

Generating Unit	means a generator of electricity and all the equipment essential to its functioning as a single entity.
Insolvency Event	means the occurrence of any one or more of the following events in relation to the Proponent: (a) an application is made to a court for an order that a provisional liquidator, or receiver, or receiver and manager, be appointed, and the application is not withdrawn, struck out or dismissed within 15 business days of it being made; (b) a liquidator or provisional liquidator is appointed; (c) an administrator or a controller (as defined under section 9 of the <i>Corporations Act 2001</i> (Cth)) is appointed to it or any of its assets; (d) it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, other than the application of solvent reconstruction; or (e) anything occurs under the law of any jurisdiction that has a substantially similar effect to any of the above paragraphs of this definition.
Intended cancellation notice	means an intended cancellation notice issued pursuant to subsection 13(2) of the Act.
Milestones	means the milestones set out in Schedule 3.
Minister	means the Minister responsible for administering the Act, or his or her delegate.
MW	means one megawatt, the unit of electrical power.
MWh	means one megawatt-hour, the unit of electrical energy.
National Electricity Law	means the National Electricity Law set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> and applied as a law of the Australian Capital Territory by the <i>Electricity (National Scheme) Act 1997</i> .
National Electricity Market	means the market for wholesale trading in electricity operated by AEMO under the National Electricity Rules, or any replacement or successor market.
National Electricity Rules	means the national electricity rules established under the National Electricity Law, as amended from time to time, or any replacement or successor rules of conduct.

Network	means the network (as defined in the National Electricity Rules) to which the Proponent, in accordance with the Proposal, is to connect the Generating System.
Network Service Provider or NSP	means the Network Service Provider (as defined in the National Electricity Rules) that owns, operates or controls the Network and with whom the Proponent is to enter into a Connection Agreement.
Nominated Person	means the person, if any, appointed as Nominated Person under clause 12.6.
Notifiable Instrument	means the Notifiable Instrument pursuant to which the Proponent is granted a FiT entitlement under the Act.
Personal Information	means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent or can reasonably be ascertained, from the information or opinion.
Premises	means any premises that the Proponent, or its personnel, employees, agents or contractors use (including places at which any material is stored) for the purpose of implementing the Proposal.
Proponent Confidential Information	means information provided by the Proponent to the Territory: (a) that the Proponent notifies to the Territory is confidential; or (b) that the Territory knows, or ought reasonably know, is confidential; but does not include information that: (a) is, or becomes, public knowledge other than by breach of this Deed; (b) has been independently developed or acquired by the Proponent; or (c) has been notified by the Proponent to the Territory as not, or no longer being, confidential.
Proponent Material	means all material owned by the Proponent, or by another person prior to the Proponent entering into this Deed, and used by the Proponent for the purpose of implementing the Proposal, or complying with this Deed, including documents, information and data stored by any means.
Proponent's FiT entitlement	means the FiT entitlement granted to the Proponent under the Notifiable Instrument.

Proposal	means the proposal submitted by the Proponent in the Auction and approved by the Minister to develop, construct, finance and operate the Generating System at the Site and to supply renewable energy to a specified network and in respect of which the Proponent has been granted a FiT entitlement, or as subsequently varied with the written approval of the Territory from time to time.
Proposed Cure Plan	means a cure plan proposed by the Proponent in accordance with clause 4.1.
Specified Contractor	means any contractor named in Schedule 4.
Specified Personnel	means any person named in Schedule 4.
Site	means the site of the Generating System specified in Item 7 of Schedule 1.
Term of FiT entitlement	means the term of the Proponent's FiT entitlement as specified in the Notifiable Instrument and set out in Item 2 of Schedule 1.
Territory	means: when used in a geographical sense, the Australian Capital Territory; and when used in any other sense, the body politic established by section 7 of the <i>Australian Capital Territory (Self-Government) Act 1988 (Cth)</i> .
Territory Confidential Information	means the kind of information that: (a) is, or relates to, documents, submissions, consultations, policies, strategies, practices and procedures of the Territory that are by their nature confidential; (b) is notified by the Territory to the Proponent as being confidential; (c) in accessing it, or receiving it from the Territory, the Proponent ought reasonably to know is confidential; or (d) is Personal Information of a person provided by the Territory to the Proponent; but does not include information that: (a) is, or becomes, public knowledge other than by breach of this Deed; (b) has been independently developed or acquired by the Proponent; or (c) has been notified by the Territory to the Proponent as not, or no longer being confidential.

Territory Law	means any law, statute, order, regulation, Notifiable Instrument or by-law of the Territory.
Territory Material	means any material provided by the Territory to the Proponent for the purposes of this Deed including documents, equipment, information and data stored by any means.

General

2.2 In this Deed, unless a contrary intention is expressed:

- (a) references to 'Proponent' include any employees, agents or subcontractors of the Proponent;
- (b) references to legislation, or to provisions in legislation, include references to amendments or re-enactments of them and to all regulations and instruments issued under the legislation; and
- (c) "assets" includes present and future properties, revenues and rights of every description.

3 Conditions of entitlement

Compliance with this Deed is a condition of the Proponent's FiT entitlement

- 3.1 In accordance with the Act, the Proponent's FiT entitlement and right to receive FiT support payments is conditional upon the Proponent ensuring compliance with the terms and conditions of this Deed.
- 3.2 A failure to comply with an obligation under this Deed is not, of itself, a breach of this Deed and is not, of itself, a failure by the Proponent to comply with a condition of its FiT entitlement. However, a failure by the Proponent to meet the requirements of a breach notice subsequently issued by the Territory in accordance with clause 4.1, and the requirements that follow from the issue of a breach notice set out in this section 3 in relation to a failure to meet an obligation under this Deed, is a breach of this Deed and is a breach of a condition of the Proponent's FiT entitlement under the Act.

Compliance with this Deed is in addition to conditions of entitlement under the Act

- 3.3 The Proponent's obligation to ensure compliance with this Deed as a condition of its entitlement to FiT support payments is in addition, and does not limit, the other conditions that apply to the Proponent's FiT entitlement by virtue of section 12 of the Act.

No requirement for Proponent to be at fault

- 3.4 Subject to clause 12.13, a failure to comply with an obligation under this Deed, and a failure to meet the requirements of a breach notice issued under clause 4.1, will be a failure to comply with a condition of the Proponent's FiT entitlement regardless of whether the failure was the result of any act or omission or fault on the part of the Proponent.

Reports

- 3.5 The Proponent must provide to the Territory the reports in the manner and at the times stated in Schedule 7.

4 Breach of this Deed

- 4.1 If the Proponent fails to meet an obligation provided for under this Deed, and clause 12.13 does not apply in respect of such failure, then the Territory may issue a written notice to the Proponent (**breach notice**) that:
- (a) specifies the obligation that the Proponent has failed to meet;
 - (b) requires the Proponent to provide a Proposed Cure Plan to the Territory within 30 Business Days of receipt by the Proponent of the breach notice, or any such longer period specified in the breach notice and
 - (c) specifies a default period of time that shall be no less than 90 Business Days.
- 4.2 The Territory and the Proponent will negotiate in good faith to agree the Cure Plan within 20 Business Days of receipt by the Territory of the Proposed Cure Plan, or any such longer period that is agreed in writing between the Parties.
- 4.3 Any Cure Plan agreed under clause 4.2 must set out, at a minimum and without limitation:
- (a) details of how the Proponent (or the Nominated Person with the written consent of the Proponent) will rectify the failure, or take such action to address the failure, as specified in the breach notice; and
 - (b) a reasonable timeframe, being no less than 30 Business Days, within which the Proponent (or the Nominated Person with the written consent of the Proponent) will address, or remedy, the relevant failure and provide a written report to the Territory setting out the steps so taken to remedy the failure.
- 4.4 If the Proponent or the Nominated Person has cured or addressed the relevant failure specified in the breach notice within the default period of time provided under clause 4.1(c), or within the timeframe specified in a Cure Plan agreed under clause 4.2, then the Territory must promptly give written notice to the Proponent (and the Nominated Person) accordingly, and the Proponent will be taken to have cured the relevant failure under this Deed.
- 4.5 A failure by the Proponent to cure or address the relevant failure in accordance with a Cure Plan agreed under clause 4.2, or if no Cure Plan is agreed within the timeframe specified in clause 4.2 then a failure by the Proponent to cure the relevant failure within the default period of time specified in the breach notice, is a breach of this Deed and a breach of a condition of the Proponent's FiT entitlement under the Act.
- The Territory will give a copy of any breach notice issued to the Proponent, and any notice of cure under clause 4.4, to the Nominated Person, if any, at the address for the Nominated Person specified in Item 9 of Schedule 1, or as otherwise stipulated by written notice in accordance with clause 12.7, at the same time as issuing the notice to the Proponent.
- 4.6 For the avoidance of doubt, neither of the following events will, of itself, constitute a breach of this Deed or a breach of a condition of the Proponent's FiT entitlement:
- (a) an Insolvency Event in respect of the Proponent; or
 - (b) the enforcement by a Nominated Person or any third party of any rights under a security or other finance document that such a Nominated Person or third party has with respect to

the Proponent.

- 4.7 The Territory acknowledges that, without limiting the liability of the Proponent under this Deed, neither the Nominated Person nor any third party appointed under the Nominated Person's security is or will be liable for any obligation or liability of the Proponent under this Deed or otherwise by reason only of the Nominated Person or third party attempting to remedy a breach of this Deed or exercising any of the rights, powers, or remedies under the Nominated Person's security.
- 4.8 The Territory consents to the Proponent giving security over any and all of its assets the subject of the Proposal, including its rights under this Deed.

5 Implementation of Proposal

- 5.1 The Proponent must implement the Proposal, and meet all Milestones by the dates specified in Schedule 3 in accordance with the provisions of this Deed to a standard of care, skill and diligence expected of a person who regularly acts in the capacity in which the Proponent will be acting.

Minimum and maximum generation rates

- 5.2 Within 12 months of the Completion Date, the Proponent must supply to the Network the minimum annual quantity of eligible electricity specified in Item 4 of Schedule 1, and during every subsequent 12 months of the term of entitlement thereafter.
- 5.3 The maximum quantity of eligible electricity, in a financial year, in relation to which the proponent is entitled to be paid a FiT support payment, is the amount specified in Item 5 of Schedule 1.

Scheduling of maintenance

- 5.4 Planned maintenance of the generating system that may impact the production of eligible electricity must be scheduled and performed by the Proponent so as to limit production losses at times of above average spot market prices.
- 5.5 For the purposes of 5.4, an above average spot market price is a future price that can reasonably be expected to be above the average spot market price over the previous 12 month period.

6 Specified Personnel & Specified Contractors

- 6.1 The Proponent acknowledges that the grant of its FiT entitlement is made on the basis of representations made by the Proponent in its Proposal that certain personnel and contractors will be engaged to perform certain work relating to implementing the Proposal.
- 6.2 In accordance with the Proponent's Proposal, the Proponent must ensure that the Specified Personnel and Specified Contractors, if any, listed in Schedule 4 undertake work on implementing the Proposal to the extent set out in Schedule 4.
- 6.3 Where Specified Personnel or Specified Contractors are unable to undertake such work, the Proponent must immediately notify the Territory. In such circumstances the Proponent must, if requested by the Territory, provide the details of replacement personnel and contractors acceptable to the Territory at the earliest reasonable opportunity.

- 6.4 To be acceptable to the Territory, such personnel and contractors must have, as a minimum, equivalent skills, training, experience and expertise as the Specified Personnel or Specified Contractors that they are replacing.
- 6.5 Unless as it occurs as a direct result of the circumstances described in clause 4.6(b), a Change in Control of the Proponent prior to successful completion by the Proponent of the final Milestone, without the Territory's prior written consent, will constitute a breach of this Deed.
- 6.6 The Territory may, in its absolute and unfettered discretion, grant consent to a Change in Control of the Proponent prior to successful completion by the Proponent of the final Milestone, and in the event that the Territory grants such consent, the Territory may impose such conditions as the Territory deems fit.
- 6.7 Unless as it occurs as a direct result of the circumstances described in clause 4.6(b), a Change in Control of the Proponent after completion by the Proponent of the final Milestone, without the prior written consent of the Territory, will constitute a breach of this Deed. The Territory may not unreasonably withhold its consent to a Change in Control of the Proponent after completion by the Proponent of the final Milestone.
- 6.8 The Territory's policy at the Date of this Deed is that it will not grant its consent to a Change in Control of the Proponent prior to the successful completion by the Proponent of the final Milestone.

7 Electricity laws

- 7.1 In this clause a reference to Generating System includes a reference to a part of the Generating System, and the physical assets comprising its connection point to the Network.
- 7.2 The Proponent must for the duration of the term of its FiT entitlement:
- (a) ensure that any owner, operator, or controller of the Generating System (including itself where applicable) maintains any registration and accreditation required under the National Electricity Law or National Electricity Rules;
 - (b) not do anything, or permit anything to be done on its behalf, that requires the approval of AEMO or the NSP, without having that approval;
 - (c) not do anything, or permit anything to be done on its behalf, in relation to the Generating System, for which accreditation, licence, qualifications, approval or authority is required by law, without having, or ensuring that the relevant person has such accreditation, licence, qualifications, approval or authority;
 - (d) comply with, and ensure that, any person owning, operating, controlling, or undertaking works in respect of the Generating System, complies with all directions of AEMO and the NSP which AEMO and the NSP are authorised under the National Electricity Law to issue;
 - (e) comply with, and ensure that, any person owning, operating, controlling, or undertaking works in respect of the Generating System complies with all lawful directions of the NSP and AEMO in respect of matters that may impact on the safe, secure and reliable operation of the Network or other assets connected to the Network (including other networks where applicable); and
 - (f) comply with any FiT support payment guidelines issued by the Minister under Part 4 of the Act.

8 Implementation of Plans

Safety, Health & Environment Plan

- 8.1 The Proponent must prepare a safety, health and environment (**SH&E**) plan that outlines in detail how it will comply, and ensure that the construction and operation of the Generating System will comply with every law, and every licence or other approval, made under any law that applies to the Proponent and/or the Facility with respect to their operations, including plans detailing compliance with any law, licence or other approval enacted, imposed or given after the date of the Deed of Entitlement or the Proponent's FiT entitlement comes into effect.
- 8.2 To the extent that laws, licences and approvals are not in effect on the date of the Deed of Entitlement with respect to safety, health and environmental regulation applicable to the Facility, the Proponent must prepare an SH&E Plan, that addresses the minimum SH&E requirements set out in this clause 8.
- 8.3 For the purposes of preparing any SH&E Plan, in the event of an inconsistency between a requirement under, or the Proponent's obligation to comply with:
- (a) a law, licence or approval; and
 - (b) the matters set out in this clause 8;
- a requirement under, and an obligation to comply with, a law, licence or approval, will take precedence to the extent of any inconsistency. If the requirements set out in clause 8.2 can reasonably be complied with concurrently with requirements under an applicable law, licence or approval, the Proponent will address the matters set out in 8.2 to the fullest reasonable extent in an SH&E Plan.
- 8.4 The Proponent must submit a draft SH&E Plan by the Milestone date set out in Schedule 3 – Milestones for review by the Minister.
- 8.5 If the Minister requests that the draft SH&E Plan be revised for the purposes of ensuring the Proponent's compliance with SH&E laws in the Territory (or any other jurisdiction), then the Proponent must revise the Plan in accordance with the request and submit a revised Plan to the Minister within 3 weeks from the date of receipt of the request, or such longer period as nominated in the request.
- 8.6 It is a condition of the FiT entitlement that a Proponent adhere to the SH&E Plan as reviewed by the Minister.
- 8.7 Any review by the Minister of an SH&E Plan shall not be construed as the Minister providing any representation that compliance with the Plan will result in avoidance of all health, safety and environmental risks, or that compliance with the Plan will result in compliance by the Proponent with all relevant laws and regulations. It remains the sole responsibility of the Proponent to ensure that it complies with all laws and regulations and that it take its own steps to guard against all health, safety and environmental risks.

Scope and Content of SH&E Plan Requirements

- 8.8 A Proponent will prepare an SH&E Plan that clearly identifies in detail:
- (a) that the generating system will be constructed in accordance with all relevant codes and standards for wind generation;
 - (b) that the generating system will be commissioned by a qualified electricity generation organisation and certified fit for that purpose;

- (c) that the generating system will be operated in accordance with the SH&E Plan and procedures that detail:
- the scope of SH&E impacts;
 - the parties responsible for SH&E; and
 - the procedures for verifying SH&E performance;
- (d) safeguards, systems, procedures, risks, risk identification, risk minimisation and management, and all other matters to prevent and to remedy adverse SH&E impacts, on:
- employees, visitors and neighbours within the vicinity (including aircraft) of the Facility;
 - systems that the Facility affects and in particular the electricity distribution system; and
 - the environment of the ACT as defined under the *Environment Protection Act 1997* (ACT) or the environment of the relevant host jurisdiction as defined under its local environment protection laws;
- (e) all hazards, including potential hazards, introduced by the generating system, including all hazardous substances present in, and emissions created by, the generating system and controlled during the operation and disposal of the generating system;
- (f) how to assess the potential for harm or impact associated with all hazards, hazardous substances and emissions of the generating system;
- (g) the party that is responsible for mitigating the harm or impacts;
- (h) the mitigation activity to be performed by the Proponent;
- (i) the method of verifying and validating the mitigation activities;
- (j) how the generating system complies with the requirements of the *ACT Work Safety Act 2008*, or similar requirements of any other participating jurisdiction that may apply to the generating system;
- (k) the SH&E reports that will be provided to the Minister (see Schedule 7), or the Minister's delegate as required by the Deed; and
- (l) the methods and controls planned for final disposal of the generation equipment.

Community Engagement Plan

- 8.9 The Proponent must meet the commitments and undertake the activities in Schedule 5 in the manner specified in Schedule 5, and within any timeframes specified in Schedule 5.

ACT Investment Plan

- 8.10 The Proponent must meet the commitments and undertake the activities in Schedule 6 in the manner specified in Schedule 6, and within any timeframes specified in Schedule 6.

9 Access to documents, premises and the Site

- 9.1 For the purpose of determining whether a Proponent is complying with, or has complied with, the Act, or for the purpose of determining whether there has been a failure to comply with, or a breach of a term or condition of this Deed, or other condition of the Proponent's FiT entitlement (monitoring purpose), an authorised employee, or authorised agent of the Territory may, upon giving 24 hours notice, enter and inspect the Site or Premises, including any building or facility on the Site or Premises.
- 9.2 The Territory may by written notice (production notice) given to the Proponent, request that the Proponent provide to the Territory, within the time stated in the notice, copies of any documents or information, or data stored by any means, that the Proponent or an interested person has access to, and that the Territory, on reasonable grounds, considers relevant to a monitoring purpose.
- 9.3 The Proponent must ensure that it and any interested person gives to the Territory copies of any documents, information or data that the Territory requests under clause 9.2 above, within the time stated in the production notice.
- 9.4 For the purposes of this clause 9, interested person means any employee of the Proponent, and any other person, including any contractor, consultant, adviser or agent of the Proponent, engaged by or on behalf of the Proponent in relation to implementing or operating the Proposal.
- 9.5 The Proponent agrees to fully cooperate with, and do all things reasonably necessary, to facilitate an inspection of the Site and Premises by an authorised person under this clause for a monitoring purpose.

10 Transfer of renewable energy certificates

- 10.1 The Proponent must, at no cost to the Territory, create and transfer to the Territory, Large-scale Generation Certificates under the *Renewable Energy (Electricity) Act 2000* (Cth) in respect of all eligible electricity generated by the generating system for which the Proponent is entitled to receive a FiT support payment.
- 10.2 The Proponent must ensure that its generating system is approved as a GreenPower Generator under National GreenPower Accreditation Program Rules.
- 10.3 The Proponent must, at no cost to the Territory, execute and provide to the Territory any instruments, documents or information that the Territory reasonably requires to account for and manage the certificates transferred to it under this clause. This includes registration by the Proponent as an accredited GreenPower generator.
- 10.4 The Proponent must, within 3 months of the end of a financial year, transfer to the Territory Large-scale Generation Certificates created in relation to generation of eligible electricity, for which the Proponent has received the FiT support payment occurring in that year.
- 10.5 Where this Deed is validly terminated, the Parties agree that the following obligations shall apply in relation to any Large-scale Generation Certificates in respect of all eligible electricity generated by the generation system up until, and including, the effective date of termination:
 - (a) where, as at the effective date of termination, the Proponent has received the FiT support payment in respect of such eligible electricity generated, the Proponent must transfer the relevant Large-scale Generation Certificates to the Territory in accordance with clause 10.1; and
 - (b) where, as at the effective date of termination, the Proponent has not received payment of

the FiT support payment in respect of such eligible electricity generated, the Proponent shall be entitled to retain all existing and future Large-scale Generation Certificates (including all legal and beneficial rights and interests in such certificates) and the Proponent will have no further obligations to the Territory in respect of the creation and transfer of any Large-scale Generation Certificates under this Deed.

- 10.6 In the event that the *Renewable Energy (Electricity) Act 2000* (Cth) or any instrument under it is replaced or amended, or a new statutory regime is introduced, after the execution of this Deed, and as a result the Proponent becomes entitled to any form of valuable certificate, credit, or other form of value or benefit other than Large-scale Generation Certificates (and whether in addition to Large-scale Generation Certificates or otherwise) specifically on the basis of the volume of renewable energy generated by the Proponent (**Renewable Energy Benefit**) then the Proponent will, to the extent to which it is permitted or capable of doing so by law, assign to the Territory the Renewable Energy Benefit which accrues to the Proponent in respect of eligible electricity generated by the Proponent.
- 10.7 In the event that the Proponent is not permitted to, or a Renewable Energy Benefit is not capable of being assigned to the Territory by the Proponent, then the Proponent will pay to the Territory a sum as compensation equivalent to the value of the Renewable Energy Benefit to which the Proponent is entitled for a financial year, within 3 months of the expiration of each financial year, or as otherwise agreed to by the Parties.

11 Insurance and indemnity

- 11.1 The Proponent must effect and maintain for the term of its FiT entitlement all insurance coverage required to be effected by it by law, and public liability insurance in an amount not less than the amount specified in Item 8 of Schedule 1, with a reputable insurer approved by the Territory.
- 11.2 The Proponent must produce evidence that it has in place the insurance required under clause 11.1 above within 14 days of a request being made by the Territory.
- 11.3 The Proponent indemnifies the Territory, its employees and agents against liability in respect of all claims, costs and expenses in relation to all loss, damage, injury or death to persons or property caused by the Proponent in connection with the preparation, submission and implementation of the Proposal, including the operation of the Generating System, or any other activity undertaken by the Proponent under this Deed except to the extent that the Territory caused the relevant loss, damage or injury.
- 11.4 The indemnity in clause 11.3 above:
- (a) applies regardless of any statutory, Territory or Ministerial approval, licence or entitlement given to the Proponent or in respect of its Proposal; and
 - (b) applies in respect of acts and omissions of any person acting on behalf of the Proponent as though such acts or omission were done by the Proponent.
- 11.5 The Proponent must, at its own expense, make good the amount of all claims, loss, damage, costs and expenses the subject of the indemnity in clause 11.3 above.

12 Transfer, Surrender & Cancellation of FiT entitlement

Application of Act

- 12.1 The Proponent must not surrender or transfer the FiT entitlement otherwise than in accordance with the Act.
- 12.2 The Proponent's FiT entitlement and entitlement to receive FiT support payments may, in accordance with section 13 of the Act, be cancelled if the Minister believes, on reasonable grounds, that a condition of the FiT entitlement has not been met (including a failure to comply with the requirements of a breach notice issued pursuant to this Deed).
- 12.3 Section 13 of the Act provides that the Minister may not cancel a FiT entitlement without giving notice and an opportunity to the Proponent to provide reasons why the Proponent's FiT entitlement should not be cancelled.

Intended cancellation notice and Nominated Person

- 12.4 In the event that the Minister issues to the Proponent an intended cancellation notice pursuant to subsection 13(2) of the Act, the Territory will as soon as reasonably practicable after the intended cancellation notice is issued, give a copy of the notice to the Nominated Person, if any, by sending it to the address specified in Item 9 of Schedule 1, or if the Nominated Person has been changed in accordance with clause 12.8, to the new Nominated Person.
- 12.5 The Territory will, upon application being made by the Proponent, or by the Nominated Person with the Proponent's written consent, provide whatever reasonable assistance it can to the Proponent, or the Nominated Person, as the case may be, in its preparation and submission to the Minister of an application under section 15 of the Act to transfer the FiT entitlement to another person.
- 12.6 Subject to clauses 12.7 and 12.8, the person specified in Item 9 of Schedule 1, if any, is appointed as the Nominated Person for the purposes of this clause 12.
- 12.7 The Nominated Person may be changed by written notice to the Territory in accordance with clause 12.8.
- 12.8 A person must provide to the Territory a written consent in the form set out in Schedule 8 in order to be appointed as the Nominated Person for the purposes of this clause 12 and, where such person is a new Nominated Person for the purposes of clause 12.7, such notice must include the consent of the Nominated Person to be replaced.

Governing law and compliance with the law

- 12.9 This Deed is to be governed by, and construed in accordance with, the law for the time being in force in the Territory and the parties submit to the non-exclusive jurisdiction of the courts of the Territory.
- 12.10 The Proponent must comply with the laws from time to time in force in the Territory or other participation jurisdiction in implementing the Proposal and operating the Generating System and in relation to all incidental activities.

Notices

- 12.11 Any notice, including any other communication, required to be given or sent to either party under this Deed, must be in writing and given to the relevant Contact Officer. A notice under this Deed will be deemed to have been given:
 - (a) if delivered by hand, on delivery;

- (b) if sent by prepaid mail, on the expiration of two business days after the date on which it was sent;
 - (c) if sent by facsimile, on the sender's facsimile machine recording that the facsimile has been successfully and properly transmitted to the recipient's address; or
 - (d) if sent by electronic mail, on the other party's acknowledgment of receipt by any means.
- 12.12 Nothing in this section 12 limits, or in any way alters, the effect of any provisions of the Act relating to the giving of notice for any purpose.

Force Majeure and Change of Law

- 12.13 Any failure by the Proponent to comply with an obligation under this Deed, including without limitation to achieve a Milestone within the time specified in this Deed, will not amount to a failure to meet an obligation under this Deed to the extent that such failure is caused by:
- (a) a force majeure event that is entirely outside of the control of the Proponent and that it would be unreasonable to expect the Proponent to have anticipated and factored into its planning when establishing and agreeing to the timelines provided for by this Deed; or
 - (b) a Change in Law made after the date of execution of this Deed.
- 12.14 A force majeure event for the purposes of clause 12.13(a) is an event entirely outside the control of the Proponent, including, but not limited to:
- (a) fire, storm, flood or other natural disaster;
 - (b) war, whether declared or not;
 - (c) riot, industrial disturbance or other civil unrest;
 - (d) acts of vandalism, sabotage, or terrorism;
 - (e) failure of the network or the connecting network service provider to meet their obligations to connect the generator under National Electricity Law; or
 - (f) acts or omissions by the Clean Energy Regulator in relation to the creation or transfer of large-scale generation certificates.
- 12.15 The Proponent shall at all times keep the Territory fully informed of the occurrence of any event or change in law referred to in clause 12.13, and the extent to which (including the reasons why) it considers it will, or is likely to, delay the performance by the Proponent of its obligations under this Deed.

13 Variation

- 13.1 Subject to clause 13.2 this Deed can only be varied by the written agreement of the Proponent the Territory, and the Nominated Person, if any.
- 13.2 In accordance with the Act, this Deed cannot be varied without the approval of the Minister.

14 Term and Termination of Deed

- 14.1 Except for those clauses which survive termination or expiration of this Deed, this Deed will terminate upon transfer, surrender or cancellation of the Proponent's FIT entitlement in accordance with the Act.

Survival of clauses

- 14.2 The obligations in clauses 9, 10, 11, 16 and 17 survive the expiration or earlier termination of this Deed and the transfer, surrender and cancellation of the Proponent's FiT entitlement.

15 General Terms and Conditions

General responsibilities of parties

- 15.1 The Parties will act reasonably and in good faith with respect to matters that relate to this Deed.

No warranties or representations arise from evaluation of a Proposal

- 15.2 In making a favourable assessment of a Proposal, neither the Territory nor the Minister make any warranty or representation about the prospects of successful implementation of a Proposal.

Costs

- 15.3 Except as provided for specifically by this Deed, all costs relating to implementing the Proposal and complying with this Deed, and any other conditions that apply to the Proponent's entitlement to FiT support payments under the Act, will be borne by the Proponent.
- 15.4 Except as provided for specifically by this Deed, and as otherwise required by law, the Territory is not liable for making any payment to the Proponent for any reason, whether by way of compensation, re-imbursement or otherwise.

No employment, partnership or agency relationship

- 15.5 Nothing in this Deed constitutes one party, or its employees, agents or contractors as employees, partners or agents of the other party, or creates any employment, partnership or agency for any purpose.
- 15.6 The Proponent must not represent itself, and must ensure its employees, agents and contractors do not represent themselves, as being employees, partners or agents of the Territory.

Severability

- 15.7 Any provision of this Deed that is illegal, void or unenforceable will not form part of this Deed to the extent of that illegality, voidness or unenforceability. The remaining provisions of this Deed will not be invalidated by an illegal, void or unenforceable provision.

No waiver

- 15.8 Failure or omission by the Territory or the Minister at any time to enforce or require strict or timely compliance with any provision of this Deed will not affect, or impair, that provision in any way, or the rights and remedies that the Territory may have in respect of that provision, or that the Minister may have under the Act.

Precedence of instruments

- 15.9 The provisions of the Act take precedence over the terms and conditions of this Deed to the extent of any inconsistency between them.

- 15.10 The Notifiable Instrument pursuant to which the Proponent is granted a FiT entitlement takes precedence over the terms and conditions of this Deed to the extent of any inconsistency between them.

Providing false or misleading information

- 15.11 The Proponent acknowledges that the Minister has granted to the Proponent a FiT entitlement relying on the statements and representations made in the Proponent's Proposal.
- 15.12 The Proponent warrants that the statements and representations made in its Proposal are true and correct to the best of its belief and knowledge after making reasonable inquiries.
- 15.13 Without limiting the Territory's rights under the general law including any statute, the Proponent must not give information to the NSP that is false or misleading.
- 15.14 Without limiting the Territory's rights under the general law including any statute, the Proponent must not give information to the Territory that is false or misleading.
- 15.15 The Proponent acknowledges that providing false or misleading information may be an offence under the *Crimes Act 1900* (ACT).

Act to take precedence

- 15.16 This Deed is not intended to limit or vary the operation of the Act. Nothing in this Deed is to be taken to limit or fetter any right, power, obligation or function of the Territory or the Minister under the Act.

16 Payment on repeal or amendment of the Act

Definitions

16.1 In this clause 16:

Independent Expert	means a firm of chartered accountants selected by the Parties in accordance with clauses 16.15 to 16.18 that meets the following criteria: (a) the firm is independent of each Party; (b) neither party has previously engaged the firm to provide services in relation to the Large-scale Wind Auction; (c) the firm has experience in valuing wind farm or other renewable energy assets; and the firm (and individuals to be utilised by the firm) are not arbitrators.
Market Value	means the market value of the assets of the Proposal (including, but not limited to, its interest in the land at the Site and the Generating System including associated plant and equipment and any connection assets) as determined in accordance with section 16.
Net Compensation Amount	means all losses, costs and expenses as calculated in accordance with clause 16.3 less any offset amounts calculated in accordance with clause 16.6, as agreed by the Parties or determined by the Independent Expert in accordance with clause 16.

- 16.2 The Proponent will be entitled to be paid an amount in accordance with this clause 16 in the event that, within the period between the date of grant of the FiT entitlement and 16 February 2037:
- (a) the Act is repealed or amended;
 - (b) the Minister imposes a condition on, or amends, the FiT entitlement after the date of the grant of the FiT entitlement and after the date of execution of this Deed (except where the condition or amendment is made in relation to a breach by the Proponent of a condition of the Proponent's FiT entitlement); or
 - (c) any other Territory Law is enacted, amended or repealed; and such amendment, repeal, enactment or condition terminates the Proponent's right to receive, reduces the amount of, or otherwise directly adversely affects the value of, the FiT support payments that the Proponent is entitled to receive at the date of the grant of the FiT entitlement, or such amendment, repeal, enactment or condition would make it illegal, impossible or impracticable for the Proponent to implement the Proposal as contemplated by the Parties at the date of grant of the FiT entitlement (**the amendment or repeal**).
- 16.3 Subject to, and in accordance with, sub-clauses 16.4 to 16.21 of this section, the Proponent will be paid an amount by the Territory so as to cover the Proponent's actual, contingent or

prospective liability for losses, costs and expenses incurred by the Proponent in its reliance on the grant of the FiT entitlement up to the date the Proponent has actual knowledge that the amendment or repeal was likely to occur (including those losses, costs and expenses incurred that require the Proponent to make a payment at a future time), including without limitation payment for:

- (a) any net loss, costs and expenses that are due to binding legal commitments having been entered into by the Proponent in reliance on the grant of FiT entitlement prior to the date of the amendment or repeal and without the Proponent having actual knowledge that the amendment or repeal was to occur, including, without limitation, all amounts paid or payable by the Proponent under any financing document in respect of the Proposal; and
- (b) any net loss, costs and expenses incurred by the Proponent in implementing the Proposal pursuant to this Deed, including, without limitation, any loss, costs and expenses incurred in the course of, or as a result of, the development, construction, financing and operation of the Generating System.

16.4 The Proponent will not be paid an amount in respect of, or compensated for, any losses, costs or expenses that are not incurred directly as a result of the amendment or repeal and will not be paid any amount in respect of, or compensated for any indirect, consequential, special, anticipatory or expectation losses, nor for any loss of opportunity, loss of future profit, future earnings or other benefit, whether that be loss of future FiT Support Payments or other future profit, income or benefit from any source.

16.5 The Proponent will not be paid any amount in respect of, or compensated for loss, expense, cost, damage or liability of any kind:

- (a) that the Proponent, acting reasonably, could have taken, or could, at the date of making a claim for compensation under this clause, take steps to mitigate;
- (b) arising from legal commitments or obligations (whether in law, equity or under statute) binding the Proponent pursuant to which the Proponent is required to pay another person any indirect, consequential, special, or expectation losses, or any loss of profits, earnings, opportunity or other future benefit;
- (c) in the nature of monies owing to its shareholders, owners, investors, partners, financiers, banks or any other associate or person which represents a loss of future earnings or future profit including without limitation any future dividends or interest, or loss of opportunity to those persons;
- (d) arising from decisions made in relation to its, or its associated entities', taxation affairs in reliance on the grant of the FiT entitlement; and
- (e) incurred by the Proponent in the preparation of its proposal in the Auction or incurred as legal or professional expenses in negotiating or settling this deed or settling any dispute under this deed, including in relation to this clause.

16.6 Any amount payable by the Territory under this clause 16 will be offset by:

- (a) any amount that becomes payable to the Proponent under statute as a direct result of the amendment or repeal, including any amount payable under statute to the Proponent as compensation for the amendment or repeal, or to replace or offset the costs, losses or expenses of the Proponent as a result of the amendment or repeal;
- (b) the proceeds paid or payable on the sale of any assets after the date of amendment or