communications must be to that address or number.

## When effective

Communications take effect from the time they are received or taken to be received under clause 8.5 (“When taken to be received”) (whichever happens first) unless a later time is specified.

## When taken to be received

Communications are taken to be received:

### if sent by post, 3 days after posting (or seven days after posting if sent from one country to another); or

### if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or

### if sent by email:

#### when the sender receives an automated message confirming delivery; or

#### 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

#### whichever happens first.

#### For the avoidance of doubt, clause [13.2.1.c. / 13.3.1.c.] (“When effective”) of the Code of Common Terms is hereby deleted and replaced with paragraphs (b) and (c) of this clause 8.5.

## Receipt outside business hours

Despite clauses 8.4 (“When effective”) and 8.5 (“When taken to be received”), if communications are received or taken to be received under clause 8.5 (“When taken to be received”) after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified.

## Reliance on communications

Any communication sent in accordance with this clause 8 can be relied on by the recipient if the recipient reasonably believes the communication is genuine and if it bears what appears to be the signature (original or facsimile) of an Authorised Officer of the sender (without the need for further enquiry or confirmation). Each party must take reasonable care to ensure that no forged, false or unauthorised communications are sent to another party.

# General

## Waiver

### The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right given to that party under this deed does not operate as a waiver of that power or right, nor does any exercise of the power or right preclude any other exercise of it or the exercise of any other power or right under this deed.

### A power or right may only be waived in writing, signed by the party granting the waiver.

## Amendment

This deed may only be amended or supplemented in writing signed by the parties.

## Severability

Any provision in this deed which is invalid or unenforceable in any jurisdiction will, for the purposes of that jurisdiction, be read down, if possible so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

## Further assurance

Each party shall do, sign, execute and deliver and shall procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to effectively carry out and give full effect to this deed and the rights and obligations of the parties under it.

## Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

## Whole agreement

### This deed represents the entire contract between the parties with respect to the subject matter of this deed and supersedes all negotiations and prior agreements in relation to such subject matter.

### Each of the Buyer and the Seller acknowledge and agree that clause 1.3 (“Construction of Contract”) of the Code of Common Terms is subject to this deed.

## Attorneys

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this deed.

## Term

### This deed shall continue in full force and effect until each of the Security Interests granted by the Seller to the Financier under the Security Documents have been discharged in full.

### The Financier agrees to notify the Buyer promptly after the Security Documents have been discharged in full.

## Stamp Duty

### The Seller shall bear the cost of any stamp duty levied in respect of this deed.

### The Seller indemnifies each other party against any liability arising from failure to comply with 9.9(a).

# Law and jurisdiction

## Governing law

This deed shall be governed by and construed in accordance with the laws of the place specified in the Details.

## Submission to jurisdiction

### The parties submit to the non exclusive jurisdiction of the courts of that place and any courts which may hear appeals from those courts in respect of any proceedings in connection with this deed.

### Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

### Each party irrevocably waives any immunity in respect of its obligations under this deed that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.

**EXECUTED** as a deed

Schedule - Notices under the Contract (clause 4.2)

* invoices under clause 4.3.1 (“Invoice”) of the Code of Common Terms
* clause 8.1.1.b (“Mutual undertakings”) of the Code of Common Terms
* clause 9.3.2 (“Delivery Failure”) of the Code of Common Terms
* clause 12.1 (“Procedure for dispute resolution”) of the Code of Common Terms

Signing page

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

**BUYER**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** for and on behalf of the Commonwealth of Australia by a delegate of the accountable authority of the Clean Energy Regulator by authority of section 23(1) of the Public Governance Performance and Accountability Act 2013 (Cth) read with section 110 of that Act, in the presence of:    Signature of witness    Name of witness (block letters) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of delegate of accountable authority    Name of delegate (block letters) |

**SELLER**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** by **[*insert name of Seller*]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:    Signature of director    Name of director (block letters) | )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Signature of director/company secretary\*  \*delete whichever is not applicable    Name of director/company secretary\* (block letters)  \*delete whichever is not applicable |

**FINANCIER**

**[*insert signature block for Financier*]**